Court of King's Bench of Alberta

Citation: Calgary Core-Mark International Inc. v. Direct Integrated Transportation Ulc, 2024 ABKB 637

Date: 20241101
Docket: 2301 04782
Registry: Calgary

Between:

Calgary Core-Mark International Inc.

Plaintiff

- and -

Direct Integrated Transportation ULC and ABC Insurance Company

Defendants

Memorandum of Decision
of the
Honourable Applications Judge J.R. Farrington

---

[1] For a number of years the defendant Direct Integrated Transportation ULC ("Direct Integrated") hauled cargo for the plaintiff Calgary Core-Mark International Inc ("Core-Mark"). Most times the transportation services and delivery of goods ran smoothly. On November 22, 2021, they did not. A load of the plaintiff's property was stolen. Unfortunately, the load consisted of cigarettes with a wholesale value of $534,451.78. Cigarettes are light, and there are potentially limitations on liability based upon weight. Core-Mark did not declare a higher value on the bill of lading. The issue on this application is whether the transporter Direct Integrated is liable for the wholesale value of the goods, or whether the amount is $38,894.00, or whether the answer is somewhere in between such as $250,000 based upon an alleged breach of a covenant to insure.

[2] Core-Mark brings an application for summary judgement. While there is no formal application of Direct Integrated before me, I understand that the parties wish for the Court to determine the liability (and amount) assessable against Direct Integrated on this application.

[3] I heard initial submissions on June 27, 2024. I then requested additional submissions regarding the effects of legislation and regulations on the dispute on September 11, 2024. After considering the matter, and the helpful submissions on both occasions by counsel, this is my decision.

[4] The parties had two general forms of agreement under which they operated. One was a "Transportation Services Agreement" and the other was a "Rate Agreement". Complicating matters, there were numerous amendments along the way between the parties. In general terms, however, the Transportation Services Agreement has an insurance clause as follows.

[5] Clause 15.1 provides (emphasis added):

> 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.

[6] Clause 15.4 provides (emphasis added):

> 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***…

[7] The insurance clause that may or may not be in the Rate Agreement does not appear to be as comprehensive. I say "may or may not" because it is not clear that the Terms and Conditions sheet in the Agreement was specifically included as part of the Rate Agreement.

[8] Much of the argument in this matter was about whether the Transportation Services Agreement or the Rate Agreement applies to the dispute between the parties. Counsel were not able to identify any criteria where an objective third party outside observer could determine whether a particular load was governed by the Transportation Services Agreement or the Rate Agreement. I could not either. Neither form of agreement identifies which rules apply to any particular type of load, timing or transportation.

[9] For the purposes of argument on this application, I will assume that the previously quoted clauses at 15.1 and 15.4 of the Transportation Services Agreement apply. They are the strongest insurance clauses in evidence. Had it been necessary to make a determination on the issue, I would have been inclined to find that the Transportation Services Agreement applies because it 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. In the end, I do not find it necessary to specifically find that the Transportation Services Agreement applies for the reasons that I will indicate.

[10] Much of the argument of Core-Mark is that there is an obligation and covenant to insure the cargo to the extent of at least $250,000 and name Core-Mark as an additional insured.

[11] In reviewing the insurance clauses, however, I do not read them the same way. Clause 15.1(a) certainly requires Core-Mark to be named as an additional insured for third party liability purposes. Clause 15.1(b) also requires the naming of Core-Mark as an additional insured for automobile liability purposes.

[12] Clause 15.1(c), however, is a clause that deals with the liability and insurance relationship between Core-Mark and Direct Integrated. It 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 that Core-Mark be named as an additional insured, or that would give Core-Mark the right of a direct action against an insurer for losses. The "additional insured" requirement that is present in Clauses 15.1(a) and 15.1(b) is conspicuously absent from Clause 15.1(c). There is no covenant to insure as argued by Core-Mark.

[13] This conclusion is buttressed by Clause 15.4. When speaking to the provision of a certificate providing details of coverage, it importantly says "where applicable" in relation to the "additional insured" aspect. The additional insured requirement is not universal. It applies to the third party liability aspects, but not to the liability relationship between the parties.

[14] There is a regulation that applies to this dispute.

[15] Section 5(1) of the ***Bill of Lading and Conditions of Carriage Regulation***, Alta Reg 313/2002 provides:

> 5(1) Every agreement for the transportation of goods to which section 3 applies is deemed to include those terms and conditions contained in the conditions of carriage set out in Schedule 3.

[16] Schedule 3, as adopted, refers the reader to sections 9 and 10 of Schedule 3 which provide:

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.

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.

[17] Importantly, section 16 of the Regulation provides:

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. (Emphasis added)

[18] There is binding authority on the points raised here. In ***Hoskin v. West***, 1988 ABCA 377 the Court of Appeal held at paragraph 8:

> It is noteworthy that the Regulations as amended in 1986 now specifically require the originating carrier to prepare the bill of lading for transporting household goods. However, as I shall explain shortly, it is not a requisite to the invocation of statutory limits on the carrier's liability, when doing general hauling, to determine whether or not the carrier bore the responsibility to prepare the bill of lading. The agreement to transport between the shipper and the carrier has two important provisions imposed by statute. Firstly, the carrier is deemed to be liable for the loss or damage to goods hauled whether or not the carrier was negligent, subject to stated exceptions. Secondly, the carrier's liability is statutorily limited to $4.41 per kilogram unless the shipper declares a higher value on the bill of lading. Every contract of general hauling is deemed to include these two provisions. However, the shipper may contract to avoid the statutory limits on the carrier's liability by declaring the true value of his goods should it be in excess of $4.41 per kilogram. If no such higher value is indicated, then the statutory limits will apply. The limitation provision applies to all general hauling agreements to transport whether or not a bill of lading has been prepared and executed. Contracts of transport regarding livestock and household goods are expressly excluded from

the limits imposed on contracts of general hauling. In my view, the liability limitation applies to every agreement regarding general hauling whether or not the shipper, the carrier or the depot agent has prepared a bill of lading.

[19] Further, the Court of Appeal summarized its findings at paragraph 16 as follows:

> On a careful reading of the ***Alberta Motor Transport Act*** and its Regulations regarding general hauling under Section 3 of the Regulations, it is clear that the statutory limits on the carrier's liability in the event of loss or damage to goods in its possession are deemed to be a part of every agreement to transport, "unless a higher value is declared on the face of the bill of lading by the consignor". That is the scheme of the pertinent Alberta legislation regarding general hauling. Those limits are not absolute. The consignor may avoid having those statutory limits placed on his loss or damage by declaring a higher or true value of his goods. As in the ***Anticosti*** case, the onus is placed on the consignor to declare a higher value on his goods. If he fails to do so, his loss or damage will be limited as prescribed.

[20] In my view ***Hoskin v. West*** applies to this case. No higher value was stated as required in the bill of lading. The dispute is governed by the limits set out in the regulation at $2.00 dollars per pound and the liability of the carrier is $38,894.00 as set out in Direct Integrated's brief. That is the result regardless of whether the Transportation Services Agreement or the Rate Agreement applies.

[21] Thank you to counsel for their very helpful submissions. Costs would normally follow the event, but if the parties cannot agree on costs or their quantum, they may speak to them at the end of one of my chambers lists within 60 days of release of this decision.

Heard on the 27th day of June, 2024 and the 11th day of September, 2024.
Dated at the City of Calgary, Alberta this 1st day of November, 2024.

J.R. Farrington
A.J.C.K.B.A.

Appearances:

McCarthy Tetrault LLP
Lyndsey Delamont
for the Plaintiff

Brownlee LLP
Sarah E. Holder
for the Defendant