



IN THE SUPREME COURT OF THE STATE OF DELAWARE

YOURWAY TRANSPORT, INC.,

Defendant-Below/Appellant,

v.

VINCERX PHARMA, INC.,

Plaintiff-Below/Appellee.

No. 208, 2026

Court Below:

Superior Court of
the State of Delaware
C.A. No. S23C-09-003 MHC

APPELLEE'S ANSWERING BRIEF

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NATURE OF PROCEEDINGS

Yourway Transport, Inc. (“Yourway”) destroyed Vincerx Pharma, Inc.’s (“Vincerx”) one-of-a-kind cell banks—the biological foundation of a cancer treatment. And Yourway admitted it was responsible. A jury awarded Vincerx \$7,650,000—after a four-day trial in which liability was never genuinely in dispute—for Yourway’s breach of the parties’ Master Services Agreement (the “MSA”). Yourway now asks this Court to set aside that verdict by challenging discretionary rulings and a directed verdict that confirmed what Yourway’s own witnesses and counsel had conceded.

Vincerx contracted with Yourway to ship cell banks from Germany to California. The cell banks had to be stored at negative 196°C. The MSA required Yourway to perform under “the highest prevailing industry standards.” A1363. Instead, Yourway allowed the Cell Banks to reach room temperature at its Pennsylvania facility, killing the cells. Yourway’s own investigation concluded it was responsible. *See* A0785. And Vincerx’s cold-chain logistics expert, Carli Derifield, provided unrebutted testimony that Yourway’s performance did not meet industry standards. *See, e.g.*, A0944-45.

Before trial, the Superior Court excluded as irrelevant and prejudicial Yourway’s proposed evidence that Vincerx had insurance and that Vincerx ceased operations years after the cell banks were destroyed.

At trial, Yourway argued an unsigned bill of lading controlled over the MSA and limited damages. *See* B410 (the “Bill of Lading”). But Yourway never introduced evidence that the Bill of Lading was a contract or was provided to Vincerx before the loss. The Superior Court thus entered a directed verdict that the Bill of Lading did not control and that Yourway breached the MSA. *See* A1246-47.

The jury was left to decide only the amount of damages. The jury heard competing expert testimony on replacement cost and returned its verdict. The Superior Court denied Yourway’s motion for new trial, finding the award within “a supportable range.” A0043.

Vincerx asks this Court to affirm.

SUMMARY OF ARGUMENT

1. Denied. The directed verdict was proper. Yourway failed to appeal the ruling that the Bill of Lading did not apply. Regardless, the Superior Court correctly held that Yourway did not establish “one element of contract formation” for the Bill of Lading. A1070. And Yourway stipulated that it was responsible for destroying the Cell Banks. *See* A0785.

2. Denied. Evidence that Vincerox had ceased operations was irrelevant to replacement-cost damages and “confusing, misleading, and possibly prejudicial.” A0625. Any error was harmless: the jury heard eighteen times that Vincerox’s program had halted for reasons unrelated to Yourway yet found for Vincerox. *See, e.g.*, A1239.

3. Denied. The Superior Court did not err by admitting replacement-cost evidence. First, Yourway waived this issue—it did not preserve the issue before, during, or after trial and its expert agreed replacement cost was the correct metric. Second, replacement cost is a recognized measure of contract damages. Third, the Superior Court correctly instructed the jury on damages. *See* A1275.

4. Denied. The jury’s verdict rested on a battle of the experts that the jury resolved in Vincerox’s favor. Jury verdicts are entitled to enormous deference, and the evidence supports the award.

5. Denied. The Superior Court excluded insurance evidence on both sides as irrelevant and unfairly prejudicial. Yourway waived any affirmative defense bearing on risk allocation.

6. Denied. Vincerox disclosed Dr. Izumi as an expert and served a report. Yourway never objected or moved to exclude. And the testimony Yourway challenges was firsthand fact testimony, not expert opinion, from the only witness with personal knowledge, Dr. Izumi.

7. Denied. There is no error to accumulate. Yourway received a fair trial on a claim it conceded. The jury's careful engagement with the evidence confirms that the verdict was the product of reasoned deliberation.

COUNTERSTATEMENT OF FACTS

I. Vincerx Acquires the Cell Banks from Bayer.

Vincerx was founded by Dr. Raquel Izumi to develop cancer treatments that were “effective and safer.” A0795.

In late 2020, Vincerx purchased a worldwide license for VIP943, an antibody drug conjugate for development as a cancer treatment from Bayer AG (“Bayer”). *See* A0795; A0797-800; B122. It is “designed to specifically hunt down and attach to the cancer cells” and to “target...chemotherapy only to the cancer cells to protect the normal cells.” A0795-96.

The consideration to Bayer was significant. Vincerx paid five million dollars upfront and agreed to make milestone and royalty payments potentially worth hundreds of millions of dollars. *See* A0800; B136-40.

As part of the license, Vincerx acquired the cell banks used to generate VIP943. Cell banks are collections of stored, cloned cells consisting of research cell banks, master cell banks, and working cell banks, each serving a distinct function (the “Cell Banks”).¹ *See* A0796; A0979-81.

¹ Research cell banks are used to make the master cell bank, which is the perfect version of the cells that produce VIP943. The working cell banks are clones of the master cell bank; they are the ones used to produce the antibody for the drug. *See* A0740-41.

The Cell Banks had to be maintained at approximately negative 196°C. They had to be shipped in specialized containers known as cryoport shippers, filled with liquid nitrogen to maintain that temperature for ten days (the “Cryoport Shippers”). *See* A0780-81.

II. Vincerx and Yourway Enter into the MSA.

Yourway holds itself out as “a pharmaceutical courier specializing in shipments that must be delivered under strict time and temperature parameters.” A0780; *see also* B290. Based on that expertise, Vincerx hired Yourway under an MSA. *See* A0779-80; B291-300. The MSA “is a contract between Yourway and Vincerx.” A0780. Both the MSA and Yourway’s trial testimony confirmed that it provided “transport services” to Vincerx under the MSA. A1120; *see also* B291 § 2(j); B292 § 3.1; B294 § 6.5.

The MSA contained several key provisions. Section 3.1 of the MSA required Yourway to “provide all Services...in accordance with the highest prevailing industry standards and practices.” B292. In Section 6.5, Yourway acknowledged that the materials it would handle were “experimental in nature” and agreed “to use prudence and reasonable care in the use, handling, storage, transportation, disposition and containment” of those materials. B294. Under Section 7.4, Yourway agreed to use only personnel “with the proper skill, training, availability, and experience to provide Services.” *Id.*

If Yourway received any communications from a regulatory authority, including the FDA, during a shipment, Yourway agreed in Section 6.1 to notify Vincerx “promptly, and in no event later than one (1) business day.” B293.

The MSA also provided, in Section 13.5, that it “constitute[d] the entire agreement between the parties” and that its terms would control over any conflicting agreement. B299.

Section 13.6 provided that the MSA “may be changed only by a writing signed by authorized representatives of each party.” B299. Vincerx’s CEO, Dr. Izumi, executed the MSA for Vincerx on February 12, 2021. B300.

The MSA does not limit Vincerx’s damages for breach. *See* B298 § 11.5 (“Vincerx may seek any other right or remedy that it may have under this Agreement or otherwise”).

III. Vincerx Relies on Yourway to Value the Cell Banks for Customs Clearance.

Vincerx retained Yourway under the MSA to transport the Cell Banks from Germany to California. *See* A0780. Vincerx relied on Yourway as its “US customs broker” for the shipment. B451; *see also* A1121; A1140. For customs, a value must be assigned for any shipment—even for shipments of blood or urine. *See* A0846. Yourway provided Vincerx with a “Proforma Invoice” for that purpose that it described as a “customs invoice.” A1114-15; *see also* B411; A0845-46; A0853-54;

A0871. Yourway understood that as a *Proforma* Invoice, it was “perfunctory or preliminary.” A1122.

The Proforma Invoice states that the Cell Banks have “NO COMMERCIAL VALUE” (B411), because they were for a developmental drug (*see* A0845-46). The parties did not discuss the replacement cost of the Cell Banks when they generated the value for the Proforma Invoice because “nobody thought we were going to...lose all the cells.” A0854.

Dr. Izumi testified that Vincerox relied on Yourway’s advice on how to describe the Cell Banks’ value on the customs forms. *See* A0845; A0871; *see also* A1129. Contemporaneous emails showed Vincerox discussing the “[c]ustoms value *as suggested by Yourway*” with Bayer. B435 (emphasis added); A1127. And Yourway advertised that it could assist with “valuation of goods.” B413; *see also* B450. While Yourway’s witness testified that he did not advise Vincerox on this issue, he confirmed that Yourway “will make sure that the valuation that is declared by the client is correct.” A1126.

IV. Yourway Destroys the Cell Banks.

Yourway admitted that “mistakes were made in the shipment of the[] cell banks.” A1130. Yourway allowed the temperature of the Cell Banks to rise 400 degrees, destroying the cells stored within. *See* A0749-50; A0987-88.

Yourway had access to real-time temperature tracking data during the entire Cell Bank shipment. *See* A0781; A0936-37. The Cell Banks left Germany on November 30, 2021 and arrived at Yourway’s Allentown, Pennsylvania facility on December 6, 2021, where they were placed on a customs hold. *See* A0782-83. But before the Cell Banks arrived in the U.S., one of the temperature trackers stopped working. *See* A0830; B381; B384-86. Yourway informed Vincerx on December 7, 2021 that the Cell Banks were “being kept in correct temperature”—even though Yourway had no way of knowing the temperature for one of the Cell Banks. B342; *see also* A0818-19.

On December 7, 2021, “Yourway received an inquiry from the FDA about the cell banks.” A0783. Even though the MSA required Yourway to notify Vincerx within one business day, Yourway did not forward the FDA inquiry to Vincerx until December 13, 2021. *See id.* Vincerx responded within hours, and the FDA released the Cell Banks from the customs hold the next morning. *See id.*; A0945.

The Cryoport Shippers were only “certified to maintain the cell banks at the required temperature” until December 9, 2021—during Yourway’s delay in forwarding the FDA inquiry. A0781. Yourway had full access to the Cell Banks (*see* A0783), but the temperature tracker data showed that Yourway failed to recharge the Cryoport Shippers with liquid nitrogen until—at the earliest—December 20, 2021 (*see* A0950-51). That is *eleven days* after the December 9, 2021

deadline that the Cryoport Shippers could maintain the Cell Banks at the correct temperature.

When Yourway belatedly tried to recharge the Cryoport Shippers, it did so improperly, and the Cell Banks returned to room temperature. *See* A0783-84. The Cell Banks were at room temperature for days. *See id.*; A0948; A1110.

The temperature excursion destroyed the Cell Banks, which were dead by the time they arrived in San Diego on December 21, 2021. *See* A0784-85.

V. Yourway’s Post-Incident Investigation and Admission of Liability.

On January 7, 2022, Vincerox provided Yourway with “written notice” that the Cell Banks had been delivered dead. A0785. Yourway conducted an internal investigation and, on March 14, 2022, issued a written report concluding that Yourway “was responsible for the damage” that was caused by the Cell Banks reaching room temperature while in Yourway’s possession. *Id.*; *see also* B400-03.

Months after issuing that report—and more than a year after the Cell Banks were destroyed—Yourway asserted, for the first time, that its liability was limited to \$52.50 under an unsigned Bill of Lading. *See* B408-10. There is no evidence that Vincerox had ever seen the Bill of Lading before then.

VI. The Superior Court Grants Partial Summary Judgment.

Vincerox commenced this action in September 2023 and filed its operative First Amended Complaint on December 12, 2023 (the “Complaint”), asserting claims for

breach of the MSA, negligence, and liability under the Carmack Amendment to the Interstate Commerce Act (49 U.S.C. § 14706). *See* A0123-43. Before trial, the Superior Court granted Vincerox’s partial motion for summary judgment, in part, ruling that the Carmack Amendment “does not apply.” A0618. The Superior Court also dismissed several of Yourway’s affirmative defenses. *See* A0620-22.

Yourway dropped its appeal of those rulings in its opening brief (Dkt. 14, the “Opening Brief” or “Op. Br.”).

VII. Pretrial Evidentiary Rulings.

Vincerox moved *in limine* to exclude evidence that Vincerox “ran out of money” and began winding down in April 2025—over three years after the Cell Banks were destroyed. A0575; *see also* A0535-41; A0569. The Superior Court granted the motion under D.R.E. 401 and 403. *See* A0625-26.

The Superior Court also ruled that Yourway would be precluded from introducing evidence of Vincerox’s insurance program, finding any probative value substantially outweighed by unfair prejudice. *See* A0654-56.

VIII. The Parties’ Stipulated Facts at Trial Establish Breach of the MSA.

At the outset of trial, Vincerox read into the record for the jury a set of stipulated facts, admitted as Joint Exhibit 1 (the “Stipulated Facts”). *See* A0779-85; B100-06. The Stipulated Facts establish, *inter alia*, that (i) the MSA “is a contract between Yourway and Vincerox”; (ii) the Cell Banks were in good condition when they left

Germany; (iii) the Cell Banks “were destroyed while in Yourway’s possession”; (iv) the Cell Banks “were dead before they were delivered”; and (v) “Yourway was responsible for the damage caused to the [C]ell [B]anks.” A0780-85.

IX. Trial Testimony Regarding the Surviving Cell Bank Material in South Korea.

Before the shipment at issue, Vincerx had separately shipped twenty vials of master cell bank material to Samsung’s facility in South Korea. *See* A0835. Vincerx had to use those remaining vials to create a new working cell bank to continue its drug development program because Yourway had destroyed the entire working cell bank. *See* A0835-36. It took twelve of those twenty vials to generate the working cell bank, leaving only eight vials of master cell bank. *See* A0836; A0867-68.

Vincerx needed to recreate the master cell bank “in order to...commercialize the drug.” A0837; *see also* A1057. Only one vial of master cell bank should have been needed to generate a new working cell bank. *See* A1036. Given that it took twelve vials to generate one working cell bank—60% of the remaining vials—Vincerx decided after consulting with experts that there was a “very low probability of success” of using the eight remaining vials at Samsung to recreate the master Cell Bank. A0837; *see also* A0867-68; A1008.

Vincerx’s damages and Cell Bank expert, Dr. Per Lindell, testified that the remaining Samsung vials were “clearly problematic” because it had taken twelve vials to produce just one working Cell Bank. A1008; *see also* A1054-55. In his

professional judgment, a full program restart, rather than a partial reconstruction from an already-depleted and problematic set of vials, was the only technically sound and regulatorily defensible path forward. *See* A1008; A1054-55; A1058-60.

X. Both Experts Testified about Replacement Cost at Trial.

Notwithstanding Yourway’s challenge on appeal to the use of replacement cost damages, Yourway’s own expert, Dr. Scott Burger, agreed that replacement cost was the right metric. He was engaged to opine on “what it would take to *replace* the cell banks.” A1147 (emphasis added). His report was titled “Expert Report: *Replacing* Vincerx’ [sic] VIP943 Master and Working Cell Banks.” A0543 (emphasis added). And his testimony at trial focused “entirely on what is it going to cost to replace the[] cell banks.” A1187-88.

Dr. Burger opined that Vincerx could use the eight remaining vials at Samsung to recreate the master Cell Bank. *See* A1159. But Dr. Burger had not personally inspected the vials, traveled to Samsung’s facility, requested any data or testing reports concerning the vials’ viability, or contacted either Samsung or Bayer to verify his assumptions. *See* A1200-02. Dr. Burger lacked “firsthand... knowledge” of the condition of the remaining vials. A1203. Instead, he relied on Dr. Izumi’s deposition testimony that Vincerx had used twelve of the twenty vials to create a working Cell Bank. *See* A1165-67; A1200-02.

Dr. Burger then opined that the cost to replace the Cell Banks was about \$253,000 based solely on the value stated in the Proforma Invoice (*see* A1182-83)—a value generated for customs clearance and “as suggested by Yourway” (B435). Dr. Burger worked backwards, starting with the invoice value, and then “using Dr. Lindell’s figures” and “cross[ing] out the steps that [he believed] aren’t required,” to “end up with a number that’s actually very close to the number on that invoice.” A1183. Dr. Burger’s method did not involve rebuilding the research Cell Bank, leaving Vincerx without the full Cell Bank system it possessed before Yourway’s breach. *See* A1230-31.

In contrast, Dr. Izumi was “the only actual witness who has any firsthand knowledge [or] experience with the master cell banks that remained...at Samsung.” A1227. Dr. Izumi testified at trial regarding matters within her personal knowledge as Vincerx’s co-founder, CEO, and business records custodian. She confirmed that it “took 12 vials of master cell bank to recreate the working cell bank that had been destroyed,” which was “[t]welve times more vials than is typically used,” leaving only eight vials of master cell bank material and creating “a big risk” for any attempt to reconstruct the program from that remaining material. A1228; *see also* B390.

Dr. Lindell opined to a reasonable degree of scientific certainty that the cost to place Vincerx in its pre-breach position was \$7.65 million. *See* A0993-96; A1006-07. That opinion was based on his review of the technical requirements for

redeveloping the master and working cell banks, his assessment that the remaining vials at Samsung were inadequate, obtaining quotes from actual drug manufacturers, and compliance with applicable regulatory guidance. *See* A0978; A0980-81; A0988-1010; A1052-56.

Dr. Lindell considered the remaining vials of master Cell Bank at Samsung when he rendered his opinion, but he opined that the remaining vials were inadequate to generate a new master cell bank and there were “way too few vials [left at Samsung] to take that chance.” A1054-55.

Yourway never moved before trial to exclude Dr. Lindell’s or Dr. Izumi’s testimony, and it did not object to the substance of the specific statements it now challenges on appeal. *See* A0967-68; A1010-12; A1016; A1228-29 (objecting only to the word “reckless”); A1231; A1234; A1236; A1242.

XI. Yourway Deposition Testimony Read into the Record.

Yourway made a strategic decision not to have its president, Gulam Jaffer, testify, after he interrupted Dr. Izumi’s testimony on the first day of trial and was admonished outside the jury’s presence. *See* A0846-48; A0912-14. The parties agreed to read portions of Mr. Jaffer’s deposition transcript before the jury instead. *See* A0919; A1061-63 (instructing the jury that the deposition transcript would be

read and “it’s like any other witness”).² Mr. Jaffer’s testimony read to the jury included that Mr. Pirbhai, as head of operations at Yourway UK, was ultimately responsible for sending the Bill of Lading to Vincerox, yet Mr. Jaffer was not surprised that Mr. Pirbhai had no document showing that the Bill of Lading was sent to Vincerox. *See* B463-64. The jury also heard that, when Mr. Jaffer was asked if he knew about Dr. Lindell’s opinion that damages were over \$7 million, he testified: “I can get an expert tomorrow and say I want a hundred million from you guys. Anyone can say anything they want.” B465.

XII. The Directed Verdict on Breach of the MSA.

On the second day of trial, the Superior Court noted that the Bill of Lading did not seem to be a contract because Yourway had established no “element of contract formation”—no offer, acceptance, consideration, or meeting of the minds. A1070-71; A1089. In response, Yourway’s counsel stated “[t]hat’s what Mr. Pirbhai will testify tomorrow.” A1071. The Court left the issue open and stated it would “have to hear the evidence tomorrow.” A1073.

The next day, despite the Superior Court’s warning of the gaps in its defense, Yourway did not ask Mr. Pirbhai a single question about the Bill of Lading, even though Mr. Pirbhai and his team were the primary point of contact with Vincerox.

² The excerpts of Mr. Jaffer’s deposition transcript included in Vincerox’s supplemental appendix are redacted to reflect only the testimony that was read into the record.

See A1107-20; B464. After Yourway concluded its case with no additional evidence on the Bill of Lading, Vincerx requested that the Court enter the directed verdict, and the Court so ruled. *See* A1218-23.

The case was submitted to the jury solely on the amount of damages on Vincerx's breach of contract claim. *See* A1275.

XIII. The Jury's Verdict and Post-Trial Proceedings.

On March 5, 2026, the jury returned a verdict in favor of Vincerx in the amount of \$7,650,000.00, consistent with Dr. Lindell's testimony. A1337-39. Yourway moved for a new trial or remittitur directing its motion solely to the amount of damages awarded (the "New Trial Motion"). *See* A1344-49. The Superior Court denied that motion. *See* A0032-43.

Yourway's appeal followed.

ARGUMENT

I. The Superior Court Properly Entered a Directed Verdict on the Bill of Lading and Breach of the MSA.

A. Question Presented

Whether the Superior Court correctly directed a verdict for Vincerox, ruling that (i) the MSA, not the Bill of Lading, governed, and (ii) Yourway breached the MSA?

Preserved: A0291-99; A0779-85; A1218-23; B107-10.

B. Scope of Review

This Court “review[s] entry of judgment as a matter of law to determine whether the evidence and all reasonable inferences drawn therefrom raise an issue of material fact when viewed in a light most favorable to the party against whom the judgment is entered.” *Mason v. Rizzi*, 2004 WL 439690, at *5 (Del. 2004) (Table). “When undisputed facts compel only one conclusion, the trial judge has a clear duty to enter a judgment consistent with that conclusion.” *Id.* Legal determinations are reviewed *de novo*. See, e.g., *XL Ins. Am., Inc. v. Noranda Aluminum Holding Corp.*, 239 A.3d 390, 399 (Del. 2020).

C. Merits of Argument

The Superior Court correctly directed a verdict for Vincerox because: (i) “the jury could [not] justifiably find that the bill of lading was...a contract that modified

the MSA” (A1247); and (ii) “no reasonable jury could determine that Yourway did not breach the [MSA]” (A1246). Yourway’s challenge is meritless.

1. The Court Correctly Ruled that the MSA, Not the Bill of Lading, Governed.

a. Yourway Failed to Appeal the Bill of Lading Ruling.

Yourway failed to appeal the ruling “that the [MSA] was the operative document.” Op. Br. p. 11. “When the notice of appeal is unambiguous about the judgment sought to be reviewed, then it is binding on the appellant.” *Knight v. Sanders*, 2011 WL 5840328, at *1 (Del. 2011) (Table).

Yourway’s notice of appeal (Dkt. 2, the “Notice”) only challenged “[t]he Court’s granting of Vincerox’s Motion for a Directed Verdict *on the issue of a breach of the [MSA]*.” A0027, ¶ 8 (emphasis added). Yourway’s Exhibit G confirms this, reflecting only the ruling “that Yourway...breach[ed] the [MSA].” A0121. Because Yourway’s Notice failed to challenge the Bill of Lading ruling, this Court should decline to review it.

b. The MSA Governs.

i. Yourway Was Fully Heard.

Yourway asserts the Superior Court ruled that the Bill of Lading did not govern “prior to Yourway presenting the testimony of Mr. Hussein Pirbhai.” Op. Br. p. 12. Not so. The Superior Court directed its verdict *after* Pirbhai testified and Yourway had been fully heard. *See* Del. Super. Ct. Civ. R. 50(a)(1).

On March 3, the Superior Court expressed doubt that “the bill of lading [was] a contract.” A1070. Yourway’s counsel asked to present Pirbhai’s testimony on that issue. *See* A1078. The Superior Court agreed (*see* A1079) and allowed Pirbhai to “show...we sent this [Bill of Lading] to [Vincerx], and we all agreed that these are the terms that modify the MSA” (A1089-90). On March 4, Pirbhai testified, yet Yourway’s counsel did not ask him about the Bill of Lading. *See* A1107-20; A1135-39; *see also* A1219. After “the entire presentation of the evidence,” the Superior Court ruled that the Bill of Lading was not “a contract that modified the MSA.” A1245; A1247. Yourway had been fully heard and its decision not to walk through the door the Superior Court left open cannot constitute error.

ii. The Parties Did Not Mutually Assent to the Bill of Lading.

The Superior Court correctly ruled that the MSA—not the Bill of Lading—governed. *See* A1246-47. The parties stipulated that “[t]he MSA is a contract between Yourway and Vincerx.” A0780. The MSA “constitute[d] the entire agreement between the parties,” and any conflicting “document or form” would not control. B299 § 13.5. The MSA could be modified only by a signed writing (*id.* § 13.6), and Delaware law governs (B300 § 13.8).

Yourway argues the Bill of Lading governed and limited its liability. *See* Op. Br. pp. 13-17. That fails. The parties did not mutually assent to the Bill of Lading’s terms, so it never became a contract: Dr. Izumi’s unrebutted testimony proved that

Yourway did not show the bill to Vincerox *until more than a year after* the Cell Banks' destruction. *See, e.g.*, A0843-44. Because the bill was unsigned, it could not modify the MSA. *See* A1373; B299 § 13.6.

First, the Bill of Lading never became a contract. A contract requires intent to be bound, definite terms, and consideration. *See, e.g., Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010). “[T]here must be a ‘meeting of the minds.’” *Eagle Force Holdings, LLC v. Campbell*, 187 A.3d 1209, 1212 (Del. 2018). Even under federal law, carriers (like Yourway) may limit liability only through an agreement evidencing “*an absolute, deliberate and well-informed choice by the shipper*” (*i.e.*, Vincerox). *Carmana Designs Ltd. v. N. Am. Van Lines Inc.*, 943 F.2d 316, 319 (3d Cir. 1991) (emphasis added; citation omitted); *accord Waters v. Del. Moving & Storage, Inc.*, 300 A.3d 1, 16 n.102 (Del. Super. 2023). When a party's name does not appear on a bill of lading and the party lacks notice of its terms, the bill cannot constitute a contract. *See Manchester Equip. Co. v. Am. Way Moving & Storage Co.*, 176 F. Supp. 2d 239, 243-45 (D. Del. 2001).

A bill of lading is subject to general rules of contract construction. *See Beta Spawn, Inc. v. FFE Transp. Servs., Inc.*, 250 F.3d 218, 227 (3d Cir. 2001); *accord Waters*, 300 A.3d at 20-26. But “a bill of lading issued after the formation of a contract...serves only as a receipt...and will not...alter the terms of the previous agreement.” *Vanlab Corp. v. Blossum Valley Foods Corp.*, 2005 WL 43772, at *3

(W.D.N.Y. Jan. 10, 2005) (citing *Greenstone Shipping Co., S.A. v. Transworld Oil, Ltd.*, 588 F. Supp. 574, 579-580 (D. Del. 1984)).

The evidence compels one conclusion: the Bill of Lading does not bind Vincerx. Vincerx's name does not appear, and it did not sign it. *See* A1373; B410.

The Opening Brief asserts *without citation* that "Vincerx was offered an opportunity to declare a higher value for the cell banks, but declined." Op. Br. p. 14. The record proves the opposite. Dr. Izumi testified Yourway provided the Bill of Lading "[m]ore than a year" after the Cell Banks' destruction. A0844; *see* A0865; A0896-97; *see also* B408-10. Yourway's president, Jaffer, "c[ould]n't say" whether Yourway sent the bill pre-shipment and suggested Pirbhai would know. B463; *see* A1064. Despite the court's invitation, Yourway did not ask Pirbhai about that issue.

No jury could have "justifiably f[ou]nd that the bill of lading was...a contract that modified the MSA." A1247. Because the bill "issued after the formation" of the MSA, it could "not...alter [its] terms." *Vanlab*, 2005 WL 43772, at *3 (citation omitted). And Vincerx had no notice of its terms. *See Payne v. Samsung Elecs. Am., Inc.*, 2024 WL 726907, at *3 (Del. Super. Feb. 21, 2024) (reciting that mutual assent requires reasonable notice of contractual terms). Even if Vincerx had received the Bill of Lading (it did not), the Superior Court correctly observed "there's zero evidence of offer[,], acceptance[,], consideration and any meeting of the

mind.” A1089. Finally, the bill could not modify the MSA because no one signed it. *See* A1373; B299 § 13.6. The directed verdict was correct.

Yourway’s contrary authorities are inapplicable. *See* Op. Br. pp. 13-16. Yourway first appeals to 6 *Del. C.* § 7-309 (*see id.* p. 14), but it never developed below the Section 7-309 theory it now vaguely invokes, and the record shows Vincerx was never “afforded an opportunity to declare a higher value” in the Bill of Lading or “advised of the opportunity” to do so, as the statute requires. 6 *Del. C.* § 7-309(b). *Waters* underscores the point. There, the court applied Section 7-309(b) only after finding that the plaintiff “was provided with” the bill of lading and “signed it in two places,” thereby acknowledging “acceptance of the Contract’s terms.” *Waters*, 300 A.3d at 22. No such contract exists here. *See* A0843-44; A0886; A0896-97; A1089.

Yourway’s federal authorities are inapposite. They almost all arose under the Carmack Amendment, which the Superior Court correctly ruled does not apply. *See* A0076. Yourway does not challenge that ruling, and “[i]ssues not briefed are deemed waived.” *Emerald Partners v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999). Even under Carmack, a carrier may limit liability only if it issues the bill “***prior to moving the shipment***” and obtains the shipper’s “absolute, deliberate and well-informed choice.” *Carmana Designs*, 943 F.2d at 319 (emphasis added; citations omitted). Neither condition was met.

iii. Yourway's Course-of-Dealing and Modification Arguments Fail.

Yourway offers two final challenges: (i) Vincerox “must be deemed” aware of the Bill of Lading’s terms based on course of dealing (Op. Br. p. 16); and (ii) the bill controls because it is “more recent and more specific” (*id.* p. 20). Both fail.

First, Yourway asserts it issued “twenty-five bills of lading” to Vincerox, purportedly establishing a standard business practice. Op. Br. p. 16. But Yourway relies on exhibits it never offered into evidence. *See* A0373-400 (unsigned bills of lading for separate shipments, with no evidence they reached Vincerox, filed with Yourway’s opposition to summary judgment). “Materials not offered into evidence are not a part of the record.” *Delaware Elec. Co-op. v. Duphily*, 703 A.2d 1202, 1207 (Del. 1997). Even if considered, the exhibits are makeweight: Dr. Izumi testified she never saw “any bill of ladings” and doubted Vincerox’s personnel had. A0866; *see* A0887.³

Yourway’s single case, *Alabi v. DHL Airways*, is inapplicable. 583 A.2d 1358 (Del. Super. 1990). There, the shipper signed the bills of lading. *See id.* at 1362-63. In contrast, Yourway sent the Bill of Lading more than a year *after* the Cell Banks’ destruction and Vincerox did not sign it.

³ Yourway’s statement that Vincerox declined a prior offer of insurance on a different shipment also relies on non-record, irrelevant evidence. *See* Op. Br. p. 3. It is also false. *See* B090-97 (accepting offer of insurance).

Second, Yourway’s assertion that “the bill of lading supplanted the [MSA]” fails. Op. Br. p. 21. A “new contract” may “supersede” an old one. *Country Life Homes, Inc. v. Shaffer*, 2007 WL 333075, at *5 (Del. Ch. Jan. 31, 2007). But the Bill of Lading is not a contract: “there’s zero evidence of offer[,] acceptance[,] consideration and any meeting of the mind.” A1089. The bill’s \$52.50 cap is irreconcilable with the MSA’s express preservation of all remedies. *See* B298 § 11.5; B299 § 13.5. A document that is not a contract cannot displace one that is.

2. Yourway Breached the MSA.

Yourway challenges the liability ruling on two grounds: (i) the MSA did not govern “the transport of the cell banks”; and (ii) Vincerx’s “damages did not arise” from Yourway’s breaches. Op. Br. pp. 18, 19. Both fail.

a. The MSA Expressly Covers Transportation.

Yourway’s fixation on “transportation” is a red herring because the MSA applies to transportation on its face. *See* Op. Br. pp. 18-19. Section 6.5 states Yourway “agree[d] to use prudence and reasonable care in the use, handling, storage, [and] *transportation*” of the Cell Banks. B294 § 6.5 (emphasis added). That provision alone shows the MSA covered transportation.

Furthermore, under Section 2(j), Yourway’s “Services” involved “distribution,” which includes transportation in Yourway’s industry. B291 § 2(j). Unrebutted expert testimony established that, in Yourway’s industry, “distribution”

encompasses transportation (*see* A0940), and that the FDA⁴ defines “distribution” as “control of the movement of products which includes import, export activities, storage, [and] transportation” (A0941). *See Terrell v. Kiromic Biopharma, Inc.*, 338 A.3d 1272, 1277 n.38 (Del. 2025) (“[I]f words in a contract have a special meaning or usage in a particular industry, then [industry] members...are presumed to use the words in that special way....”) (citation omitted). Yourway’s own dictionary definition of “distribute” includes “*ship or deliver*...to individual customers.” Op. Br. p. 19 (emphasis added).

Yourway’s argument fails for another reason. In addition to transportation, Yourway also promised to comply with “highest prevailing industry standards” (B292 § 3.1) in the “storage” of the Cell Banks (B291 § 2(j)); *see also* B294 § 6.5. It breached that obligation too. The Cell Banks were stored at Yourway’s Allentown facility when the temperature excursion destroyed them. *See* A0782-85.

b. Vincerx’s Damages Flowed from Yourway’s Breaches.

Vincerx’s damages “flowed from the breaches” of the MSA. *In re Dura Medic Holdings, Inc. Consol. Litig.*, 333 A.3d 227, 255 (Del. Ch. 2025). Yourway’s own internal investigation concluded that it “was responsible for the damage caused to the cell banks.” A0785; *see also* A0079.

⁴ The MSA contemplates FDA regulation of “performance of the Services.” B291 § 2(c).

Yourway breached its obligations under the MSA. Yourway had to perform Services under “the highest prevailing industry standards” (B292 § 3.1); notify Vincerox of FDA communications within one business day (B293 § 6.1); use “prudence and reasonable care” in the “handling, storage, [and] transportation” of Vincerox’s Materials (B294 § 6.5); use skilled personnel (*id.* § 7.4); and protect Materials from “loss [and] damage...at all stages of the Services” (B295 § 9.1).

Vincerox’s cold-chain expert, Derifield, testified that Yourway breached its transportation, storage, regulatory notice, qualified personnel, and protection duties under Sections 3.1, 6.1, 6.5, 7.4, and 9.1 in at least seven respects: it had no contingency plan for the shipment; it failed to respond when a temperature tracker stopped working; it failed to recharge the Cryoport Shippers within their validated ten-day window; it recharged them using an improper method; it delayed relaying an FDA inquiry for six days; it failed to employ trained personnel; and it deviated materially from the manufacturer’s operating instructions. *See* A0941-51; A1132-33 (Yourway admitting it did not know if it had properly trained personnel).

The record confirms Derifield’s un rebutted opinion. One Cryoport monitor failed on December 2; Pirbhai nonetheless told Vincerox five days later, on December 7, that the shipment was at the correct temperature—a representation he could not have verified. *See* A1134-35; B381. Yourway received an FDA inquiry that same day but did not relay it to Vincerox until December 13 (*see* A0783)—six days later,

and four days after the Cryoport Shippers' certified window expired (*see* A0781). That was the same time the Cell Banks' temperature began to "hockey stick" upward. A0947; *see also* B379-80. Derifield testified that the delay alone breached the standard of care. *See* A0943. Yourway's admitted, uncontested breaches destroyed the Cell Banks in direct violation of the MSA.

II. The Court Properly Excluded Evidence of Vincerox's Post-Litigation Financial and Operational Condition.

A. Question Presented

Whether the Superior Court acted within its discretion to exclude evidence that Vincerox had halted operations years after Yourway destroyed the Cell Banks under D.R.E. 401 and D.R.E. 403?

Preserved: A0038-42; A0535-41; A0625-26; A0766-70; A1357-58.

B. Scope of Review

The Superior Court's admission or exclusion of evidence is reviewed for abuse of discretion. *See Hudson v. State*, 312 A.3d 615, 624 & n.17 (Del. 2024). "Judicial discretion is the exercise of judgment directed by conscience and reason, and when a court has not exceeded the bounds of reason in view of the circumstances and has not so ignored recognized rules of law or practice so as to produce injustice, its legal discretion has not been abused." *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988). "The trial judge is in a unique position to evaluate and balance the probative and prejudicial aspects of evidence." *Greene v. Beebe Med. Ctr., Inc.*, 1995 WL 420808 at *1 (Del. 1995) (Table) (cleaned up).

Even if the Superior Court erred, this Court will not reverse unless it also finds "that a 'substantial right of the party is affected.'" *Mercedes-Benz of N. Am. Inc. v. Norman Gershman's Things to Wear, Inc.*, 596 A.2d 1358, 1365 (Del. 1991) (citation omitted).

If an objection was not fairly presented below, this Court will review only for plain error. *See Shawe v. Elting*, 157 A.3d 152, 168 (Del. 2017).

C. Merits of Argument

The Superior Court granted Vincerox's second motion *in limine*, holding that "plaintiff's current status as a company in this field is irrelevant to the issue of damages" and "confusing, misleading, and possibly prejudicial." A0625. This Court should affirm.

1. Yourway Waived Appeal of D.R.E. 403 Exclusion.

The Superior Court excluded evidence that Vincerox had halted all operations under both D.R.E. 401 and D.R.E. 403. *See* A0625-26; *see also* A0538-41 (Second Motion in Limine seeking exclusion under both rules). Yourway's Opening Brief does not address the Court's ruling under D.R.E. 403 or argue that the Court's finding of confusion, misleading the jury, or prejudice did not substantially outweigh the probative value. *See* Op. Br. pp. 23-29. The argument is waived. *See, e.g., Emerald Partners*, 726 A.2d at 1224; *see also* Del. Supr. Ct. R. 14(b)(vi)(3); *Scott v. Frank*, 2012 WL 375491, at *2 (Del. 2012) (Table) (declining to address merits of appeal because appellant failed to brief alternative ruling).

2. The Evidence Is Irrelevant and Prejudicial.

Yourway argues that evidence that Vincerox halted its operations is relevant to Vincerox's "damages theory, ... the credibility of Plaintiff's evaluation evidence,

and...witness motive and bias.” Op. Br. p. 24. Yourway never identifies a material fact that becomes more or less probable because—years after the Cell Banks were destroyed—Vincerx ran out of money. *See Banks v. State*, 93 A.3d 643, 646 (Del. 2014) (defining relevance).

The jury was tasked with determining damages on Vincerx’s breach of contract claim. Such damages are determined by what “should give [plaintiff] the benefit of the bargain it struck with [defendant] and should be based on [plaintiff’s] expected position but for [defendant’s] breach.” *Leaf Invenenergy Co. v. Invenenergy Renewables LLC*, 210 A.3d 688, 701 (Del. 2019).

Vincerx winding down years later has no bearing on what it would cost to place Vincerx in the same position it would have been but for Yourway’s breach. Vincerx decided to wind down in 2025 because it “ran out of money.” A0575; *see also* A0569; A0578.

Nor does the evidence go to the credibility, motive, or bias of any witness on the issue of damages. Dr. Lindell was Vincerx’s only witness to testify about damages. Yourway has identified no basis for how Vincerx winding down would impact Dr. Lindell’s credibility or any motive or bias.

Even if the evidence were relevant (and it is not), the Superior Court correctly excluded it under D.R.E. 403. Evidence that Vincerx went out of business would

risk confusing or misleading the jury into reducing damages on that basis. The Superior Court acted within the bounds of reason to exclude that evidence.

3. Yourway Was Not Denied a Fair Trial Because It Was Allowed to Introduce Evidence that Vincerx's Drug Program Had Halted.

The Superior Court's exclusion of evidence that Vincerx was winding down did not affect Yourway's substantial rights. Exclusion of evidence that is "not critical" or "generally cumulative of evidence that was admitted" does not deprive a party of a fair trial. *Hilco Capital, LP v. Fed. Ins. Co.*, 978 A.2d 174, 180 (Del. 2009); *Gillen v. Cont'l Power Corp.*, 2014 WL 7009942, at *6 (Del. 2014) (Table).

Here, Yourway suffered no prejudice because evidence that Vincerx wound down is cumulative of other trial evidence. Over Vincerx's objection, the jury heard at least *eighteen* times that Vincerx's drug program was "halted" for reasons unrelated to Yourway: once in Yourway's opening argument (A0766-70); six times cross-examining Dr. Izumi (A0859; A0860; A0890; A0906-A0907; A1235; A1239); five times cross-examining Dr. Lindell (A1022; A1032; A1038-39; A1049; A1051); and six times in Yourway's closing argument before the jury deliberated (A1303; A1308; A1311; A1312; A1320 (stated twice)).

Yourway was able to make its point to the jury.

III. The Superior Court Did Not Err in Permitting Replacement-Cost Damages.

A. Question Presented

Whether the Superior Court erred by admitting evidence of replacement costs?

Preserved: A0038; A0198; A0296; A0539-40; A0756-60; A1280-91; A1356.

B. Scope of Review

The Court will review for abuse of discretion or, if not fairly presented below, for plain error. *See supra* § II.B.

Yourway’s reliance on *Thompson St. Capital Partners IV LP v. Sonova U.S. Hearing Instruments, LLC* in favor of *de novo* review is misplaced. *See* Op. Br. p. 30 (citing 340 A.3d 1151, 1165 (Del. 2025)). In *Thompson*, the Court reversed and remanded a Rule 12(b)(6) dismissal based on issues of contract interpretation that are subject to *de novo* review. *See* 340 A.3d at 1165. *Thompson* does not apply to Yourway’s arguments on damages evidence.

C. Merits of Argument

1. Yourway Waived the Objection.

At trial, Dr. Lindell testified about the replacement cost for the Cell Banks, including that Vincerox would need to “start that process from scratch.” A0990-92. Yourway argues that its “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 Vincerx would never spend that money and would never recreate the cell banks because it was no longer a viable company.” Op. Br. p. 31. That objection has been waived for at least five reasons.

First, Yourway admits that it did not object to Dr. Lindell’s replacement cost testimony at trial. *See* Op. Br. p. 30 (arguing objection preserved in New Trial Motion); *see also* A0037. Nor did Yourway move to exclude that testimony before trial. *See generally* A0001-23 (docket). The Court should affirm on that basis alone. *See, e.g., Koutoufaris v. Dick*, 604 A.2d 390, 394 (Del. 1992).

Second, Yourway’s expert, Dr. Burger, agreed that replacement cost was the correct measure of damages. *See Hamilton v. State*, 1995 WL 12015, at *1 (Del. 1995) (Table) (holding objection to admissibility waived by affirmatively asserting evidence on the same issue). Yourway now argues that damages should be the “actual cash value lost,” not the “replacement cost value.” Op. Br. p. 32. But the only testimony by Yourway’s expert was on replacement cost:

Q: So your focus was entirely on what is it going to cost to *replace* these cell banks, correct?

A: Yes. That’s what was destroyed, and so that’s what needs to be *replaced*.

A1187-88 (emphasis added); *see also* A1147 (“I was asked [by Yourway] to evaluate...what it would take to replace the cell banks.”).

Third, Yourway did not timely appeal from the Court’s order prohibiting its damages expert from testifying that Vincerox had stopped operating. *See Cahall v. Thomas*, 2005 WL 1175940, at *1 (Del. 2005) (Table); *see also* A0083; B098. Yourway only appealed from the Superior Court’s grant of the *second* motion *in limine*. *See* A0026 ¶ 4.

Fourth, Yourway cites no authority to support that replacement cost is an invalid measure of contract damages. *See Flamer v. State*, 953 A.2d 130, 134 (Del. 2008) (“The failure to cite *any* authority in support of a legal argument constitutes a waiver of the issue on appeal.”).

Fifth, Yourway failed to properly notice its appeal of replacement-cost damages. Yourway’s Notice challenged the admission of “consequential damages.” A0027 ¶ 7. Replacement costs are not consequential damages—they are direct expectation damages designed to place the non-breaching party in its pre-breach position. *See Siga Techs., Inc. v. PharmAthene, Inc.*, 132 A.3d 1108, 1130 (Del. 2015).

2. The Court Correctly Instructed the Jury on Damages.

There was no error because the Superior Court correctly instructed the jury on the measure of damages at trial consistent with Yourway’s argument on appeal:

When the Court finds that one party committed a breach of contract, the other party is entitled to compensation in an amount that will place it in the same position it would have been if the contract had been properly

performed. The measure of damages is the loss actually sustained as a result of the breach of contract.

A1275; *cf.* Op. Br. p. 31. Yourway did not appeal that instruction. If there was any error, it was cured by the Superior Court's instruction. *See Cahall*, 2005 WL 1175940, at *1 ("It is presumed that the jury followed the trial judge's instructions.").

3. Replacement Cost Is a Correct Measure of Contract Damages.

Yourway argues that "actual cash value," and not "replacement cost" is the correct measure of damages. Yourway is wrong. Vincerox had a reasonable expectation that Yourway would perform in accordance with the MSA and is entitled to replacement costs to compensate it for the loss of the Cell Banks.⁵ *See supra* § I.C.2 (detailing Vincerox's expectations under the MSA); *Siga*, 132 A.3d at 1130.

Delaware courts have recognized that replacement cost is a correct measure of damages, particularly where other methods of calculating fair market value are unavailable. *See Bd. of Educ. of Caesar Rodney Sch. Dist. v. New Castle Roofing & Waterproofing, Inc.*, 2001 WL 1456870, at *5 (Del. Super. Aug. 29, 2001).

⁵ Yourway states that Vincerox claimed "its damages in this case were approximately \$1.8 million" in the Complaint. Op. Br. p. 7. That allegation was made solely under Vincerox's mooted Carmack claim and states "Vincerox suffered damages...in an amount to be determined at trial, but no less than \$1.8 million." A0142 ¶ 98. It was also made without the benefit of expert opinion. For breach of contract, Vincerox alleged its damages were "in an amount Vincerox will prove at trial." A0139 ¶ 82.

The same reasoning applies here. Both parties' experts agreed that the only way to place Vincerox in the position it would have been in but for the breach is to replace the Cell Banks. *See* A0990-92; A1187-88. No commercial value exists for the Cell Banks because they are for a developmental cancer treatment that cannot be sold on the open market. *See* A0845-46.⁶

Yourway's reliance on *Laskowski v. Wallis*, 205 A.2d 825 (Del. 1964) is misplaced. *See* Op. Br. p. 33. There, the Court reversed based on the trial court's instruction to include damages for permanent injury that were contradicted by the only trial evidence. *See Laskowski*, 205 A.2d at 826-27. Unlike *Laskowski*, Vincerox has provided more than "some credible evidence showing reasonable probability" of the *existence* of damages. *Id.* at 826. And Yourway stipulated it destroyed the Cell Banks. *See* A0785. Thus, Vincerox need not establish the *amount* of damages "with precise certainty," and "doubts about the extent of damages are generally resolved against the breaching party." *Siga*, 132 A.3d at 1131.

Vincerox proved it would cost \$7,650,000 to replace the Cell Banks. *See* A0995-96. The loss of the Cell Banks was "catastrophic for the company. To restart

⁶ Yourway's automobile hypothetical is inapposite. *See* Op. Br. p. 32 n.2. Only one Cell Bank existed. Yourway destroyed it. Vincerox cannot simply get the Cell Banks repaired by a mechanic or buy a new Cell Bank at the dealership. When Yourway's counsel asked Dr. Lindell a similar automobile hypothetical, he responded, "I'm not sure what that has to do with the cell banks." A1037-38.

this program, you have to redo the creation of cell banks, and that's expensive." A0989-90. To determine that cost, Dr. Lindell determined what steps would be required to replace the Cell Banks. *See* A0990-91. Then he obtained quotes from four contract manufacturers to perform those steps. *See* A0995; A1171 (Dr. Burger agreeing with Dr. Lindell's methodology). And the true damages are likely higher, "but in all fairness, [Dr. Lindell] tried to provide an average." A1052; *see also* A1171 (Dr. Burger testifying that you generally do not take the lowest bid).

4. Yourway Does Not Show Plain Error.

Recognizing it did not preserve an objection to replacement damages, Yourway submits that the "interests of justice require" this Court to consider the issue because of "unique facts" regarding Vincerox's operational and financial condition. Op. Br. p. 30. Vincerox's damages were not "inexorably linked to [Vincerox's] financial and operational status," as Yourway claims. *Id.* Dr. Lindell confirmed that whether the drug program halted had no impact on his analysis. *See* A1038-39.

Yourway must show that the Superior Court committed plain error. *See Isaac v. Politico LLC*, 346 A.3d 103, 126 (Del. 2025) (en banc). "This exception to Rule 8 is 'very narrow' and 'extremely limited.'" *Id.* (citation omitted). To meet that burden, Yourway "must show that (1) the record is adequate to review [its] claim, (2) an error occurred, (3) the error is plain, **and** (4) the error adversely affected [its]

substantial rights by jeopardizing the fairness and integrity of the trial process’ such that there is ‘a reasonable probability that, but for the error, the outcome of the proceeding would have been different.’” *Matta v. State*, 2026 WL 1162953, at *2 n.24 (Del. Apr. 29, 2026) (citation omitted and emphasis added); *see also Shawe*, 157 A.3d at 168. Yourway does not meet any of those factors for the reasons described in this § III and § II above.

Moreover, Yourway cannot show a “reasonable probability” that the outcome would be different. Yourway introduced no evidence to the jury for any measure of damages except replacement cost. *See* A1147; A1187-88. The jury finding Vincerx’s evidence of replacement cost more persuasive is not plain error.

IV. The Court Properly Denied Yourway’s Motion for New Trial or Remittitur.

A. Question Presented

Whether the Superior Court abused its discretion in denying Yourway’s motion for a new trial or remittitur, where the jury’s \$7,650,000 verdict was supported by the evidence at trial?

Preserved: A0032-43; A1352-59.

B. Scope of Review

The Delaware Constitution protects civil jury verdicts: “the findings of the jury, if supported by evidence, shall be conclusive.” *LG Elecs. Inc. v. Invention Inv. Fund I, LP*, 2026 WL 935618, at *8 (Del. Apr. 7, 2026) (quoting Del. Const. art. IV, § 11(a)(1)).

There is a presumption that a damages verdict is correct. *See Wilhelm v. Ryan*, 903 A.2d 745, 754 (Del. 2006). This Court will set aside a jury award “only in the unusual case where it is clear that the award is so grossly out of proportion to the injuries suffered as to shock the Court’s conscience.” *Id.* (citation omitted).

This Court will find an abuse of discretion only “if the jury verdict was against the great weight of evidence, no reasonable jury could have reached the result, and the denial was untenable and unreasonable.” *Gillen*, 2014 WL 7009942, at *6 (citation omitted).

C. Merits of Argument

1. The Verdict Was Based on Abundant Evidence at Trial.

Two experts testified about replacement cost. The jury believed one. That is precisely the kind of jury determination an appellate court does not second-guess.

Yourway argues the verdict was “against the great weight of the evidence.” Op. Br. p. 34. But “this Court on appeal is bound by the jury verdict if it is supported by evidence.” *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979). The verdict is supported by Dr. Lindell’s detailed replacement-cost testimony. *See supra* § III.C.3.

Yourway’s primary argument is that Dr. Lindell’s testimony on replacement cost was speculative because it is “not grounded in any expenditure Vincerox made or ever will make.” Op. Br. p. 35.⁷ Yourway’s argument is defeated by settled Delaware law. Contract damages are “based upon the reasonable expectations of the parties *ex ante*”—*i.e.*, before the breach occurred. *Siga*, 132 A.3d at 1130 (citation omitted). Whether Vincerox will use any monetary award to, in fact, replace the Cell Banks is irrelevant to expectation damages and not in the record.

Yourway’s citation to *JanCo FS 2, LLC v. ISS Facility Services, Inc.* is of no moment. 344 A.3d 1009 (Del. Super. 2025). The *JanCo* plaintiff’s damages were barred by the contract and thus could not be tied “to a particular breach.” *Id.* at 1040.

⁷ Yourway rehashes its other arguments regarding the second motion *in limine*, replacement costs, and insurance evidence. *See* Op. Br. p. 35. Those arguments fail for the reasons stated in §§ II and III above, and § V below.

Conversely, Vincerox tied its loss to Yourway's breaches of the MSA when it destroyed the Cell Banks. *See supra* § I.C.2.

2. The Verdict Does Not “Shock the Conscience.”

Yourway argues that the \$7.65 million verdict is excessive because Vincerox paid \$5 million to Bayer under the license agreement. *See* Op. Br. p. 37. Not so.

Yourway ignores trial testimony showing that the consideration to Bayer was much greater than the initial \$5 million payment: Bayer was also entitled to millions in additional milestone payments and, if the drug was commercialized, royalty payments potentially in the hundreds of millions. *See* A0799-800; *see also* B136-40.

3. Dr. Lindell Concluded that the Remaining Vials of Cell Bank in South Korea Were Inadequate.

Yourway argues the verdict and Dr. Lindell failed to account for the eight remaining vials of master cell bank shipped to Samsung. *See* Op. Br. pp. 36-37. This argument asks the Court to reweigh evidence the jury considered and rejected.

Yourway states, without citation, that Dr. Lindell testified that he “chose not to consider those vials and whether it would reduce or eliminate the need” to replace the Cell Banks. Op. Br. p. 36. That is incorrect.

Dr. Lindell testified he was aware of the vials at Samsung when he rendered his opinion (*see* A0882; A1029), but he concluded that “[i]n all likelihood, you wouldn't get a good enough...master cell bank out of those cells” (A1008). He

explained there was “some issue” with the remaining vials: “[i]f [the vials] were working as they should, you should only need one or two or three vials” to make a working cell bank. A1055. But “[i]n this case, they used 12.” *Id.* He also testified that there were “way too few vials [left] to take that chance. You don’t take chances with a program like this, especially when it’s going to go into patients.” A1054. Dr. Lindell told the jury he considered the remaining vials; they believed him.

This case is not *Salt Meadows Homeowners Ass’n, Inc. v. Zonko Builders*. See Op. Br. p. 37 (citing 312 A.3d 195 (Del. 2024)). There, the Superior Court below granted remittitur because the jury improperly inflated damages by 30% and added \$500,000 that was not supported by the evidence. 312 A.3d at 200-01. Here, the jury adopted Dr. Lindell’s opinion, and its verdict falls squarely within the range the evidence supports. See A0035-37.

4. Yourway Waived Any Objection to Dr. Lindell’s Testimony.

Even if Yourway could show that Dr. Lindell’s testimony “was speculative” or “unreliable,” Yourway failed to preserve that objection. Op. Br. pp. 35, 37. Yourway did not object to Dr. Lindell’s testimony and opinions before or during trial. See *supra* § III.C.1; see also A0037.

V. The Court Properly Excluded Insurance Evidence.

A. Question Presented

Whether the Superior Court acted within its broad discretion when it excluded evidence of both parties' insurance?

Preserved: A0038-42; A0046-48; A0591-96; A0634-37; A1111-12; A1357-58.

B. Scope of Review

The Court will review for abuse of discretion or, if not fairly presented below, for plain error. *See supra* § II.B.

C. Merits of Argument

Yourway asked the Superior Court to show the jury a misleadingly cropped picture: that Vincerx carried its own insurance. The evidence was irrelevant to every claim and defense the jury considered.

Under the MSA, Yourway accepted all risk of loss: it agreed to (i) “use prudence and reasonable care in the use, handling, storage, [and] transportation” of the Cell Banks (A1365 § 6.5); (ii) perform all Services “in accordance with the highest prevailing industry standards” (A1363 § 3.1); (iii) “take such measures as are required to protect the Materials...from loss, damage and theft at all stages of the Services” (A1366 § 9.1); and (iv) maintain “adequate and appropriate Comprehensive General Liability...insurance, including without limitation,

professional liability insurance and general liability insurance” (A1368 § 11.4). Yourway had two insurance policies covering the shipment: a \$5 million policy and a \$500,000 policy. *See* A0593-94. While professing a need to explain “risk allocation” (A0610), Yourway adamantly opposed any evidence being presented to the jury about its own policies (*see* A0636-37).

The Superior Court declined to let one side tell half the story, and it evenhandedly excluded evidence of both parties’ insurance. *See* A0046-48. That ruling was faithful to the rules of evidence and fair to both sides.

1. The Evidence Was Irrelevant to Any Live Defense.

Vincerx’s insurance had nothing to do with this case. Yourway describes Vincerx’s insurance as being relevant to “risk allocation.” Op. Br. p. 40. In other words, Yourway wanted to use Vincerx’s insurance to suggest that Vincerx was comparably at fault for its own loss. Secondarily, Yourway wanted to inject into the jury’s damages deliberation the irrelevant fact that Vincerx carried separate coverage. Neither purpose connects to any defense. And both run headlong into the MSA, which imposed the duties to protect the Cell Banks and maintain insurance squarely on Yourway—not Vincerx. *See* A1363-69 §§ 3.1, 6.5, 9.1, 11.4.

To be admissible, evidence must be both “material” and “probative.” *Kiser v. State*, 769 A.2d 736, 740 (Del. 2001). This Court has said that ““evidence is material if it is offered to prove a fact that is of consequence to the action, and it has probative

value if it affects the probability that the fact is as the party offering the evidence asserts it to be.”” *Baird v. Owczarek*, 93 A.3d 1222, 1232 (Del. 2014) (cleaned up). Evidence that fails either prong “is not admissible.” D.R.E. 402. When a defense is dismissed, any evidence relevant only to that issue becomes inadmissible because it no longer supports a “valid defense” or helps the defendant avoid liability. *Baird*, 93 A.3d at 1233.

Delaware law has long recognized that the existence of insurance, standing alone, carries no probative value on a civil claim’s merits. *See* D.R.E. 411; *Pinkett v. Brittingham*, 567 A.2d 858, 862 (Del. 1989) (excluding mention of insurance to a jury because it “serves no purpose except to alert the jury to the presence of insurance”). That principle is also embedded in the collateral source rule, which is “‘firmly embedded’ in Delaware law” and recognizes the limited probative value of collateral sources of recovery (like insurance) and high risk for prejudice. *Miller v. State Farm Mut. Auto. Ins. Co.*, 993 A.2d 1049, 1053 (Del. 2010) (citation omitted); *see also id.* at 1051 n.4 & 1056.

The insurance evidence is not material to any valid defense. After the February 4 pretrial conference, the Superior Court dismissed most affirmative defenses, except four on whether the MSA or Bill of Lading controlled, plus that Yourway “is not an insurer of [Vincerx’s] goods” and that Vincerx failed to mitigate damages. A0077-81; *see also* B098. None of the surviving defenses makes

Vincerx's insurance material or probative. The defense concerning Yourway's status as an insurer of goods was ambiguous, ill-defined, and inapplicable based on the MSA's clear allocation of risk and responsibilities. *See* A1368 § 11.4. The mitigation defense asked whether Vincerx acted reasonably *after* breach, not whether it purchased insurance beforehand. *See McKinley v. Casson*, 80 A.3d 618, 627 (Del. 2013) ("The duty to mitigate...generally arises after a defendant has breached its duty."). The remaining defenses turned on what contract controlled, the MSA or an unsigned, undelivered Bill of Lading.

The insurance evidence also lacks probative value. Yourway argued that Vincerx's insurance was relevant to "risk allocation" and "damages and credibility." Op. Br. pp. 40, 41. Insurance evidence is inadmissible because it has no bearing on either theory. Yourway's "risk allocation" theory is comparative negligence by another name—a defense it never pleaded and waived. *See* Del. Super. Ct. Civ. R. 8(c); A0662-63; B035-37. And the MSA placed the insurance obligation on Yourway, not Vincerx. *See* A1368-69 § 11.4. Yourway's "damages and credibility" theory fares no better: both sides agreed the proper measure was replacement cost. *See* A0990-92; A1187-88.

2. Rule 403 Independently Required Exclusion.

Relevance aside, Rule 403 independently supports exclusion. Evidence is not admissible where its probative value is substantially outweighed "by the danger of

confusing the issues or misleading the jury.” *Kiser*, 769 A.2d at 741. Even if Vincerx’s insurance carried some sliver of probative value, the Superior Court acted well within its discretion in finding that value substantially outweighed by unfair prejudice and the risk of confusing the jury. *See* D.R.E. 403.

The Superior Court properly found that evidence of Vincerx’s insurance was “way too prejudicial” and “extremely much, much prejudicial.” A0047; A0048. It was right. Telling a jury that a plaintiff carries insurance invites it to shirk its duty and withhold recovery on the assumption that there is some other source of recovery. That is precisely what the rules of evidence forbid. *See Pinkett*, 567 A.2d at 862; *see also* D.R.E. 411; *Wright v. Christiana Care Health Servs., Inc.*, 2025 WL 1166976, at *2 (Del. Super. Apr. 22, 2025).

The evidence was also misleading, as it stands in contrast to Yourway’s obligations under the MSA. Additionally, Vincerx’s insurer denied the claim under a policy exclusion for temperature excursions—the exact loss Yourway caused—so any suggestion that insurance made Vincerx whole would have been not only prejudicial but false. *See* A0593-94.

Yourway’s authorities confirm the point. *See* Op. Br. pp. 39-40. *Byborg* and *Payne* establish only the unremarkable proposition that insurance may sometimes be admitted for a purpose other than proving fault; neither case sanctions the one-sided, collateral-source-adjacent use Yourway proposed here. *See Byborg Enters. S.A. v.*

Vertex, Inc., 2025 WL 1911338, at *5 (Del. Super. July 11, 2025); *Payne v. Home Depot*, 2009 WL 659073, at *4 (Del. Super. Mar. 12, 2009). At most, they show that the Superior Court could have admitted the evidence for a limited, relevant purpose—not that it was *required* to. Abuse-of-discretion review asks whether the trial court’s choice was arbitrary, not whether a different court might have chosen differently. The Superior Court made the correct decision.

3. The Ruling Caused No Prejudice.

The Superior Court’s ruling cut both ways: it excluded Vincerox’s and Yourway’s insurance. *See* A0659. Rather than open the door to a mini-trial on insurance coverage, the Superior Court closed it on everyone. Keeping insurance out of the case was a paradigmatic, fair exercise of discretion, not an abuse of it.

Nor did the exclusion disarm Yourway. The Superior Court permitted Yourway to argue about the Bill of Lading, its limitation of liability, and that Vincerox did not declare a higher value. *See* A0655-56. That was Yourway’s primary argument at trial, but it failed to support that argument with evidence. A ruling that leaves a party free to make its argument, minus irrelevant and prejudicial matter, cannot supply the significant prejudice needed to unsettle a jury’s verdict. *See Phelps v. West*, 2018 WL 3934946, at *7 (Del. 2018) (Table) (reciting that this Court may order new trial only if prejudice is significant enough to deny appellant fair trial).

VI. The Court Properly Allowed Dr. Izumi's Testimony.

A. Question Presented

Whether the Superior Court abused its discretion in allowing Dr. Izumi to testify when she was timely disclosed as an expert and provided fact testimony?

Preserved: A0178-80; A0237-63; A0787-93; B076-77; B084-85.

B. Scope of Review

This Court will review for abuse of discretion or, if not fairly presented below, for plain error. *See supra* § II.B.

C. Merits of Argument

1. Dr. Izumi Was a Properly Disclosed Expert.

Vincerx timely identified Dr. Izumi as an expert and served a corresponding report. *See* A0178-80 (the “Expert Disclosure”); A0237-55 (the “Izumi Report”); *see also* B076-77 & B084-85 (interrogatory responses identifying Dr. Izumi as expert). Still, Yourway seeks reversal because Dr. Izumi did “not produc[e] an expert report.” Op. Br. p. 44. That argument cannot be squared with the record.

Pretrial expert disclosures “need not state ‘magic words’ for an expert to be able to testify on a certain issue.” *Phelps*, 2018 WL 3934946, at *7. A party must identify each expert expected to testify, “state the substance of the facts and opinions,” and provide “a summary of the grounds for each opinion.” Del. Super. Ct. Civ. R. 26(b)(4)(A)(i). The linchpin is whether the “prior disclosures” and expert

report “as a whole” give adequate “notice to the opposing party as to the sort of expert opinion that the witness would provide at trial.” *Phelps*, 2018 WL 3934946, at *7.

Dr. Izumi is an expert in biologics and small molecules like VIP943. *See* B114-17; A0791. The Expert Disclosure identified Dr. Izumi as a testifying expert on VIP943’s “demonstrated promising efficacy” and “highly favorable safety profile in clinical trials.” A0180. Vincerx served the Izumi Report, describing VIP943’s early results, efficacy, and safety, and providing the bases for her opinion. *See* A0238; A0242-55. Vincerx also served discovery responses identifying Dr. Izumi as a “[l]itigation [e]xpert” with “[k]nowledge of the Cell Banks and their value to Vincerx.” B049; *see also* B076-77; B084-85.

Vincerx satisfied every obligation: “(i) a timely identification of [her] role as an expert; and, (ii), a timely disclosure of [her] opinions and the bases for [her] opinions.” *Turner v. Del. Surgical Grp., P.A.*, 67 A.3d 426, 429 (Del. 2013) (citation omitted). On this record, Yourway cannot show the Superior Court acted arbitrarily in allowing Dr. Izumi to testify.

2. Yourway Never Timely Challenged Dr. Izumi’s Testimony.

Yourway neither sought to exclude Dr. Izumi’s testimony *in limine* nor properly objected at trial. Indeed, Yourway concedes it “did not contest Dr. Izumi’s

qualifications to provide expert testimony.” Op. Br. p. 45. Its quarrel with the Izumi Report’s substance fails on the merits and was waived.

“[A] party challenging expert evidence on *Daubert* grounds must do so...timely.” *Beard Rsch., Inc. v. Kates*, 8 A.3d 573, 593 (Del. Ch. 2010), *aff’d sub nom. ASDI, Inc. v. Beard Rsch., Inc.*, 11 A.3d 749 (Del. 2010). Otherwise, the challenge is waived. *See id.* at n.119. And an appellant may not raise an issue for the first time on appeal. *See, e.g., Koutoufaris*, 604 A.2d at 394.

Yourway filed no *Daubert* challenge and did not challenge the Izumi Report’s substance at trial. When Yourway raised its narrow objection, Vincerox explained that “Dr. Izumi was identified as an expert in this case, and there was no motion to preclude her testimony or limit her testimony.” A0793. The Superior Court agreed: “Mr. Bellew, if you didn’t object, I’m not going to sit here now during a trial [in] which she is going to testify” and bar her. *Id.*

Yourway did not preserve the issue during trial. It points to four instances in which it says Dr. Izumi “testif[ied] as an expert” (Op. Br. p. 46), but Yourway did not object to the relevant questions or answers. *See* A1228-30 (objecting only to “reckless”); A1231; A1234; A1236; A1242. The only objections to Dr. Izumi’s expert status were narrow—her CV’s introduction (*see* A0787-89) and her testimony about experience as an expert (*see* A0792-93)—both resting on the demonstrably

mistaken premise that she was “here as a fact witness” (A0788). The Superior Court rejected that argument, and rightly so. *Id.*

Yourway’s remaining complaint—that the Izumi Report was substantively insufficient—surfaces for the first time on appeal. Never having raised that objection below, Yourway cannot raise it now. *See Koutoufaris*, 604 A.2d at 394.

3. Dr. Izumi’s Explanation of Why Vincerox Did Not Restart from the Samsung Vials Was Fact Testimony.

Yourway failed to identify a single instance in which Dr. Izumi testified as an expert.

An expert may take the stand as a fact witness and testify to what she personally perceived and did. *See* D.R.E. 701. Delaware has long allowed such testimony “as long as a foundation is laid ‘that the witness’[s] testimony is rationally based on [her] own perception of and personal experience with the substance and not on scientific, technical or other specialized knowledge.’” *S’holder Representative Servs. LLC v. Alexion Pharms., Inc.*, 2024 WL 4052343, at *7 (Del. Ch. Sept. 5, 2024) (first alteration in original) (quoting *Campbell v. State*, 974 A.2d 156, 168-69 (Del. 2009)). A fact witness is permitted to give her “personal perception or contemporaneous thoughts on the matter at issue.” *Id.* at *9.

Dr. Izumi testified as Vincerox’s leader confronting a catastrophic loss. That is plain from the excerpts Yourway identifies. She explained that Vincerox considered Dr. Burger’s proposed method and determined it was not viable: it “took

12 vials of master cell bank to recreate the working cell bank that had been destroyed,” “[t]welve times more vials than is typically used,” leaving “only eight vials” and “a big risk.” A1228. Dr. Izumi was “the only actual witness who has any firsthand knowledge [or] experience with the master cell banks that remained in South Korea at Samsung.” A1227. Those are facts, not expert opinions.

Yourway’s remaining grievances collapse just as quickly. Dr. Izumi merely observed that Dr. Burger “omitted the fact that [Vincerx] would have no research cell bank” under “his method.” A1231. Yourway *itself* elicited the other testimony with which it now takes issue. *See* Op. Br. p. 46; A1234; A1236; A1242. Yourway’s own expert confirmed that he “relied on Dr. Izumi’s testimony” (A1201) and that Dr. Izumi was “the one who testified” from firsthand knowledge “as to the condition and the suitability of those remaining eight vials” (A1202). Dr. Izumi’s account was fact testimony from the only firsthand witness. Allowing Vincerx’s CEO to tell the jury what she perceived and did was correct. This Court should affirm.

VII. Yourway’s Cumulative Error Claim Fails.

A. Question Presented

Whether the cumulative effect of the Superior Court’s purported errors requires a new trial?

Preserved: A1352-59. Vincerx also incorporates by reference the issues preserved *supra* §§ I-VI.

B. Scope of Review

“Cumulative error must derive from multiple errors that caused actual prejudice.” *Cooke v. State*, 338 A.3d 418, 475 (Del. 2025) (cleaned up). This Court weighs whether any errors, combined, “are ‘prejudicial to substantial rights [so] as to jeopardize the fairness and integrity of the trial process.’” *Id.* (alteration in original; citation omitted). Unpreserved cumulative error claims are reviewed “for plain error.” *Torres v. State*, 979 A.2d 1087, 1101 (Del. 2009).

C. Merits of Argument

Yourway did not argue cumulative error below, and the court did not err. Yourway’s “claim of cumulative error fails.” *Cooke*, 338 A.3d at 475.

First, Yourway did not preserve this issue. Its New Trial Motion argued only that “[t]he combined effects” of excluding “evidence relating to Plaintiff’s financial condition” and “insurance coverage” (A1348) should factor into “whether the verdict is against the weight of the evidence or excessive” (A1349). Yourway’s

cumulative error theory is far broader. *See* Op. Br. pp. 47-48. Plain error review thus applies. *See Torres*, 979 A.2d at 1101. That standard reaches only “‘basic, serious and fundamental’” defects that deprive a party “‘of a substantial right’” or “‘clearly show manifest injustice.’” *Smith v. Delaware State Univ.*, 47 A.3d 472, 479 (Del. 2012) (citation omitted). Yourway cannot meet that standard.

Second, there were “no individual errors,” so “the cumulative claim must fail.” *Ashley v. State*, 85 A.3d 81, 87 (Del. 2014). Yourway provided the unsigned Bill of Lading long after the Cell Banks’ destruction; that document could not supplant the MSA. *See* A0843-44. On damages, the Superior Court found Yourway “did not object to Dr. Lindell’s theory,” waiving the issue (A0037), and Yourway’s own expert used the same replacement cost methodology (*see* A0038). The court correctly barred evidence of Vincerox’s operational condition and insurance and found Yourway’s later arguments against these pretrial rulings “time-barred.” A0041. Indeed, Yourway told the jury the VIP943 program “was halted” through no “fault of the Defendant.” *Id.*

The Superior Court ensured a fair trial. This Court should protect the jury’s informed verdict from Yourway’s meritless claims of error and affirm.

CONCLUSION

For these reasons, the Superior Court's rulings and the jury's verdict should be affirmed.

Date: August 19, 2026

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