



# Civil Resolution Tribunal

Date Issued: August 9, 2023

File: SC-2022-007318

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Thiele v. ICBC*, 2023 BCCRT 670

BETWEEN:

HORST THIELE

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about coverage under a motor vehicle insurance policy.
2. The applicant, Horst Thiele, owns a 2005 Chevrolet Silverado 3500 truck that is insured by the respondent insurer, Insurance Corporation of British Columbia (ICBC). Mr. Thiele says his truck was damaged by a fire caused by a rodent nest located in his engine compartment. Mr. Thiele paid \$6,384.30 to repair the damage, and claims

reimbursement from ICBC of \$5,000, the small claims monetary limit at the Civil Resolution Tribunal (CRT).

3. ICBC says Mr. Thiele has not proven the damage was a result of a fire or rodent nest rather than from normal wear and tear or a lack of oil in the engine. ICBC also says Mr. Thiele breached his insurance policy by failing to allow ICBC to inspect the vehicle before repairs were completed.
4. Mr. Thiele represents himself. ICBC is represented by an authorized employee.

## **JURISDICTION AND PROCEDURE**

5. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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. Section 39 of the CRTA says that 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 in the interests of justice.
7. Section 42 of the CRTA says that 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. Where permitted by section 118 of the CRTA, in resolving this dispute, the CRT may order a party to do or stop doing something, pay money, or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether Mr. Thiele is entitled to \$5,000 as insurance coverage from ICBC for his truck's mechanical repairs.

## **EVIDENCE AND ANALYSIS**

10. Typically, in a civil claim such as this, the applicant Mr. Thiele must prove his claim on a balance of probabilities (meaning "more likely than not"). However, when an insurer denies coverage, as ICBC did here, it bears the burden to prove the denial was justified (see: *Boyle v. Insurance Corporation of British Columbia*, 2017 BCSC 1762 at paragraph 54). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.
11. The background facts are not particularly in dispute. On June 21, 2021, Mr. Thiele and a passenger were on a road trip. Approximately 5 hours into the road trip Mr. Thiele smelled "burned oil" and heard loud engine noises. When he pulled over he felt "a lot of heat, heavy fumes, and smoke". He checked the oil and there was nothing on the dipstick. Mr. Thiele called a tow truck who towed the vehicle to Downtown Service, a local mechanic.
12. Mr. Thiele says the damage was caused by a rodent nest in the engine compartment that caught fire. The truck's "turbocharger" and associated parts needed repair and replacement, which was ultimately done for a total of \$6,384.30. Mr. Thiele argues this should be covered under his comprehensive insurance policy with ICBC, and claims reimbursement of \$5,000, the CRT's small claims monetary limit.
13. As noted, ICBC argues Mr. Thiele has not proven there was a fire in the vehicle or that any damage was due to rodents. ICBC says Mr. Thiele also deprived it of the

right to inspect the vehicle by failing to retain any of the damaged parts or taking photos of the damage before he reported it to ICBC.

### ***Insurance policy***

14. ICBC's Autoplan Optional Policy, Division 8, section 5(1) says that if vehicle loss or damage occurs, the insured must "promptly notify" ICBC, and file a proof of loss within 90 days. Further, section 5(3)(b) of the policy says the owner must not remove any physical evidence of the loss or damage or make any repairs to the vehicle, unless immediately necessary to protect the vehicle from further loss, until ICBC has had a reasonable opportunity to inspect it.
15. ICBC says Mr. Thiele did not inform it of the truck's damage until September 7, 2021, approximately 2.5 months after the damage occurred. Once notified, ICBC spoke with an employee of Downtown Service that ICBC says told it a fire was suspected, but not confirmed, and the oil feed line had melted. Downtown Service advised it did not take any pictures.
16. Mr. Thiele says he did not know the damage was something that could be covered under his insurance policy. He also says Downtown Service did not inform him it could be. He says he only discovered it could be covered after the repairs were completed. In any event, Mr. Thiele undisputedly reported the damage as soon as he was aware he had to, and ICBC does not dispute he filed a proof of loss within 90 days.
17. Mr. Thiele undisputedly took his vehicle to a mechanic immediately. As Mr. Thiele was on a road trip, the mechanic, Downtown Service, was approximately a 5-hour drive away from his home. Downtown Service kept the truck until repairs were completed in August 2021. Mr. Thiele undisputedly relied on Downtown Service to diagnose and repair his vehicle. I find he was not aware, and it would not be common knowledge, that he would have to keep the damaged parts that were removed from his vehicle. I find after ICBC was informed of the damage, Mr. Thiele provided it with all of the repair documentation, and ICBC was able to contact Downtown Service for further information.

18. Section 5(4)(b) of the Optional Policy says that ICBC is not liable under the insurance policy if an owner or operator, to the prejudice of ICBC, contravenes section 5(3)(b). This means that if ICBC is prejudiced by Mr. Thiele's failure to allow ICBC a reasonable opportunity to inspect the vehicle, ICBC is not obligated to provide coverage under the policy. The burden is on ICBC to establish prejudice (see: *Stony Lake Logging v. ICBC*, 2015 BCPC 385). As noted, ICBC had the opportunity to review the repair records and speak directly with the repair shop. I find it has not proven it was prejudiced as a result of the repairs being made prior to Mr. Thiele becoming aware that a claim should be made. I find ICBC has not established it should be relieved from its liability to cover the claim.

### ***Entitlement to insurance coverage***

19. The next question is what caused the truck's damage. As noted, Mr. Thiele says he needed a new turbocharger because the rodent nest caught fire and melted the main oil feed line. In contrast, ICBC argues there is no evidence a fire caused the damage rather than a mechanical failure, which is not covered under the policy.

20. Several of Downtown Service's estimates and invoices are in evidence. The relevant notes are summarized as follows:

- a. On June 24, the vehicle was towed in. There was no oil on the dipstick. The vehicle was inspected for oil leaks under the carriage. Downtown Service verified there was oil at the turbo oil feed line which was melted and leaking due to a "fire under turbo area (rodent nest)" (quote reproduced as written). Downtown Service recommended the turbo be removed and replaced.
- b. On July 8, Downtown Service removed and re-installed all related parts for access to the turbo oil feed line. It cleaned the rodent nest and "burnt material" from under the turbo. It refilled the engine and checked for leaks. When the engine was started, it had little power and Downtown Service suspected "seized turbo vanes" and an "inoperative cluster".

- c. On July 12, Downtown Service removed and re-installed air inlet access to the turbo fines and noted the turbo was “worn badly due to lack of oil from burn off oil feed line”.
  - d. On August 13, Downtown Service removed and re-installed all related parts for the turbocharger and turbo assembly. At this time, the truck was drivable again.
21. Although ICBC argues Mr. Thiele has not proven his truck’s damage resulted from a fire or rodent nest rather than just being empty of oil or some other mechanical failure, I disagree. The best evidence of the cause of the truck’s damage is from Downtown Service, which actually investigated the damage and performed the repairs. Given Downtown Service’s invoices and its explanation to ICBC, I find it more likely than not that a rodent nest in Mr. Thiele’s engine compartment got so hot that it melted the oil feed line, causing damage to the turbocharger. There is nothing in evidence that indicates there was any other oil leak, or any other mechanical failure. I find it does not matter whether an actual fire occurred or not, the undisputed evidence is that the nest created such heat that the oil feed line to the turbocharger melted.
22. ICBC did not provide an entire copy of its Optional Policy, but it does not argue that Mr. Thiele’s truck damage would not be covered if caused by a rodent nest and/or fire. So, I accept that it is covered under Mr. Thiele’s policy.
23. As for damages, ICBC does not dispute the repair cost, which totaled \$6,384.30. An applicable deductible would generally be deducted from any reimbursement. However, no party provided any information about the applicable deductible, so I do not make any deduction. I find Mr. Thiele has proven he is entitled to the full \$5,000 claimed.

***Interest, fees and expenses***

24. The CRT’s \$5,000 small claims monetary limit is exclusive of *Court Order Interest Act* interest, CRT fees, and dispute-related expenses.

25. Mr. Thiele is entitled to pre-judgment interest on the \$5,000 under the *Court Order Interest Act*. Calculated from August 16, 2022, the date of Downtown Service's final repair invoice, this equals \$169.60.
26. 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. As Mr. Thiele was successful, I order ICBC to reimburse him \$175 in paid CRT fees. He did not claim any dispute-related expenses.

## **ORDERS**

27. Within 21 days of the date of this decision, I order ICBC to pay Mr. Thiele a total of \$5,344.60, broken down as follows:
  - a. \$5,000 in damages as reimbursement for repair costs,
  - b. \$169.60 in pre-judgment interest under the Court Order Interest Act, and
  - c. \$175 in tribunal fees.
28. Mr. Thiele is also entitled to post-judgment interest, as applicable.
29. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Andrea Ritchie, Vice Chair