

Court of King's Bench of Alberta

Citation: Calgary Core-Mark Inc v Direct Integrated Transportation ULC, 2025 ABKB 738

Date: 20251212
Docket: 2301 04782
Registry: Calgary

Between:

Calgary Core-Mark International Inc

Appellant

- and -

Direct Integrated Transportation ULC and ABC Insurance Company

Respondent

**Reasons for Judgment
of the
Honourable Justice D.A. Labrenz**

Appeal from the Judgment by
J.R. Farrington, The Honourable Applications Judge

Dated the 01st day of November, 2024
2024 ABKB 637, Docket: 2301 04782

I. Introduction

[1] This appeal concerns the summary judgment granted in favor of Calgary Core-Mark International Inc. (“Core-Mark”) against Direct Integrated Transportation ULC (“Direct Integrated,” operating as Canada Cartage) in the amount of \$38,894. In that decision, the

Applications Judge limited Direct Integrated's liability for a stolen trailer of cigarettes to \$2 per pound, pursuant to the *Bill of Lading and Conditions of Carriage Regulation*, Alta Reg 313/2002 (the "*Bill of Lading Regulation*"): *Calgary Core-Mark International Inc. v Direct Integrated Transportation ULC*, 2024 ABKB 637 ("*Core-Mark*").

[2] Core-Mark argues that the Application Judge erred in concluding that Direct Integrated's liability was limited under the *Bill of Lading Regulation*. Core-Mark's primary position is that Direct Integrated breached a contractual obligation to insure the cargo and to name Core-Mark as an additional insured. Core-Mark contends that this breach entitles it to recover damages equal to the wholesale value of the cargo, which is \$534,451.78. In the alternative, Core-Mark argues that damages should be assessed at a minimum of \$250,000. While acknowledging the statutory limitation set out in the *Bill of Lading Regulation*, Core-Mark maintains that its claim arises from a separate breach of contract, which should not be subject to the statutory cap applicable to the loss of the cigarettes.

[3] Direct Integrated asserts that the Application Judge did not err in limiting liability to the statutory maximum. While it does not dispute liability for the theft, Direct Integrated submits that its responsibility is capped at \$38,894.00, representing the \$2 per pound limit under the *Bill of Lading Regulation* because Core-Mark failed to declare a value for the goods on the bill of lading. Direct Integrated also challenges Core-Mark's contractual claim, arguing that there was no obligation to add Core-Mark as an additional insured. As a result, Direct Integrated maintains that the statutory limit represents Core-Mark's full entitlement.

[4] I conclude that the *Bill of Lading Regulation* does not limit Direct Integrated's liability for a breach of contract. I also find that the Transportation Agreement ("TA") was in effect on the night of the theft and that this agreement required Direct Integrated to obtain insurance for Core-Mark's benefit and to name Core-Mark as an additional insured. However, because the value of the goods was not declared on the bill of lading or otherwise communicated, Direct Integrated's liability is limited to the minimum amount under the insurance clause, which is \$250,000. I would hasten to add that Direct Integrated's liability would not change if I have wrongly concluded that the TA was in effect on the night of the theft as the Rate Agreement ("RA") between the parties required Direct Integrated to obtain minimally obtain \$250,000 worth of cargo insurance in Core-Mark's favour as an additional insured.

II. Factual Background

[5] Core-Mark is a wholesale distributor of grocery products serving customers in the retail and convenience sectors.

[6] Direct Integrated is a transportation company that operates a commercial trucking business.

A. Theft/Circumstances

[7] On November 22, 2021, Direct Integrated was transporting a shipment of cigarettes valued at \$534,451.78 on behalf of Core-Mark when the trailer carrying the shipment was stolen while in Direct Integrated's care and possession.

[8] A bill of lading was prepared for this shipment; however, no value for the goods was declared on its face. The record does not clearly indicate who prepared the bill, and it was not signed by either party.

[9] The shipment of cigarettes weighed approximately 19,447 pounds.

[10] At the time of the theft, Direct Integrated held motor carrier cargo insurance policy number 665438071 issued by CNA Continental Casualty Company, effective from July 1, 2021, to July 1, 2022. This policy did not name Core-Mark as an additional insured; it listed Core-Mark only as a certificate holder. The policy provided coverage for Motor Truck Cargo liability up to \$500,000 for alcohol and tobacco shipments per occurrence.

B. The Transportation Agreement

[11] Prior to the theft, the parties entered into two distinct agreements. The first was the TA dated October 23, 2011, under which Direct Integrated agreed to transport Core-Mark's cargo using "dedicated tractor-power and delivery services utilizing Core-Mark's tandem axle trailers" on commercial routes between Calgary and Edmonton.

[12] The TA includes several insurance obligations, one of which is an alleged covenant requiring Direct Integrated to obtain Motor Carrier Cargo insurance for Core-Mark's products in an amount not less than the wholesale value of the goods and to name Core-Mark as an additional insured. The applicability of this alleged covenant is one of the issues in dispute in this matter. The relevant insurance provisions in the TA are found in clauses 15.1 and 15.4, which state as follows:

15.1

Except as otherwise provided in this Agreement, Service Provider shall ensure that the following insurance with respect to the Services is procured and maintained.

- a) Commercial General Liability, including the standard Insurance Service Office Broad Form Endorsement, with not less than a \$5,000,000.00 (Canadian \$) combined single limit for bodily injury or death to persons and property damage on an occurrence form, naming the Customer as an additional insured, a combination of primary and excess liability limits are acceptable.
- b) Automobile Liability Insurance covering all owned, leased, hired or borrowed vehicles and employers non-owned liability with not less than a \$5,000,000.00 (Canadian \$) combined single limit for bodily injury or death to persons and property damage on an occurrence form naming the Customer as an additional insured, a combination of primary and excess liability limits are acceptable.
- c) Motor Carrier's Cargo insurance coverage in an amount not less than \$250,000 (Canadian \$), per vehicle and in an amount sufficient to cover the full Wholesale Invoice Cost value of any of the Customer's truckloads in the custody, possession or control of Service Provider; and
- d) Any additional insurance coverage or any increase in any of the foregoing amounts as required by applicable Canadian or Provincial law, rule or regulation, or by the Provincial Transportation Regulatory Body or as the Customer from time-to-time reasonably require.

15.4

At the commencement of this contract and at least annually thereafter, Service Provider shall provide, or cause to be provided, to the Customer a certificate(s) of insurance evidencing the foregoing coverage and applicable deductibles, not to exceed \$100,000, from an insurance carrier reasonably satisfactory to Customer naming the Customer as Certificate Holder and Additional Insured where applicable. The failure of Service Provider to provide such certificates or the failure of Customer to request such certificates shall not limit Service Provider's liabilities under the provisions of Sections 13 and 14. Each certificate under a), b) and c), above, shall contain a provision requiring that the Customer (as an additional insured) receive renewal certificates within 5 days of policy expiration and be given at least thirty (30) days prior written notification of any modification or cancellation.

(collectively the "TA Insurance Clauses")

[13] The TA was amended several times to extend its term and adjust the rates for services. Notably, in October 2018, the parties executed Amendment 6, effective January 1, 2019. This amendment changed the rate Direct Integrated would charge Core-Mark to \$1.82 per kilometer for hauling a trailer and \$41.56 per hour for wait times. Amendment 6 also confirmed that no other amendments were made and that all terms and conditions of the TA would remain in full force and effect.

[14] On December 1, 2021, several days after the theft, the TA was further amended through Amendment 7. In this amendment, the parties agreed to terminate the second agreement and incorporate its services into the TA. The recitals of Amendment 7 state:

This Amendment No. 7 dated December 1, 2021 ("**Amendment No. 7**") is to the original Transportation Services Agreement entered into as of the 23rd day of October, 2011 as amended March 31, 2014 ("**Amendment 1**"), December 12, 2014 ("**Amendment 2**"), October 23, 2015 ("**Amendment 3**"), October 21, 2016 ("**Amendment 4**"), October 2017 ("**Amendment 5**") and October, 2018 ("**Amendment 6**") (hereinafter collectively referred to as the "**TSA**") between Direct Integrated Transportation ULC ("**Service Provider**") and Core-Mark International Inc. a corporation incorporated under the laws of Alberta ("**Core-Mark or Customer**").

...

AND WHEREAS the parties entered into a Rate Agreement on April 22, 2018 ("**Rate Agreement**"), with no expiry date, for additional Services;

AND WHEREAS the parties wish to renew the Term of the TSA, terminate a portion of the Services under the TSA, merge the Services under the Rate Agreement into this TSA, terminate the Rate Agreement and update the rates...

C. The Rate Agreement

[15] On April 22, 2018, the parties executed an additional agreement called the Rate Agreement. Under this arrangement, Core-Mark agreed to compensate Direct Integrated with a

base rate of \$1.77 per kilometer, subject to adjustment according to a contractual fuel price formula for hauling a trailer, and \$40.35 per hour for wait time.

[16] The two agreements, acknowledged by both parties as separate, are similar in the scope of services but differ in certain obligations, including insurance requirements. The RA includes an express limitation of liability of \$2 per pound for the replacement cost of the products. This limitation of liability clause appears at clause 2 of the RA Terms document, which forms part of the Rate Agreement, and states:

2. **Service Provider’s Liability for Products.** Service Provider shall be liable to Customer for the Replacement Cost (defined below) for any loss or damage to Products while such Products are in its custody, possession or control subject to the following

...

(b) Notwithstanding anything to the contrary in this Agreement, the Replacement Cost payable by Service Provider shall not exceed \$2.00/lb, (\$4.41/kg) **(even if a greater amount is specified on the applicable Bill of Lading);**

[Emphasis Added]

[17] The RA also includes an Entire Agreement Clause, which requires that any amendments, modifications, or waivers of the Terms be made in writing and signed by both parties. It is undisputed that the RA was never amended.

[18] Both parties acknowledge that the objective evidence makes it difficult to determine which of the two agreements was in effect at the time of the theft. Core-Mark contends that services were provided under the TA, as the invoiced rate for services on the night of the theft was \$1.82 per kilometer. Core-Mark further emphasizes that Direct Integrated admitted in its Statement of Defence and in the initial affidavit sworn by its Vice President of Risk that it was providing services under the TA at the time of the theft, asserting that the RA was incorporated into and formed part of the TA. On cross-examination, however, Direct Integrated correctly acknowledged that the two agreements are wholly separate.

[19] In contrast, Direct Integrated asserts that the RA governed the provision of services at the time of the theft. It highlights the invoice from the night of the incident, which it claims aligns with the execution date of the RA. Direct Integrated further notes that although the RA Rate fluctuated according to the previously described sliding mechanism, the applicable rate on the night of the theft happened to match the \$1.82 per kilometer rate specified under the TA. There is no evidence as to applicable fuel prices on the night of the theft to corroborate this claim.

[20] The RA also provides that the accompanying document titled “Direct Integrated’s Standard Terms and Conditions – March 2017” contains the general terms and conditions of contract under which Direct Integrated will provide transportation services to Customer.

[21] I note briefly that Application Judge commented at paragraph 7 of *Core-Mark* that “it is not clear that the Terms and Conditions sheet in the Agreement was specifically included as part of the Rate Agreement”. In my view, these Terms and Conditions were part of this Agreement, as this document is specifically referenced in the “Notes” section on the second page of the RA.

[22] The RA also includes insurance provisions, which read as follows:

3. Insurance. Service Provider shall ensure that the following insurance with respect to the Services is procured and maintained:

- (a) Commercial General Liability with at least \$2,000,000 combined single limit for bodily Injury/death/property damage;
- (b) Automobile Liability Insurance, covering all owned, leased, hired or borrowed vehicles and employers non owned liability with not less than a \$2,000,000 combined single limit for bodily injury/death/property damage;
- (c) Motor Service Provider's Cargo, Insurance, coverage in an amount not less than \$250,000 per vehicle;
- (d) Upon request, Service Provider shall provide to Customer a certificate(s) of insurance evidencing the foregoing coverage from an insurance carrier reasonably satisfactory to Customer. Each certificate shall contain a provision requiring that Customer (as an additional insured) be given at least thirty (30) days prior written notification of any modification or cancellation.

[Emphasis Added]

III. The Judgment Under Appeal

[23] As mentioned above, the Application Judge concluded that the statutory limit under the *Bill of Lading Regulation* applied, and Direct Integrated's liability was limited to \$38,894.00 due to the failure to provide a value on the Bill of Lading.

[24] In the decision, the Application Judge acknowledged that neither the court nor counsel could identify any criteria an objective third party could use to determine whether a particular load was governed by the TA or the RA. While noting that the TA would have applied on the night of the theft because "[t]hey are the strongest insurance clauses in evidence," the Application Judge found it unnecessary to make such a determination given the conclusion that the statutory limit applied: **Core-Mark** at para 9.

[25] The Application Judge then reviewed TA clause 15.1, noting that 15.1(a), pertaining to third-party liability, and 15.1(b), referencing automobile insurance, both contained an express covenant to add Core-Mark as an additional insured. The Application Judge continued by noting that 15.1(c) deals with the liability and insurance relationship between Core-Mark and Direct Integrated. The Application Judge further noted that the clause provides for minimum cartage insurance coverage of \$250,000 for the carrier for hauling losses, but there is nothing in clause 15.1(c) that requires Core-Mark to be named as an additional insured or that would give Core-Mark the right of a direct action against an insurer for losses. The Application Judge further stated that the "additional insured" requirement present in clauses 15.1(a) and 15.1(b) is conspicuously absent from clause 15.1(c). The Application Judge determined based upon his review that there is no covenant to insure as argued by Core-Mark: **Core-Mark** at para 9-15.

[26] The Application Judge also considered clause 15.4 and noted that it required certificates of insurance naming Core-Mark as an additional insured "where applicable", which in the view

of the Application Judge, reinforced the notion that the covenant to insure was not universal: *Core-Mark* at para 13.

[27] The Application Judge, however, reproduced only a portion of clause 15.4 while placing considerable emphasis on the phrasing “and Additional Insured where applicable” in the provision: *Core-Mark*, at para 13. Clause 15.4 of the TA, reproduced in its entirety, reads as follows:

At the commencement of this contract and at least annually thereafter, Service Provider shall provide, or cause to be provided, to the Customer a certificate(s) of insurance evidencing the foregoing coverage and applicable deductibles, not to exceed \$100,000, from an insurance carrier reasonably satisfactory to Customer naming the Customer as Certificate Holder and Additional Insured where applicable. The failure of Service Provider to provide such certificates or the failure of Customer to request such certificates shall not limit Service Provider’s liabilities under the provisions of Sections 13 and 14. Each certificate under a), b) and c), above, shall contain a provision requiring that the Customer (as an additional insured) receive renewal certificates within 5 days of policy expiration and be given at least thirty (30) days prior written notification of any modification or cancellation.

[Emphasis Added]

[28] As will be discussed in greater detail below, Core-Mark correctly argues that the Application Judge erred by isolating a portion of clause 15.4, and that had the Application Judge considered the clause in its entirety, the Application Judge would have concluded that clause 15.4 confirmed the obligation to add Core-Mark as an additional insured under clause 15.1(c).

[29] Finding no covenant to add Core-Mark as an additional insured under clause 15.1(c), the Application Judge concluded that the *Bill of Lading Regulation*, specifically sections 9, 10, and 16 of Schedule 3, applied. This meant that a statutory liability cap of \$2 per pound applied in the absence of a declaration of a higher value on the bill of lading. The Application Judge, relying upon *Hoskin v West*, 1998 ABCA 377 (“*Hoskin*”), held that Direct Integrated’s liability was limited by weight to \$38,894.00, as no greater value was declared on the bill of lading. The Application Judge stated that it would not matter whether the TA or RA applied to the stolen shipment of cigarettes.

IV. The Appellant’s Position

[30] The parties advance very similar arguments on appeal as they did before the Application Judge.

[31] Core-Mark argues that the Application Judge erred by limiting damages to the statutory cap under the *Bill of Lading Regulation*. The damage limit it imposes relates only to “loss or damage to goods” and not to a concurrent cause of action for breach of contract, such as a breach of the covenant to insure. See *Exalta Transport Corp v C & A Industries Inc*, 2008 ABQB 637 (*Exalta*).

[32] In this case, Core-Mark argues that the evidence establishes three concurrent breaches of contract under the TA that governed the delivery of the cigarettes as cargo. First, Core-Mark asserts that Direct Integrated failed to insure the cigarettes under clause 15.1(c) of the TA for their full invoice cost. Core-Mark notes that the \$500,000 blanket coverage obtained by Direct Integrated for alcohol and tobacco was less than Core-Mark's full invoice cost of \$534,451.78. Core-Mark further contends that the TA was breached because Direct Integrated sought only \$38,894.00 under the insurance policy, based on its incorrect belief that this amount represented the limit of the commercial hauler's liability. Second, Core-Mark argues that Direct Integrated breached the TA by failing to name Core-Mark as an additional insured as required under the agreement. Third, Core-Mark claims that Direct Integrated breached the TA by failing to properly secure the trailer that was stolen while containing Core-Mark's cigarettes.

[33] Core-Mark further argues that its expectation damages arise from the breach of the TA contractual provision and are therefore not limited by the cap imposed by the *Bill of Lading Regulation* for "loss or damage to goods." Alternatively, even if the RA applied to the shipment of cigarettes, Core-Mark contends that the two dollars per pound limit applies only to the replacement cost claim and not to damages for breach of contract.

[34] In support of its argument that the TA applies, Core-Mark contends that Direct Integrated's Statement of Defence, the first affidavit of its Vice President of Risk, and statements made during cross-examination support the conclusion that the TA was the agreement under which the parties operated at the relevant time.

[35] Core-Mark also argues that the most probative evidence on this point is the invoice arising from the theft, which it states shows that TA rates were being charged on the night in question rather than RA rates.

[36] Core-Mark further argues that because only the RA sets out a two dollars per pound limitation of liability, and because the TA does not contain such a limitation, the parties are permitted by section 16 of the *Bill of Lading Regulation* to contract for higher liability as long as the contract does not reduce the statutory minimum. Since the TA increased Direct Integrated's liability above the statutory minimum, the statutory cap does not apply.

[37] Core-Mark claims expectation damages based on what it would have received if Direct Integrated had fulfilled its contractual obligations, which is the full value of the stolen goods, \$534,451.78. Alternatively, Core-Mark argues that even if the Rate Agreement applied, damages would be at least \$250,000 based on the minimum insurance required.

V. The Respondent's Position

[38] Direct Integrated argues that its liability is limited either by contract or by statute. It asserts that it complied with its contractual obligations and that the statutory regime governs the allocation of risk. The *Bill of Lading Regulation* applies, and Section 3 imposes blanket liability of \$2 per pound unless a higher value is declared on the bill of lading. Although Direct Integrated took the position that the RA was the agreement governing the shipment of the cigarettes, this is not relevant because the statute must be applied.

[39] Direct Integrated argued that the RA was in effect at the time of the theft. It stated that the RA set the rate at \$1.77 per kilometer, but the variable rate was increased to \$1.82 per kilometer in January 2019, which matches the TA. It also asserted that the services provided were those described in the RA.

[40] Direct Integrated also noted that the RA contains an explicit limitation: “Replacement Cost payable by the Service Provider shall not exceed \$2 per pound.” This limitation applies “notwithstanding anything to the contrary in this Agreement.” The bill of lading for the shipment appears to have a prepopulated declared value of \$0 and repeats the statutory \$2 per pound limitation. Therefore, even if the TA were applied, the statutory regime would still limit liability to \$2 per pound unless a higher value was declared on the bill of lading.

[41] Direct Integrated also argued that section 16 of the *Bill of Lading Regulation* does not assist Core-Mark because, while it permits the parties to add terms, it does not allow reducing or altering the statutory obligations. Therefore, the onus is on Core-Mark to declare a higher value if it wishes to avoid the statutory limit. Direct Integrated cited *Hoskin* to confirm that the statutory limits form part of every contract unless a higher value is declared.

[42] In response to the argument that it breached the covenant to insure, Direct Integrated noted that it obtained insurance in the amount of \$500,000 for tobacco shipments with Core-Mark listed as a certificate holder. Direct Integrated also maintained that it was not required to add Core-Mark as an additional insured under the cargo insurance clause. The contract does not require Direct Integrated to obtain insurance for the full value of every shipment unless a higher value is declared.

[43] Direct Integrated agreed with Core-Mark that the matter is suitable for summary judgment with no material facts in dispute. However, Direct Integrated maintained that the law and the contracts are clear: liability is limited to \$2 per pound.

VI. The Standard of Review

[44] The parties agree that the standard of review on all issues in correctness: *Bacheli v Yorkton Securities Inc*, 2012 ABCA 166 at para 30; *Losenko v Wild Rose Ready Mix*, 2024 ABKB 33 at paras 14-15; *Western Energy v Savanna Energy*, 2022 ABQB 259 at para 22, aff’d 2023 ABCA 125. The Court, on review, is not bound by any finding, fact or otherwise, made by the Application Judge as an appeal is *de novo* and on such appeals no deference is owed: *McGowan v Lang*, 2015 ABCA 217 at para 32.

VII. Principles of Summary Judgment

[45] Both parties took the position that this matter was appropriate for summary judgment as there are no uncertainties in the facts or evidence that would prevent judgment from being granted.

[46] Rule 7.3(1) of the *Alberta Rules of Court*, Alta Reg 124/2010 permits a party to request summary judgment on an entire claim or a portion thereof, because there is no defence to a claim, or any part of it, or the only real issue is the amount to be awarded.

[47] The test for summary judgment as succinctly stated by the Supreme Court of Canada in *Hryniak v Mauldin*, 2014 SCC 7 at para 49:

There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[48] The Alberta Court of Appeal in *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 at para 47 outlined the main considerations:

- a) Having regard to the state of the record and the issues, is it possible to fairly resolve the dispute on a summary basis, or do uncertainties in the facts, the record or the law reveal a genuine issue requiring a trial?
- b) Has the moving party met the burden on it to show that there is either “no merit” or “no defence” and that there is no genuine issue requiring a trial? At a threshold level the facts of the case must be proven on a balance of probabilities, or the application will fail, but mere establishment of the facts to that standard is not a proxy for summary adjudication.
- c) If the moving party has met its burden, the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial. This can occur by challenging the moving party’s case, by identifying a positive defence, by showing that a fair and just summary disposition is not realistic, or by otherwise demonstrating that there is a genuine issue requiring a trial. If there is a genuine issue requiring a trial, summary disposition is not available.
- d) In any event, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial discretion to summarily resolve the dispute.

VIII. Analysis

A. Issues

[49] The issues for determination in this appeal can be stated as follows:

1. Does the *Bill of Lading Regulation* serve as an absolute statutory cap to Direct Integrated’s liability?
2. If not, which agreement applies?
3. Based on the answer to (2), does the insurance clause in the agreement contain a covenant to insure, and if so, was it breached?
4. If there is a breach, what is the proper monetary amount of damages?

B. The Bill of Lading Regulation

[50] As a starting point it is useful to review the regulation that governs, at least in part, the present dispute. Section 3 of the *Bill of Lading Regulation* requires that a bill of lading for general hauling must be prepared by either the consignor (Core-Mark), the carrier (Direct Integrated) or the operator of the depot if shipped through a depot. Section 3(2) further identifies the information that must be found on the face of the bill of lading, which notably includes a space for declared value.

[51] Section 5 of the *Bill of Lading Regulation* provides that every agreement for the transportation of goods under s.3 is deemed to include the conditions of carriage found in Schedule 3. Condition 1 of the conditions of carriage imposes blanket liability on a carrier described in a Bill of Lading for any loss or damage to the goods the carrier has accepted, subject to the exceptions identified in Condition 5.

[52] Condition 9 discusses the limits on the amount of compensation for which the carrier is liable. As Justice Langston concluded in *Exalta* at para 27, this limitation does not apply to any “loss or damage” that the carrier may be found liable but it relates to Condition 1 which imposes liability only for “loss or damage to goods.” Condition 9 reads as follows:

Valuation

9 Subject to section 10 of these Conditions of Carriage, the amount of any loss or damage for which the carrier is liable, whether or not the loss or damage results from negligence,

- (a) shall be computed on the basis of the value of the goods at the place and time of shipment including the freight and other charges if paid, or
- (b) where a value lower than that referred to in clause (a) has been represented in writing by the consignor or has been agreed upon, such lower value shall be the maximum liability.

[53] Condition 10 provides for the statutory cap on the amount of loss or damage as follows:

Maximum liability

10 The amount of any loss or damage computed under section 9 of these Conditions of Carriage shall not exceed \$4.41 per kilogram (\$2 per pound) computed on the total weight of the shipment unless a higher value is declared on the face of the bill of lading by the consignor.

[54] Both parties also referred to s. 16 of the *Bill of Lading Regulation*, which provides as follows:

Additional terms and conditions

16(1) Nothing in section 5, 8 or 10 shall be construed as prohibiting a consignor and a carrier from adding terms and conditions to the agreement for the transportation of goods.

(2) Notwithstanding subsection (1), any added terms or conditions referred to in subsection (1)

- (a) that alter the terms and conditions contained in the conditions of carriage as set out in Schedule 3, 8 or 9, as the case may be, and
 - (b) that reduce or alter the obligations provided for under the conditions of carriage referred to in clause (a),
- are void

[55] Consistent with the modern approach to statutory interpretation, the wording of legislation is to be read in its entire context and in its grammatical and ordinary sense, harmoniously with the scheme of the Act and the intention of the legislator: *La Presse inc. v Quebec*, 2023 SCC 22 at paragraph 22. The plain meaning of the text is not determinative but must be assessed against the legislative meaning, including the context, purpose, and relevant legal norms: *La Presse*, at paragraph 23.

[56] The legislative intent underlying the *Bill of Lading Regulation*, as reflected in its context, purpose, and relevant legal norms, is to govern the consignor–carrier relationship by establishing general carrier liability for loss or damage to goods and by mandating completion of a bill of lading prior to shipment. These requirements address the frequent shipment of goods without prior contractual arrangements and the wide range of shipping contexts, from sophisticated commercial relationships to unsophisticated one-off or infrequent shipments.

[57] The *Bill of Lading Regulation* advances these objectives by deeming the carrier liable for loss or damage to shipped goods and by limiting liability by weight, subject to a higher value declared on the face of the bill of lading by the consignor: *Hoskin*, at paragraphs 8 and 16.

[58] Section 16 of the *Bill of Lading Regulation*, consistent with its legislative purpose, permits parties to add terms and conditions to the statutory agreement governing transportation of goods. It does not permit parties to reduce or alter the obligations set out in Schedule 3.

[59] When interpreting the *Bill of Lading Regulation*, it is also important to recognize that the statutory cap on liability applies only to the extent of the carrier’s liability for loss or damage to goods. Justice Langston explained this distinction in *Exalta* at paragraph 27 -28:

Condition 9 then discusses the limits on the amount of the compensation for “which the carrier is liable”. *Exalta* argues that because condition 9 provides a limit on ‘any loss or damage’, C &A’s claim is covered by this condition. However, when one views the preceding conditions concerning liability with the specific wording of condition 9, which is not simply ‘any loss or damage’, but “the amount of any loss or damage for which the carrier is liable”, it is clear that the limitations on compensation provided in condition 9 do not apply carte blanche to ‘any loss or damage’ for which a carrier may be liable. Instead, condition 9 relates back to condition 1, which imposes liability, but only for “any loss of or damage to goods”.

Together, conditions 1, 2, 3, and 9 provide a benefit to the shipper by negating the need for a shipper to prove causation by a specific carrier if there is ‘loss of or damage to’ the goods; by virtue of these conditions, the carrier named in the Bill of Lading is liable, regardless of whether the damage or loss arises from

negligence or some other conduct. However, should the shipper wish to claim any other type of damage, unless there is another applicable statutory condition, the standard norms for onus, proof, causation, and other elements of tort or contract, apply.

[Emphasis added]

[60] Justice Langston ultimately held that C & A, the plaintiff in *Exalta*, was entitled to compensation due to Exalta's failure to provide notice as required under Condition 16 of Schedule 3 of the *Bill of Lading Regulation*. In the circumstances, Exalta did not notify C & A of its inability to deliver a rented welder to C & A's customer because of an incorrect address. Exalta made no effort to communicate this failure and consequently was held liable for the fees incurred by C & A for renting an additional welder prior to the delivery of the original equipment.

[61] It is important to recognize, however, the central point made in *Exalta* that notwithstanding the reliance in that case on Condition 16, the parties to a shipping contract are permitted to add additional terms that do not relate to the direct "loss or damage" to the good being shipped so long as those additional terms do not reduce or alter the obligations set out in Schedule 3.

[62] Based on the foregoing analysis, I agree with the Application Judge's conclusion that, because no value was declared on the bill of lading, liability and damages for loss or damage relating to the cigarettes are limited to \$2 per pound, amounting to \$38,894.00. The difficulty does not arise from this determination but rather from what I find to be the Application Judge's erroneous conclusion that the Transportation Agreement did not obligate Direct Integrated to maintain cargo insurance naming Core-Mark as an additional insured in the minimum amount of \$250,000. Furthermore, the Application Judge failed to recognize that, in any event, the Rate Agreement imposed the same minimum insurance requirement.

[63] In response to the first issue, I conclude that the *Bill of Lading Regulation* operates as an absolute cap on damages for liability, but only with respect to "the amount of any loss or damage for which the carrier is liable," meaning "loss or damage" directly pertaining to the goods themselves. Direct Integrated correctly asserts that s.16 of the *Bill of Lading Regulation* precludes the parties from altering the consignor's obligation to declare a higher value for the goods if the consignor seeks compensation in an amount exceeding the prescribed limit for loss or damage to the goods.

[64] Conversely, and consistent with *Exalta*, the *Bill of Lading Regulation* does not preclude Core-Mark, as consignor, from seeking damages arising from a breach of Direct Integrated's contractual obligations that are not barred by s.16 of the Regulation. Such claims do not alter or diminish the obligations imposed under the conditions of carriage. In particular, this includes circumstances where Core-Mark establishes that Direct Integrated breached its covenant to obtain cargo insurance naming Core-Mark as an additional insured.

[65] The purpose of insurance when shipping goods under the *Bill of Lading Regulation* is to address the gaps created by statutory liability limits and to ensure that the consignor is fully protected. While Schedule 3 of the *Bill of Lading Regulation* limits the carrier's liability to \$2/lb (\$4.41/kilo) for goods lost or damaged in the absence of a declared higher value on the bill of lading, s.16 does not prohibit the consignor from paying a premium for cargo insurance through

the carrier. Such policies typically designate the consignor as the beneficiary. This principle is expressly recognized in section 11 of the Regulation concerning the transportation of household goods, which provides that when the consignor is charged a fee for insurance, or is part of what has been bargained for, the policy must be purchased on behalf of the consignor, and the named beneficiary will be the consignor or another party at the consignor's direction.

[66] One of the primary purposes of insurance in the shipping context is to protect the consignor from financial loss beyond the statutory liability of \$2/lb where higher values have not been declared on the bill of lading, and to ensure full indemnity to the consignor, which in this case is Core-Mark.

[67] I conclude that damages arising from an alleged breach of a covenant to insure are not subject to the statutory cap found in Condition 9 of Schedule 3 of the *Bill of Lading Regulation*. The statutory cap applies only to loss or damage to goods, not to separate contractual obligations such as a covenant to procure insurance. Therefore, a claim based upon breach of that covenant is not constrained by the \$2/lb cap.

C. Which Agreement was in effect?

[68] Given that the Bill of Lading Regulation does not restrict agreements concerning the covenant to provide cargo insurance with the Core-Mark as an additional insured, the issue is which of the two agreements between Core-Mark and Direct Integrated governed when the trailer of cigarettes was stolen. This determination is largely academic because, under either the TA or the RA, Direct Integrated agreed to provide cargo insurance naming Core-Mark as an additional insured in the minimum amount of \$250,000.

[69] If it were necessary to decide this issue, I find on a balance of probabilities that the TA governed on the night of the theft. The evidence indicates that the rate charged was that of the TA (\$1.82/km), Direct Integrated admitted that the RA and TA were separate agreements, and its initial Statement of Defence asserted that the TA applied. Further, as Judge Farrington observed, the TA was the broader and more comprehensive agreement, which “seems to be the most particular and specifically negotiated agreement between the parties and presumably the parties meant to speak to insurance in the context of that agreement”: *Core-Mark* at para 9.

[70] Direct Integrated maintains that the RA governed the relationship, relying on the variable rate structure tied to fuel prices. It submits that the \$1.82 per kilometre rate reflected on the invoice for the relevant night, together with the proximity of the account's inception to the RA's execution, substantiates its position. This argument is unpersuasive. In the absence of evidence establishing fuel prices at the material time, the rate is, at best, equivocal. Furthermore, as Core-Mark observes, the RA account reflects an initial entry dated April 6, 2018, preceding the RA's execution on April 22, 2018. While this fact is not conclusive, it fails to provide sufficient support for the proposition that the RA was operative, particularly when considered against the weight of contrary evidence and contextual factors.

[71] I conclude that the TA was in effect when the trailer of Core-Mark's cigarettes were stolen.

D. Did the Insurance Clause in the TA Contain a Covenant to Insure?

1. Principles of Contractual Interpretation

[72] The objective in interpreting a contract is to ascertain and give effect to the parties' true intention as expressed in the written agreement, considered as a whole, at the time of formation: *Bhasin v Hrynew*, 2014 SCC 71 at para 45.

[73] Canadian courts have adopted a “contextual approach” to contractual interpretation which involves having regard to the surrounding circumstances of the contract: *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53 at para 46 (*Sattva*). This approach requires a “practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine ‘the intent of the parties and their scope of understanding’”: *Sattva* at para 47, citing *Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada*, 2006 SCC 21.

[74] Speaking to the substance of this approach, the Supreme Court of Canada stated at para. 47 of *Sattva*:

To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning:

No contracts are made in a vacuum: there is always a setting in which they have to be placed. . . . In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.

Reardon Smith Line Ltd v Hansen-Tangen, [1976] 3 All ER 570 (HL) at p. 574, per Lord Wilberforce.

[Emphasis added]

[75] While words must be given their ordinary and grammatical meaning, interpretation must also account for contextual factors, including the purpose of the agreement and the nature of the relationship it creates: *Sattva* at para 48. The “goal of the exercise is to ascertain the objective intent of the parties—a fact-specific goal—through the application of legal principles of interpretation”: *Sattva* at para 49.

[76] Courts must interpret the contract as a whole and cannot selectively focus on individual clauses or portions of clauses. The search for the parties' intentions on an objective basis requires considering what a reasonable person would infer from the words used: *ATCO Electric Limited v Alberta (Energy and Utilities Board)*, 2004 ABCA 215 at paras 76–77. The words of any provision must not be read in isolation but in harmony with the remainder of the contract and in light of its commercial purpose: *Canadian Natural Resources Limited v Wood Group Mustang (Canada) Inc (IMV Projects Inc)*, 2018 ABCA 305 at para 97.

[77] Additionally, all words in a contract should be given meaning, where possible, and the absence of words may also be considered: *Geoffrey L Moore Realty Inc. v Manitoba Motor*

League, 2003 MBCA 71 at para 12, citing *National Trust Co. v Mead*, 1990 CanLII 73 (SCC), [1990] 2 SCR 410, and *Controls & Equipment Ltd. v Ramco Contractors Ltd. et al.*, 1999 CanLII 32511 (NB CA), 209 NBR (2d) 1.

[78] While surrounding circumstances must be considered, even in the absence of ambiguity, “they must not be allowed to overwhelm the words of that agreement”: *Sattva* at para 57; See also *IFP Technologies (Canada) Inc. v EnCana Midstream and Marketing*, 2017 ABCA 157 at para 82 (*IFP*).

[79] Where a contract is ambiguous, extrinsic evidence (parol evidence) may be admitted to resolve the ambiguity, and an interpretation that promotes business efficacy is preferred, provided it is supported by the text: *IFP* at para. 86. Mere difficulty in interpretation does not amount to ambiguity; a contract is ambiguous when its words are “reasonably susceptible of more than one meaning”: *IFP* at para 87. Where ambiguity exists, courts should give effect to the reasonable expectations of the parties: *Builders Capital (2014) Ltd. v Aviva Insurance Company*, 2022 ABCA 120 at para 26, citing *Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co.*, 2016 SCC 37 at paras. 49–51.

[80] Commercial contracts should be interpreted in accordance with sound commercial principles and good business sense. Absent evidence of a bad bargain, courts should avoid interpretations that produce unrealistic or absurd results: *IFP* at para 88.

[81] In sum, determining whether a covenant to insure exists requires an interpretation that begins with the words of the contract, read in their ordinary and grammatical sense, in light of the surrounding circumstances at the time of execution, with the objective of ascertaining the parties’ intent as understood by a reasonable person. The analysis must consider the contract as a whole, not isolated provisions. Words should not be disregarded except where they would produce an absurd result, and the absence of words may be relevant. Where ambiguity exists, courts should give effect to the reasonable expectations of the parties, and the interpretation should accord with sound commercial principles.

2. Does the TA Contain a Covenant to Insure Core-Mark’s Cargo as an Additional Insured

[82] The principles of contractual interpretation outlined above support the conclusion that the TA imposes an obligation to procure insurance for the benefit of Direct Integrated and to name it as an additional insured. When the contract is read as a whole, clauses 15.1(c) and 15.4 indicate such an obligation, even though clause 15.1(c) does not expressly contain that wording.

[83] While the contract must be read as a whole, the principal provisions in dispute are clauses 15.1 and 15.4 of the TA, which warrant particular focus. The central issue is whether clause 15.1(c) should be interpreted as imposing an obligation on Direct Integrated to obtain insurance sufficient to cover the wholesale value of the cargo and to name Core-Mark as an additional insured under that policy. Clause 15.1(c), reproduced below, provides:

Except as otherwise provided in this Agreement, Service Provider shall ensure that the following insurance with respect to the Services is procured and maintained.

(c) Motor Carrier’s Cargo insurance coverage in an amount not less than \$250,000 (Canadian \$), per vehicle and in an amount sufficient to cover the full

Wholesale Invoice Cost value of any of the Customer's truckloads in the custody, possession or control of Service Provider.

[84] Direct Integrated asserts that clause 15.1(c) does not impose any obligation to name Core-Mark as an additional insured. Its argument relies on the omission of the words "naming the Customer as an additional insured" in clause 15.1(c), which it claims demonstrates an intention not to require Core-Mark to be named as an additional insured. Clauses 15.1(a) and (b), reproduced below, contain explicit wording requiring the Customer to be named as an additional insured:

Except as otherwise provided in this Agreement, Service Provider shall ensure that the following insurance with respect to the Services is procured and maintained.

- (a) Commercial General Liability, including the standard Insurance Service Office Broad Form Endorsement, with not less than \$5,000,000.00 (Canadian \$) combined single limit for bodily injury or death to persons and property damage on an occurrence form, naming the Customer as an additional insured, a combination of primary and excess liability limits are acceptable.
- (b) Automobile Liability Insurance covering all owned, leased, hired or borrowed vehicles and employers non-owned liability with not less than \$5,000,000.00 (Canadian \$) combined single limit for bodily injury or death to persons and property damage on an occurrence form naming the Customer as an additional insured, a combination of primary and excess liability limits are acceptable.

[Emphasis Added]

[85] It is clear that clause 15.1(c) does not contain explicit wording requiring Direct Integrated to name Core-Mark as an additional insured. However, Core-Mark argues that when the contract is read as a whole, particularly clauses 15.4 and 15.1(c), it demonstrates that the parties intended Core-Mark to be named as an additional insured under clauses 15.1(a), (b), and (c). Clause 15.4, reproduced below, provides:

At the commencement of this contract and at least annually thereafter, Service Provider shall provide, or cause to be provided, to the Customer a certificate(s) of insurance evidencing the foregoing coverage and applicable deductibles, not to exceed \$100,000, from an insurance carrier reasonably satisfactory to Customer naming the Customer as Certificate Holder and Additional Insured where applicable. The failure of Service Provider to provide such certificates or the failure of Customer to request such certificates shall not limit Service Provider's liabilities under the provisions of Sections 13 and 14. Each certificate under a), b) and c), above, shall contain a provision requiring that the Customer (as an additional insured) receive renewal certificates within 5 days of policy expiration and be given at least thirty (30) days prior written notification of any modification or cancellation.

[Emphasis Added]

[86] It is useful to note that the Application Judge did not make a specific finding as to whether the covenant existed in this case, as the judge concluded that the statutory limit applied.

However, the Application Judge relied on the words “where applicable” in clause 15.4 to suggest that the judge would have concluded that no such obligation existed if required to make a finding on that point. The position was that the words “where applicable” indicated an intention that only certain provisions of clause 15.1 required Core-Mark to be named as an additional insured, and the omission of explicit wording in clause 15.1(c), together with “where applicable,” meant that it did not apply in this instance. However, as noted by the Core-Mark, the Application Judge appeared to focus on the first half of clause 15.4, and it is unclear whether the judge considered the entirety of the clause, particularly the second half, which includes “shall contain a provision requiring that the Customer (as an additional insured).”

[87] A review of the full text of clauses 15.1 and 15.4, considered alongside the contract as a whole, supports the conclusion that the parties intended clause 15.1(c) to include an obligation to name Core-Mark as an additional insured.

[88] The ordinary and grammatical meaning of the words in clause 15.1(c) does not indicate that Direct Integrated had an obligation to name Core-Mark as an additional insured, nor does it suggest the opposite. The provision is silent on the issue. The parties had the opportunity to include explicit wording in the clause to clarify that no such obligation existed but chose not to do so.

[89] The ordinary and grammatical meaning of the words in clause 15.4 supports the position that the intention was to include that obligation. There is nothing in clause 15.4 that restricts its application. While the words “where applicable” could be interpreted to mean that the obligation does not apply to certain provisions, they could also be interpreted as referring to each of clauses 15.1(a), (b), and (c).

[90] When reviewing all of clause 15.4, the words “each certificate under a), b) and c), above shall contain a provision requiring that the Customer (as an additional insured)” resolve the ambiguity. These words clearly state that the Customer (Core-Mark) is to be an additional insured and specifically reference each of a), b), and c). This language can be read consistently with the omission in 15.1(c), interpreting it as imposing an obligation for each of those three provisions.

[91] I further note that clause 15.1 includes an additional provision, 15.1(d), which was not highlighted by either counsel in their submissions. Clause 15.1(d) states:

Except as otherwise provided in this Agreement, the Service Provider shall ensure that the following insurance with respect to the Services is procured and maintained:

d) Any additional insurance coverage or any increase in any of the foregoing amounts as required by applicable Canadian or Provincial law, rule or regulation, or by the Provincial Transportation Regulatory Body, or as the Customer may from time to time reasonably require.

[92] There are two important considerations arising from a review of clauses 15.1 and 15.4, including 15.1(d). First, the phrase “where applicable” may refer to any additional insurance coverage that the Customer could reasonably require from time to time under 15.1(d). This additional insurance could involve circumstances where the parties agree that there is no need to add Core-Mark as an additional insured. In that case, “where applicable” would clearly exclude insurance procured under 15.1(d) but would apply to the other three subclauses. It could also

theoretically apply to any additional insurance required by law that does not require Core-Mark to be named as an additional insured.

[93] Second, the explicit reference in clause 15.4 to “as an additional insured,” with specific mention of a), b), and c) but no mention of d), suggests that those clauses were intentionally targeted. This indicates that the parties intended Core-Mark to be an additional insured in relation to those provisions. In other words, there is no apparent conflict between clauses 15.1 and 15.4. They can be read together in accordance with their ordinary and grammatical meaning to confirm that all of a), b), and c) required Core-Mark to be added as an additional insured.

[94] As described above, words in the contract should not be disregarded unless doing so would lead to an absurd result. The analysis must not rely on an isolated provision or a portion of a provision. If the parties truly intended to exclude 15.1(c) from the obligation to add Core-Mark as an additional insured, they could have removed the reference to c) from 15.4. They did not do so. Therefore, the reference to c) in 15.4 should not be ignored, as it does not produce an absurd result in this case.

[95] This analysis also requires considering the reasonable expectations of the parties and what a reasonable person would infer from the language used, interpreted in accordance with sound commercial principles.

[96] These factors also support the conclusion that the obligation to insure exists. In my view, after reviewing the entire contract, a reasonable person would infer that the parties intended Core-Mark to be an additional insured. This conclusion is based on the discussion above, including the explicit inclusion of c) in 15.4 and the silence in 15.1(c), which contains no contrary indication regarding the obligation to name Core-Mark as an additional insured.

[97] I also consider that the parties had a reasonable expectation that the obligation would apply. Commercial principles suggest that the parties understood the risks inherent in shipping. They clearly addressed insurance in the context of both agreements. A party in Core-Mark’s position, aware that loss or damage to goods was possible, would want to protect itself against potential loss. An interpretation that does not extend the obligation to name Core-Mark as an additional insured would primarily protect Direct Integrated against liability and leave Core-Mark exposed to loss in certain situations, such as in the present instance. It is unlikely that a sophisticated party like Core-Mark would intend to leave itself vulnerable to loss resulting from another party’s actions when insurance was contemplated and could easily be obtained.

[98] I would be more inclined to conclude that there was no reasonable expectation of an obligation to insure under (c) if 15.4 did not specifically refer to it. That would maybe be the case if Core-Mark was willing to take an additional risk in relation to its product, or simply by failing to negotiate that obligation in the provision. However, when the contract is viewed as a whole, and considering the ordinary and grammatical words used, the reasonable expectation of the parties (and what an objective person would conclude) is that Core-Mark would be a named insured for loss of their goods in an amount of at least \$250,000.

[99] I also return briefly to the statutory requirement to purchase insurance and name the customer as an additional insured for household goods. While that requirement does not apply in this case, it supports the broader principle that when insurance is procured and a fee is charged, whether implicit or explicit, the Customer expects to be named as an additional insured. The Bill of Lading Regulation specifically requires this protection for household goods. It is logical to

conclude that, although not mandated here, sophisticated commercial parties would want similar protection unless expressly excluded, which is not the case in this agreement.

[100] As noted earlier, even if I am incorrect in concluding that the TA was the agreement in effect in this instance, the RA also explicitly contained a provision in its incorporated terms and conditions requiring insurance for Core-Mark at a minimum of \$250,000 for cargo insurance, with Core-Mark named as an additional insured. Therefore, whether the TA or the RA was in effect, and in the absence of any notification that the cigarettes were valued at more than \$250,000, Direct Integrated was contractually obligated to obtain insurance naming Core-Mark as an additional insured, and they failed to do so. Based on the record, this constitutes a clear contractual breach that entitles Core-Mark to damages.

E. The Quantification of Core-Mark's Damages

[101] The Application Judge correctly concluded that Core-Mark is limited to judgment under the *Bill of Lading* regulation for its loss of cigarettes in the amount of \$38,894. In addition, Core-Mark is entitled to damages arising from Direct Integrated's breach of its contractual obligation to obtain insurance naming Core-Mark as an additional insured in the minimum amount of \$250,000.

[102] To assess the proper quantification of Core-Mark's damages arising from the failure of Direct Integrated to obtain insurance naming Core-Mark as an additional insured, it is trite law that the object of a compensatory claim is, as far as possible, to place the claimant in the position they would have been in had the wrong not occurred. This principle is subject, in some factual scenarios, to other considerations such as contributory negligence, losses that fall outside the scope of the tort or breach of contract, and remoteness in the sense that the loss was speculative or beyond the reasonable contemplation of the parties. In *Remington Development Corporation v Canadian Pacific Railway Company*, 2025 ABCA 244 at para 90 the Alberta Court of Appeal concisely summarized the concept of remoteness as follows:

Remoteness therefore aims to limit the scope of liability for damages by ensuring that only the reasonably foreseeable consequences of a breach of contract are compensable. By avoiding an overly broad application of liability, remoteness promotes fairness through predictable and proportional legal outcomes. It prevents the breaching party from being held responsible for damages that are too indirectly or unexpectedly linked to its actions, or that are disproportionately large compared to those actions. The type of loss caused by a breaching party must have been reasonably contemplated by that party when the contract was formed.

[103] In this instance, the measure of damages is the loss incurred by Core-Mark due to Direct Integrated's failure to obtain cargo insurance in the contractually agreed minimum amount of \$250,000, less any applicable deductible. While Core-Mark argues that Direct Integrated's policy, for which it was a certificate holder in the amount of \$500,000 for alcohol and tobacco (with a \$10,000 deductible), demonstrates knowledge of the value of the cigarette shipment, I do not find that this inference can safely be drawn. I am also unable to conclude that Direct Integrated knew the value of the shipment merely because previous shipments had occurred. Core-Mark did not advise Direct Integrated of the value of the cigarettes being shipped and did not declare that value on the bill of lading. While Core-Mark argues that it should be entitled to its entire loss because of references in the TA insurance clauses to the "wholesale value" of goods, nothing beyond the minimal insurance requirement could reasonably have been

contemplated by Direct Integrated given the failure to communicate the actual and higher value of the cigarettes. Therefore, damages exceeding the minimum insurance amount of \$250,000 are too remote and were not within the reasonable contemplation of the parties.

IX. Conclusion

[104] Core-Mark's damages are not limited to the \$38,894 that the Application Judge correctly concluded were properly claimable from Direct Integrated because of Core-Mark's failure to declare a valuation on the bill of lading and the corresponding statutory cap imposed by the Bill of Lading Regulation for the loss of cigarettes. Direct Integrated is also liable for damages in the amount of \$250,000 for breach of the covenant to insure the shipment of Core-Mark's cigarettes, including the obligation to name Core-Mark as an additional insured. Core-Mark's current policy in the amount of \$500,000 for alcohol and tobacco provides the best evidence of the deductible of \$10,000, which will be deducted from the total award of damages.

[105] Summary judgment in favor of Core-Mark is therefore granted against Direct Integrated in the amount of $\$38,894 + \$250,000 - \$10,000$, for a total of \$278,894. I also award pre-judgment interest in favor of Core-Mark.

X. Costs

[106] The parties shall make every effort to resolve the question of costs as between them. In the event they are unable to agree on costs, I grant leave to provide me written submissions not exceeding 5 pages each, within 60 days of the date of this decision.

Heard on the 11th day of September, 2025.

Dated at the City of Calgary, Alberta this 12th day of December, 2025.

D.A. Labrenz
J.C.K.B.A.

Appearances:

Lyndsey Delamont
for the Appellant Core-Mark

Sarah E. Holder
for the Respondent Direct Integrated