

SERVICE CONTRACTS CONSIDERED AUTOMOBILE INSURANCE IN BRITISH COLUMBIA

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On April 25, 2024, the British Columbia Financial Services Authority (“**BCFSA**”) issued *Regulatory Statement RS 24-008: Product Warranty, Vehicle Warranty, and Automobile Insurance* (“**Regulatory Statement**”) which has significant implications for original equipment manufacturers (“**OEMs**”), administrators, motor vehicle dealers and third-party providers of motor vehicle service contracts.

The Regulatory Statement provides the following classifications:

- **Product warranty insurance** relates to loss or damage to personal property, other than motor vehicles or personal property that falls within another class of insurance;
- **Vehicle warranty insurance** relates to loss or damage to motor vehicles due to mechanical failure; and
- **Automobile insurance** relates to loss or damage to motor vehicles, such as providing indemnification for loss in the event of theft, motor vehicle accidents, or if the glass, paint, or other part of a motor vehicle is damaged due to a fortuitous event.

The incorporation of damage to glass, paint, or other parts of a motor vehicle due to fortuitous events (which, based on our discussions with the BCFSA, includes, for instance, damage due to propelled rocks, road debris and potholes in the normal course of driving) in the definition of automobile insurance will require a complete overhaul of the service contract industry in BC.

Indeed, contracts that have long been viewed as service contracts (for instance, dent & ding, tire & wheel, windshield repair/replacement) are now considered to be automobile insurance, and cannot be sold or underwritten in the absence of insurance licensing.

This is in stark contrast to contracts that respond to mechanical failure (i.e., vehicle warranty insurance) for which there is an insurance licensing exemption for manufacturers, retailers (including motor vehicle dealerships) and their employees. The rationale behind this exemption is that OEMs have direct control over product design and specifications (as compared to third-party service contract providers) and should be allowed to “stand behind” their products. Although this rationale would seemingly apply equally to both vehicle warranty insurance and service contracts, the exemption is oddly only available for vehicle warranty

insurance.

Impact on OEMs, administrators, motor vehicle dealers and third-party providers

Faced with the BCFSAs interpretation set out in the Regulatory Statement, OEMs, administrators and third-party providers of service contracts are left to make the difficult decision of whether to pull their service contracts off the shelves, or to engage with an insurer authorized to conduct insurance business in BC to underwrite their service contracts. Note also that those selling service contracts within the dealerships will now be required to have insurance agent licensing in order to do so. Given that BC does not currently have a restricted insurance licensing regime in place, full licensing is required, which takes some time to obtain.

We understand that the BCFSAs has reached out specifically to several OEMs, administrators, motor vehicle dealerships and third-party providers to request information about their service contracts and practices. Such communications may, in some cases, result in the opportunity to enter into a voluntary compliance agreement with the BCFSAs that includes an agreed-upon transition period.

Although the BCFSAs has signalled its willingness to work with the industry on an orderly transition, it is important to keep in mind that there is no transition period specifically set out in the Regulatory Statement, and that the BCFSAs has the authority to issue “cease and desist” orders and penalties for failure to comply.

Interestingly, the Regulatory Statement is addressed to insurers authorized to conduct insurance business in BC, and not to the OEMs, administrators, dealerships and third-party providers who are most directly affected.

The BCFSAs appears to be targeting the auto space in particular, with no corresponding attention at this time on providers of contracts that respond to, for instance, accidental damage of portable electronic devices.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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