



# Civil Resolution Tribunal

Date Issued: September 9, 2020

File: SC-2020-003706

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Stillwater Consulting Ltd. v. ICBC*, 2020 BCCRT 1010

BETWEEN:

STILLWATER CONSULTING LTD.

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This small claims dispute is about insurance coverage for an alleged “hit and run” collision on January 11, 2020.

2. The applicant, Stillwater Consulting Ltd. (Stillwater), says the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly refused its claim that its vehicle was damaged as a result of a hit and run. Stillwater seeks an order for \$5,000, which is its estimate of the total cost to repair the vehicle.
3. ICBC says its estimators' evidence shows the damage was not a result of vehicle to vehicle contact, so the damage does not qualify for coverage under the Provincial Hit and Run Fund, which ICBC administers.
4. Stillwater is represented by one of its owners, JM. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
7. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of

law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. In resolving this dispute the CRT may make one or more of the following orders, where permitted by section 118 of the CRTA:
  - a. Order a party to do or stop doing something;
  - b. Order a party to pay money;
  - c. Order any other terms or conditions the CRT considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether Stillwater is entitled to “hit and run” vehicle damage coverage from ICBC.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant Stillwater bears the burden of proof on a balance of probabilities. While I have read all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. Stillwater says that on January 12, 2020, JM noticed damage to the driver’s side of the vehicle while it was parked in his driveway. As the driveway is fenced, JM says the damage must have occurred the night before, when the vehicle was parked on the street near a community theatre. JM says when he drove the vehicle to his house that night, it was dark so he may not have seen the damage at that time. In any event, after noticing the damage on January 12, JM contacted ICBC to report it.
12. Stillwater reported the damage to ICBC under section 24 of the *Insurance (Vehicle) Act* (IVA). Section 24 of the IVA describes remedies available for hit and run accidents and, where a hit and run driver remains unknown, says that ICBC may be named as a nominal defendant in claims for damages. ICBC says, and I agree, that

section 24 specifically requires that claimed damages must have been caused by an unidentified vehicle.

13. Stillwater's vehicle was first inspected by an unidentified estimator at an ICBC Express Valet shop on January 16, 2020. That estimator noted the damage consisted of a small diameter scrape from the back of the left rear quarter panel extending to the front of the left rear door, where the door was then punctured and ripped. Blue paint transfer was noted. The estimator determined the damage was not consistent with vehicle to vehicle impact.
14. Stillwater's vehicle damage was also reviewed by several other ICBC employees, including:
  - a. Dan Ford, Material Damage Manager, on January 16, 2020,
  - b. Lorena Miranda, Claims Centre Estimator, on January 22, 2020, and
  - c. Larry Kucher, Material Damage Operations Manager, on April 28, 2020.
15. Each of the above-noted ICBC employees stated their opinion was that the damage was not consistent with vehicle to vehicle contact. Both Mr. Ford and Mr. Kucher noted the blue paint present within the damage was non-automotive.
16. Stillwater says it later discovered additional damage near the front left wheel well, which was reviewed by Beverly Leduc, Material Damage Estimator with ICBC. Ms. Leduc noted the wheel well damage was at a different height than the other damage, and did not include the same blue paint transfer. Ms. Leduc determined the wheel well damage was likely unrelated to the left side scrape damage, and was also not consistent with vehicle to vehicle contact. Based on its employees' opinions, ICBC denied Stillwater's claim for damages.
17. In their submissions, both parties referenced an investigation done by a Special Constable in the Special Investigations Unit. However, neither party submitted any documents from this investigation, so I make no findings about it and place no weight on the submissions about it, except to say that the parties generally agree

the Special Constable agreed with ICBC's determination the damage was not caused by vehicle to vehicle contact.

18. Stillwater disagrees with ICBC's determination of how the damage occurred. It had the vehicle inspected by Rocky Mountain Collision (RMC). RMC's April 23, 2020 repair quote is for \$3,235.34. Stillwater acknowledges the repair quote's amount, but argues that repairs "could be as high as \$5,000", which is the amount claimed in this dispute.
19. In support of its position, Stillwater produced an undated email from Shannon Tang, Body Shop Assistant Manager at RMC, about the vehicle's damage. In it, Ms. Tang says that both the wheel well damage and scrape damage appeared consistent. She further stated it was her opinion "the damage appears consistent with **something** moving along the side" of Stillwater's vehicle, from back to front (my bold emphasis added).
20. Neither the ICBC employees' or Ms. Tang's qualifications are before me, aside from their job titles. A job title in itself does not necessarily establish qualifications to provide expert evidence on the likely cause of vehicle damage. Therefore, I find none of the opinions qualify as expert evidence under the CRT's rules. Even so, I find the opinions are substantially consistent, with the exception of whether the wheel well damage was related to the January 11, 2020 incident.
21. In any event, as noted above, to be eligible for coverage under section 24 of the IVA, damage must be consistent with vehicle to vehicle contact. Here, I find Stillwater has not established the damage was caused by another vehicle. Even its own body shop RMC says "something" dragged along the side of Stillwater's car, but stops short of saying the damage was likely caused by another vehicle. On balance, I am unable to find the damage was caused by an unidentified vehicle entitling Stillwater to coverage under the Provincial Hit and Run Fund. Therefore, I find its claim must be dismissed. Given my conclusion, I do not need to address Stillwater's claimed damages in any detail. other than to say I would have not allowed anything more than the \$3,235.34 quoted by RMC.

22. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Stillwater was not successful, I find that it is not entitled to reimbursement of its paid tribunal fees. Neither party claimed dispute-related expenses.

## **ORDER**

23. I order Stillwater's claims, and this dispute, dismissed.

---

Andrea Ritchie, Vice Chair