



IN THE SUPREME COURT OF THE STATE OF DELAWARE

YOURWAY TRANSPORT, INC.,	:	No. 208,2026
	:	
Appellant/Defendant-Below,	:	
	:	
v.	:	Court Below:
	:	Superior Court
VINCERX PHARMA, INC.,	:	
	:	
	:	C.A. No. S23C-09-003 MHC
Appellee/Plaintiff-Below	:	

OPENING BRIEF OF APPELLANT, YOURWAY TRANSPORT, INC.

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Dated: July 20, 2026

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I. NATURE OF THE PROCEEDINGS

This is the appeal of Yourway Transport, Inc. (“Yourway”) from a jury verdict in favor of Vincerx Pharma, Inc. (“Vincerx”) and a number of pretrial rulings and the Trial Court’s denial of Yourway’s post-trial Motion.

II. SUMMARY OF ARGUMENT

1. It Was Reversible Error For The Trial Court To Grant A Directed Verdict Holding That The Provisions Of The Master Services Agreement And Not The Bill Of Lading Controlled, And That The Master Services Agreement Was Breached.

2. The Trial Court Reversibly Erred By Excluding Evidence Regarding Vincerox's Financial And Operational Condition, As The Evidence Was Relevant And Admissible On Key Issues In The Case.

3. The Trial Court Committed Reversible Error By Permitting An Improper Measure of Damages.

4. It Was Reversible Error For The Trial Judge Not To Grant Either A New Trial Or Remittitur, As The Jury's Verdict Was Against The Great Weight Of The Evidence.

5. It Was Reversible Error To Bar Yourway From Introducing Evidence Of Vincerox's Insurance Program, As The Evidence It Sought To Introduce Was Relevant And Admissible On Damages Issues.

6. It Was An Abuse Of Discretion To Permit Vincerox's CEO To Offer Expert Testimony Dispute Not Producing An Expert Report.

7. The Cumulative Effect Of The Trial Court's Errors Denied Yourway A Fair Trial

III. STATEMENT OF FACTS

Vincerx was a pharmaceutical manufacturing company involved in the manufacture of certain pharmaceutical products. [A-0795] Yourway is a transportation and supply chain solutions provider for the pharmaceutical and biotech industries. [A-0779] The relationship between Vincerx and Yourway began in 2021, with the execution of the Master Services Agreement, through which Yourway would, from time to time, provide transportation and similar services to Vincerx. [A-0779 - A-0780]

Between March 20, 2021 and May 1, 2023, Vincerx retained Yourway to provide shipping services on at least twenty-five occasions. [A-0376 – A0400] On each occasion, Yourway would provide a bill of lading that would govern the shipment of the goods. *Id.* Though given the opportunity, Vincerx did not ever elect to designate a higher value than that listed on the bill of lading. *Id.* At the outset of the relationship between Yourway and Vincerx, Vincerx sent an email requesting a quote for insurance on shipments being performed by Yourway. [A-0402 – A0403; A-1111 – A1114] Upon learning that insurance would cost approximately 4% of the total value of the shipment, Vincerx did not obtain insurance coverage from Yourway. *Id.* Rather, Vincerx relied on its own insurance, obtained from an independent insurer. [A-0407 – A-0408]

In late 2020, Vincerx purchased a product known as VIP943, a treatment for certain forms of cancer, from Bayer AG, a German pharmaceutical and biotechnology company, who developed VIP943 but chose not to manufacture it for market. [A-0780; A-0797 to A-0800] Vincerx purchased the license for manufacturing and marketing VIP943 from Bayer for five million dollars. [A-0799 to A-0800] Included in that licensing agreement included all of the physical materials related to VIP943, including the cell banks at issue here, but more importantly the associated data, techniques, and materials needed to further develop the product, as well as the right to manufacture, market, and distribute the product subject to royalties to be paid to Bayer. [A-0797 to A-0800]

After completing its transaction with Bayer, Vincerx retained Yourway to transport certain materials, called cell banks, from Bayer's facility in Wuppertal, Germany to San Diego, California, where Vincerx's vendor, PCI Pharma Services, was located. [A-0780]

Cell banks are collections of stored, cloned cells. [A-0796; A-0970] The cell banks contained the cells that constitute VIP943, which is an antibody drug conjugate, which consists of antibodies that are attracted to cancer cells, and a chemotherapy drug. [A-0795 to A-0796] Because of the nature of the material, the cell banks had to be kept at -196° C, so they were placed in transport carriers known as cryoport shippers, which were filled with liquid nitrogen would maintain

the proper temperature for ten days. [A-0780 to A-0781] Three separate cryoport shippers were used, as the shipment included research cells banks, master cell banks, and working cell banks. [*Id.*]

Yourway provided Vincerx with a bill of lading for the transport, as it had done in the previous occasions when it provided transportation services to Vincerx. [A-1372] The bill of lading indicated that the shipment contained three pieces—the cryoport shippers containing the cell banks. *Id.* The bill of lading further listed the weight of the cell banks as 105 lbs. *Id.* Finally, the bill of lading stated that unless a greater value is declared, Vincerx agreed that the value of the property is not to exceed \$50.00 for any shipment of 100 lbs. or less, and not exceeding 50 cents per pound for shipments weighing in excess of 100 lbs. *Id.* No greater value was declared. *Id.*

As part of the transportation from Germany to the United States, Vincerx's Vice President of Biologic Development and Marketing, Raj Dua, certified on a customs declaration terms a pro forma invoice, that the value of the cell banks was \$253,391. [A-1115] In so signing, he certified that all of the information contained in the invoice, including the \$253,391 value of the cell banks, was true and correct. [A-1118 – A-1119]

The cell banks left Germany on November 30, 2021 and travelled through Heathrow Airport in London, UK and on to Philadelphia International Airport, in

Philadelphia, Pennsylvania, and were then driven to Yourway's facility in Allentown, Pennsylvania. [A-0782 to A-0783] They arrived there on December 6, 2021, where they were subject to a "hold" by the United State Food and Drug Administration. [A-0783]

While at the Allentown facility, the liquid nitrogen in the cryoport shippers dissipated and the cell banks reached room temperature. [A-0783] After an unsuccessful attempt to recharge the liquid nitrogen failed, they arrived at PCI's facility on December 21, 2021, but the cells were dead upon arrival. [A-0784 to A-0785]

In September 2023, Vincerx initiated this case by filing a Complaint. Following the removal of this case to the United States District Court for the District of Delaware, and subsequent remand to this Court, Vincerx filed a First Amended Complaint on December 12, 2023. [A-0122]. The First Amended Complaint asserted three causes of action against Yourway: a claim for breach of contract, a claim for negligence, and a claim for liability under 49 *U.S.C.* § 14706 (also known as the Carmack Amendment.) [*Id.*]

Prior to trial, a number of matters were decided *in limine* by the Trial Court; specifically, the Trial Court determined that the Yourway would be barred from presenting information to the jury concerning the insurance that Vincerx had purchased and the role that insurance played in Vincerx's plans for risk allocation

and the mitigation of that risk. [Ex. 0044 – A-0069] Further, Yourway was barred from presenting to the jury information about Vincerox's financial and operational condition, more specifically, barred from detailing for the jury the fact that Vincerox had ceased all operations and had reduced its staff to a single person as it wrapped up its operations, for reasons having nothing to do with the events giving rise to this case, but because it failed to obtain further investment funding. [A-0070 – A0108]

At trial a number of decisions were made by the Trial Court, namely, 1) that neither the second or third causes of action in the First Amended Complaint were viable, and that the case would proceed as a breach of contract action, [A-1069 - A-1079] 2) that, as a matter of law, that the Master Services Agreement, and not the bill of lading, was the contract that controlled the parties' relationship, [*id.*; A-1262] and 3) that as a matter of law, Yourway breached the Master Services Agreement. [*Id.*; A-1262]

On damages, Vincerox asserted in the First Amended Complaint that its damages in this case were approximately \$1.8 million. [A-0122] However, Vincerox then produced an expert report of Dr. Per I. Lindell, who asserted Vincerox had suffered damages four times in excess of what it had previously claimed. [A-0194]

Dr. Lindell testified at trial and sought to justify his conclusion by calculating what it might cost Vincerox to completely reconstruct the VIP943

program as a way of regrowing the cell banks from scratch. [A-0967 – A-1060] However, Vincerx would never be reconstructing the program from scratch, because it ceased all operations. [A-0767 - A- 0769] Furthermore, Dr. Lindell’s theory was improper because Vincerx already had cell blocks, at another location in Korea, from which it could have recreated the lost cell blocks. [A-1151 – A-1154] Vincerx’s damages theory completely overlooked the value of the materials at issue.

By contrast, Yourway presented the testimony of Dr. Scott Burger. [A-1142 – A-1215] Dr. Burger testified that in order to replace the cell banks that were lost, Vincerx would not be required to start the entire program from scratch, as Dr. Lindell suggested, but that the cell banks could have been rebuilt and replenished using the cell banks that had previously been shipped to Samsung in South Korea. [A-1151 – A-1167]

The Trial Judge further permitted Vincerx’s CEO, Dr. Rachel Izumi, to provide expert opinions notwithstanding that she failed to submit an expert report. [A-0792 - A-0793] Instead, Vincerx merely submitted Dr. Izumi’s CV, coupled with a press release regarding a virtual investor event from April 8, 2024 regarding VIP943 and another product, VIP236, as well as PowerPoint-style slides concerning VIP943. [A-0179 – A0180; A-0237 – A-0263] The Trial Court

specifically permitted Dr. Izumi to present expert testimony, critical of Dr. Burger's testimony, in rebuttal. [A-1216; A-1227 – A-1255]

After the conclusion of the case, while the jurors were deliberating, they submitted four questions, specifically:

- “Was the shipment insured for loss by either party? If so, what was the recovery?” [A-1330]
- “What tab where is Dr. Lindell's cost chart? Do we have it?” [A-1333]
- “When Vincerx purchased the license from Bayer for 5 million, how much did they pay for the full cell bank, master, working, research?” [Id.]; and
- “The full bank that was shipped to, I guess, California from Germany, what was the cost of that from Bayer?” [Id.]

At the conclusion of deliberations, the jury returned a verdict in the amount of \$7,650,000.00. [A-1339; A-1341]

Yourway moved for a new trial or remittitur as the verdict was against the weight of the evidence. [A-1343] That motion was denied on April 21, 2026. [A-0032] This appeal follows. [A-0025]

IV. ARGUMENT

A. IT WAS REVERSIBLE ERROR FOR THE TRIAL COURT TO GRANT A DIRECTED VERDICT HOLDING THAT THE PROVISIONS OF THE MASTER SERVICES AGREEMENT AND NOT THE BILL OF LADING CONTROLLED, AND THAT THE MASTER SERVICES AGREEMENT WAS BREACHED.

Question Presented: Whether the Trial Court erred by determining as a matter of law that the Master Services Agreement and not the bill of lading controlled the dispute between the parties and that the Master Services Agreement was breached.

This question was preserved by Yourway's opposition to Vincerx's motion for directed verdict. [A-1079; A-1217 – A-1223; A-1246 – A1247]

Scope of Review:

A motion for a directed verdict is governed by Rule 50(a). Super. Ct. Civ. R. 50(a). The standard of review of the grant of a motion for a directed verdict is whether the evidence in the case raises an issue of material fact for the jury's consideration. *Russell v. Kanaga*, 571 A.2d 724, 731 (Del. 1990) Such a motion may only be granted when a jury could not, under any reasonable view of the evidence, justifiably find in favor of the non-moving party. *Furek v. Univ. of Del.*, 594 A.2d 506, 523 (Del. 1991). Moreover, the evidence and all reasonable inferences from the evidence to be viewed in the light most favorable to the non-movant. *Russell*, 571 A.2d at 731.

Merits of the Argument:

It was reversible error for the Trial Court to have granted a directed verdict and to have decided as a matter of law that the Master Services Agreement and not the bill of lading was the applicable agreement governing the parties' relationship at it related to this loss. It was further error for the Trial Court to have determined, as a matter of law, that the Master Services Agreement was violated. At the very least, these were questions for the jury.

The parties identified different documents as governing the relationship between them as it concerned the transit of the cell banks. Vincerox believed that the Master Services Agreement [A-1361] was the operative document, while Yourway favored the bill of lading. [A-1372] The Trial Court decided, as a matter of law, that the Master Services Agreement was the operative document and, further, that it was breached, rather than permitting the jury to decide this factual determination. This was reversible error.

The Court below reasoned that the Master Services Agreement controlled, and not the bill of lading, because the latter contained no "element of contract formation" that existed as to the bill of lading. [A-1078] In other words, he found that there was insufficient evidence of such things as offer, acceptance, consideration, and meeting of the minds to demonstrate the formation of a valid contract, or the receipt of the bill of lading by Vincerox. [A-1070 – A-1071]

This was erroneous for two reasons.

First, the Trial Judge made that determination prior to Yourway presenting the testimony of Mr. Hussein Pirbhai. Mr. Pirbhai was the Operations Director who was in charge of worldwide transportation operations, and supervised the teams that performed the day-to-day operations. [A-1108] He would have been in the position to testify whether Yourway provided Vincerox with the bill of lading, but at the time his testimony was presented to the jury, the Trial Judge had already determined that the Master Services Agreement and not the bill of lading was the operative contract.

A directed verdict must be evaluated against the evidence as viewed in the light most favorable to the non-moving party. *See, Russell*, 571 A.2d at 731. By entering the directed verdict before Yourway had completed its case, the Trial Court necessarily failed to satisfy that standard because the Trial Court could not have considered evidence that had not yet been presented. Mr. Pirbhai, as Operations Director responsible for worldwide transportation operations, was in a position to testify to matters directly relevant to whether the bill of lading was provided to and accepted by Vincerox. The Trial Court's ruling foreclosed that testimony from bearing on the question it resolved.

Second, the Trial Court’s conclusion that the Master Services Agreement controlled because the bill of lading did not contain the indicia of a contract misunderstands the operation of a bill of lading in the shipping relationship.

A bill of lading is a contract that governs the shipment of goods, laying out the terms under which a shipment is to be performed. *Norfolk Southern Railway Co. v. Kirby*, 543 U.S. 14, 18-19 (2004). Section 1-201 of Title 6 of the Delaware Code similarly defines a bill of lading as “a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods.” 6 *Del. C.* § 1-201; *Waters v. Delaware Moving and Storage, Inc.*, 300 A.3d 1, 14 (Del. Super. Ct. 2023).

A bill of lading has long been recognized as operating “as both the receipt and the basic transportation contract between the shipper-consignor and the carrier.” *EF Operating Corp. v. Am. Bldgs.*, 993 F.2d 1046, 1050 (3d Cir. 1993) citing *Texas & P. Ry. Co. v. Leatherwood*, 250 U.S. 478, 39 S. Ct. 517, 518, 63 L. Ed. 1096 (1919); *Louisville & Nashville R. Co. v. Central Iron & Coal Co.*; 265 U.S. 59, 44 S. Ct. 441, 443, 68 L. Ed. 900 (1924)); *S. Pac. Transp. Co. v. Commercial Metals Co.*, 456 U.S. 336, 342, 102 S. Ct. 1815, 72 L. Ed. 2d 114 (1982).

Furthermore, Section 7-309(b) of the Delaware Code, which regulates contractual limitations on a carrier's liability, permits such limitation on liability provisions, and reads:

Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

6 *Del. C. § 7-309. See, also, Waters*, 300 A.3d at 15.

In this case, the terms of the carriage agreement are set out clearly in the bill of lading, which includes a limitation on liability provision which provides as follows:

Unless a greater value is declared, the shipper agrees that the value of the property is released to an amount not exceeding \$50.00 for any shipment of 100lbs or less, and not exceeding 50 cents per pound for shipments weighing in excess of 100lbs.

[A-1372]

Vincerx was offered an opportunity to declare a higher value for the cell banks, but declined this opportunity. Yourway submits that part of the reason Vincerx did not declare a higher value was that it would have led to a higher shipping charge. This is a well-accepted reality in the shipping industry. *Norfolk S.*

Ry., 543 U.S. at 19 (recognizing that a shipper may not declare the full value of the materials being shipped in order to obtain lower shipping rates.) Yourway believed that Vincerox sought to avoid such a charge, because it did not need Yourway to assume a greater liability, in light of Vincerox's own insurance coverage.¹ Similarly, Vincerox had previously requested and declined the opportunity to obtain insurance through Yourway. This further demonstrates Vincerox's custom and practice was to accept the damages liability limitation in the bill of lading.

Thus, the terms of the carriage relationship between Vincerox and Yourway was clearly detailed in the language and purpose of the bill of lading.

Vincerox repeatedly emphasized that the bill of lading was not signed by Vincerox thus implying that it was not a valid agreement on that ground. However, a shipper's signature is not required to bind the shipper to the terms of a bill of lading—including a limitation of liability. *American Ry. Express Co. v. Lindenburg*, 260 U.S. 584 (1923) (reversing the state court determination that a shipper was not bound to a liability limitation on bill of lading because it lacked the shipper's signature).

¹ It was for that reason that Yourway sought to present evidence of Vincerox's insurance program before the jury, which the Trial Court erroneously disallowed, as discussed in another section of this brief.

Indeed, the Supreme Court stated, “[a bill of lading] is sufficient if the shipper accepts the carrier bill of lading without himself signing it. It becomes binding upon him by his acceptance, he being presumed to know and accept the conditions of the written bill of lading.” *Id.* at 591.

Thus, Vincerx’s signature was not necessary for the bill of lading to be effective, as its placement of the cell banks with Yourway under the bill of lading was the legal indicia of its assent. The terms of a bill of lading are binding on the shipper and carriers. *S. Pac. Transp.*, 456 U.S. at 342; *EF Operating Corp.*, 993 F.2d at 1050.

Furthermore, the record reflects that between March 10, 2021 and May 1, 2023, Yourway issued at least twenty-five bills of lading to Vincerx, none of which were signed. Consequently, this evidence conclusively demonstrates that the tender of unsigned bills of lading was the standard business practice between Vincerx and Yourway in their previous dealings. Consequently, Vincerx must be deemed to have been fully aware of the terms of the bill of lading. *See, Alabi v. DHL Airway, Inc.*, 583 A.2d 1358, 1362-63 (Del. Super. Ct. 1990) (holding plaintiff to be bound to terms of bill of lading based on the frequent and repeated use of the shipper’s services.)

Consequently, the decision by the Court below to find as a matter of law that the Master Services Agreement and not the bill of lading was the operative contract

was error and requires a new trial, as that question was one upon which the jury had to pass.

The Trial Court's decision was also erroneous because the record does not demonstrate that the Master Services Agreement was breached as a matter of law. To establish a breach of contract claim under Delaware law, a plaintiff must demonstrate three elements: "(1) a contractual obligation; (2) a breach of that obligation; and (3) resulting damages." *Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 548 (Del. Super. Ct. 2005).

The Superior Court stated in the decision denying the motion for new trial that the parties stipulated that the MSA was breached. [A-0032] This is not accurate. Yourway did not stipulate that the MSA was breached, because its position was that the MSA was not the operative agreement between the parties. The Superior Court, in making its decision on this point, asserted that "no reasonable jury could determine that Yourway did not breach the Master Services Agreement. As a matter of fact, Mr. Pirbhai, this morning, even said as much." [A-1246] This is also not accurate. Mr. Pirbhai never testified that the Master Services Agreement applied, nor that it was breached. He did testify that mistakes were made in the shipment of the cell banks and that there was a temperature excursion while the cell banks were in the possession of Yourway. [A-1130]

However, there was never any concession that the Master Services Agreement applied or was breached, as the Superior Court suggested.

Nothing in the Master Services Agreement discusses, details, or explicates Yourway's duties and obligations, specifically with regard to the transport of the cell banks. In fact, the Master Services Agreement defined the "services" that Yourway was to provide under that agreement as "packaging, labeling, quality control testing, stability testing, release, storage, distribution and/or destruction of product, together with such other services as are specified in the applicable quote." [A-0863] "Transportation" of the cell banks was not part of that definition.

Vincerx's CEO, Dr. Izumi, took the position that the term "distribution" applied to the transportation at issue in this case, stating: "A: I don't know how you distribute something without transporting it." [A-0863]

This argument is unsupportable. Delaware adheres to "an objective theory of contracts, [by which] the contract's construction should be that which would be understood by an objective, reasonable third party." *Leaf Invenenergy Co. v. Invenenergy Renewables Ltd. Liab. Co.*, 210 A.3d 688, 696 (Del. 2019). Accordingly, clear and unambiguous terms are interpreted according to their ordinary meaning. *Id.*

Nowhere in the document is the term "distribution" defined, and the common definition of the word definitively precludes it applying to the point-to-

point transportation of the cell banks in this case, as “distribute” in common parlance, means “to divide and give out in shares; deal out; allot,” “to disburse through a space or over an area; spread; scatter,” or “to promote, sell, and ship or deliver (an item or line of merchandise) to individual consumers...” *Websters New Universal Unabridged Dictionary*, “distribute” at 572 (1996).

As such, it is objectively unreasonable to read “distribution” to include the point-to-point transportation in this case, from Vincerox’s supplier, Bayer, to Vincerox’s agent, PCI. Thus, the transportation, not being among the “services” contemplated under the contract, precludes a finding that the Master Services Agreement applied as a matter of law. This is critical because if the Master Services Agreement is not the operative contract in this dispute, then the jury’s determination very well may have been different, given the potential that the limitation of liability provision in the bill of lading might have been credited.

Additionally, Vincerox’s claim of resulting damages did not arise from the alleged breaches of the Master Services Agreement.

The acts which were alleged to have resulted in the damages to Vincerox were the failure to appropriately refill the liquid nitrogen on the cryoport shippers. However, such failures were not a breach of any obligation set out under the Master Services Agreement, because that document contains no provision setting out Yourway’s obligations regarding shipping or the specific requirements for this

particular shipment. The lack of damages flowing from an alleged breach of the Master Services Agreement is fatal to Vincerx's argument.

Delaware law requires that breach-of-contract damages must “flow[] proximately from the breach of contract.” *Hajoca Corp. v. Security Trust Co.*, 25 A.2d 378, 382 (Del. Super. Ct. 1942). Consequently, Vincerx had to demonstrate that the damages it claimed “flowed from” Yourway's violation of the contract. *In re Dura Medic Holdings, Inc. Consolidated Litigation*, 333 A.3d 227, 255 (Del. Ch. 2025).

With regard to the loss of the cell banks, however, the loss did not flow from the breach of any specific obligation undertaken by Yourway as set out in the Master Services Agreement, as no such specific obligations are contained therein. Rather, those obligations are set out in the bill of lading. It is the breach of the duty under the bill of lading to maintain the cryogenic temperatures that led to the loss, not any breach of the terms of the Master Services Agreement.

Furthermore, to the extent the Master Services Agreement and the bill of lading are in conflict—as with, for example, the limitation of liability contained in the bill of lading—the bill of lading would control, as it is both more recent and more specific. Under Delaware law, a more recent contract will control over an older contract “to the extent that the new contract is inconsistent with the old contract.” *Country Life Homes, Inc. v. Shaffer*, No. 2288-S, 2007 Del. Ch. LEXIS

23, at *19-20 (Del. Ch. Jan. 31, 2007). Furthermore, specific contractual provisions are held to control over general ones. *See, Thompson Street Capital Partners IV, L.P. v. Sonova United States Hearing Instructions, LLC*, 340 A.3d 1151, 1166 (Del. 2025).

Here, the bill of lading was the more recent contract than was the Master Services Agreement and provided specificity as to Yourway's obligations concerning transport of the cell banks.

The bill of lading provided specific dates and times for the shipment, locations for the collection and delivery of the cell Banks, details about what would be contained in the shipment, how the shipment was to be conducted, and the limitations on liability. By contrast, the Master Services Agreement only generally contemplated a relationship between Yourway and Vincerx.

Thus, as the bill of lading is the later and more specific agreement, under Delaware law, the terms of the bill of lading supplanted the Master Services Agreement as the governing contract in this case, especially as it concerned the conflicting provisions as to liability and damages, in light of the limitation of liability provision in the bill of lading. *Country Life Homes*, 2007 WL 333075, at *5; *UtiliSave, LLC v. Miele*, No. 10729-VCP, 2015 Del. Ch. LEXIS 242, at *22 n. 43 (Del. Ch. Sept. 17, 2015); *Country Life Homes, Inc. v. Shaffer*, No. 2288-S, 2007 Del. Ch. LEXIS 23, at *19-20 (Del. Ch. Jan. 31, 2007).

Even if the Master Services Agreement governed the broader relationship between the parties, the Trial Court erred by ruling that it controlled to the exclusion of the bill of lading. As already explained, specific contractual provisions control over general ones, and a later agreement controls over an earlier one to the extent of any inconsistency. Here, the two documents could coexist, with the Master Services Agreement governing the general terms of the parties' ongoing relationship and the bill of lading governing the specific terms of each individual shipment – including the limitation on liability. At a minimum, the question of how these two documents interacted, and whether the bill of lading's limitation of liability survived alongside the Master Services Agreement, should not have been resolved by premature directed verdict.

Thus, the Court below committed reversible error in declaring that the Master Services Agreement was the operative contract.

B. THE TRIAL COURT REVERSIBLY ERRED BY EXCLUDING EVIDENCE REGARDING VINCERX'S FINANCIAL AND OPERATIONAL CONDITION, AS THE EVIDENCE WAS RELEVANT AND ADMISSIBLE ON KEY ISSUES IN THE CASE.

Question Presented: Whether the Trial Court committed reversible error by barring Yourway from presenting to the jury evidence concerning Vincerox's financial and operational condition?

This question was preserved by Yourway's Opposition to Vincerox's Second Motion *in Limine* to Exclude Evidence Regarding Vincerox's Financial and Operational Condition. [A-0581; A-0071]

Scope of Review:

The standard of review when reviewing a Superior Court decision to admit evidence is abuse of discretion, and this Court should order a new trial when the mistake constituted significant prejudice "so as to have denied the appellant a fair trial." *Phelps v. West*, 193 A.3d 717, 2018 WL 3934946 at *17 (Del. 2018) (TABLE).

Merits of the Argument:

Independent of the threshold contract question, the Trial Court committed reversible error by excluding from the jury's consideration evidence of Vincerox's financial and operational condition. This ruling, together with the exclusion of insurance evidence discussed in Argument E, deprived the jury of the factual context necessary to evaluate Vincerox's damages theory.

Delaware Rule of Evidence 401 provides that evidence is relevant if it has “any tendency to make a fact more or less probable than it would be without the evidence,” if that fact is of consequence to the action. D.R.E. 401. The threshold for relevance is low. , 2022) (relevance is a “low threshold”).

Plaintiff’s financial and operational condition was relevant to explain the evolution of Plaintiff’s damages theory, to assess the credibility of Plaintiff’s evaluation evidence, and to evaluate witness motive and bias. Evidence bearing on motive, bias, and credibility are admissible when it may assist the jury in evaluating the weight of a party’s damages evidence. *See* D.R.E. 401 (relevant evidence); D.R.E. 402; D.R.E. 607 (permitting impeachment of a witness’s credibility).

Evidence of Vincerox’s financial and operational condition was crucial for the jury’s understanding of Vincerox’s shifting view on the valuation of its loss, as Vincerox previously certified that the cell banks at issue had a value of \$253,391 but at trial sought damages in excess of \$7M.

The evidence about Vincerox’s financial condition was relevant not only to explain that shift, but also to provide the jury with context in order to understand Vincerox’s theory of damages and to place that theory of damages in its proper context. Additionally, that evidence was necessary to assess the credibility of Plaintiff’s damages claims, and to evaluate witness bias and motive.

The evidence about Vincerox's financial condition was relevant not only to explain that shift, but also to provide the jury with context in order to understand Vincerox's theory of damages and to place that theory of damages in its proper context. Additionally, that evidence was necessary to assess the credibility of Plaintiff's damages claims, and to evaluate witness bias and motive.

The jury was asked to evaluate competing valuation evidence, expert testimony, and alternative valuation methods. It was also asked to determine the credibility of witnesses advancing those theories. However, due to the Trial Court's erroneous determination, the jury was denied the evidence of Plaintiff's financial and operational condition which would have provided dispositive context for completing that evaluation. Excluding that evidence improperly skewed the damages presentation and stripped the jury of necessary context evidence and the ability to fully and critically assess Plaintiff's damages evidence.

Yourway contends that this evidence was proper as it would have provided enlightenment to the jury as to why Plaintiff's damages position shifted from its previous certified valuation of \$253,391—which Yourway believes reflects a more proper valuation—to the dramatically higher damages, exceeding \$7M, it claimed at trial. The fact that Vincerox ceased its operations after being unable to secure additional funding, an event that had nothing to do with Yourway or the events at issue in this case, provided a valuable basis for the jury to properly and critically

evaluate Plaintiff's shifting damages theory, as well as the credibility of witnesses advancing that theory. It further provided a basis for the jury to assess and compare the reasonableness of the theories on valuation proposed by both parties.

One of the critical uses for this evidence would have been the issue of the proper measure of damages. At the time of the jury's decision, Vincerox had ceased all operations and had a single employee, namely, Dr. Izumi. Vincerox's theory of damages, however, was premised on the amount Vincerox would have had to spend in order to recreate the cell banks from scratch, and not the value of the cell banks themselves. Because the jury was not permitted to hear the full evidence that Vincerox had ceased all operations and was, in essence, a shell whose operations were being wound down, the jury may very well have believed that if Vincerox was awarded the amount it claimed to need in order to recreate the cell banks, that Vincerox would, in fact, recreate the cell banks, and awarded that measure of damages on that basis and with the expectation that the money would be spent for that purpose.

Indeed, Vincerox's expert explicitly stated that he focused on replacement costs because "[t]hat's, in my opinion, what [Vincerox] need[s] to do to continue this program. You need a cell bank, and a proper cell bank to continue the program if you are going to go forward with it. You can't do that without replacing the cell banks." [A-0992]

However, at the time that Dr. Lindell was discussing what needs to be done to “continue this program” and to “go forward with it,” Vincerox had completely ceased all operations and there was no possibility of that the program would ever continue nor that Vincerox would ever spend any money in an attempt to recreate the program to replace the cell banks, let alone spending \$7.65M to do so.

Indeed, Vincerox’s CEO, Dr. Izumi, specifically testified, when asked whether Vincerox has taken any steps to restart the process, “Well, we said today we have not because the program is halted at this moment, but should we restart the program, what I just said would have to happen at some point in the life cycle of getting this drug approved.” [A-0890] However, at that point, there was no possibility that Vincerox would “restart the program” because it was virtually a moribund and defunct company, however, Yourway was barred from explaining that fact to the jury, so the jury was robbed of the opportunity to understand why its valuation of Vincerox’s damages should not be made on the premise that Vincerox would ever, in fact, “restart the program” so it would never spend any money to reconstitute the entirety of the program in order to recreate the cell banks.

Had the jury been fully informed of the facts concerning Vincerox’s operations and finances, and the fact that it had no intention of recreating the cell banks—which was the basis for their claim to \$7.65M in damages—the jury very well may have believed that the proper measure of damages was not the amount it

would cost Vincerox to do recreate the cell banks as it had no intention to do so, but determined that the proper value of the loss was the inherent value of the cell banks, which Vincerox, itself, in the custom declaration, valued at \$253,391.

The jury's questions during deliberations further underscore the importance of that missing context. The jury specifically asked not only about insurance, as previously noted, but additional information regarding Vincerox's purchase price, the costs associated with purchasing the cell banks, themselves, and the basis for Vincerox's expert's damages calculations. The significance of the jury's inquiry regarding insurance, and the error in excluding that evidence, is further addressed in Argument E.

These questions reflect the fact that the jury was diligently attempting to evaluate the appropriate measure of damages and to quantify the actual loss to Vincerox. In the absence of the contextual evidence, as a result of the Trial Judge's evidentiary rulings, however, the jury was left to assess Vincerox's reconstruction-based damages theory essentially in the dark, without the complete factual framework. That demonstrates that the ultimate valuation given by the jury was wholly unmoored from reality and the actual value of the damages sustained by the loss.

Thus, had the jury been fully informed of the facts of this case, including its cession of operations upon being unable to secure additional funding, the jury

would have been able to assess—and would have been within its rights to question—whether Plaintiff’s \$7.65M claim was a reflection of an actual valuation or was motivated by the failure to secure that additional funding, and to have evaluated the claim accordingly. As discussed in the next sections, this exclusion had direct consequences for both the measure of damages the jury was permitted to apply and the reasonableness of the verdict it returned.

C. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY PERMITTING AN IMPROPER MEASURE OF DAMAGES.

Question Presented: Whether the Trial Court committed reversible error by permitting the jury to reach a verdict based on an improper measure of contract damages?

This question was preserved with the filing of Yourway's Motion For New Trial or Remittitur. [A-1343]

Further, even if this Court were to somehow conclude that proper objections were not made, Yourway respectfully submits that, under Supreme Court Rule 8, the interests of justice require this Honorable Court to consider and determine this question, given the unique facts involving Vincerox's financial and operational status, the second motion *in limine* which barred the evidence of that status, and the fact that the measure of damages Vincerox presented was inexorably linked to its financial and operational status at the time of trial.

Scope of Review:

The question of what damages may be recovered for a breach of contract is a question of law, which is reviewed *de novo* for legal error. *Thompson St. Capital Partners IV L.P. v. Sonova United States Hearing Instruments, LLC*, 340 A.3d 1151, 1165 (Del. 2025).

Merits of the Argument:

Next, the Trial Judge committed reversible error by permitting an improper measure of damages. In Delaware, contract damages are intended to place the plaintiff in the position it would have occupied absent the breach, not to provide a windfall. *Paul v. Deloitte & Touche, LLP*, 974 A.2d 140, 146 (Del. 2009). The measure of damages is the loss actually sustained as a result of the breach of the contract. *J. J. White, Inc. v. Metropolitan Merchandise Mart, Inc.*, 107 A.2d 892, 894 (Del. Super. Ct. 1954).

The Superior Court concluded that Yourway waived the argument about Dr. Lindell's theory of damages failure to object to Dr. Lindell's opinion during trial. That conclusion is misguided.

Yourway is not arguing that the Lindell's theory is per se objectionable, but that permitting it was erroneous under the facts of this case, and in light of the denial of Yourway's request to present all the evidence of Vincerox's financial and operational condition, which showed that Vincerox had ceased all operations, reduced its staff to a single employee, and was essentially defunct at the time of trial. Yourway's objection to Lindell's theory is premised on the lack of a factual basis for the premise that Vincerox was, essentially, to be reimbursed for what it would spend in order to recreate the cell banks, when Vincerox would never spend that money and would never recreate the cell banks because it was no longer a viable company, but Yourway was barred from demonstrating this fact to the jury.

The question of what the proper measure of damages should be as a result of the breach of the contract in this case was at issue, and the Trial Court should have found that the proper measure was the value of the property lost and not the amount it would hypothetically have cost to recreate the cell banks. These are distinctly different measures, as the former is a measure of the actual cash value lost, while the latter is the replacement cost value.²

In this case, Yourway posits that the only proper value of the damages in this case was the actual cash value and not the replacement cost value, as the former amount is the “loss actually sustained” by Vincerox.

Vincerox did not actually sustain \$7.65M in damages. First, the evidence in this case is clear that the inherent value of the cell banks was the \$253,391 figure which Raj Dua, on behalf of Vincerox, certified as the value of the cell banks. [A-1374]

Vincerox sought to argue that this valuation was meaningless, but Vincerox had the knowledge of the worth of the cell banks, based on its experience in the biopharmaceutical industry, its investment in the development of the product, and the knowledge it acquired as a result of its due diligence in engaging in this

² A common hypothetical demonstrating the difference is the fact that the market value of an automobile damages in an accident (*i.e.*, the actual cash value) might be greatly exceeded by the cost to repair the auto to its pre-accident state (*i.e.*, the replacement cost value).

transaction with Bayer. By contrast, Yourway is an entity without any particular expertise in the valuation of the items it is shipping, or these cell banks specifically, nor does it have knowledge of the industry.

Second, as discussed in Argument B, Vincerox had ceased all operations before trial and had no intention of rebuilding the cell banks. Because the \$7.65M award was premised on an expenditure or undertaking that would never occur, it does not compensate Vincerox for any loss it actually sustained or ever will sustain. That figure was not tethered to the inherent value of the property lost.

Delaware law requires that a jury have some reasonable basis on which to estimate, with a fair degree of certainty, the probable loss the plaintiff has actually sustained. *Laskowski v. Wallis*, 205 A.2d 825, 826 (Del. 1964). Here, the jury was given no such basis. It was asked to award the hypothetical cost of a replacement project that Vincerox will never undertake, untethered from any measure of the loss Vincerox actually sustained. As a result, the jury's verdict reflects a measure of damages that did not align with the nature of the actual loss.

In sum, the measure of damages permitted by the Superior Court therefore provided Vincerox not with compensation for its loss, but with an extreme windfall some thirty times the value of the property, as estimated by Vincerox prior to the loss.

D. IT WAS REVERSIBLE ERROR FOR THE TRIAL JUDGE NOT TO GRANT EITHER A NEW TRIAL OR REMITTITUR, AS THE JURY'S VERDICT WAS AGAINST THE GREAT WEIGHT OF THE EVIDENCE.

Question Presented: Whether the Trial Judge committed reversible error by not granting a new trial or *remittitur*, as the verdict was against the great weight of the evidence?

This question was preserved with the filing of Yourway's Motion for New Trial or Remittitur. [A-1343]

Scope of Review:

Under Superior Court Civil Rule 59, the Court may grant a new trial or order *remittitur* where the verdict is against the great weight of the evidence or the damages awarded are excessive. Super. Ct. Civ. R. 59. The Court has discretion to set aside a verdict that results in a miscarriage of justice or reflects an award not supported by the evidence. *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979). While jury verdicts are afforded deference, the Court may intervene where the award is so excessive as to shock the conscience or where it is not reasonably supported by the record. *Young v. Frase*, 702 A.2d 1234, 1237 (Del. 1997). This Court reviews that decision under an abuse of discretion standard. *Storey*, 401 A.2d at 465.

Merits of the Argument:

Next, the Court below erred by not granting a new trial or *remittitur*, as the

verdict was against the great weight of the evidence.³

Delaware law clearly requires that damages be proven with reasonable certainty and may not be based on speculation or conjecture. *JanCo FS 2, LLC v. ISS Facility Servs., Inc.*, 344 A.3d 1009, 1040 (Del. Super. Ct. 2025) (“While ‘reasonable certainty’ does not mean ‘absolute certainty,’ the damages calculation ‘must be taken out of the area of speculation.’”).

Plaintiff’s damages case was premised on the proposition that the only way to replace the cell banks was to restart the underlying program from the beginning. As previously discussed, that premise was fundamentally flawed because Vincerox had ceased all operations and would never undertake such a reconstruction. To support its theory, Vincerox’s expert relied not on actual costs incurred, but on third-party bid proposals obtained from outside entities, estimating what a hypothetical reconstruction might cost. The resulting damages figure was speculative, not grounded in any expenditure Vincerox made or ever will make, and

³ The Trial Court’s rulings on certain evidentiary matters, which are being separately addressed in this brief, shaped the evidentiary record presented to the jury. Specifically, the Court ruled that evidence relating to Vincerox’s financial condition and insurance coverage could not be introduced. The combined effect of those limitations was relevant to the Rule 59 analysis, as they restricted the evidence available to the jury in evaluating Plaintiff’s damages theory, especially the assumption that a full restart of the program was the appropriate measure of loss.

failed to account for the fact that the loss of the cell banks did not require a full restart of the program from inception.

Taken together, the evidence permitted the jury to adopt a damages figure that reflects a hypothetical reconstruction project, rather than a measure tied to the actual loss at issue. The resulting award is therefore against the weight of the evidence.

Second, even if the proper measure of damages in this case is the cost of recreating the cell banks, the \$7.65M figure failed to account for the fact that the events of this case did not eliminate all of the VIP943 cells in existence, as twenty vials of a master cell bank were shipped to Samsung in South Korea. By the time of trial, Vincerx has used twelve of them to create several hundred working cell banks and eight vials remained.

In generating the \$7.65M figure, Plaintiff's expert, Dr. Lindell, specifically testified that he chose not to consider those vials and whether it would reduce or eliminate the need to entirely recreate the program. This evidence was relevant as it demonstrated beyond doubt that the \$7.65M figure was not reasonably supported by the evidence, because it failed to account for the reduction which the use of the cell banks in South Korea would have provided. At a minimum, the existence of usable cell banks in South Korea required the jury to discount the reconstruction figure to account for the work those vials would eliminate. Dr. Lindell's refusal to

do so rendered his damages figure inherently unreliable, and the jury's wholesale adoption of that figure was not supported by the evidence.

The Court below also should have granted a *remittitur*, in the alternative. *Remittitur* is appropriate when the jury's damages verdict "is so grossly disproportionate to the injuries suffered so as to shock the Court's conscience and sense of justice." *Salt Meadows Homeowners Ass'n, Inc. v. Zonko Builders, Inc.*, 312 A.3d 195, 199 (Del. 2024).

In this case, the jury award of \$7.65M should have shocked the judicial conscious. The grossly inflated verdict can only be explained by the jury believing that, by its award, it was essentially reimbursing Vincerox for the amount it would, in fact, be spending in the future to reconstruct the entire project, rather than simply compensating it for the loss of the cell banks.

Indeed, that must be so, as the amount of the jury verdict is more than \$2.5M more than the amount Vincerox paid, approximately one year before the loss of the cell banks, to Bayer for the license to manufacture VIP943 and associated materials, including the cell banks. The \$5M Vincerox paid included not only the cell banks, but also additional data, materials and intellectual property associated with the VIP943. More importantly, the price paid included the legal right and ability of Vincerox to manufacture and market VIP943 and none of which were lost as a consequence of the cell banks being destroyed.

Thus, the verdict in this case amounted to the entire \$5M that Vincerx paid to Bayer for the license, plus an additional \$2.5M, when that figure purportedly represented the cost to Vincerx to recreate the line when it had no intent to do so, should have shocked the judicial conscience and sense of justice.

Therefore, in the absence of a new trial, the Trial Judge erred by not granting a *remittitur* in this case.

E. IT WAS REVERSIBLE ERROR TO BAR YOURWAY FROM INTRODUCING EVIDENCE OF VINCERX'S INSURANCE PROGRAM, AS THE EVIDENCE IT SOUGHT TO INTRODUCE WAS RELEVANT AND ADMISSIBLE ON DAMAGES ISSUES.

Question Presented: Whether the Trial Court committed reversible error by barring Yourway from introducing evidence of Vincerox's insurance program?

This question was preserved by the supplemental briefing on the scope and admissibility of Vincerox's insurance program. [A-0590; A-0045]

Scope of Review:

The standard of review when reviewing a Superior Court decision to admit evidence is abuse of discretion, and this Court should order a new trial when the mistake constituted significant prejudice "so as to have denied the appellant a fair trial." *Phelps*, 2018 Del. LEXIS 384 at *17.

Merits of the Argument:

Next, Yourway was improperly barred from producing evidence and testimony concerning Vincerox's insurance coverage. Vincerox successfully sought to exclude any reference to its insurance program on the grounds that such evidence would be irrelevant, unfairly prejudicial, or barred by the collateral source rule.

Neither D.R.E. 411 nor the collateral source rule requires exclusion. Rule 411 prohibits the admission of liability insurance to prove negligence or wrongful conduct, but it does not bar insurance-related evidence offered for another

permissible purpose. *See* D.R.E. 411; *see also* *Byborg Enters. S.A. v. Vertex, Inc.*, 2025 WL 1911338, at *5 (Del. Super. Ct. July 11, 2025) (denying a motion to strike references to insurance coverage presented to demonstrate the comprehensive nature of the parties’ agreement); *Payne v. Home Depot*, 2009 WL 659073, at *4 (Del. Super. Ct. Mar. 12, 2009) (quoting D.R.E. 411 to explain that “[t]he plain language of the rule is intended to protect the tortfeasor from the prejudicial effect of the mention of insurance, but there is no similar prohibition against the admission of evidence concerning the plaintiff’s insurance coverage. In fact, the rule specifically allows insurance to be mentioned ‘for other purposes.’”).

Vincerx’s insurance evidence was not offered to prove fault or to suggest that damages should be reduced, but to provide context in which the parties’ actions in the case—especially Vincerx’s decision to value the contents of the shipment at \$253,391 on the customs declaration—could be evaluated.

Yourway did not intend to introduce evidence of this insurance to argue that Vincerx’s recovery should be barred or that Vincerx was compensated for its loss or to reduce the amount of recoverable damages. Rather, Yourway sought to present this evidence to the jury for limited and proper purposes that were directly relevant to the issues in this case.

First, the evidence bore directly on the issue of risk allocation by Vincerx and, more specifically, on the question of the declared value of the cell banks.

Vincerx had the ability to declare a higher value on the bill of lading in exchange for higher shipping charges. The fact that Vincerx chose not to do so is some evidence that Vincerx instead relied on its own insurance program to mitigate against any risk of loss. This would have provided context for that decision and informed the jury as to how the parties allocated risk at the time of shipment. That context would have been relevant as evidence that the bill of lading, with its limitation on liability, was the applicable contract, and that Vincerx understood that its recovery under the bill of lading for any loss was limited.

Furthermore, the evidence was relevant to issues of damages and credibility. Vincerx, consistent with its risk allocation and insurance arrangements, previously certified a shipment value of \$253,391 but, at the time of trial, sought \$7.65M in damages. Evidence concerning Plaintiff's insurance program could have assisted the jury in evaluating the consistency and reasonableness of Vincerx's position on damages at trial. Thus, this would have been proper contextual evidence, not improper or inadmissible evidence of payment or compensation.

The insurance evidence was intimately related to the jury's analysis of the declared value of the property in the bill of lading. By denying Yourway the ability to present the insurance evidence, the jury was stripped of the ability and opportunity to fairly weigh the significance of Vicerx's declared value election in the bill of lading, as the insurance information would have provided the

commercial context in which Vincerox's decision in declaring the value of the products was made, including whether Vincerox chose to allocate any risk of loss through its own insurance, rather than through an increased declared value. Evidence for that contextual purpose was highly relevant the proper and its exclusion not only grossly prejudiced Yourway but misled the jury in its evaluation of the damages issue in the case.

Indeed, as noted above, the jury clearly sensed the importance of the issue even in the absence of the evidence, when it asked about whether either party had insurance for the loss. This underscores that the excluded evidence went precisely to questions the jury was trying to answer.

Similarly, although the collateral source rule prevents a defendant from seeking to reduce a plaintiff's recovery based on compensation received from an independent source, the rule does not render inadmissible *all* insurance-related evidence when that evidence fulfills a valid purpose which the rule is not designed to address.

Because Yourway sought to present this information for proper purposes, which are not barred by the applicable court rules, and because the evidence was relevant and admissible, it was error to preclude it. If the Trial Court had any concern about the potential misuse of the evidence by the jury, the proper response was not to bar the evidence, but to provide an appropriate limiting instruction to

clarify the limited use for which the jury might have considered the insurance evidence.

As such, because the evidence was offered for limited and appropriate purposes, was relevant under D.R.E. 401, admissible under D.R.E. 402, and was not barred by D.R.E. 411 or the collateral source rule, it should have been permitted to be presented to the jury and the decision barring the evidence constituted reversible error.

F. IT WAS AN ABUSE OF DISCRETION TO PERMIT VINCERX'S CEO TO OFFER EXPERT TESTIMONY DISPUTE NOT PRODUCING AN EXPERT REPORT.

Question Presented: Whether the Court below committed reversible error by permitting Vincerx's CEO to testify as an expert despite not producing an expert report?

This question was preserved by objection at trial. [A-0792 to A-0793; A-1216]

Scope of Review:

Whether to permit a party to offer expert testimony is a matter of discretion for the trial court and this Court reviews such matters under an abuse of discretion standard of review. *M.G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513, 522 (Del. 1999); *In re Zantac (Ranitidine) Litig.*, No. N22C-09-101 ZAN, 2024 Del. Super. LEXIS 491, at *8 (Del. Super. Ct. July 1, 2024).

Merits of Argument:

Finally, on the first day of trial, the Trial Judge permitted Plaintiff's CEO, Raquel Izumi, to offer expert testimony, despite not providing an expert report. Under Rule 26,

A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to

which the expert is expected to testify and a summary of the grounds for each opinion.

Rule 26. Case law has repeatedly interpreted the requirements of Rule 26 as requiring a expert report to be produced setting out the opinions the expert is to express at trial. *Hill v. DuShuttle*, 58 A.3d 403, 406 (Del. 2013)(“[w]hether it would provide more information or not, a *formal report* is required under the rules and the trial court ordered that report be produced,” emphasis added); *Sammons v. Doctors for Emergency Servs., P.A.*, 913 A.2d 519, 529 (Del. 2006) (“Plaintiff was to identify her experts and provide their *reports* as to their expert opinions. Then, Defendant would be on notice of the bases for the expert opinions, and....respond in kind as to their experts and *supply the bases for their opinions by way of a report.*” Emphasis added); *Dayton v. Collison*, No. N17C-08-100 CLS, 2019 Del. Super. LEXIS 446, at *28 (Del. Super. Ct. Sept. 24, 2019) (precluding plaintiff, a general contractor, from providing expert opinion on structural issues and Code violations because, *inter alia*, the plaintiffs failed to submit an expert report from him.)

In this case, Yourway did not contest Dr. Izumi’s qualifications to provide expert testimony. However, because she did not submit an expert report, she should have been barred from offering expert testimony. The prejudice to Yourway was substantial. Dr. Izumi’s rebuttal testimony was not limited to her personal observations as Vincerx’s CEO. Rather, she offered sustained opinions

on the scientific feasibility and risk of Dr. Burger's proposed approach, including his opinion that the cell banks could be rebuilt using the eight master cell bank vials in South Korea. She testified that there was "a big risk" that starting with the remaining vials would fail [A-1228 – A1229], that Dr. Burger "completely omitted" the need for a research cell bank from his methodology [A1231], and that the eight vials were "insufficient" to accomplish what was needed [A1236]. She further served as a conduit for Dr. Lindell's expert opinions, expressly adopting his critique of Dr. Burger's methodology as her own. [A1234; A-1242] This was, in substance and effect, improper expert testimony on the central disputed issue in the case – whether a full program restart was necessary – delivered by a witness who produced no expert report and as to whose opinions Yourway had no notice and no opportunity to prepare a response.

Given the disputed issues in this case, permitting Dr. Izumi to improperly testify as an expert was reversible error and an abuse of discretion, as it clearly had the potential to affect the jury's verdict on key issue in this case.

G. THE CUMULATIVE EFFECT OF THE TRIAL COURT'S ERRORS DENIED YOURWAY A FAIR TRIAL.

Question Presented: Whether the cumulative effect of the Trial Court's errors denied Yourway a fair trial?

Scope of Review:

The cumulative error doctrine permits the reversal of a civil judgment and a new trial when multiple trial errors collectively prejudice substantial rights so as to jeopardize the fairness and integrity of the trial process, even if the individual errors might be insufficient standing alone to warrant reversal. *Robelen Piano Co. v. Di Fonzo*, 169 A.2d 240, 248 (Del. 1961).

Merits of Argument:

The cumulative effect of the Trial Court's rulings denied Yourway a fair trial and requires a new one.

The jury in this case was told, as a matter of law, that the Master Services Agreement — and not the bill of lading — governed the parties' relationship, removing that question from the jury's consideration. The jury was given a damages framework that permitted recovery based on the hypothetical cost of a reconstruction project that Vincerox will never undertake, was denied evidence that Vincerox had ceased operations and was, in essence, a defunct company, bore directly on the reasonableness and credibility of Vincerox's damages theory, was denied evidence of Vincerox's insurance program, which would have provided

commercial context for the declared value of the cell banks and the parties' allocation of risk, and heard improper expert rebuttal testimony from Vincerox's CEO, delivered without a Rule 26 report, attacking the central opinion of Yourway's expert on the very issue that determined the measure of damages.

The jury's own deliberation questions referenced above confirm the prejudice. These are the questions of a jury searching for precisely the context and analytical tools the Trial Court kept from the jury's view.

Each ruling compounded the effect of the others. The exclusion of the financial condition evidence made the improper damages measure more damaging. The exclusion of insurance evidence made the directed verdict on the contract question more consequential. The admission of Dr. Izumi's unreported expert testimony filled a gap that should not have existed.

Cumulatively, these rulings so thoroughly shaped and constrained the evidentiary and legal landscape that the resulting verdict cannot be regarded with confidence.

V. CONCLUSION

Thus, for all the foregoing reasons, Defendant Yourway Transport, Inc., respectfully asks this Court to reverse the decision below and to remand this matter for a new trial.

Respectfully Submitted,

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