

COURT OF APPEAL FOR ONTARIO

CITATION: Panasonic Canada Inc. v. XL Specialty Insurance Company, 2026

ONCA 633

DATE: 20260909

DOCKET: COA-25-CV-1174

Gillese, Madsen and Pomerance JJ.A.

BETWEEN

Panasonic Canada Inc.

Applicant (Respondent)

and

XL Specialty Insurance Company

Respondent (Appellant)

Marcus B. Snowden and Dean P. Barlett, for the appellant

Jeffrey A. Brown and Dylan Cox, for the respondent

Heard: April 1, 2026

On appeal from the judgment of Justice Janet Leiper of the Superior Court of Justice, dated July 30, 2025, with reasons reported at 2025 ONSC 4407.

Gillese J.A.:

I. OVERVIEW

[1] Panasonic Canada Inc. (“**Panasonic**”) was insured by XL Specialty Insurance Company (“**XL**”) under its cyber risk policy (the “**Base Policy**”).

[2] After suffering a ransomware attack on its network, Panasonic made an indemnity claim for the costs it incurred in responding to the attack (the “**Claim**”). It maintained that the \$1.5 million USD (“**\$1.5M USD**”) retention in the Base Policy applied. However, XL maintained that Endorsement #023 to the Base Policy, which has a \$3 million USD (“**\$3M USD**”) retention, applied. Endorsement #023 amended the Base Policy in respect of coverage for cyber-extortion reimbursement and ransomware events.

[3] Panasonic brought an application for a declaration that its Claim was subject to the \$1.5M USD retention (the “**Application**”).

[4] By judgment dated July 30, 2025 (the “**Judgment**”), the application judge found in Panasonic’s favour, declared the applicable retention was \$1.5M USD, and ordered XL to pay Panasonic the agreed-on amount that exceeded the retention.

[5] XL appeals.

[6] In my view, the ransomware event provisions in Endorsement #023 apply to the Claim. Accordingly, I would allow the appeal and declare that the applicable retention is \$3M USD. Because the agreed-on amount of Panasonic’s Claim is less than the \$3M USD retention, it is wholly self-insured. Consequently, I would also dismiss the Application.

II. BACKGROUND

[7] Panasonic sells technology products and services to businesses and consumers. It is an affiliate of Panasonic Corporation of North America (“**Panasonic North America**”).

[8] In February 2022, Panasonic suffered a cyber security incident (the “**Incident**”): persons outside of the company had obtained unauthorized access to its network. Malware had been sent to a Panasonic employee and, when the employee downloaded and opened the infected file, the virus entered Panasonic’s system network. Shortly after accessing Panasonic’s network, the attackers downloaded confidential and sensitive files from it and posted them online. They then posted a message asking Panasonic to contact them. The message warned that data had been encrypted and Panasonic should not try to recover it independently, but offered to decrypt two files free of charge, implying a ransom was required to release the balance. Panasonic’s company policy was to not negotiate with attackers, so it did not respond to the demand.

[9] Instead, Panasonic immediately hired several companies and individuals to assist it in responding to the Incident. Among other things, Panasonic: hired a company that specializes in responding to cyber-attacks; obtained help from law firms; repaired its network; purchased replacement laptops to prevent reinfection; and paid significant amounts in employee overtime required to manage the fallout from the attack.

[10] Panasonic sought indemnity under the Base Policy provisions governing first party coverages, third party liability coverages, and data breach response and crisis management coverage. Coverage under the Base Policy is subject to a “retention” – which functions as a deductible – of \$1.5M USD. The parties agreed that the Panasonic Claim was for approximately \$2 million USD.

[11] Panasonic did not pay a ransom nor did it claim indemnity for cyber-extortion expenses.

[12] Panasonic did not seek coverage under Endorsement #023. Endorsement #023 is entitled “Ransomware Sublimit Endorsement”. It provides that the Base Policy is “amended” to address coverage for cyber-extortion reimbursement and ransomware events. Coverage for each is subject to a retention of \$3M USD.

[13] The parties disagreed over which retention applied to the Claim – \$1.5M USD or \$3M USD. Panasonic maintained it had established its Claim under the Base Policy and, therefore, was subject to a retention of \$1.5M USD. XL maintained the \$3M USD retention applied because Endorsement #023 governs ransomware events and the Claim was connected to a ransomware event.

[14] Panasonic then launched this proceeding, seeking a declaration that its Claim was subject to the \$1.5M USD retention.

III. THE RELEVANT POLICY PROVISIONS

[15] The relevant provisions in the Declaration Page of the Base Policy are set out below.

DECLARATION PAGE

FOR PURPOSES OF THE *INSURANCE COMPANIES ACT (CANADA)*, THIS DOCUMENT WAS ISSUED IN THE COURSE OF XL SPECIALTY INSURANCE COMPANY'S BUSINESS IN CANADA.

POLICY NUMBER:	CTP0910005-03	INSURANCE COMPANY:	XL Specialty Insurance Company 100 King Street West, Suite 3020 Toronto, Ontario Canada M5X 1C9		
RENEWAL OF:	CTP0910005-02				
ITEM 1. NAMED INSURED					
Named Insured		Panasonic Canada Inc.			
Address		5770 Ambler Drive Mississauga, Ontario L4W 2T3			
ITEM 2. POLICY PERIOD					
Effective Date		April 1, 2021	Expiration Date		April 1, 2022
ITEM 3. COVERAGE SCHEDULE					
Combined Limits - Combined Policy Aggregate Limit				\$5,000,000 USD	
THIRD PARTY LIABILITY COVERAGES		LIMIT	RETENTION		RETRO DATE
Technology Products and Services		\$5,000,000 USD	\$1,500,000 USD		December 6, 2017
Professional Services		N/A	N/A		N/A
Media		\$5,000,000 USD	\$1,500,000 USD		April 1, 2014
Privacy and Cyber Security		\$5,000,000 USD	\$1,500,000 USD		July 10, 2012
Privacy Regulatory Defense, Awards and Fines		\$5,000,000 USD	\$1,500,000 USD		July 10, 2012
FIRST PARTY COVERAGES		LIMIT		WAITING PERIOD	
Business Interruption and Extra Expense	Loss of Business Income	\$5,000,000 USD		12 Hours	
	Extra Expense	LIMIT		RETENTION	
		\$5,000,000 USD		\$1,500,000 USD	
Data Recovery		\$5,000,000 USD		\$1,500,000 USD	
Cyber-Extortion and Ransomware		\$5,000,000 USD		\$3,000,000 USD	

Data Breach Response and Crisis Management Coverage	\$5,000,000 USD	\$1,500,000 USD
ITEM 4. PREMIUM		\$40,000 USD
...		
ITEM 8. ENDORSEMENTS ATTACHED AT POLICY ISSUANCE		
Endorsement Number	Endorsement Form Number	Endorsement Title
...		
23	TRD 835-CN 0421	Ransomware Sublimit Endorsement

[16] Endorsement #023 is set out in full in Schedule A to these reasons. Its most relevant provisions are set out below.

ENDORSEMENT #023

This endorsement:
effective 12:01 a.m., April 1, 2021,
forms a part of Policy No. CTP0910005-03,
issued to PANASONIC CANADA INC.,
by XL SPECIALTY INSURANCE COMPANY.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RANSOMWARE SUBLIMIT ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that the Policy is amended as follows:

- The following Endorsement Schedule is added to the Policy:

ENDORSEMENT SCHEDULE

COVERAGE	SUBLIMIT	CO-INSURANCE %		RETENTION	WAITING PERIOD
		INSURED	INSURER		
Cyber-Extortion Reimbursement	\$5,000,000 USD	0%	100%	\$3,000,000 USD	N/A
Ransomware Event	\$5,000,000 USD	0%	100%	\$3,000,000 USD	12 hours

2. Insuring Agreement I.B.3. Cyber-Extortion and Ransomware is deleted and replaced with the following:

3. Cyber-Extortion Reimbursement

The Insurer will reimburse the Insured for cyber-extortion expenses in excess of the applicable retention that the Insured incurs directly resulting from and in response to a cyber-extortion threat.

...

4. Definitions IV.I. Cyber-extortion Threat is deleted and replaced with following:

- I. Cyber-extortion Threat

Any threat communication from a third party or rogue employee related in any way to an actual or potential threat to start or continue to:

1. Disrupt the network to impair business operations of the Insured Company;
 2. Alter, damage, or destroy data stored on the network;
 3. Use the network to transmit malware to third parties;
 4. Deface the website;
 5. Access, release, or otherwise misuse data, including personally identifiable information, protected health information, or confidential business information, stored or previously stored on the network;
 6. Refuse to return data stolen from the network;
 7. Prevent access to the network or data by using encryption and withholding the decryption key; or
 8. Disclose any fact relating to the foregoing to the public or to any third party.

5. Solely for the purposes of this Endorsement, the following new definitions shall apply:

- Threat Communication

A threat made demanding or seeking payment and/or other consideration in exchange for, or in connection with, the prevention, elimination, mitigation or removal of a threat against the Insured or

any communications intended to initiate such communications with the Insured.

- Ransomware Event Loss

Any and all loss for, arising out of, in connection with, or in any way involving a cyber-extortion threat, regardless whether such loss consists of damages, claim expenses, regulatory damages, first party costs, or any other amounts paid by the Insurer under the Policy.

...

15. To the extent any provision contained in this Endorsement is deemed inconsistent with any other provision of this Policy, the provisions of this Endorsement shall control.

IV. THE REASONS FOR DECISION BELOW

[17] The application judge found that (i) Panasonic had established its Claim for coverage under the Base Policy such that a retention of \$1.5M USD applied to its losses; and (ii) XL had not met its onus to show that the limitation in the form of a higher retention amount of \$3M USD applied. She reasoned as follows.

[18] In relation to clause 5 of Endorsement #023, the application judge said the following, at para. 61 of her reasons:

I give effect to the clear language in paragraph 5, that these definitions are “Solely for the purposes of this Endorsement”. This is not ambiguous. This means that these definitions apply “solely” for the purposes of Endorsement 23.

[19] The application judge then stated that because Panasonic did not look to Endorsement #023 for its grant of coverage, “one must look to the language in the balance of the policy to assess the availability of coverage”. She pointed out that

on the definitions in the Base Policy, Panasonic suffered a “First party incident”, which is defined as a “cyber security breach, cyber extortion threat or data breach”. Further, Panasonic claimed under the provisions for third party liability coverage, data breach response and crisis management costs resulting from a “cyber security breach”, and first party coverage under the headings of “Business interruption and extra expenses” and “data recovery”.

[20] The application judge noted that in each of the claimed areas, the lower retention rate applied, and Panasonic had made no claim for any expenses that might also be covered under Endorsement #023. She said there was nothing in the Base Policy or Endorsement #023 that required Panasonic to have recourse only to Endorsement #023 in the event of a “threat communication”, a “ransomware event loss” or “attempted cyber-extortion”.

[21] The application judge then referred to case law involving motor vehicle claims in which the insured had the choice to make the more advantageous claim to themselves and their family members, absent a clear limitation from doing so in the policy.

[22] The application judge concluded that the coverages attracted a retention amount of \$1.5M USD and, because Endorsement #023 did not apply to the grants of coverage, neither did its higher retention amount of \$3M USD.

V. THE ISSUE

[23] The appellant raises a single issue on appeal: does Endorsement #023 – with its \$3M USD retention – apply to Panasonic’s Claim?

[24] Before addressing the issue, it is necessary to decide what standard this court is to apply in reviewing the decision below, a matter on which the parties are divided.

VI. STANDARD OF REVIEW

The Parties’ Positions

XL

[25] Based on *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 S.C.R. 23, XL submits the issue is a legal question reviewable on a correctness standard. It makes two arguments in contending it has met the *Ledcor* factors. First, it maintains the issue is of precedential value because both the Base Policy and Endorsement #023 are copyrighted company standard forms issued in the United States and Canada, and there is a “dearth” of Canadian jurisprudence on the forms. Second, XL says there is no meaningful factual matrix specific to these parties that assists in the interpretation of the relevant policy provisions.

[26] Alternatively, XL submits that given the application judge's uncontested factual findings, she made extricable legal errors such that her interpretation remains reviewable on a correctness standard.

Panasonic

[27] Based on *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, Panasonic submits the application judge's interpretation of the policy provisions was a matter of contractual interpretation and, thus, would typically not be disturbed on appeal absent palpable and overriding error. Panasonic acknowledges that, on the *Sattva* approach, if the alleged error in interpretation raises an extricable error of law, the correctness standard of review applies. However, it contends that XL has failed to identify such an extricable error, and the application judge's reasons reveal none.

[28] Panasonic makes three arguments in support of its contention that XL cannot meet its burden to prove that the *Ledcor* factors apply.

[29] First, it says XL is in a similar position to the insurer in *908593 Ontario Limited. v. Atradius*, 2023 ONCA 156, 31 C.C.L.I. (6th) 1, where this court applied the *Sattva* deferential standard because the insurer provided "no evidence" its insurance policy was a standard form. Second, Panasonic says the XL base policy forms issued to Panasonic and Panasonic North America are not identical and that would be expected if they were standard form. Third, Panasonic relies on *Tien*

Lung Taekwon-Do Club v. Lloyd's, 2015 ABCA 46, 599 A.R. 39, to maintain that a “dearth” of jurisprudence on the provisions suggests a lack of precedential value.

[30] Alternatively, Panasonic maintains that, regardless of which standard of review applies, the application judge’s decision that Endorsement #023 does not apply to its Claim is correct.

Analysis

[31] In my view, XL has met its onus to show that the *Ledcor* exception applies. Accordingly, this court must apply the correctness standard when reviewing the application judge’s interpretation of the relevant policy provisions. A brief review of *Ledcor* provides useful context for the application of its factors.

[32] The policy in *Ledcor* was “all risks” property insurance. It contained an exclusion clause in which the cost of “making good faulty workmanship” was excluded. A contractor hired to clean the windows of a building scratched them and they had to be replaced. The insured made a claim for the cost of replacing the windows; the question for the court was whether the faulty workmanship exclusion applied.

[33] At first instance, the court found the exclusion clause was ambiguous and applied the *contra proferentem* principle to hold the insurer liable. The Alberta Court of Appeal reversed that decision. A further appeal to the Supreme Court of Canada was successful and the insurer was found liable.

[34] When the Supreme Court decided *Ledcor*, *Sattva* was the governing authority on the appellate standard of review on questions of contractual interpretation. *Sattva* holds that because contractual interpretation is a question of mixed fact and law, a deferential standard generally applies.

[35] However, in *Ledcor*, the Supreme Court pronounced that standard form contracts are an exception to the *Sattva* approach. At para. 24 of *Ledcor*, the court explains:

[W]here an appeal involves the interpretation of a standard form contract, the interpretation at issue is of precedential value, and there is no meaningful factual matrix that is specific to the parties to assist the interpretation process, this interpretation is better characterized as a question of law subject to correctness review.

[36] The Court goes on to note, at para. 28, that “[s]tandard form contracts are particularly common in the insurance industry”.

[37] In sum, *Ledcor* identifies two factors which determine whether the correctness standard of review applies to the interpretation of a contract: (1) where the interpretation of a standard form contract is of precedential value; and (2) there is no meaningful factual matrix specific to the parties that assists in the interpretative process: at para. 46.

[38] In my view, XL has satisfied its onus on both factors.

***Ledcor* – the first factor**

[39] There are two related aspects to the first factor: whether the contract to be interpreted is a standard form contract and whether its interpretation is of precedential value.

[40] On the issue of standard form, the evidence is that XL copyrighted both the Base Policy and Endorsement #023 and it uses those forms throughout the United States and Canada. A comparison of Endorsement #023 with Endorsement #027 of the Panasonic North America policy shows they are identical. If there are differences in the base policy forms, they appear to be minor. In any event, the focus of the interpretative process in this case is Endorsement #023 and, to reiterate, its wording is identical to that in Endorsement #027 of the Panasonic North America policy.

[41] In my view, the evidence that the forms are copyrighted and used throughout the United States and Canada, and that identical forms of Endorsement #023 were used both for Panasonic and Panasonic North America, satisfies XL's burden to prove that the policy is a standard form contract. Accordingly, this case is distinguishable from *Atradius*, in which this court found at para. 6, "[t]here is simply no evidence that the Policy is a standard form contract as that term is used in *Ledcor*".

[42] *Ledcor* offers guidance on when the interpretation of a standard form contract is precedential. At para. 39, it states that it would be undesirable for courts

to interpret identical or very similar standard form provisions inconsistently without good reason. It also points to the mandate of appellate courts, which is to ensure consistency of the law, a matter which is advanced by permitting appellate courts to review the interpretation of standard form contracts for correctness. At para. 40, the Court stresses that consistency is particularly important in the interpretation of standard form insurance contracts because both insurance companies and customers benefit from certainty and predictability.

[43] These considerations – the need for consistency and its ensuing benefits of certainty and predictability – apply in this case. We have been advised that this is the first case in which Endorsement #023 has been interpreted. Applying a correctness standard of review to the decision below will ensure that future courts will not arrive at different results on the same or similar language.

[44] I conclude on the first factor by indicating I do not find *Tien Lung Taekwon-Do Club* of assistance in deciding whether Endorsement #023 is of precedential value for three reasons. First, that case was decided before *Ledcor*. Second, the policy in question was interpreted for a very different legal reason, namely, whether an insurer owed a duty to defend the insured in a court action. Third, the statement at para. 19 of *Tien Lung Taekwon-Do Club* relied on by Panasonic does not suggest that a paucity of Canadian jurisprudence means a lack of precedential value. Rather, in that statement, the Alberta Court of Appeal is simply noting that

the parties were unable to provide any Canadian jurisprudence dealing with the provision in question.

***Ledcor* – the second factor**

[45] The second *Ledcor* factor requires the court to consider whether there is anything in the factual matrix specific to these parties that bears on the interpretation process. In my view, there is not – and I do not understand Panasonic to argue to the contrary.

[46] Paragraphs 31-32 of *Ledcor* offer guidance on this factor. They explain that the surrounding circumstances to the formation of a standard form contract remain relevant, despite the application of a correctness standard of review. Such circumstances include the purpose of the contract, the nature of the relationship it creates, and the market or industry in which it operates. However, the Court goes on to explain that while relevant, the surrounding circumstances play less of a role in the interpretation process, tend not to be specific to the particular parties, and are usually the same for everyone who may be a party to a particular standard form contract.

[47] These comments apply to this case. Cybersecurity breach events and self-insured retentions are not unique to the parties to this proceeding, a consideration that underscores the need for the courts to interpret Endorsement #023

consistently. Hence, the second *Ledcor* factor also supports a correctness standard of appellate review in this case.

Conclusion on the standard of review

[48] If I am incorrect and the *Sattva* approach governs, the correctness standard nonetheless applies because, as I explain below, the application judge made extricable legal errors in her interpretation of the relevant policy provisions.

VII. ENDORSEMENT #023 APPLIES TO THE CLAIM

The Parties' Positions

XL

[49] XL's submission can be summarized as follows. The Base Policy includes Endorsement #023. Endorsement #023 amends the Base Policy in respect of cyber-extortion and ransomware events. XL concedes that Panasonic made no claim relating to the cyber-extortion threat. However, it submits that "ransomware event loss" is broadly defined in clause 5 of Endorsement #023 and applies even though Panasonic made no claim for cyber-extortion expenses. It maintains that the court below erred in interpreting clause 5 of Endorsement #023 in isolation from the balance of the endorsement and from the Base Policy of which it forms a part. XL submits that when the policy as a whole is given effect, Endorsement #023 and its \$3M USD retention applies to the Claim.

Panasonic

[50] Panasonic's submission can be summarized as follows. It is insured for the losses set out in the Claim under separate coverage grants, each of which is subject to a \$1.5M USD retention. The only part of the Base Policy that refers to a \$3M USD retention is Endorsement #023, which includes a definition of "ransomware event loss" in clause 5. The application judge properly interpreted clause 5 to mean that a loss would only be considered a ransomware event loss if Panasonic made a claim under Endorsement #023. Panasonic did not make its Claim under Endorsement #023 and was not required to do so. Because XL failed to prove the higher retention in Endorsement #023, the only applicable retention is \$1.5M USD in the Base Policy.

Analysis

[51] I accept XL's submission. Although the Claim was not tendered pursuant to Endorsement #023, it relates to a ransomware event loss and, therefore, Endorsement #023 and its \$3M USD retention applies. In finding to the contrary, the application judge erred in law by interpreting clause 5 of Endorsement #023 without considering its full terms within the context of the Base Policy as a whole.

[52] In *Emond v. Trillium Mutual Insurance Company*, 2026 SCC 3, 509 D.L.R. (4th) 583, the Supreme Court recently addressed the relationship between base insurance policies and endorsements. The Court noted that endorsements are not self-contained, standalone contracts, stating that while some endorsements may

be comprehensive on the subject of the particular coverage provided in them, they are still “built on the foundation of the policy”: *Emond*, at para. 36. In short, *Emond* reminds us that endorsements must be read in conjunction with the policy.

[53] Thus, the question becomes, how is Endorsement #023 to be interpreted in light of the Base Policy? Endorsement #023 expressly answers this question, beginning with the following statement at the top of its first page. Just above its title, “Ransomware Sublimit Endorsement” (the “**Title**”), Endorsement #023 states: “THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.” [Capitals in the original.]

[54] Endorsement #023 goes on to explain that it “changes” the Base Policy by amending it. This can be seen in the preamble sentence that immediately follows the Title, which provides: “In consideration of the premium charged, it is understood and agreed that this Policy is amended as follows...” [emphasis added].

[55] Clause 1 of Endorsement #023 addresses the overriding purpose of Endorsement #023, stating that the “Endorsement Schedule is added to the [Base] Policy” (emphasis added). The Endorsement Schedule shows that coverage for cyber-extortion reimbursement and ransomware events has been changed, making each subject to a \$3M USD retention. Clause 1 is critical to interpreting Endorsement #023, so it is set out again below.

1. The following Endorsement Schedule is added to the Policy:

ENDORSEMENT SCHEDULE

COVERAGE	SUBLIMIT	CO-INSURANCE %		RETENTION	WAITING PERIOD
		INSURED	INSURER		
Cyber-Extortion Reimbursement	\$5,000,000 USD	0%	100%	\$3,000,000 USD	N/A
Ransomware Event	\$5,000,000 USD	0%	100%	\$3,000,000 USD	12 hours

[56] Clause 2 deletes I.B.3. of the Base Policy – which defines First Party Coverage for Cyber-Extortion and Ransomware – and replaces it with the following:

The Insurer will reimburse the Insured for cyber-extortion expenses in excess of the applicable retention that the Insured incurs directly resulting from and in response to a cyber-extortion threat.

[57] Clause 3 deletes and replaces the definitions of Cyber-extortion Expenses in IV.H. of the Base Policy.

[58] Clause 4 deletes the definition in IV.I. of the Base Policy for Cyber-extortion Threat and replaces it with the following:

I. Cyber-extortion Threat

Any threat communication from a third party or rogue employee related in any way to an actual or potential threat to start or continue to:

1. Disrupt the network to impair business operations of the Insured Company;
2. Alter, damage, or destroy data stored on the network;
3. Use the network to transmit malware to third parties;

4. Deface the website;
5. Access, release, or otherwise misuse data, including personally identifiable information, protected health information, or confidential business information, stored or previously stored on the network;
6. Refuse to return data stolen from the network;
7. Prevent access to the network or data by using encryption and withholding the decryption key; or
8. Disclose any fact relating to the foregoing to the public or to any third party.

[59] Clause 5 of Endorsement #023 contains new definitions of “Threat Communication” and “Ransomware Event Loss” and states that the definitions shall apply “Solely for the purposes of this Endorsement”. Clause 5 of Endorsement #023 is set out again now for ease of reference.

5. Solely for the purposes of this Endorsement, the following new definitions shall apply:
 - Threat Communication

A threat made demanding or seeking payment and/or other consideration in exchange for, or in connection with, the prevention, elimination, mitigation or removal of a threat against the Insured or any communications intended to initiate such communications with the Insured.
 - Ransomware Event Loss

Any and all loss for, arising out of, in connection with, or in any way involving a cyber-extortion threat, regardless whether such loss consists of damages, claim expenses, regulatory damages, first party costs, or any other amounts paid by the Insurer under the Policy.

[Emphasis added.]

[60] The application judge interpreted the words “Solely for the purposes of this Endorsement” in clause 5 as meaning that the definitions in clause 5 apply only to

claims brought under Endorsement #023. That interpretation cannot be correct for three reasons.

[61] First, the application judge interpreted clause 5 without considering the clear and unambiguous meaning of clauses 1, 2, 3, and 4 of Endorsement #023. Clause 1 changes coverage for cyber-extortion reimbursement and ransomware events from that which is in the Base Policy to that which is in the Endorsement Schedule. Clauses 2 through 4 change the definitions in the Base Policy relating to cyber-extortion, ransomware, and cyber-extortion threat. Read together, clauses 1 through 4 are unambiguous: Endorsement #023 governs all claims for cyber-extortion and ransomware events.

[62] Second, the definition of “Threat Communication” in clause 5 includes a threat made in connection with the removal of a threat against the insured, and “Ransomware Event Loss” is defined to include “Any and all loss... in connection with, or in any way involving a cyber-extortion threat”. That reference to cyber-extortion threat requires that clause 5 be read in conjunction with clause 4, where “cyber-extortion threat” is defined as “any threat communication from a third party ... related in any way to an actual or potential threat to start or continue to” perform actions from an enumerated list.

[63] Applying those definitions, it is clear that the attackers’ communication to Panasonic falls within the meaning of threat communication and ransomware

event loss in clause 5. It also falls within a number of the cyber-extortion threats listed in clause 4, including: to disrupt the network (#1); to alter, damage or destroy data stored on the network (#2); to misuse data stored on the network (#5); and, to prevent access to the network or data by using encryption (#7). Accordingly, while Panasonic did not pay a ransom nor claim for costs directly incurred in relation to the ransom demand, its Claim was for ransomware event loss.

[64] Because the Claim falls within the meaning of Ransomware Event Loss in Endorsement #023, it is governed by Endorsement #023. Therefore, it matters not that Panasonic made its Claim pursuant to the Base Policy.

[65] Third, the application judge erred in failing to consider clause 15 of Endorsement #023. Clause 15 states that “To the extent any provision contained in this Endorsement is deemed inconsistent with any other provision of this Policy, the provisions of this Endorsement shall control”. In short, clause 15 dictates that the provisions of Endorsement #023 govern all claims arising from a cyber-extortion threat or ransomware event loss, even if they conflict with provisions in the Base Policy. Consequently, because the Claim is a ransomware event loss within the definition of clause 5, it is subject to a retention of \$3M USD.

[66] In conclusion, when correctly interpreted, Endorsement #023 applies to the Claim, thus making it subject to the \$3M USD retention. Because the agreed-on

amount of the Claim is less than \$3M USD, the Claim is wholly self-insured and the Application should be dismissed.

VIII. DISPOSITION

[67] For these reasons, I would allow the appeal with costs to XL fixed at the agreed-on sum of \$21,000, all inclusive. In accordance with XL's request, I would also order that the following changes be made to the Judgment:

- (i) delete the wording of para. 2(a) of the Judgment and substitute a declaration that the \$3M USD Endorsement 23 Ransomware Event retention applies to the Panasonic Claim as ransomware event loss; and
- (ii) delete the wording of para. 2(b) of the Judgment and substitute the following: the Panasonic Claim in the agreed amount is a loss wholly self-insured within the said retention amount.

[68] I would further order that paras. 3, 4, and 5 of the Judgment be deleted and the Application dismissed with costs to XL in the agreed-on sum of \$88,000, all inclusive.

Released: September 9, 2026 "E.E.G."

"E.E. Gillese J.A."
"I agree. L. Madsen J.A."
"I agree. R. Pomerance J.A."

Schedule A**ENDORSEMENT #023**

This endorsement:
effective 12:01 a.m., April 1, 2021,
forms a part of Policy No. CTP0910005-03,
issued to PANASONIC CANADA INC.,
by XL SPECIALTY INSURANCE COMPANY.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT
CAREFULLY.

RANSOMWARE SUBLIMIT ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that the Policy is amended as follows:

1. The following Endorsement Schedule is added to the Policy:

ENDORSEMENT SCHEDULE

COVERAGE	SUBLIMIT	CO-INSURANCE %		RETENTION	WAITING PERIOD
		INSURED	INSURER		
Cyber-Extortion Reimbursement	\$5,000,000 USD	0%	100%	\$3,000,000 USD	N/A
Ransomware Event	\$5,000,000 USD	0%	100%	\$3,000,000 USD	12 hours

2. Insuring Agreement I.B.3. Cyber-Extortion and Ransomware is deleted and replaced with the following:

3. Cyber-Extortion Reimbursement

The Insurer will reimburse the Insured for cyber-extortion expenses in excess of the applicable retention that the Insured incurs directly resulting from and in response to a cyber-extortion threat.

3. Definitions IV.H. Cyber-extortion Expenses is deleted and replaced with the following:

- H. Cyber-extortion Expenses

1. Reasonable and necessary money, digital currency, property, or other consideration surrendered as payment by or on behalf of the Insured Company in order to eliminate, mitigate, or remove a cyber-extortion threat; and
2. Reasonable and necessary amounts paid to qualified third parties to facilitate or negotiate an actual payment by or on behalf of the Insured Company as set forth in paragraph 1. of this definition, including any transaction or currency exchange fees.

Amounts surrendered as payment will be deemed reasonable and necessary cyber-extortion expenses only when the Insured shows by clear evidence that the amounts surrendered plus any loss of business income and data recovery expenses otherwise covered by this Policy is materially and measurably less than the sum of any loss of business income and data recovery expenses that would have otherwise been covered by this Policy. The Insured must prepare and submit a complete and final proof of loss to the Insurer in conformance with Notice VI.E.1(b) Insured's Claim and First Party Incident Obligations of the Policy for the Insurer to evaluate coverage under this provision. In no event will the Insurer pay or commit to pay any cyber-extortion expenses before such amounts are actually paid by the Insured and submitted to the Insurer for reimbursement in conformance with this provision.

4. Definitions IV.I. Cyber-extortion Threat is deleted and replaced with following:

- I. Cyber-extortion Threat

Any threat communication from a third party or rogue employee related in any way to an actual or potential threat to start or continue to:

1. Disrupt the network to impair business operations of the Insured Company;
2. Alter, damage, or destroy data stored on the network;
3. Use the network to transmit malware to third parties;
4. Deface the website;
5. Access, release, or otherwise misuse data, including personally identifiable information, protected health information, or

confidential business information, stored or previously stored on the network;

6. Refuse to return data stolen from the network;
 7. Prevent access to the network or data by using encryption and withholding the decryption key; or
 8. Disclose any fact relating to the foregoing to the public or to any third party.
5. Solely for the purposes of this Endorsement, the following new definitions shall apply:
- **Threat Communication**
A threat made demanding or seeking payment and/or other consideration in exchange for, or in connection with, the prevention, elimination, mitigation or removal of a threat against the Insured or any communications intended to initiate such communications with the Insured.
 - **Ransomware Event Loss**
Any and all loss for, arising out of, in connection with, or in any way involving a cyber-extortion threat, regardless whether such loss consists of damages, claim expenses, regulatory damages, first party costs, or any other amounts paid by the Insurer under the Policy.
6. The Insurer's obligation to pay cyber-extortion expenses shall not exceed the Cyber-Extortion Reimbursement Sublimit set forth in the Endorsement Schedule. The Cyber-Extortion Reimbursement Sublimit shall be the Insurer's maximum liability for all cyber-extortion expenses for which this Policy affords coverage under any insuring agreement and is part of, and not in addition to, the limit(s) of liability applicable under any other of the Policy's insuring agreements or applicable aggregate limit(s). The Cyber-Extortion Reimbursement Sublimit shall apply regardless of the number of cyber-extortion threats. No amount constituting cyber-extortion expenses as defined in this endorsement shall be afforded coverage under any other insuring agreement or provision of this Policy, including, but not limited to, as extra expenses or data recovery expenses. Coverage for all loss included within the definition of cyber-extortion expenses set forth above shall be available solely and exclusively under Insuring Agreement I.B.3. as amended in this endorsement and shall be subject to the Cyber-Extortion Reimbursement Sublimit and Cyber-

Extortion Coinsurance Percentage set forth in the Endorsement Schedule.

7. For any cyber-extortion expenses in excess of the highest applicable retention, the Insured shall be responsible for payment of the Cyber-Extortion Coinsurance Percentage set forth in the Endorsement Schedule of otherwise covered cyber-extortion expenses, and the Insurer shall pay only the remaining Insurer Percentage set forth in the Endorsement Schedule of any cyber-extortion expenses. Payment by the Insured of the Cyber-Extortion Coinsurance Percentage of such loss will not reduce the Cyber Extortion Sublimit or any other limit under the Policy. Only the Insurer Percentage set forth in the Endorsement Schedule of cyber-extortion expenses paid by the Insurer may erode and/or exhaust the Cyber-Extortion Reimbursement Sublimit. The Cyber-Extortion Coinsurance Percentage of cyber-extortion expenses shall remain uninsured and borne solely by the Insured at its own risk. The Cyber-Extortion Reimbursement Sublimit is part of, and not in addition to, the Ransomware Event Sublimit.
8. The Insurer is liable only for that portion of cyber-extortion expenses in excess of the Cyber-Extortion Retention amount set forth in the Endorsement Schedule. The Cyber-Extortion Retention shall remain uninsured and borne solely by the Insured at its own risk. The Cyber-Extortion Retention will be separate from any other retentions in the Policy applicable to cyber extortion expenses for which this Policy provides coverage, provided that if more than a single retention applies to a claim and/or first party incident, then the Insured is responsible for paying only the highest applicable retention.
9. The insurer's obligation to pay ransomware event loss shall not exceed the Ransomware Event Sublimit set forth in the Endorsement Schedule. The Ransomware Event Sublimit shall be the insurer's maximum liability for all ransomware event loss for which this Policy affords coverage under any insuring agreement and is part of, and not in addition to, the limit(s) of liability applicable under any of the Policy's insuring agreements or applicable aggregate limit(s). The Ransomware Event Sublimit shall apply regardless of the number of cyber extortion threats, claims, first party incidents, or other events for which coverage may apply under any of the Policy's Insuring Agreements. The Cyber-Extortion Reimbursement Sublimit is part of, and not in addition to, the Ransomware Event Sublimit.

10. For any ransomware event loss other than cyber-extortion expenses in excess of the highest applicable retention, the Insured shall be responsible for payment of the Ransomware Event Coinsurance Percentage set forth in the Endorsement Schedule of otherwise covered ransomware event loss, and the Insurer shall pay only the Insurer Percentage set forth in the Endorsement Schedule of any ransomware event loss. Payment by the Insured of the Ransomware Event Coinsurance Percentage of such loss will not reduce the Ransomware Event Sublimit or any other limit under the Policy. Only the Insurer Percentage set forth in the Endorsement Schedule of ransomware event loss and any other ransomware event loss paid by the Insurer may erode and/or exhaust the Ransomware Event Sublimit. The Ransomware Event Coinsurance Percentage of ransomware event loss shall remain uninsured and borne solely by the Insured at its own risk.
11. The Insurer is liable only for that portion of ransomware event loss other than cyber-extortion expenses in excess of the Ransomware Event Retention amount set forth in the Endorsement Schedule. The Ransomware Event Retention shall remain uninsured and borne solely by the Insured at its own risk. The Ransomware Event Retention will be separate from any other retentions in the Policy applicable to ransomware event loss for which this Policy provides coverage, provided that if more than a single retention applies to a claim and/or first party incident, then the Insured is responsible for paying only the highest applicable retention.
12. Solely in connection with any ransomware event loss, Definition IV.AAA Waiting Period of the Policy is replaced by the Ransomware Event Waiting Period set forth in the Endorsement Schedule.
13. The provisions of this Endorsement, including the relevant Cyber-Extortion Reimbursement Sublimit, Cyber-Extortion Coinsurance Percentage, Cyber-Extortion Retention, Ransomware Event Sublimit, Ransomware Event Coinsurance Percentage, Ransomware Event Retention, and Ransomware Event Waiting Period shall apply regardless whether any other cause or event contributes concurrently or in any sequence to any portion of cyber-extortion expenses or ransomware event loss.
14. Should the Insurer determine, in its sole discretion, that payment of any ransomware event loss might conflict with applicable laws or regulations (including but not limited to any Canadian, U.S. or foreign trade or economic sanctions laws or regulations), the Insurer has the

right, but not the obligation, to seek relief or guidance from an appropriate regulatory authority or court of competent jurisdiction before it will pay any such ransomware event loss. If the Insurer exercises such right, payment for any ransomware event loss will not become due until thirty (30) days after payment of such ransomware event loss has been authorized by such regulatory authority or court or such additional time that the Insurer may reasonably require. Condition IX.K, Alternative Dispute Resolution, of this Policy shall not apply to or impair the rights of the Insurer as set forth in this paragraph.

15. To the extent any provision contained in this Endorsement is deemed inconsistent with any other provision of this Policy, the provisions of this Endorsement shall control.

All other terms and conditions of this Policy shall remain the same.