# Misrepresentation Must Be Material And Not Based On Mere Speculation

**May 24, 2017**

## Summary

This case involved an insurance claim that was denied based on an alleged misrepresentation in an application for insurance coverage related to the Uniform Conditions of Carriage and the existence of a "standard" Bill of Lading.

## The Application

C.H. Robinson Worldwide Inc. ("Robinson") retained KLM Carrier ("KLM") to transport food products by truck from Ajax to Calgary. The shipment was lost after a collision. Robinson claimed against KLM's insurer, Northbridge Commercial Insurance Corporation ("Northbridge") pursuant to the insurance contract between Robinson and KLM. Under the insurance contract KLM was required to maintain insurance coverage and was liable for the full value of any shipments lost or destroyed. Northbridge ultimately refused to pay the claim, arguing that KLM's policy was void for misrepresentation.

At the hearing of an application brought by Robinson, the Judge held that KLM's insurance policy was void because KLM made a material misrepresentation to Northbridge. KLM answered "No" to a survey question on its policy renewal asking whether KLM had any contracts with shippers that stipulated limits of liability that were higher than on the applicant's standard Bill of Lading (the "Question"). The application Judge held that the answer to the Question was a material misrepresentation because the contract between Robinson and KLM provided liability for the full value of the shipment lost, and this exceeded the limited liability under the Uniform Conditions of Carriage pursuant to the *Carriage of Goods*, O. Reg. 643/05 ("Uniform Conditions of Carriage") regulation under the *Highway Traffic Act*, R.S.O. 1990, c. H.8, which would have otherwise governed because KLM did not have a standard Bill of Lading. The application Judge concluded that the misrepresentation by KLM was material because it likely reduced the premium KLM paid for coverage.

## The Appeal

The Court of Appeal held that the Uniform Conditions of Carriage were irrelevant in deciding whether KLM made a misrepresentation. The Question focused not on the Uniform Conditions of Carriage, but instead on KLM's standard Bill of Lading, if one existed. Northbridge drafted the survey questions for the policy renewal and therefore had to accept the consequences of not referencing the Uniform Conditions in Carriage in its survey. A standard Bill of Lading was not produced and therefore, Northbridge could not prove a misrepresentation.

In the absence of the standard Bill of Lading, Northbridge could not satisfy the court that KLM's answer to the Question constituted a misrepresentation. Robinson's appeal was therefore allowed.

By

Robin Squires, Meagan Patry

Expertise

Insurance Claim Defence

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## BLG Offices


**Calgary**
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
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**Ottawa**
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

**Vancouver**
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

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F 604.687.1415

**Montréal**
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

**Toronto**
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749



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