

**IN THE MATTER OF AN ARBITRATION PURSUANT TO
Section 148.2(1) of the Revised Regulations to the Insurance (Vehicle) Act
(includes amendments up to the BC Reg. 126/2014)**

AND

Arbitration Act, RSBC 1996, c. 66

BETWEEN:

SN

CLAIMANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

**SUPPLEMENTAL ARBITRATOR'S DECISION REGARDING THE ADMISSIBILITY OF
THE REPORT OF D. HARVEY WEST, FEC, P.ENG.**

Counsel for the Claimant	Anu Khanna
Counsel for the Respondent	Derek James
Date of Supplemental Decision	May 12, 2020

FACTS AND THE POSITION OF THE PARTIES

1. On May 11, 2020 I ruled that Mr. West's opinion dated April 13, 2020 was inadmissible. The same day, following receipt and review of my decision, counsel for the respondent emailed me and said, in full:

This is an arbitration under the Insurance (Vehicle) Regulation and concerns damages arising out of a motor vehicle accident. The respondent writes concerning the Decision dated May 11, 2020.

The respondent sought to have admitted the report of Harvey West, engineer. The claimant objected to the admissibility of the report, in part, on the basis that it speaks to forces of impact, which as a matter of law, he says makes it inadmissible. The respondent clarified the basis for which it sought to admit the report in its submissions:

“at no point in his report does Mr. West comment on this issue [the issue of the measurement of the extent of injury suffered by an individual]. He was asked and did comment on whether the puncture damage shown on the rear of the vehicle in which the Claimant was riding as a passenger was caused by the vehicle being operated Mitica Craciun in the accident. It is important to remember that the Claimant is stating that it was caused and it is an essential element of his case.”

This clarification appears to have been acknowledged at paragraph 14 of the Decision.

In spite of this fact, at paragraph 15 of the Decision, it appears that report was ruled inadmissible on the basis that “At its best, Mr. West’s evidence might offer support for the proposition that the impact to the claimant’s vehicle was modest. Even that is uncertain, because the absence of a puncture does not indicate the forces that were present.” A basis not argued by the respondent.

The respondent seeks leave to argue the foregoing and have the application decided on the basis for which the respondent seeks to have the report admitted.

2. The claimant opposes the respondent making further submissions.

DECISION

3. In paragraph 14 of my decision, I reviewed the respondent’s basis for arguing for the admission of Mr. West’s report.

4. In paragraph 15 of my decision, I reviewed the argument made by the claimant to exclude Mr. West’s evidence.

5. In paragraph 16 of my decision, I said that Mr. West’s evidence was neither relevant nor necessary. This is my finding regardless of the basis upon which the respondent says Mr. West’s evidence is tendered; it is a finding with respect to the nature of the evidence.

6. In addition, I do not consider whether the subject collision caused a puncture to the claimant’s bumper to be an “essential element” of the claimant’s case. In this proceeding, I have been asked to determine the nature, extent, and consequences of the claimant’s alleged injuries. Whether or not the collision caused a puncture in the claimant’s bumper, *simpliciter*, is not an issue which arises on a consideration of those matters.

7. I decline to allow further submissions.

