**IN THE MATTER OF AN ARBITRATION PURSUANT TO S. 148.2
OF THE INSURANCE (VEHICLE) REGULATION,
B.C. Reg. 447/83 and the ARBITRATION ACT [SBC 2020] c. 2**

BETWEEN:

EM

CLAIMANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

COSTS ASSESSMENT AWARD

Counsel for the Claimant, EM	Derek V. Abreu
Counsel for the Respondent, Insurance Corporation of British Columbia	Joseph P. Cahan
Date of Hearing:	August 20, 2026
Place of Hearing:	Vancouver, BC, Via zoom
Date of Award:	September 1, 2026
Arbitrator:	Dennis C. Quinlan, K.C.

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EM v. INSURANCE CORPORATION OF BRITISH COLUMBIA

COSTS ASSESSMENT

I. INTRODUCTION

[1] The claimant EM seeks an assessment of party and party costs arising from arbitration awards indexed as *EM v. ICBC* (February 26, 2025) and *EM v. ICBC* (February 13, 2026).

[2] This litigation can be best described as protracted.

[3] EM provides three discrete bills of cost pertaining respectively to the Respondent's application to adjourn the arbitration in November 2023 ("Adjournment Application"), the arbitration hearing in January 2025 to determine the amount of Underinsured Motorist Protection ("UMP) compensation to which EM was entitled ("UMP Arbitration"), and the Respondent's post arbitration application dated December 19, 2025 seeking a determination of deductible amounts and costs ("Post Arbitration Application").

[4] EM was awarded costs of each proceeding.

[5] The issues were helpfully narrowed by EM's arbitration counsel Mr. Dennis providing an affidavit of justification affirmed July 17, 2026 ("Affidavit of Justification"), and Respondent's counsel Mr. Cahan delivering a June 2, 2026 letter of objection and August 19, 2026 Scott Schedule.

II. GENERAL PRINCIPLES OF COSTS ASSESSMENT

[6] There is general agreement between the parties as to the applicable principles governing the assessment of costs.

[7] Rule 14-1(2) provides that party and party costs are to be allowed under the tariff set out in Appendix B if they were proper or reasonably necessary to conduct the proceeding. Rule 14-1(5) provides a near identical test for disbursements, subject to the limitation of reasonable amount.

[8] Master MacNaughton as she then was in *Turner v. Whittaker* 2013 BCSC 712, set out at paragraph 5 the legal principles governing the assessment of disbursements (citations omitted):

[5] Counsel were also able to agree on the following legal principles which are applicable on an assessment of disbursements:

1. Rule 14-1(5) requires an assessing officer to determine which disbursements were necessarily or properly incurred in the conduct of a proceeding and to allow a reasonable amount for those disbursements.

2. The consideration of whether a disbursement was necessarily or properly incurred is case-and circumstance-specific and must take into account proportionality under Rule 1-3.

3. The time for assessing whether a disbursement was necessarily or properly incurred is when the disbursement was incurred not with the benefit of hindsight.

4. A necessary disbursement is one which is essential to conduct litigation; a proper one is one which is not necessary but is reasonably incurred for the purposes of the proceeding.

5. The role of an assessing officer is not to second guess a competent counsel doing a competent job solely because other counsel might have handled the matter differently.

III. BILLS OF COSTS

[9] I will deal with each bill of costs separately.

1. ADJOURNMENT APPLICATION

[10] A summary of the background facts to the Respondent's Adjournment Application is relevant to the assessment.

[11] EM was struck as a pedestrian in a crosswalk on November 28, 2016. Her underlying tort action settled on October 25, 2021 for the tortfeasor's policy limits including costs and disbursements to the date of settlement, and the Respondent's agreement that the balance of her claim for UMP compensation could proceed to arbitration pursuant to section 148.2 of the Insurance (Vehicle) Regulation.

[12] The UMP claim of EM was commenced effective April 7, 2022 following delivery to VanIAC of a Notice to Arbitrate dated March 14, 2022.

[13] EM agrees she is not entitled to a "second" recovery for any costs and disbursements arising from the already resolved tort action.

[14] At the initial pre-arbitration call with counsel on September 28, 2022, the arbitration hearing was scheduled for seven days commencing November 29, 2023. It was agreed the Supreme Court Civil Rules would govern the UMP proceeding subject to the UMP statutory scheme and direction from the arbitrator.

[15] The hearing date of November 29, 2023 was confirmed at a phone conference on February 17, 2023 to update status of the proceeding, and then again at the arbitration management conference conducted October 19, 2023. At the same management conference, various directions were made setting deadlines for delivery of a witness schedule, document agreement, chronology, agreed statement of facts, objections to expert reports, and will-say statements.

[16] On November 20, 2023, counsel for the Respondent advised he had been assigned a judge for a twenty-day trial commencing that day and thereby required an adjournment of the arbitration. After being advised EM would not consent, the Respondent delivered a notice of application on November 24, 2023 seeking the adjournment.

[17] Counsel appeared by Zoom on November 27, 2023 at which time it was agreed the arbitration would be adjourned and reset for January 2, 2025 on a pre-emptory basis against the Respondent. The exact terms of the adjournment were left to the parties to reach agreement. A further appearance was scheduled for November 29, 2023 in case there was no settlement.

[18] An agreement was not reached and on November 29, 2023, the following order was made:

> (1) The arbitration scheduled to commence November 29, 2023 is adjourned to January 2, 2025 on a pre-emptory basis against the Respondent;
>
> (2) EM is entitled to costs of the adjournment application in any event of the cause, including disbursements thrown away due to the adjournment,

payable thirty days following presentation of a Bill of Costs and as agreed upon or assessed;

(3) The Respondent is not permitted to deduct the above amounts associated with this order from the ultimate award.

[19] The leading decision on costs “thrown away” is *Bolin v Lylick*, 2018 BCCA 127, where in circumstances of a plaintiff seeking an adjournment, the Court at para 19 stated:

> [19] In these circumstances, there is no apparent reason to depart from the usual approach to costs in circumstances of a late adjournment; in other words, there is no apparent reason not to relieve the defendants from the prejudice of the late adjournment by an award of costs thrown away. It is to be remembered that even though the judge did not attribute fault to the plaintiff in the adjournment application, in asking for an adjournment the plaintiff was asking for an indulgence from the court that had adverse consequences for the defendants. I would add to the order made for an adjournment a term that the defendants are entitled to their costs of trial preparation thrown away. <u>I would not define the degree of such wasted costs in the circumstances of this case as was done, for example in *Dhillion v. Foster*, 2004 BCSC 1782, to which we have been referred, and I note further, that what fits within the waste captured by the term “costs thrown away” is properly a matter for the trial court’s determination.</u>

Emphasis added

[20] In *Barrie v British Columbia*, 2022 BCSC 1122, Chief Justice Hinkson at para. 58 similarly described the test as those costs which the plaintiff was forced to “re-start or re-do”.

[21] EM now seeks 74 tariff units plus expert witness cancellation fees and subpoena charges as costs and disbursements thrown away, together with accrued interest since November 29, 2023.

[22] The Respondent concedes EM is entitled to tariff items and disbursements if she can establish they are properly attributable to the adjournment application or rendered wasted by the adjournment. However, the Respondent submits an order for costs

thrown away does not "…transform the entirety of the arbitration proceeding into recoverable costs of that application."

[23] The Respondent submits EM is entitled to 4 units for costs thrown away and no amount for disbursements.

[24] I make two comments at the outset.

[25] First I agree with EM that she is entitled to the cancellation fees for the expert witnesses Dr. Savchuk and Dr. Waseem. In my experience the respective amounts paid by EM's counsel of $2,496 and $2,375 totaling $4,871 are supportable and not excessive. Of equal import and as evidenced by the circumstances outlined in paragraphs 14 to 16 herein, Respondent's counsel had ample opportunity to raise the potential scheduling difficulty or arrange other counsel in advance.

[26] Instead the issue was left to the very last moment when the die was firmly cast.

[27] Lack of counsel's availability in such circumstances is not good reason for an adjournment: *Dhillon v. Foster*, 2004 BCSC 1782 at para. 6. Prejudice to EM was created by the Respondent and it is the Respondent who must bear the cost consequences of that prejudice.

[28] I recognize that while double booking of trials is a regular part of counsel's life as a litigator, the risk of a double booking coming to fruition remains with counsel.

[29] There was no evidence of payment for issuing the subpoenas and I would not allow the claimed amount of $215.44.

[30] Second I agree with the Respondent that an award of costs thrown away does not amount to an order capturing all steps undertaken from the outset of the litigation to the date of the adjournment. It is only tariff items "thrown away" or "wasted" as those terms are described in *Bolin,* which trigger the award. The underlying foundation of an award for costs thrown away is to compensate the affected party for steps that must necessarily be "…restarted or re-done…".

[31] The Claimant seeks the following tariff units:

Item #	Possible Units	Units Claimed	Respondent
1	1 – 10	2	0
2	1 – 30	16	0

6	1—10	8	0
10(a)	1—10	5	0
11	1 – 10	8	0
14	1 – 5	1	0
17	1 – 10	4	0
18	1 – 10	4	0
19(b)	3	3	0
20(b)	5	5	0
21(b)	3	1.5	1.5
22(b)	5	2.5	2.5
31	1 – 3	1	0
32	1 – 5	2	0
34	5	5	0
40	1	1	0
44	5	5	0
TOTAL		74	4

[32] Item 1 refers to correspondence sent and investigations conducted until the start of the UMP proceeding. I fail to see how the adjournment created any costs thrown away or wasted in respect to correspondence or investigations which occurred prior to the commencement of the UMP proceeding. I allow no units under this item.

[33] Item 2 refers to correspondence and investigations taken from commencement of the UMP proceeding to the adjournment of the arbitration. In my view item 2 is reflective of the work that is generally undertaken and completed during the usual course of litigation including correspondence, conferences, investigations and negotiations.

[34] By the very nature of the adjournment, some steps as identified in paragraphs 31 and 32 of the Affidavit of Justification were wasted and subject to being repeated. It is

well understood that adjournments and particularly last-minute adjournments are costly to litigants because of the legal work that must be repeated. The "Snakes and Ladders" analogy proffered by Mr. Dennis is to some extent apropos. I allow 6 units as reflective of those costs.

[35] Item 6 refers to commencing and prosecuting the UMP proceeding for which provision is not made elsewhere in the tariff. I do not accept the assertion made in the Affidavit of Justification that "…repeated procedural and prosecution work was required to restore the case after the adjournment." I allow no units under this item.

[36] Item 10(a) refers to obtaining discovery and inspection of documents. As commented by Chief Justice Hinkson, I am confident that many if not all the steps taken in respect to document discovery would remain of value: *Barrie,* at para. 59. To the extent any further document disclosure conducted after the adjournment was necessary, it would be recognized within the bill of costs associated with the UMP Arbitration. I allow no units under this item.

[37] Item 11(a) refers to giving discovery and inspection of documents. The same approach as taken under item 10(a) is applicable. I allow no units under this item.

[38] Item 14 refers to serving notices to admit. For the reasons expressed previously, I allow no units under this item.

[39] Item 17 refers to process and correspondence with experts. I accept that some correspondence and process with expert witnesses were either wasted or had to be repeated due to the adjournment. I would allow 2 units.

[40] Item 18 refers to process and correspondence associated with witnesses including issuing subpoenas. Like expert witnesses, I accept some process and correspondence including the issuing of subpoenas and preparing witnesses was either wasted or had to be repeated due to the adjournment. I would allow 1 unit.

[41] Items 19(b) and 20(b) refer to preparation and attendance for a person being examined for discovery. EM was examined for discovery on July 24, 2023 and then again on December 3, 2024 following the adjournment. It goes without saying that had the arbitration not been adjourned, the second discovery of EM would not have occurred or been necessary. I agree with Mr. Abreu that these items can be dealt with either as a wasted cost thrown away or allow units for two examinations for discovery when dealing

with the bill of costs for the UMP arbitration. The result is the same under either approach.

[42] The Respondent agrees to 8 units for preparation and attendance at a one-day discovery but seemingly nothing for the second discovery. Considering the second discovery was shorter as reflected by the court reporter's invoices, I allow 4 units as preparation and attendance at a half-day discovery necessitated by the adjournment and in effect re-started.

[43] Items 21(b) and 22(b) refer to preparation and attendance for a contested application. The Respondent agrees to the 4 units sought by EM and I allow those units.

[44] Items 31 and 32 refer to preparation and attendance at a management conference. A second arbitration management conference was necessitated by the adjournment and all issues dealt with in the first arbitration management conference had to be repeated. Following the approach taken in items 19(b) and 20(b), I allow 3 units as a cost thrown away for preparation and attendance.

[45] Item 34 refers to preparation for the arbitration hearing. I recognize there is risk of overlap with item 2, but nonetheless the intense preparation required immediately before commencement of the arbitration was in my view, wasted and necessarily had to be repeated 13 months later. I allow 2.5 units equating to one half day of preparation.

[46] Item 40 refers to process for setting down the arbitration. The arbitration had to be set down twice due to the adjournment. Following the same approach taken earlier, I allow 1 unit as a cost thrown away.

[47] Item 44 refers to negotiations which lead to a settlement. As no settlement resulted, there is no entitlement under this item.

[48] In summary I allow tariff costs thrown away of $2,895.20 comprised of 23.5 units at $110 per unit plus GST and PST, and disbursement amounts thrown away of $4,871 for the expert witness cancellation fees.

[49] I assess total costs and disbursements thrown away as $7,766.20 The Claimant is entitled to prejudgment interest from November 29, 2023 to today at the prescribed Registrar's rates. Counsel advised they will reach agreement on the amount.

2. UMP ARBITRATION

[50] The arbitration took place over six days between January 2 to 10, 2025 following which EM's damages were assessed at $324,000 before considering deductible amounts. EM advanced a claim for damages that was in excess of $2,200,000.

[51] EM was awarded costs of the arbitration at Scale B and now seeks tariff items totaling 175 units.

[52] The parties agree on 115 units for tariff items 11(a), 14, 17, 19(b), 20(b), 21(b), 22(b), 31, 32, 34 and 35.

[53] The following tariff units remain in dispute:

Item #	Possible Units	Units Claimed	Respondent
1	1 – 10	8	4
2	1 – 30	25	12
6	1 – 10	4	2
10(a)	1 – 10	4	2
18	1 –10	5	3
36	1 – 10	7	2
40	1	2	1
44	5	5	0
TOTAL		60	26

[54] As already stated, item 1 refers to instructions and investigations between the conclusion of EM's tort action and commencement of the UMP proceeding. I accept Mr. Dennis' assertion that he was unfamiliar with UMP claims and therefore had to investigate the process. However in my view such steps would have been modest and likely involved reviewing the CLE Motor Vehicle Practice Manual which provides an in-depth explanation of UMP. The Respondent suggests 4 units and I allow that amount.

[55] Item 2 refers to correspondence, investigations and negotiations undertaken throughout the UMP process. In Mr. Cahan's submission, EM's case was not complex

and ranged between simple and moderate complexity. It is true there was nothing unusual relative to other personal injury cases.

[56] Having said that the Respondent took issue with all aspects of EM's claim.

[57] Notwithstanding there was video evidence of EM being hit as a pedestrian in a crosswalk, the Respondent pursued the liability issue premised on the allegation that EM was contributorily negligent in being on her cell phone as she crossed the roadway. The main quantum issue was the loss of earning capacity and the assertion by EM that due to the significant physical and mental injuries sustained, her career plan to become a lawyer was significantly impaired. While EM was ultimately unsuccessful in advancing that claim, I cannot say it was frivolous such that the investigations undertaken to advance that claim were unnecessary.

[58] After considering the items identified in item 2 of the Tariff including attendance at a mediation, I allow 15 units.

[59] Item 6 refers to the documentation required to commence the UMP claim. That documentation was limited to the preparation and delivery of a Notice to Arbitrate to VanIAC followed by a statement of claim. I allow 2 units.

[60] Item 10(a) refers to the process for obtaining discovery of documents. The records obtained from the Respondent were minimal and I allow 2 units.

[61] Item 18 refers to contacting, interviewing and issuing subpoenas to all witnesses. As lay witnesses, EM called her mother, father, husband and girlfriend for which there would have been no difficulty contacting or interviewing. I allow 3 units.

[62] Item 36 refers to the preparation of written argument. A 75 page written argument was provided on behalf of EM and it was clear significant preparation went into the document. Having said that, there was an aspect of boilerplate content for well-known legal principles that contributed to its length. I allow 5 units.

[63] Item 40 refers to process for setting the arbitration down for hearing. EM seeks 2 units presumably on the basis that the arbitration was set down twice. I already included 1 unit as a cost thrown away in connection with the adjournment and I therefore allow 1 unit.

[64] Item 44 refers to negotiations including mediation, but as previously noted, this item is only allowed if the proceeding is resolved as a result of the negotiations. Given

the negotiations were unsuccessful, I do not allow any units under this item. As set out in paragraph 58, I took negotiations into account in my allowance under item 2.

[65] In summary I allow, in addition to the agreed units of 115 units, a further 32 units for a total of 147. Costs of the arbitration at $110 per unit plus GST and PST total $18,110.40.

3. POST ARBITRATION APPLICATION

[66] Following delivery of the Award dated February 26, 2025, the Respondent by its Post Arbitration Application dated December 19, 2025, sought a determination of deductible amounts to be deducted from the award of damages as required by section 148.1(1) of the Insurance (Vehicle) Regulation and an order for costs of the arbitration from December 30, 2024, being the date of an offer to settle purported to have been made pursuant to Rule 9-1 of the Rules.

[67] I note it took the Respondent nearly ten months to bring its Post Arbitration Application.

[68] In the result, the Respondent's application was largely unsuccessful, and EM was awarded 85% of her costs.

[69] EM seeks costs in the amount of $1,151.92 as represented by 85% of 11 units in respect to preparation and attendance at the application. The Respondent submits EM is only entitled $837.76 based upon 85% of 8 units.

[70] The difference between the parties is that EM sought units under item 25 which refers to an assessment before a master or registrar whereas the Respondent submits the correct tariff item is 22 referring to a contested chambers application.

[71] I agree with the Respondent that the proper tariff item is 22 and I thereby assess costs in amount of $837.76.

4. DISBURSEMENTS NET OF DISBURSEMENTS THROWN AWAY

[72] A comprehensive list of disbursements for all bills of costs totaling $113,046.04 inclusive of GST and PST was attached as Exhibit "A" to the Affidavit of Justification. It is this amount which EM now claims for disbursements.

[73] The Respondent in its earlier letter of objection dated June 2, 2026, disputed certain disbursements on the basis they were not properly supported or otherwise

recoverable. As best I can discern, many of those objections were resolved by Exhibit "A", wherein charges for clinical records and expert reports pre-dating filing of the Notice to Arbitrate, McComb Witten disbursements and office overhead were eliminated.

[74] The following disbursements remain in dispute and to the extent a disbursement is disallowed or recognized elsewhere, the total amount claimed in Exhibit "A" must be adjusted.

[75] The cancellation fees totaling $4,871 for Dr. Savchuk and Dr. Waseem have already been accounted for in respect to disbursements thrown away as costs of the adjournment and should thereby be deducted from Exhibit "A".

[76] The subpoena fees in the amount of $215.44 were not proven and should be deducted from Exhibit "A".

[77] Interest on disbursements in the amount of $17,408.30 is not a proper disbursement and should be deducted from Exhibit "A".

[78] The Respondent maintained its objection to the claim of $2,193.40 for photocopies based upon 5,724 photocopies at $0.35 per page and inclusive of 190 colour photocopies. No rationale was provided by the Respondent for the objection other than the absence of supporting documentation.

[79] In reviewing the documentation provided at the arbitration hearing, the Claimant prepared three or four binders (depending on the category), for each of liability and medical/legal reports, wage loss, book of authorities and the 26 marked exhibits and 4 exhibits marked for identification. Those binders for the arbitration alone required 1,800 double sided copies (3,600 single sided copies). Further the Affidavit of Justification stated that file specific accounting summaries recorded 5,684 copies for the period December 7, 2022 (post-delivery of Notice to Arbitrate) to July 14, 2026.

[80] Considering all the evidence, I reduce the photocopies allowed to $1,700 which is a deduction from Exhibit "A" of $493.40.

[81] The Respondent made the qualified objection of "Allow Subject to Proof" to the attendance and testimony at the arbitration of the expert witnesses Dr. Waseem and occupational therapist Russell McNeill, and a Cantonese interpreter. It was not clear to me exactly what the objection was. I was told case authority would be provided but nothing was received.

[82] The attendance of Dr. Waseem and Mr. McNeill was addressed in some detail at paragraphs 78 to 81 of the Affidavit of Justification and went unchallenged. The need for the Cantonese interpreter in respect to the evidence of EM's mother was explained at paragraph 82 of the Affidavit of Justification. I see no reason to make any adjustment for those disbursements.

[83] Last I recognize the Respondent also objected to office overhead charges for scanning, filing fees, faxes, courier, CD roms, Legal Alternative, and Veritext Paper. All those charges were eliminated in Exhibit "A" except for $49 for fax and scanning. Those two items were addressed in paragraphs 86 to 88 and not challenged. Again I see no reason to disallow the amounts claimed.

[84] Once the adjustments of $22,988.14 are deducted from Exhibit "A", I assess total disbursements in respect to the three bills of costs as $90,057.90, net of the disbursements thrown away due to the adjournment. To the extent an adjustment for PST is required, I leave it to counsel to make that calculation.

IV. SUMMARY

[85] I assess the three Bills of Costs broken down as follows:

Adjournment Application	$7,766.20*
UMP Arbitration	$18,110.40
Post Arbitration Application	$837.76
Disbursements	<u>$90,057.90</u>
TOTAL	$116,772.26

* Plus pre-judgment interest from November 29, 2023

[86] EM is entitled to her costs of this assessment unless there are considerations of which I am not aware. To avoid a further application, I assess those costs at $1,000.

[87] I strongly urge the parties to bring this long running litigation to an end and reach agreement as to payment including the anticipated future charges from VanIAC and the arbitrator.

Dated: September 1, 2026

Dennis Quinlan
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Arbitrator, Dennis C. Quinlan, K.C.

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