

## NOT ALL TRUCK INSURANCE IS THE SAME

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In October 2006 a tractor owned by Squamish-based Triack Resources Ltd. was involved in a single vehicle accident. It was hauling logs but the Insurance Corporation of British Columbia denied coverage for the company's claims. ICBC contended that the tractor was insured for delivering and dumping materials, the premium for which activity was half that for hauling logs.

In the *Revised Regulations (1984) under the Insurance (Motor Vehicle) Act*, Section 55(2)(a) stipulates that an insured cannot "operate a vehicle . . . contrary to the statements contained in the application for insurance for the vehicle," including "the use declared in the application." If they do so, the insured forfeits coverage for any losses. The insurance application is effectively the information provided in the owner's certificate of vehicle licence and insurance. The use declared in Triack's application was for dumping and delivering materials, rate class 120. However, at the time of the accident the vehicle was being used to haul logs, an activity covered under rate class 114.

Triack challenged ICBC's decision in B.C. Supreme Court, arguing that the words, "vehicle designed and used for delivering and dumping materials", encompassed hauling logs. Alternatively, they claimed that if the tractor was improperly insured, it was a result of the negligence of their broker, Archibald Clarke and Defieux.

In the case, *Triack Resources Ltd. v. ICBC and Archibald Clarke and Defieux Insurance Services Ltd.*, the plaintiff maintained that its vehicles had multiple uses and that ICBC lacked a specific rate class to encompass all of the potential uses for Triack's vehicles. While it is true that there is no specific rate class for multi-use vehicles, ICBC has a well-defined policy for insuring multi-use vehicles—the vehicle must be insured in the rate class drawing the highest premium.

The Regulations expressly provide that coverage includes all lesser risk/lower premium uses. For instance, if the tractor had been insured for the higher premium of rate class 114 (logging use) and Triack was using the tractor for dumping at the time of the accident, there would have been coverage. ICBC also provides a temporary change endorsement that allows use in a higher rate class for a limited period.

In this case, the Court found that Triack's broad interpretation of delivering and dumping would have held true if the owner's certificate had been interpreted in isolation. But, to quote from the

ruling: “This is a statutory plan of universal compulsory automobile insurance, and its terms include not only what is set out in the certificate, but also what is contained in the Act and the Regulation.”

The Court considered other factors in interpreting the scope of the vehicle use, including:

- ICBC’s commercial vehicle rate classes arrange coverage reflecting the level of risk flowing from their use and area of use
- The Regulations include a specific use and definition for hauling logs.
- Triack had another tractor insured at the time in the logging rate class.
- Triack was familiar with ICBC’s policies on insuring vehicles with multiple uses.

Given these facts, the Court found that Triack was in breach of a term or condition of its insurance policy by hauling logs while insured at a lesser premium rate class.

The Court also considered if the broker was negligent in placing the coverage. It found that the agent knew that a vehicle with multiple uses must be insured in the rate class drawing the highest premium. Further, the plaintiff’s witnesses admitted the agent may have informed them that, if the vehicle was insured for dumping and delivering materials, it could not also be used to haul logs. Triack therefore failed to meet the standard of proof to support an allegation of negligence against the broker. Accordingly, none of the defendants was responsible for Triack’s loss.

For more information on this case and vehicle insurance law, please contact **Robert Hodgins** [rhodgins@singleton.com](mailto:rhodgins@singleton.com) or **Michelle Taylor** [mtaylor@singleton.com](mailto:mtaylor@singleton.com).

The authors acted as counsel in this case for the defendants.