
Court of Appeal for Saskatchewan

Docket: CACV4215

**Citation: *Economical Mutual Insurance
Company v Brock Stock Farm Ltd.,
2024 SKCA 62***

Date: 2024-06-14

Between:

**Economical Mutual Insurance Company, Mutual Fire Insurance Company of
British Columbia, The Wawanesa Mutual Insurance Company and Peace Hills
General Insurance Company**

*Appellants
(Defendants)*

And

Brock Stock Farm Ltd.

*Respondent
(Plaintiff)*

Before: Leurer C.J.S., Caldwell J.A. and Dawson J. (*ad hoc*)

Disposition: Appeal allowed in part

Written reasons by: The Honourable Chief Justice Leurer
In concurrence: The Honourable Mr. Justice Caldwell
The Honourable Madam Justice Dawson

On appeal from: 2023 SKKB 119, Saskatoon
Appeal heard: November 16, 2023

Counsel: Kaylea Dunn, K.C. and Kelsey O'Brien for the Appellants
Robert Kennedy, K.C. for the Respondent

Leurer C.J.S.

I. INTRODUCTION

[1] This appeal concerns a dispute between Economical Mutual Insurance Company, Mutual Fire Insurance Company of British Columbia, The Wawanesa Mutual Insurance Company and Peace Hills General Insurance Company [Insurers] and their policy holder, Brock Stock Farm Ltd. [Brock].

[2] In February of 2016, the roof of a building owned by Brock collapsed, causing it damages for which it claimed against the Insurers. Brock has been granted summary judgment for its losses: *Brock Stock Farm Ltd. v Economical Mutual Insurance Company*, 2023 SKKB 119 [*Chambers Decision*].

[3] The Insurers appeal from the *Chambers Decision*, saying that, for various reasons, their policy does not cover Brock's losses. I have concluded that the Insurers must succeed in one part of their appeal.

[4] Brock's losses were caused by the gradual deterioration of part of the roof's truss system. Loss or damage caused in this way is excluded from coverage under the policy, although resultant damage is insured. In this case, the judge erred when she found that all of Brock's losses constituted resultant damage, and she failed to make the necessary findings of fact that would allow this Court to determine what Brock is due under the policy, if anything. Accordingly, this issue must be remitted to the Court of King's Bench for determination.

II. BACKGROUND

A. The collapse of the roof

[5] Brock owns and operates a farm in Saskatchewan. One of its assets is a large barn in which it houses hogs.

[6] The structure of the barn's roof is provided by a series of trusses. The truss system is pre-engineered and is made of wood. The individual trusses are joined together by metal plates. These

plates are variously referred to as truss plates or gusset plates. Except when quoting the evidence, I will use the term *truss plates* to describe these metal objects as the judge used that description in the *Chambers Decision*.

[7] In December of 2015, there was a partial collapse of the barn’s roof. This damage was repaired by Brock without any involvement by the Insurers.

[8] In the first part of February 2016, the area near Brock’s farm experienced strong wind gusts. These were measured at the nearest weather station, located at Kindersley, Saskatchewan, at 87 kilometers per hour on February 6 and at 76 kilometers per hour on February 7. Evidence provided by the Insurers called into question whether the winds at Brock’s farm were quite that strong. In any event, the Insurers’ uncontradicted evidence was that, if the barn’s truss system had worked as designed, whatever the precise wind speeds at the farm might have been, they would not have been strong enough to damage the roof. However, on February 10, 2016, one of Brock’s employees determined that a portion of the barn’s roof had collapsed.

[9] When the collapse was investigated it was discovered that the truss plates that held together the wooden parts of the trusses had suffered from corrosion. The judge found, as fact, that the cause of the collapse was a combination of wind and the corrosion of the truss plates.

B. The policy and the denial of coverage

[10] The policy is what is sometimes referred to as an “all risk” policy. Under it, the Insurers agreed that, in “the event that any of the property insured is lost or damaged by the perils insured against, [they would] indemnify [Brock] against direct loss so caused” to the limits of the policy. By its terms, it insured “against **all risks** of direct physical loss or ‘damage to insured property’” (emphasis in original). The policy also provided business interruption insurance.

[11] The policy also includes many exclusions. Two are relevant in this appeal, as follows:

4b. Perils Excluded

This Form does not insure loss or damage caused directly or indirectly:

...

(6) By dampness or dryness of atmosphere, changes of temperature, freezing, heating, shrinkage, evaporation, loss of weight, leakage of contents, exposure to light, contamination, pollution, change in colour or texture or finish, rust or corrosion, marring,

scratching or crushing, but this exclusion does not apply to loss or damage caused directly by rupture of pipes or breakage of apparatus not otherwise excluded, theft or attempt thereat [*sic*] or accident to transporting conveyance. Damage to pipes caused by freezing is insured provided such pipes are not otherwise excluded;

...

(15) By wear and tear, gradual deterioration, latent defect, inherent vice, or the cost of making good faulty or improper material, faulty or improper workmanship, faulty or improper design provided; however, to the extent otherwise insured and not otherwise excluded under this Form, resultant damage to the property is insured;

I will generally refer to clause 4(b)(6) as the Corrosion Exclusion and clause 4(b)(15) as the Deterioration Exclusion.

[12] Because of the roof's collapse, Brock incurred \$48,395.81 in temporary repairs, and it made permanent repairs that cost \$237,907.84. It also suffered an interruption to its business. Brock submitted a proof of claim seeking payment of these losses under the policy. When the Insurers did not pay, Brock commenced an action, which the Insurers defended.

C. The summary judgment application

[13] Brock applied for summary judgment of its claim. The Insurers agreed that the dispute could be decided summarily, but they took the position that the action should be dismissed, asserting that the "cause of the collapse was rusted and corroded truss plates, and that the gradual deterioration caused both the December 2015 and February 2016 collapses" (*Chambers Decision* at para 26). In doing so, they relied on the Corrosion Exclusion and the Deterioration Exclusion.

[14] As part of its case, Brock offered the evidence of Trevor Knoll, a licenced structural engineer. For their part, the Insurers tendered the evidence of a professional civil and structural engineer, Jeff Udall. Both these experts wrote several reports without inspecting the actual trusses that had collapsed, although Mr. Knoll tested two truss plates taken from a part of the roof that had not failed but had been removed from it during its repair.

[15] Mr. Knoll opined that the two truss plates he had inspected retained approximately 67% to 91% of the manufacturer's stated ultimate failure capacity. The strength testing resulted in the conclusion that "the current corroded state of the truss plates had not completely reduced their capacity to transmit loading within the truss assembly". He further opined that the "roof trusses

did not fail under their own self weight due to corroded truss plates but rather it was a combination of wind load and the partial weakening of the truss plates due to corrosion” that caused the collapse. He also found that “neither factor acting alone would have caused the failure”.

[16] Mr. Udall gave evidence on the nature of the damage and attributed the cause of the collapse to the corroded truss plates. He explained that barn roofs are designed to withstand wind speeds that exceed those that the barn had experienced in December of 2015 and February of 2016. He offered the opinion that the barn’s roof had “collapsed in February 2016, because of the severely corroded and deteriorated state of the metal gusset plate connectors joining the wooden roof trusses”. His further conclusion was that because of “the corroded and deteriorated state of the gusset plates, the Hog Barn was not structurally sound, and could have collapsed at any time, regardless of wind conditions”. He also stated that the “loads imposed on the structure by the winds in December 2015 and February 2016, were not significant enough to cause structural damage to a structurally sound building, without corroded or deteriorated components such as metal gusset plate connectors”.

[17] The Insurers also filed the evidence of meteorologist and climatologist, Ron Hopkinson. Mr. Hopkinson used data from the three weather stations closest to the barn to estimate the wind speeds that would have been experienced at the Brock farm in February of 2016. He concluded that the “strongest sustained wind in early February 2016 occurred on February 6, 2016, and was 59 km/hour”. He opined that winds of that speed “would be seen in Brock, Saskatchewan on average approximately every two years” and that they “are not considered unusual, and do not meet the meteorological definition of a windstorm”.

[18] These three experts, as well as several other witnesses, were cross-examined on their affidavits.

D. The *Chambers* Decision

[19] The judge began her reasons with an introduction, which provided an overview of the facts. She then summarized the parties’ positions and identified three issues as requiring her attention.

[20] The first was whether the case could be decided summarily. As I have noted, the parties had agreed that their dispute was amenable to summary disposition. The judge independently considered the issue and concluded that the matter was “well suited for a summary judgment application” (*Chambers Decision* at para 33).

[21] Before turning to the second question the judge described the applicable onuses of proof. In this regard, she found that to succeed in its claim “Brock must first establish that the loss claimed falls within the coverage set out in the terms of the Policy”. She observed that if this burden was met, the “onus then shifts to the [Insurers] to demonstrate that one or more of the exclusions in the Policy apply” (at para 35). In this case, she found that it was “not disputed that the Policy provides broad form coverage, which applies to all direct physical loss and damage to the insured property. As such, the loss claimed falls within the ‘all risk’ coverage provided, and the collapse is insured unless an exclusion clause applies”. She determined that “assessing the cause of the collapse [was] integral” to the applicability of the exclusion clauses relied upon by the Insurers (at para 41).

[22] Having established this framework, the judge turned to the second issue she had identified, being the cause of the collapse. The judge concluded that the prerequisites for the admission of the experts’ evidence “have been met and the evidence of these expert witnesses is accepted in the proposed areas of expertise” (at para 45). She then summarized and analyzed their evidence over many pages of her decision. After having done all of this, she found that “the truss plates were unable to withstand the combined dead load and wind load for which they were initially designed” and that even though “the wind that occurred at the approximate time of the collapse was less than what the Barn was initially designed to withstand, *the combination of corrosion and this wind event operated in tandem to cause the collapse*” (at para 85, emphasis added).

[23] These findings made, the judge moved to the third issue she had identified, being whether Brock’s February 10, 2016, loss was covered by the policy. On this, she first discussed the proper approach to be taken when there are concurrent causes of a loss. She found that the “express language in this Policy ousts coverage when an excluded cause, such as corrosion, is a ‘concurrent cause’ of the loss” (at para 97). Accordingly, she concluded that under “the specific terms of the Policy, there is no coverage where the associated loss is directly or indirectly caused by rust, corrosion, wear and tear or gradual deterioration, unless an exception applies” (at para 98).

[24] The judge agreed with the Insurers that, having demonstrated that there are exclusion clauses which apply, the onus shifted back to Brock to establish that the loss fell within any exception to an exclusion clause (see para 100). She found that Brock had met this burden in connection with exceptions to both exclusions upon which the Insurers had relied. In connection with the Corrosion Exclusion, the judge found the applicable exception in the words that provide that the exclusion “does not apply to loss or damage caused directly by rupture of pipes or breakage of apparatus not otherwise excluded”. The Deterioration Exclusion removes from coverage loss or damage caused directly or indirectly by, among other things, wear and tear, gradual deterioration, but also states that “however, to the extent otherwise insured and not otherwise excluded under this Form, resultant damage to the property is insured”. On this, the judge simply noted that even “if corrosion of the truss plates were classified as ‘wear and tear’ or ‘gradual deterioration’, the resultant damage to the Barn would be insured under the stated exception as it is otherwise insured” (at para 116).

[25] Having determined that Brock was entitled to coverage, the judge turned to the quantification of its claim. She accepted that Brock had incurred the losses it claimed for temporary and permanent repair to the barn, in the amounts of \$48,395.81 and \$237,907.84, respectively. She found its business interruption loss to be \$41,893.26. In the result, she awarded Brock judgment for \$328,196.91, plus pre-judgment interest. The judge also awarded Brock costs, which she fixed at \$5,000.

III. ISSUES

[26] The outcome of the Insurers’ appeal is determined by the answers to the following questions:

- (a) Did the judge err in finding wind to be a concurrent cause of the collapse of the roof?
- (b) Did the judge err by restricting her analysis to a consideration of only parts of the policy?

- (c) Did the judge err in concluding that the damage in this case was caused directly by breakage of an apparatus?
- (d) Did the judge err in ordering costs in favour of Brock?

IV. ANALYSIS

A. The finding that wind contributed to the collapse

[27] As I have noted, the second issue the judge considered was the cause of the roof's collapse. She found this to be corrosion to the truss plates and wind. The majority of the judge's lengthy reasons were devoted to a careful recitation of both the lay and expert evidence that bore on the causation question.

[28] The Insurers argue that the judge erred by finding that wind was a concurrent cause of the roof's collapse. They attempt to position this alleged error as one of law, by asserting that she misapprehended or failed to consider material parts of the evidence. In the alternative, they argue that the finding was the product of a palpable and overriding error. In my view, however it is presented, there is no merit to the Insurers' attack against the judge's factual findings.

[29] In their factum, the Insurers point to four specific parts of Mr. Hopkinson's evidence to which it is alleged the judge failed to "properly receive and give appropriate weight". These include that (a) there had been many prior occasions when stronger or more sustained winds had been experienced in the area near Brock's farm, (b) the fact that there had been no record of damaging winds when the December of 2015 collapse occurred, (c) the winds experienced before the February of 2016 collapse were not unusual in that they might be expected to be equaled every two years, and (d) the winds experienced in February of 2016 were much lower in magnitude than that required to cause structural damage. However, contrary to their assertion in this appeal, the judge quoted from the parts of the Hopkinson Report that contained this and other aspects of the Insurers' evidence (see paras 56 to 67). Moreover, the judge expressly stated that she "relied on Mr. Hopkinson's evidence for the purpose of understanding the measurements and nature of the wind leading to the time of the collapse" of the roof (at para 70).

[30] More importantly, the judge carefully explained why she was unable to accept Mr. Udall's opinion that wind had not been a contributing factor in the collapse. This included a detailed review of the photographic record and the areas where the two engineering experts agreed or came close to agreement. I will quote only one small part of her analysis, which sits in the middle of her lengthy consideration of the evidence, to make this point:

[78] The Udall Supplemental Report #2 subsequently recognized the Barn roof may be susceptible to damage with "less than the original design" wind speeds as its ability to resist the winds decreases. Mr. Udall comments on the impacts of deterioration on capacity:

Throughout its lifespan, the trusses will be subjected to various loads from wind and snow. If these loads are less than the original design loads, and the trusses are in good condition, the roof should remain intact and function as intended. As the roof ages and the truss plates deteriorate, the trusses' ability to resist day-to-day snow and wind loads is also reduced. [...] At some point, the strength is reduced to such a point that it will collapse from the smallest loads and even its own weight.

[79] The Knoll Supplemental Report comments on the impacts of stress reversal caused by wind and the tension that the opposite force of wind "uplift" create in structures. The Udall Supplemental Report #2 also comments on the effect of stress reversal, but discounts this as the typical result of a wind is for a section of the roof to separate and be thrown away from the building. Mr. Udall states:

Winds alone generally do not cause inward collapse of the truss structure. The uplift forces pull building elements up and away from the structure. Engineered trusses are designed for uplift wind forces.

[80] Yet both experts recognize the weakening of one truss plate has the potential to lead to progressive failures in the remainder of the truss plates and can extend to adjacent trusses due to load redistribution.

[31] The judge went on to consider weaknesses in Mr. Knoll's evidence, before concluding as follows:

[84] Ultimately, the precise degree of corrosion of the failed truss plates remains unknown. What is evident is that without the corrosion and ongoing deterioration of the truss plates, this collapse would not have occurred. Similarly, without the wind load on this weakened structure, this collapse would not have occurred.

[85] I find that the truss plates were unable to withstand the combined dead load and wind load for which they were initially designed. I am of the view that the Barn was not entirely structurally sound due to the corrosion that had already occurred to the truss plates. Even though the wind that occurred at the approximate time of the collapse was less than what the Barn was initially designed to withstand, the combination of corrosion and this wind event operated in tandem to cause the collapse.

[86] That is not to say that further corrosion or deterioration of the truss plates may have eventually resulted in a collapse solely from the dead load of the roof. However, given the evidence of the wind at the relevant time coupled with the expert evidence and testing of

the surviving truss plates, I am satisfied that for the collapse to have occurred at this particular time, it was due to a combination of wind and corrosion.

[87] None of the parties were able to conclusively state what the windspeeds would have been at the specific location of the Barn in early February 2016 or what the precise wind force would have been on the Barn. In my view, the evidence supports that the truss plates were weakened due to time and environment. When the strong winds occurred in the days before the collapse, this resulted in a load redistribution among the trusses and a subsequent progressive failure in the adjacent trusses.

[88] I do not accept that the Barn would have collapsed at the relevant time without an additional factor happening concurrently, such as the wind. I am satisfied from the evidence and on a balance of probabilities that it was corrosion of the truss plates in combination with the wind that caused the collapse.

[32] I see no material omissions in the judge's review of the evidence. This leads me to conclude that there is no merit to the Insurers' assertion that the judge misapprehended or failed to consider any material evidence. I also can see no palpable, let alone overriding, error in the judge's analysis of the evidence. Her finding of fact that there were two, concurrent causes of the collapse therefore must stand unimpeached in this appeal.

[33] However, before moving on to the next issue, I must make one final point. The premise of the Insurers' argument about causation is that Brock's claim would fall outside of coverage under their policy if Brock could not show that wind had been a contributing cause of the roof's collapse. In making this argument, they rely on *Algonquin Power (Long Sault) Partnership v Chubb Insurance Company of Canada* (2003), 50 CCLI (3d) 107 (WL) (Ont SCJ), which states as follows:

[125] An insurer is not obliged to provide coverage solely because an insured did not, whether subjectively or objectively, anticipate the cause of a loss. An "all risks" policy provides coverage against all fortuitous losses, unless the loss is specifically excluded. It is a first principle of insurance law that coverage is not available if the loss was not fortuitous. It does not follow that because the event was fortuitous, coverage must be provided. While an insurer attempting to exclude coverage may argue the event was non-fortuitous, the insured is not automatically entitled to coverage for every fortuitous event. Chubb agrees that this loss was fortuitous. This does not guarantee coverage, it just means that the loss is not automatically excluded.

[34] I take no issue with the proposition that not every fortuitous loss is covered by the policy. However, I accept Brock's position, as did the judge, that "the Policy provides broad form coverage, which applies to all direct physical loss and damage to the insured property. As such, the loss claimed falls within the 'all risk' coverage provided, and this collapse is insured unless an exclusion clause applies" (at para 41). In other words, the policy provides coverage for the collapse

of the roof, even if wind did not contribute to that event, unless one of the exclusions to coverage applies.

[35] In conclusion on this issue, the judge did not err in finding that wind was a contributing cause of the roof's collapse. However, and in any event, the question of coverage does not turn on whether wind was a cause of the collapse, but rather on whether the cause fell within the scope of one or both of the exclusions the Insurers raised in defence to the claim under the policy. Before turning to the question as to the applicability of these exclusions, I must address one other argument made by the Insurers.

B. The judge did not improperly restrict her analysis

[36] The Insurers submit that the judge improperly restricted her analysis to only parts of the policy. Although, in their factum, they attempted to centre their submissions with reference to the principles applicable to the proper interpretation of insurance policies, including the requirement to read a contract of insurance as a whole, it became clear that their submission reduced to the suggestion that the judge gave inadequate consideration to the potential applicability of the Deterioration Exclusion.

[37] The Insurers root this part of their submissions in the introduction the judge gave to her consideration of the expert opinions tendered by the parties. In this regard, after providing a comprehensive summary of this evidence, the judge turned to a weighing of the expert evidence, which she did under a heading bearing that description. She began this part of her analysis with the following statements:

[68] To begin, I *have tailored my analysis to the contribution of corrosion as opposed to rust, wear and tear, or gradual deterioration*. Each of the experts discusses the impact of corrosion and, while the other three terms are specified in the exclusion clauses and often used interchangeably, in my view the primary issue in the declining strength of the truss plates is corrosion.

(Emphasis added)

[38] The Insurers argue in their factum that the sentence I have emphasized, and the analysis that followed it in the *Chambers Decision*, “reveals that [the judge’s] analysis was improperly narrowed, and that she failed to fully consider the Policy as a whole”. Even more particularly, they say that the judge erred by failing to analyze in a meaningful way the possibility that the collapse

of the roof may be attributable to a cause that fell within the Deterioration Exclusion. The significance of this is that the “breakage of apparatus exclusion” only applies to the Corrosion Exclusion and not that relating to loss or damages caused directly or indirectly by gradual deterioration.

[39] I cannot agree with the Insurers’ argument on this point as it is premised on a misapprehension of the judge’s reasons. Paragraph 68 forms part of the judge’s analysis of the second issue that she identified, namely, relating to the cause of the roof’s collapse. As I read that paragraph, it serves to introduce the conclusion that she later reaches, i.e., that the cause of the failure was, in part, attributable to corrosion. Although the judge uses the phrase “primary issue” in the last sentence of paragraph 68, in the context of the analysis that follows, I interpret the sentence as an expression of the judge’s finding of fact that the primary contributing cause for the collapse was the corrosion of the truss plates.

[40] None of this is surprising given the evidence before the judge. For example, the Insurers went to some length to draw out from the cross-examination of Mr. Udall, the corrosive nature of the atmosphere within the hog barn. More pointedly, each of the experts emphasized the role that corrosion played in the collapse. Both sides’ experts attributed the collapse to corrosion. The points of divide between them were in relation to the role of wind on the collapse and if the truss plates had sufficiently corroded that the roof would have fallen on its own weight, and when that might have occurred. In short, it was *uncontested* that corrosion had played a role in the collapse of the barn’s roof. As I will later explain, this corrosion also equated, in the circumstances of this case, to a deterioration of the truss plates.

[41] In any event, there is no basis to say that the judge forgot or failed to analyze the potential applicability of the Deterioration Exclusion. She wrote in this regard as follows:

[116] Even if corrosion of the truss plates were classified as “wear and tear” or “gradual deterioration”, the resultant damage to the Barn would be insured under the stated exception as it is otherwise insured.

[42] This passage makes clear that the judge gave the Insurers the benefit of the assumption that the Deterioration Exclusion applied. She simply refused to make the further finding they sought that the exclusion applied in the circumstances of this case because she also concluded that an exception operated to overcome the exclusion, i.e., the part that states that “to the extent otherwise

insured and not otherwise excluded under this Form, resultant damage to the property is insured”. The Insurers’ ability to rely on the Deterioration Exclusion depends on its ability to challenge this latter conclusion by the judge. I will discuss this later in these reasons.

[43] In conclusion, there is no merit to the Insurers’ arguments that the judge improperly restricted her analysis to only parts of the policy or erred in the other ways discussed in this portion of my reasons.

C. Corrosion Exclusion (and apparatus exception)

[44] As has been noted, the policy states that it does not insure loss or damage caused directly or indirectly by:

(6) ... dampness or dryness of atmosphere, changes of temperature, freezing, heating, shrinkage, evaporation, loss of weight, leakage of contents, exposure to light, contamination, pollution, change in colour or texture or finish, *rust or corrosion*, marring, scratching or crushing, *but this exclusion does not apply to loss or damage caused directly by rupture of pipes or breakage of apparatus not otherwise excluded*, theft or attempt thereat [*sic*] or accident to transporting conveyance. Damage to pipes caused by freezing is insured provided such pipes are not otherwise excluded;

(Emphasis added)

[45] As I have just discussed, there was no dispute that the collapse was caused, in part at least, by corrosion. The parties presented argument on the basis that, because of the Corrosion Exclusion, Brock would have no coverage unless the exception to it applied. More specifically, Brock’s claim must be dismissed unless its loss or damage was “caused directly by ... breakage of apparatus”. On this issue, before the judge, Brock took the position that the truss plates are part of an “apparatus not otherwise excluded” such that this exception applies, whereas the Insurers took the position that the truss system is not an “apparatus” and therefore the exclusion clause applies.

[46] As I have also observed, the judge found that the “apparatus” exception to the Corrosion Exclusion operated on the facts of this case. After a consideration of the arguments made to her, the judge explained her reasons for this conclusion, as follows:

[112] Reading the Policy as a whole, there is ambiguity in the language used. If it was the Insurers’ intention to limit the meaning of an “apparatus”, it was open to them to include a similar limitation in the Policy. The truss is a framework of structural elements that rely on the combination of parts for the function of carrying and supporting the load of the roof. This meets the definition of an apparatus. When this apparatus failed, the loss fell within the exception under the exclusion clause.

[113] In considering that coverage provisions should be construed broadly and exclusion clauses narrowly and in applying the principle of *contra proferentum*, I am satisfied the loss falls within the exception and is subject to coverage under the Policy.

[47] In their attack against the *Chambers Decision* on this point, the Insurers remount the same arguments as they advanced before the judge. They are entitled to do this because the issue of the proper interpretation of this standard form contract is to be reviewed by this Court for its correctness. However, I am satisfied that the judge did not err by interpreting the policy in a way that included the barn's truss system within the definition of an apparatus.

[48] I begin my analysis of this issue, as did the judge, with reference to the *Shorter Oxford English Dictionary*, 6th ed, vol 1 (Oxford University Press, 2007), which includes the following definition of the word *apparatus*:

apparatus: The things collectively necessary for the performance of some activity or function; the equipment used in doing something; a machine, a device.

[49] The judge's description of the truss as a "framework of structural elements that rely on the combination of parts for the function of carrying and supporting the load of the roof" (at para 112) fits this definition. In this regard, the evidence before the judge explained the composition of the trusses themselves and their operation as an integrated whole to carry out the function that the judge described.

[50] Yet, the Insurers resist this conclusion because they say that the trusses are part of the barn. They insist that an apparatus must be separate from a building. They largely base this argument on the fact that, in contrast to the absence of a definition of apparatus in the policy, it attaches the following meaning to the phrase "Farm Buildings":

8. "Farm Buildings" means the building(s) other than dwelling building(s) located on the "premises" and as described on the "Declaration Page", including:

- a. Fixed structures pertaining to the building(s);
- b. Additions and extensions communicating and in contact with the building(s);
- c. Permanent fittings and fixtures that normally form part of a building(s);
- d. Materials and supplies on the "premises" for maintenance of, normal repairs and minor alterations to the building, or for building services;
- e. Signs, hydro poles and lines, to a maximum of \$2,000 in all;
- f. Silos and silo unloaders, but only if described specifically on the "Declaration Page";
- g. Machinery that is permanently attached within the building(s).

[51] The Insurers say that the trusses are manifestly “fixed structure[s] pertaining to the building”, integral to the engineered support of the roof, and also among the “permanent fittings and fixtures that normally form part of” the barn. As such, it is said the trusses form part of a Farm Building and, so the argument goes, it would create an inconsistency in the policy to find them also to be an apparatus. I cannot agree.

[52] The Insurers do not explain, at least in a way that I can understand, what inconsistency is created in the actual operation of the policy if the trusses are determined both to be an apparatus and part of a Farm Building. As importantly, the Insurers’ argument ignores that the policy contemplates that at least some apparatuses would meet the definition of being a Farm Building. In this regard, clause 8(d) includes within that term “Machinery that is *permanently attached* within the building(s)” (emphasis added). By any reasonable understanding of the word *apparatus*, a machine is one. The Insurers’ main argument is therefore contradicted by the very definition upon which they rely; it does not lead to a conclusion that an apparatus ceases to be such simply because it is affixed to the realty.

[53] As part of their argument, the Insurers also point out that the word *apparatus* is used in several other places in the policy in conjunction with references to pipe systems, electrical systems and machinery or equipment. For example, they refer to the exclusion relating to loss or damage to buildings caused by explosion, fire and other similar causes:

(14) To buildings by:

(a) Snowslide, landslide, subsidence or other earth movement, except for ensuing loss or damage which results directly from fire, explosion, smoke or leakage from “fire protective equipment”;

(b) Explosion (except with respect to explosion of natural, coal, or manufactured gas), collapse, rupture, bursting, cracking, burning out or bulging of the following property owned, operated or controlled by you, unless fire ensues and then only for the loss or damage caused directly by such ensuing fire;

(i) The portions containing steam or water under steam pressure of all boilers generating steam, and piping or other equipment connected to said boilers and containing steam or water under steam pressure;

(ii) Piping and *apparatus* or parts thereof normally containing steam or water under steam pressure from an external source and while under such pressure;

(iii) Other vessels and *apparatus* and pipes connected therewith while under pressure, or while in use or in operation provided their maximum normal internal working pressure exceeds 103 kilopascals (15 pounds per

square inch) above atmospheric pressure but this exclusion does not apply to loss or damage resulting from the explosion of manually portable gas cylinders or of tanks having an internal diameter of 610 millimetres (24 inches) or less used for the heating and storage of hot water for domestic use;

(iv) Moving or rotating machinery or parts thereof;

(v) Any vessels and *apparatus* and pipes connected therewith while undergoing pressure test but this exclusion does not apply to other property insured hereunder that has been damaged by such explosion; or

(vi) Gas turbines;

(c) Settling, expansion, contraction, moving, shifting or cracking unless concurrently and directly caused by a peril not otherwise excluded herein;

(Emphasis added)

[54] As can be seen, in the context of this exclusion, the word *apparatus* is used in connection with pipes and vessels. However, elsewhere, the word finds an association with a broader sense.

Thus, it is found as part of the definition of *automobile*, as follows:

1. “Automobile” means any self-propelled land motor vehicle, trailer or semi-trailer (including machinery, *apparatus*, or equipment attached thereto) which is principally designed and is being used for transportation of persons or property on public roads, and is required by law to be insured under a contract evidenced by a motor vehicle liability policy, or any vehicle insured under such a contract.

(Emphasis added)

[55] Later in the policy, the word *apparatus* appears as part of an extension of coverage that relates to office contents and computer coverage, as follows:

4. This Extension insures against breakdown of “data processing equipment” if loss, damage or expenses are resulting from or are caused:

a. By the sudden and accidental mechanical failure of “data processing equipment”;

b. By short circuit, blow out, or other electrical disturbance including power surge within the “data processing equipment”, *apparatus* or devices other than interruption to power by blackout or brown-out;

c. By any repairing, servicing or processing operation involving the “data processing equipment”;

d. When “data processing equipment” malfunctions or breaks down while “media” is being run through the system;

(Emphasis added)

[56] In my view, the only conclusion that can be drawn from these disparate references to *apparatus* is that the accompanying words do not limit the breadth of the ordinary meaning of the

word, as set out in the dictionary definition relied upon by the judge to find the import of the word as it is used in the policy.

[57] I similarly attach no significance to the fact that the word *apparatus* is included in the definition of pressure vessel under s. 8-5 of *The Insurance Regulations*, RRS c I-9.11 Reg 1. In this regard, I agree with the judge who wrote that the “use of ‘apparatus’ in the related definition of ‘pressure vessel’ is specific only to that section of *The Insurance Regulations* and is not incorporated into the Policy, nor does the text of the Policy suggest that extrapolating this narrow definition into the Policy was a reasonable expectation of either party” (at para 110).

[58] Finally, the Insurers attack the judge’s reliance on the *contra proferentem* principle. They point out that the Supreme Court has emphasized that this is an interpretative tool of last resort, to be invoked when meaning cannot be given by employing general rules of construction, referring to *Sabean v Portage La Prairie Mutual Insurance Co*, 2017 SCC 7 at para 12, [2017] 1 SCR 121. However, *if* the judge erred by invoking the *contra proferentem* principle, her mistake had no effect in the circumstances of this case.

[59] At least on the facts as they presented themselves here, and given the position taken by the parties before the judge, I see no error in her conclusion that the apparatus exception applied. I say this in part because *neither* Brock nor the Insurers pointed to what I consider to be a more obvious circumstance in which the Corrosion Exclusion and its associated exception would operate. I will illustrate this point with a more evident situation in which the exclusion and its exception would apply.

[60] The intent behind the exclusion would appear to be that the policy would not generally cover damages caused directly or indirectly by dampness but would respond when such damages were caused by dampness that was directly caused, for example, because a water pipe burst. Understood in this way, the exception to the exclusion would operate when the rupture of pipes or breakage of the apparatus was the *cause* of the dampness or dryness of atmosphere, changes in temperature, freezing, heating, shrinkage, evaporation, loss of weight, leakage of contents, exposure to light, contamination, pollution, change in colour or texture or finish, rust or corrosion, marring, scratching or crushing.

[61] However, the Insurers did not approach the interpretation of the exclusion in that way. Instead, they asserted that the exception to the exclusion could apply when dampness or dryness of atmosphere, changes in temperature, freezing, heating, shrinkage, evaporation, loss of weight, leakage of contents, exposure to light, contamination, pollution, change in colour or texture or finish, rust or corrosion, marring, scratching or crushing had caused the rupture of the pipes or breakage of the apparatus. This interpretative approach to the Corrosion Exclusion is one that is open and, on these facts at least, leads to the conclusion that the exclusion does not apply.

[62] In conclusion, the judge did not err by determining that the truss plates were part of an apparatus not otherwise excluded by the policy such that the Corrosion Exclusion did not apply.

D. Deterioration Exclusion (and resultant damages exception)

[63] As has been mentioned, the Deterioration Exclusion removes from coverage loss or damage caused directly or indirectly by, among other things, wear and tear, and gradual deterioration. The Insurers raised this exclusion as the first basis upon which they resisted coverage under the policy. The Deterioration Exclusion also states that “however, to the extent otherwise insured and not otherwise excluded under this Form, resultant damage to the property is insured”. The applicability of both the exclusion and the exception to it is at issue in this case.

[64] In the *Chambers Decision*, the judge did not directly decide that the corrosion to the truss plates fell within the scope of the Deterioration Exclusion. However, in several places she equated the corrosion that she found to have occurred with the deterioration of the truss plates. She said this most clearly when she set out her conclusion that the collapse had been caused by a combination of both wind and corrosion. In this regard, as previously quoted, she wrote that what was “evident [was] that *without the corrosion and ongoing deterioration of the truss plates*, this collapse would not have occurred” (at para 84, emphasis added).

[65] Considering the evidence given by both experts, the judge reached the only conclusion that was available on the record before her when she equated the corrosion of the truss plates with their ongoing deterioration. Indeed, this was as much as recognized by Brock when it wrote in its factum that “the corrosion of the truss plates, *and the resultant deterioration* and compromise to the

structural integrity of the truss system, was effectively acknowledged by both of the structural engineers who testified in the application” (emphasis added).

[66] Accordingly, by equating the corrosion of the truss plates with their ongoing deterioration, the judge did nothing more than apply the most common definitions of the word *deterioration*, including that found in the *Oxford English Dictionary Online* (Oxford University Press, 2024), being the “action or process of deteriorating, a growing or making worse”, and the associated definition of deteriorating, meaning to “make worse or of inferior quality; to lower in character or excellence; to worsen”. I can see no difference between the ongoing deterioration that the judge described and the phrase ongoing deterioration that is used in the policy.

[67] In summary, all of Brock’s losses were caused directly or indirectly by gradual deterioration to the truss plates. This means that the Deterioration Exclusion was operative unless an exception to it applied.

[68] Nonetheless, Brock invites this Court to conclude otherwise. It makes two submissions. I can agree with neither.

[69] First, Brock argues that the Deterioration Exclusion operates only if deterioration is caused by wear and tear. However, this is not what the exclusion states. It contains a list of direct or indirect causes of loss or damage that take a claim outside of the scope of coverage. These are presented as *separate* causes. I cannot read the plain language of the policy to require that gradual deterioration must be the product of wear and tear any more than I can accept that “latent defect”, or “inherent vice”, or the “cost of making good faulty or improper material”, or “faulty or improper workmanship”, or “faulty or improper design” are only excluded if they are also accompanied by wear and tear. Instead, the evident intent of the exclusion is to remove from the scope of coverage recovery for loss or damages caused directly or indirectly by *any one* of the listed causes, unless the claim is for resultant damage that is otherwise insured and not otherwise excluded by the operation of another exclusion clause.

[70] Second, Brock argues that deterioration cannot encompass corrosion because (so it says), it would negate the operation of the exception to the Corrosion Exclusion in every case. I take no issue with Brock’s submission that the policy must be read as a whole, giving effect to all its terms.

However, I do not see the problem that Brock suggests arises if the rusting of the truss plates is understood both to be corrosion within the meaning of the Corrosion Exclusion and gradual deterioration within the meaning of the Deterioration Exclusion. More specifically, I can envisage cases where both the exception to the Corrosion Exclusion and the exception to the Deterioration Exclusion operate. An example might be where a pipe bursts or an apparatus breaks causing corrosion. In such a case it is possible that the exceptions to either or both exclusions might operate; directly caused damages resulting from the corrosion would fall into the exception to the Corrosion Exclusion and, if the damages caused could be described as resultant, they would also be within the exception to the Deterioration Exclusion. More generally, there is no principle that prevents more than one policy exclusion applying in a given circumstance.

[71] For these reasons, the Deterioration Exclusion was applicable on the facts of this case and would serve to exclude Brock's entire claim unless an exception to it applied. In respect to this, the judge concluded that an exception did override its application when she found, as previously quoted, that "the resultant damage to the Barn would be insured under the stated exception as it is otherwise insured" (at para 116). However, there are several difficulties with the judge's conclusion that the resultant damages exception to the exclusion operated to permit Brock full recovery of its claim.

[72] First, under any understanding of what would constitute resultant damages, the truss plates themselves suffered corrosion and the cost of their replacement must be removed from the damages claim. The judge made no attempt to quantify the amount of the damages claimed by Brock that were attributable to the deterioration of the truss plates. However, it was clear that some reduction in the claim must occur to account for the replacement of the truss plates which were clearly not resultant damages.

[73] Second, while I do not discount the possibility that other parts of Brock's claim *might* constitute resultant damages, the judge did not explain how that was the case. In this context it is worth recalling that the apparatus exception to the corrosion exclusion operated because the truss plates were part of a broader working whole. This fact alone invited a consideration as to whether more of Brock's damages claim might not constitute resultant damages.

[74] The Deterioration Exclusion, including the exception for resultant damages, is one that is commonly found in property insurance policies. There is an extensive body of case law that discusses how to apply a resultant damages exception in the face of a loss that otherwise falls within the scope of the exclusion, whether that is because the loss or damages has been caused directly or indirectly by wear and tear, gradual deterioration, latent defect, inherent vice, or the cost of making good faulty or improper material, faulty or improper workmanship, or faulty or improper design. However, I find myself unable to determine what part, if any, of Brock’s loss may yet be insured by this policy. This is because the judge did not address this issue in any meaningful way. Additionally, neither party provided helpful submissions to this Court on the point. Instead, the Insurers simply asserted in their factum that “the damages awarded go beyond ‘resultant damage to the property insured’”. Brock essentially ignored the issue, by instead simply asserting that the Deterioration Exclusion did not operate.

[75] For these reasons, it is impossible for this Court to determine what part, if any, of Brock’s claimed losses might constitute resultant damages within the meaning of the exception to the Deterioration Exclusion. This issue must be remitted to the Court of King’s Bench.

[76] In conclusion on this issue, the only finding open on the record of this case is that the losses and damages claimed by Brock were caused directly or indirectly by gradual deterioration. Brock therefore is limited to recovery of any resultant damage to the property insured. The issue of what amount of its loss, if any, falls within this exception to the Deterioration Exclusion must be remitted to the Court of King’s Bench for determination.

E. Costs

[77] The Insurers argue that the judge erred by fixing costs at \$5,000 without referencing the applicable tariff of costs. They describe this as “unreasonable” and “unsupportable”. Their fundamental submission is that the judge was required to give reasons if she intended to deviate from awarding costs on any basis other than by way of a quantification under the Tariff of Costs as prescribed in *The King’s Bench Rules*.

[78] The Insurers' argument has no merit. While the judge did not give reasons for fixing costs as she did, reasons are not routinely provided when costs are awarded and most certainly were not required in this case.

[79] Costs awards are highly discretionary. Rule 11-1(1) of *The King's Bench Rules* confirms the expansive discretion given to trial courts over matters of costs:

Discretion of Court

11-1(1) Subject to the express provisions of any enactment and notwithstanding any other rule, the Court has discretion respecting the costs of and incidental to a proceeding or a step in a proceeding, and may make any direction or order respecting costs that it considers appropriate.

[80] The remainder of Rule 11-1, as well as other Rules, define certain principles applicable to the general discretion recognized in those Rules. However, those further provisions also contain much room for the exercise of discretion.

[81] Many decisions of this Court have emphasized the highly discretionary nature of a costs award. Some of these are reviewed in *Suderman v Yakubowski-Suderman*, 2022 SKCA 87 at paras 203–206, 82 RFL (8th) 1. In this case, the costs award did not deviate to a substantial degree from what would be provided for under the tariff.

[82] Nonetheless, because I have decided that the question as to what part, if any, of Brock's claim qualifies as resultant damages must be remitted, I would set aside the costs award the judge made in the *Chambers Decision*. However, this has nothing to do with the Insurers' costs argument, which, as noted, has no merit whatsoever.

V. CONCLUSION

[83] The judge did not err in finding that the Corrosion Exclusion did not operate on the facts of this case. However, the grant of summary judgment in favour of Brock must be set aside. The only finding open on the record is that the losses and damages claimed by Brock were caused directly or indirectly by a gradual deterioration of the truss plates. Therefore, the Deterioration Exclusion applied, except to the extent that Brock is claiming resultant damages. The judge did not make the necessary findings of fact that would allow this Court to determine what part, if any, of Brock's damages constitute resultant damages, nor did this Court receive the necessary

submissions that would allow us to do this. Accordingly, that issue must be remitted to the Court of King’s Bench.

[84] For these reasons, I would set aside the judgment granted to Brock, as well as the costs award made in its favour, and remit the issue as to what part, if any, of Brock’s claimed losses might constitute resultant damages within the meaning of the exception to the Deterioration Exclusion to the Court of King’s Bench.

[85] There has been divided success of the parties on the several issues that were presented to this Court for determination. As well, the Insurers’ liability under the policy for resultant damages, if any, is yet to be determined on the evidence in this matter. For these two reasons, I would order no costs in connection with this appeal.

“Leurer C.J.S.”

Leurer C.J.S.

I concur.

“Caldwell J.A.”

Caldwell J.A.

I concur.

“Caldwell J.A.”

for Dawson J. (*ad hoc*) as per authorization