

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

MAR 22 2023



*In the Supreme Court of British Columbia*

No. \$ 232135

Vancouver Registry

Between

INSURANCE CORPORATION OF BRITISH COLUMBIA

Plaintiff

And

CANADIAN NATIONAL RAILWAY COMPANY,  
COMPAGNIE DES CHEMINS DE FER NATIONAUX DU CANADA,  
CANADIAN FOREST PRODUCTS LTD. IN ITS ENGLISH FORM  
AND PRODUITS FORESTIERS DU CANADA LTEE IN ITS FRENCH  
FORM, CANFOR PULP PRODUCTS INC. and CANFOR PULP LTD.

Defendants

**NOTICE OF CIVIL CLAIM**

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Time for response to civil claim**

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21422 5232135

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## CLAIM OF THE PLAINTIFF

### Part 1: STATEMENT OF FACTS

*[Using numbered paragraphs, set out a concise statement of the material facts giving rise to the plaintiff's(s') claim.]*

1. The Plaintiff, Insurance Corporation of British Columbia, is a Crown Corporation providing motor vehicle insurance in the Province of British Columbia with its offices located at 151 West Esplanade, North Vancouver, British Columbia.
2. The Defendant, Canadian National Railway Company, Compagnie des chemins de fer nationaux du Canada, is a Federal company with a registered office located at 935 de la Gauchetiere Street West, Montreal, Quebec.
3. The Defendant, Canadian National Forest Products Ltd. in its English form and Produits Forestiers du Canada Ltee in its French form is a limited company with a registered and records office located at 100 – 1700 West 75<sup>th</sup> Avenue, Vancouver, British Columbia.
4. The Defendant, Canfor Pulp Products Inc., is a limited company with a registered and records office located at 100 – 1700 West 75<sup>th</sup> Avenue, Vancouver, British Columbia.
5. The Defendant, Canfor Pulp Ltd. is an extra provincial company with a registered and records office located at 100 – 1700 West 75<sup>th</sup> Avenue, Vancouver, British Columbia.
6. On or about the 12<sup>th</sup> day of November, 2020, at or near the Canfor – Prince George Pulp Mill, 2789 Prince George Pulpmill Road, Prince George, British Columbia, a 2019 Freightliner Tractor, bearing British Columbia licence plate number MF5997, owned by Mercedes-Benz Financial Services Canada Corporation (lessor) and Excel Transportation Inc. (lessee), and operated by Shane Wayenberg, (hereinafter referred to as “the Freightliner”), was struck by rail cars being negligently operated by employees of the Defendant, Canadian National Railway Company, Compagnie des chemins de fer nationaux du Canada, or in the alternative by employees of Canadian National Forest Products Ltd. in its English form and Produits Forestiers du Canada Ltee in its French form, Canfor

Pulp Products Ltd or Canfor Pulp Ltd., causing the total loss of the Freightliner, (hereinafter referred to as "the collision").

7. The Plaintiff pursuant to its obligation under an optional policy of insurance with Mercedes-Benz Financial Services Canada Corporation (lessor) and Excel Transportation Inc. (lessee) paid for the total loss, and other losses, to the Freightliner, (hereinafter referred to as the "Freightliner payment") and obtained full subrogation rights for that loss pursuant to Section 84 of the Insurance (Vehicle) Act.
8. The Plaintiff is entitled to recover the Freightliner payment from the Defendants, jointly and severally.
9. The Plaintiff has paid the following amounts of money in respect of the said losses to the Freightliner:

Total Loss: 2019 Freightliner	\$ 94,980.00
Tows	\$ 263.32

**TOTAL: \$ 95,243.32**

## **Part 2: RELIEF SOUGHT**

*[Using numbered paragraphs, set out the relief sought and indicate against which defendant(s) that relief is sought. Relief may be sought in the alternative.]*

1. Judgment for debt in the sum of \$95,243.32
2. Interest pursuant to the Court Order Interest Act, R.S.B.C. 1996 c. 79 and amendments from November 12, 2020, to the date of judgment
3. Costs
4. Such further and other relief as to this Honourable Court may deem just.

## **Part 3: LEGAL BASIS**

*[Using numbered paragraphs, set out a concise summary of the legal bases on which the plaintiff(s) intend(s) to rely in support of the relief sought and specify any rule or other enactment relied on. The legal bases for the relief sought may be set out in the alternative.]*

1. The Plaintiff was at all material times the insurer of the Freightliner under a Certificate of Insurance Number MF5997 affording insurance coverage arising out of the use of the Freightliner at the time of the loss.
2. Mercedes-Benz Financial Services Canada Corporation (lessor) and Excel Transportation Inc. (lessee) made a claim to ICBC for the total loss caused to the Freightliner resulting from the collision.
3. Pursuant to Section 84 of the Insurance (Vehicle) Act, the Plaintiff is subrogated to, and deemed to be the assignee of, all rights to recover the monies paid by the Plaintiff to Mercedes-Benz Financial Services Canada Corporation (lessor) and

Excel Transportation Inc. (lessee) in respect of the damage caused by the Defendants and each of them arising out the collision.

4. At all material times, the Plaintiff says and the fact is that the collision occurred due to the negligence of the Defendants and each of them.
5. As a result of the negligence of the Defendants, jointly and severally, the Freightliner was considered a total loss and the Plaintiff as an insurer has paid out the said sum of \$95,243.32 in insurance monies in respect of the said loss.

Plaintiff's address for service: *[Set out the street address of the address for service. One or both of a fax number and e-mail address may be given as additional addresses for service.]*

Insurance Corporation of British Columbia  
117-151 West Esplanade  
North Vancouver, British Columbia V7M 3H9  
CONTACT: Susan Lowrie  
Paralegal – Legal Recovery  
Phone: (604) 981-8067  
Toll-free: 1 (800) 665-6442

Fax number address for service (if any): (604) 443-4111

E-mail address for service (if any):

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street  
Vancouver, BC V6Z 2E1

Date: 22/MAR/2023  
[ dd/mm/yyyy]

Agent for Brenda Adlem

Signature of  
☐ plaintiff ☒ lawyer for plaintiff

Brenda Adlem  
Barrister & Solicitor  
Insurance Corporation of British Columbia  
151 West Esplanade  
North Vancouver, BC V7M 3H9  
Phone: (604) 982-2432

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

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### APPENDIX

*[The following information is provided for data collection purposes only and is of no legal effect.]*

#### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiff's claim against the Defendants, jointly and severally, is for \$95,243.32 being the amount which the Plaintiff has paid for the total loss and other losses, to the Freightliner, for which the Plaintiff is subrogated to and deemed to be the assignee of all rights to recover with respect to the monies paid as a result of the collision in accordance with Section 84 of the Insurance (Vehicle) Act.

#### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

*[Check one box below for the case type that best describes this case.]*

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money

- ☐ an employment relationship  
☐ a will or other issues concerning the probate of an estate  
☒ a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

*[Check all boxes below that apply to this case.]*

- ☐ a class action  
☐ maritime law  
☐ aboriginal law  
☐ constitutional law  
☐ conflict of laws  
☒ none of the above  
☐ do not know

**Part 4:**

*[If an enactment is being relied on, specify. Do not list more than 3 enactments.]*

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR  
SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff, Insurance Corporation of British Columbia, claims the right to serve this pleading/petition on the Defendant outside British Columbia on the ground that the proceeding concerns a tort committed in British Columbia as enumerated at s. 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*, [SBC 2003], c. 28