

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CARLEX GLASS AMERICA, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:24-cv-00695
)	Judge Waverly D. Crenshaw, Jr.
SOMPO AMERICA INSURANCE)	Magistrate Judge Barbara Holmes
COMPANY,)	
)	
Defendant.)	
)	

**MEMORANDUM OF LAW IN SUPPORT OF SOMPO AMERICA INSURANCE
COMPANY'S MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 50(a)**

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COMES NOW Sompo America Insurance Company (“Sompo”) and files this Memorandum of Law in Support of its Motion for Judgment as a Matter of Law pursuant to Federal Rule of Civil Procedure 50(a).

I. INTRODUCTION¹

Sompo is entitled to judgment as a matter of law for three independent reasons.

First, no reasonable jury could find that Carlex has proven any of the elements of its breach of contract claim.² Carlex’s property damage claim fails because there is no legally sufficient evidence that the March 3, 2020 tornado caused actual damage to the furnace or tin bath. Nor did Carlex offer any basis for the jury to determine damages: for the furnace, there is no non-speculative evidence of repair necessity or cost, and in any event Carlex has offered no basis for the jury to separate any recoverable damages caused by the tornado from unrecoverable damages caused by pre-tornado conditions, the Covid “hot hold,” a July 2020 power outage, poor maintenance, and normal equipment breakdown—all of which undisputedly caused some damage. Carlex’s business interruption claim fails because without sufficient proof of a covered physical loss, there is no coverage for any resulting business interruption. In addition, (1) Carlex identified no “suspension” due to covered property damage; (2) there is no evidence Carlex lost revenue; (3) the evidence conclusively demonstrates that any lost revenue was not caused by the tornado; and (4) if such losses existed, there is no evidence substantiating an amount of nonspeculative lost revenue damages.

¹ Unless otherwise noted, all emphasis is added to, and citations and internal quotation marks are omitted from, the quoted passages.

² Sompo moves for judgment as a matter of law as to Carlex’s second claim for declaratory relief for the same reasons stated in its arguments regarding Carlex’s breach of contract claim. Doc. 1-1 at 16.

Second, no reasonable jury could find that Carlex did not misrepresent the extent and cause of its damage. The insurance contract is thus void, and there is no coverage.

Third, no reasonable jury could find that, under the terms of the Policy, February 1, 2024 Proof of Loss was timely submitted or that its lawsuit was timely filed.

II. LEGAL STANDARD

Judgment as a Matter of Law. Under Federal Rule of Civil Procedure 50, a court should grant judgment as a matter of law when “a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.” Fed. R. Civ. P. 50(a)(1). Judgment as a matter of law is appropriate when, “viewing the evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact for the jury, and reasonable minds could come to but one conclusion, in favor of the moving party.” *Noble v. Brinker Int’l, Inc.*, 391 F.3d 715, 720 (6th Cir. 2004). Tennessee’s “state-law standard is not meaningfully different from [federal Rule 50’s].” *Adkisson v. Jacobs Eng’g Grp., Inc.*, 370 F. Supp. 3d 826, 842 (E.D. Tenn. 2019).

Breach of Contract. To prove breach of contract under Tennessee law,³ a plaintiff must prove (1) the existence of a valid, enforceable contract; (2) a deficiency in the defendant’s performance amounting to breach; and (3) damages caused by the breach. *Clippinger v. State Farm Mut. Auto. Ins. Co.*, 630 F. Supp. 3d 947, 953 (W.D. Tenn. 2022). For the contract to be valid and enforceable, the insured must have complied with all conditions precedent. *Guilbert v. Phillips Petroleum Co.*, 503 F.2d 587, 590 (6th Cir. 1974) (contracts “do not come into being unless”

³ When federal jurisdiction is based on diversity of citizenship, as here, the law of the forum state will apply. *Morris v. Wal-Mart Stores, Inc.*, 330 F.3d 854, 857 (6th Cir. 2003); *K&T Enters., Inc. v. Zurich Ins. Co.*, 97 F.3d 171, 176 (6th Cir. 1996).

conditions precedent “are performed”); *Strickland v. City of Lawrenceburg*, 611 S.W.2d 832, 837 (Tenn. Ct. App. 1980).

Damages. Under Tennessee law, courts “require a reasonable degree of certainty in determining damages.” Feldman, 22 Tenn. Prac. Cont. L. & Prac. § 12:6 (2025). A “jury may not render a proper verdict for damages based on excessively remote, uncertain, and speculative evidence.” *Id.*; see *Airline Const. Inc. v. Barr*, 807 S.W.2d 247, 256 (Tenn. Ct. App. 1990) (“To support an award of damages there must exist proof of these “damages within a reasonable degree of certainty.”); *Baker v. Hooper*, 50 S.W.3d 463, 470 (Tenn. Ct. App. 2001) (lost or expect profits are recoverable only when the amount is proved with reasonable certainty).

III. ARGUMENT AND CITATION OF AUTHORITY

Sompo is entitled to judgment as a matter of law for three independent reasons: no reasonable jury could find for Carlex on its breach of contract claim; no reasonable jury could find that Carlex did not misrepresent the cause and extent of its damages, thus voiding the contract; and no reasonable jury could find that Carlex timely filed its Proof of Loss or its lawsuit.

A. No Reasonable Jury Could Find That Sompo Breached the Insurance Contract

To prove breach of a valid contract under Tennessee law, a plaintiff must prove a deficiency in the defendant’s performance amounting to a breach and damages caused by the breach. *Clippinger*, 630 F. Supp. 3d at 953. Here, that means Carlex must prove that it was entitled to coverage—that is, the Policy required Sompo to pay Carlex for the damages submitted in its February 1, 2024 Sworn Statement in Proof of Loss—and that Sompo failed to pay for those damages. See *Farmers Bank & Tr. Co. of Winchester v. Transamerica Ins. Co.*, 674 F.2d 548, 550 (6th Cir. 1982) (Tennessee law; “[A] claimant under an insurance policy has the initial burden of proving that he comes within the terms of the policy.”).

No reasonable jury could find that Carlex was entitled to coverage because there is no legally sufficient evidence that the March 3, 2020 tornado caused Carlex's claimed property or business interruption damages. Three gaps in the evidence each independently doom these claims as a matter of law: (1) there is no evidence that Carlex experienced actual loss; (2) there is no evidence that the losses Carlex identifies were caused by the tornado; (3) even if there were, there is no evidence substantiating an amount of nonspeculative damages.

Carlex's business interruption claims also fail because (1) without sufficient proof of a covered physical loss, there is no coverage for any resulting business interruption; (2) Carlex has presented no evidence of any actual business losses; and (3) even if it could, the evidence conclusively demonstrates any such losses did not result from the tornado and instead were "due to" or "caused by" other events, *see* Jnt. Ex. 1, Policy at 64 ("Policy"); and (4) if such losses existed, is no evidence substantiating an amount of nonspeculative lost revenue damages. Carlex thus cannot prove it was entitled to coverage under the Policy for damages caused by the tornado. Sompó is entitled to judgment as a matter of law on the breach of contract claim.

1. The Tornado Did Not Cause Damage to the Furnace or Tin Bath That Carlex Claims

In its Sworn Statement in Proof of Loss, Carlex claimed \$22,967,340 in damages to the furnace and \$4,620,390 in damages to the tin bath. Jnt. Ex. 31, Proof of Loss at 3 ("Proof of Loss"). But Carlex has offered no evidence to prove that these losses occurred, much less as a result of the tornado. Nor is there any reasonable basis for the jury to determine the amount of damages.

a. There is no evidence of specific damage to the furnace or tin bath following the tornado.

No reasonable jury could conclude that Carlex sustained \$22,967,340 in damages to the furnace or \$4,620,390 in damages to the tin bath. Carlex presented no evidence to identify *any*

specific damage to the furnace or tin bath supposedly sustained—it simply claims they were “damaged.” Such assertions are mere argument, not evidence.

Indeed, Carlex did not present any evidence of any damage to the furnace or the tin bath after the tornado that did not exist before the tornado. Carlex’s own witness Cecil Qualls testified that he examined the furnace and the tin bath on the night of the tornado and found *no* damage. Nor was there damage to the interior of the furnace: endoscopic camera photos showed only normal wear and tear. And after frozen glass was removed, Qualls reinspected the tin bath and found no damage. None of that testimony is disputed. Carlex bears the burden to prove the alleged damage to its property. *See Farmers Bank*, 674 F.2d at 550. Without such evidence, its claims fail.

b. There is no evidence that any damage to the furnace or tin bath was caused by the tornado.

Even if the court were to find that some small portion of damage existed, there is no evidence that the tornado was the “cause” of any such damage to the furnace or tin bath. Policy at 32, 88. As this Court observed at the January 8, 2026 Daubert hearing, determining whether the tornado caused any particular damage to the float glass line requires science and engineering principles. Such issues require expert opinion to establish.

Carlex has failed to offer *any* evidence, much less expert opinion, showing that the tornado caused damage to the furnace or the tin bath, or even a theory of how it did so. Not a single witness testified that the tornado damaged the furnace or the tin bath. There is no evidence that the crack underneath the furnace was caused by the tornado; Qualls admitted at trial that he could not say for sure (1) when the crack began or (2) whether it was caused by the tornado or something else. Uncertainty about the cause and timing of the damage falls far short of meeting Carlex’s burden to show it was “caused by” a covered event.

Indeed, on January 15, 2026, Alex Rotolo all but admitted that Carlex cannot say the tornado caused *any* particular damage, and in fact does not know what caused the claimed damage at all. Rotolo invoked a metaphor, comparing Carlex to a driver who brings a car into the shop because the engine is not working. Rotolo posited that it does not matter exactly why the engine is not working if the mechanic ultimately knows that replacing it will make the car work. Like the driver in Rotolo’s metaphor, Carlex has claimed that the furnace and tin bath are damaged but admits it does not know exactly what is damaged or what caused the damage. But that knowledge is not a prerequisite to having a mechanic fix your car. Knowledge of specific loss and causation, in contrast, are required to prove breach of contract. Carlex has offered no legally sufficient evidence to show actual damages caused by the tornado, as Rotolo’s testimony confirms.

At best, the evidence showed only that a tornado was *capable* of causing the damage Carlex claims—but that is insufficient to prove that this tornado *in fact* did. It is Carlex’s burden to prove that any losses were caused by a “covered cause of loss.” Policy at 88. Without such evidence, any coverage claim fails. *Farmers Bank*, 674 F.2d at 550.

Not only did Carlex present no evidence that the tornado was the cause of any damage, but the evidence shows the opposite. As discussed, Carlex’s own witnesses testified that their inspection shortly after the tornado showed no damage to the furnace or tin bath that did not already exist. *Supra* at 5. And the only expert testimony on causation was from Robert Underwood, who testified on January 21, 2026 that the evidence strongly suggests the tornado did not cause Carlex’s claimed property damage; if it had, Carlex’s post-tornado yield data would show more constant defects, rather than the up-and-down yields Carlex posted.

Moreover, the only evidence presented to the jury regarding causation demonstrated that other things caused the damage Carlex claims: a June 2019 power outage; maintenance issues pre-

dating the tornado; the Covid “hot hold”; a June 29, 2020 power outage; poor maintenance post-dating the tornado; and normal equipment breakdown.

Damage Pre-Dating the Tornado. It is undisputed that the float glass line had a history of damage and maintenance issues before the tornado. For instance, as Qualls testified, a major power outage in June 2019 damaged the refractory lip, causing increased bubble and stone defects and necessitating the lip repair scheduled for March 9-14, 2020—all damage not caused by the tornado. And as Underwood testified, when he inspected the line in 2023, he saw evidence of the type of defects that would have been caused by the June 2019 power failure.

Carlex witnesses also admitted pre-tornado maintenance issues with the furnace. As Qualls testified, in 2019 Carlex switched from using a float line specific maintenance crew to a centralized crew. Qualls admitted that from 2019 to 2023 this team did not implement all recommended furnace maintenance, did not have sufficient staffing for corrective improvements, and fell significantly behind on preventative maintenance. He testified that it was not unusual to have spalling damage in the furnace refractory area, including in December 2019. *See* Def. Exh. 92.

Covid “Hot Hold.” From March 14, 2020 to May 27, 2020, Carlex put the furnace and the tin bath on a “hot hold.” But Carlex’s own witnesses testified that the hot hold caused damage to both—which was not related to the tornado. Specifically, Qualls admitted that there were a lot of defects in the three to four months after restarting the system on May 27. Qualls also agreed that the tin that built up in the bottom of the tin bath during the hot hold was not related to the tornado. That damage is consistent with Qualls’s explanation that a three-month hot hold is hard on the furnace and is not recommended. As Qualls and Rotolo each admitted, startup defects are normal after a hot hold of any duration. And Qualls admitted it is possible that the longer the hot hold, the more problems there may be afterward. For that reason, Qualls testified, Carlex implements hot

holds only in exceptional circumstances and, until March 2020, had never implemented a hot hold lasting three months.

June 29, 2020 Power Outage. As Qualls testified, on June 29, 2020, shortly after the hot hold, an unrelated power outage caused a significant furnace upset. This “upset” damaged the furnace: Qualls explained that although the float glass line was still experiencing defects from the hot hold, by the time the power outage occurred, Carlex had implemented corrective actions and defects were trending downward. But then, Qualls admitted, the power outage hit and caused defects to increase again in the short-term. These also cannot be attributed to the tornado.

Poor Maintenance. Undisputed evidence shows that improper maintenance damaged the furnace and the tin bath and decreased yield. As Qualls testified, proper maintenance preserves the line’s efficiency and longevity and helps avoid breakdowns. And Steve Beckwith testified that aggressive maintenance to the furnace specifically helps minimize defects. In contrast, Beckwith explained, poor maintenance anywhere on the float line can decrease yield.

That is what happened here. Qualls admitted Carlex fell significantly behind on maintenance between 2019 and 2023. Beckwith admitted that when he returned to Carlex in 2023, maintenance needed to be more aggressive and proactive—and defects were higher overall. Beckwith explained that since then, Carlex has reinstated the float line maintenance crew and been more proactive, and yields have improved. This causation testimony is undisputed; Beckwith admitted that Carlex had no proof showing it performed the necessary maintenance on the line.

Equipment Breakdown. Undisputed evidence from Qualls also shows that even with proper maintenance, equipment breaks down over time, causing damage and decreased efficiency and yield. And as Beckwith explained, for the furnace specifically, degradation or wear is normal, particularly in the hot areas; for example, wear and tear in the furnace refractory (and the repair it

required) did not relate to the tornado. And as Qualls admitted, furnace breakdown can cause high defect levels in the glass.

In sum, there is (1) no evidence that any damage was “caused by” the tornado and (2) undisputed evidence that other issues caused the damage Carlex claims. Carlex has not met its burden to show coverage.

c. **Carlex’s damages claim is speculative and fails to separate recoverable amounts from non-recoverable ones.**

Carlex’s breach of contract claim fails as to property damage for the independent reason that there is no basis for the jury to determine any amount of recoverable property damage. In addition to proving actual loss caused by the tornado, Carlex must prove Sompo’s alleged breach caused it to incur the \$22.9 million in furnace damage and \$4.6 million in tin bath damage it claims. *See Clippinger*, 630 F. Supp. 3d at 953; Proof of Loss at 3. But Carlex presented no evidence on two necessary points: (1) to substantiate the actual value of any damage to the furnace or cost to repair it; and (2) to present any basis for the jury to separate recoverable alleged damages (resulting from the tornado) from unrecoverable ones (resulting from other causes).

First, there is no legally sufficient evidence showing how much it would cost to repair the furnace. Under Tennessee law, “a jury may not render a proper verdict for damages based on excessively remote, uncertain, and speculative evidence.” Feldman, 22 Tenn. Prac. Cont. L. & Prac. at § 12:6. Carlex has provided nothing more than that. In its Proof of Loss, signed by Alex Rotolo, Carlex claimed the furnace repair was estimated to cost \$23.1 million and in fact cost \$22.9 million. Proof of Loss at 3. But *nothing* in the record substantiates that cost—no invoice reflecting work, no explanation of what was done or why, no financial records showing what Carlex spent—much less expert testimony confirming that the repairs reflected in the cost were necessary. All Carlex has presented is Rotolo’s say-so. That is insufficient as a matter of law.

Second, Carlex’s property damage claim suffers an another independent problem: When damage exists or is alleged from multiple incidents, the burden is on the claimant to differentiate between covered and uncovered losses. *See Williams v. State Farm Mut. Auto. Ins. Co.*, 2020 WL 6821700, at *2 (Tenn. Ct. App. Nov. 20, 2020) (“The insured has the burden to prove that a loss falls within the insuring agreement.”). Here, there are multiple undisputed causes of damage to the furnace and tin bath. *Supra* Section III.A.1.b. And as discussed, causation in this case requires science and engineering principles to prove. Yet Carlex presented no evidence, let alone expert testimony, to show what portion of the claimed damage to the furnace or the tin bath were from the tornado.

Indeed, Carlex has not even attempted to identify what specific damage the tornado allegedly caused. Even accepting Carlex’s position that the tornado caused some damage, their own witnesses admitted that other causes also caused damage, and they don’t know what caused what. For example, Qualls admitted that *both* the tornado and the Covid hot hold contributed to the high defects following the hot hold, and that there was no way to know whether the crack in the furnace was caused by the tornado or something else. Carlex has provided no basis for the jury to determine which causes are responsible for what proportion of the total damage. Without such evidence, any amount claimed is necessarily speculative and unrecoverable as a matter of law. *See Airline Const. Inc.*, 807 S.W.2d at 256; Feldman, 22 Tenn. Prac. Cont. L. & Prac. at § 12:6.

2. The Tornado Did Not Cause Any Business Interruption Losses

Carlex claimed \$23,315,448 in business interruption losses. Proof of Loss at 1. But the Policy is clear about what types of “time element” losses are covered:

- A. If applicable, this policy insures “Time Element” loss the Insured sustains as provided in the Time Element Coverages. The Time Element loss must result from the necessary “suspension” of the insured’s business activities at an Insured Location during the Period of Restoration. The “suspension” must be due to direct physical loss of or damage to property of the type insurable under

this policy, and the loss or damage must be caused by a “covered cause of loss” as insured against in this policy.

There is recovery only to the extent that the Insured is:

...

3. Able to demonstrate a loss of revenue for the operations, services or production suspended.

Policy at 64 (emphasis added). In addition, the Policy “insures ‘Time Element’ loss only to the extent it cannot be reduced through: ... [t]he use of inventory....” *Id.* at 64-65. In other words, the Policy covers (1) “demonstrate[d] ... loss of revenue” (2) that Carlex “sustain[ed]” (3) from a “necessary suspension” of production (4) “due to direct physical ... damage to property” (5) “caused by a covered cause of loss,” i.e., the tornado, (6) that could not be offset using existing inventory. *See id.* And none of this loss can be awarded “based on excessively remote, uncertain, and speculative evidence.” Feldman, 22 Tenn. Prac. Cont. L. & Prac. at § 12:6; *MDT Servs. Grp., LLC v. Cage Drywall, Inc.*, 2015 WL 736932, at *1 (M.D. Tenn. Feb. 20, 2015) (no recovery for “hypothetical” losses or “injuries that are at best speculative”).

Carlex’s claim for business interruption losses fails for several reasons. Carlex has not demonstrated any “loss of revenue” “result[ing] from” a business suspension at all, much less one caused by physical damage from the tornado. Nor has Carlex offered any evidence that would provide the jury a basis upon which to determine the amount of damages.

a. **There is no evidence of any actual loss of revenue following the tornado.**

Carlex has offered no evidence that it suffered any “loss of revenue.” Indeed, there was no evidence that Carlex was unable to fulfill orders, drained its inventory, or fell behind on production sufficient to meet demand.

To the contrary, the undisputed evidence shows that Carlex always had excess inventory to cover all sales. Qualls testified that at the time of the tornado, Carlex had enough inventory to

fill its fabrication plants customers' needs. Indeed, as Michelotti testified on January 14, using that inventory Carlex was able to fulfill all OEM orders for auto glass. Michelotti confirmed that no orders from *any* customers were cancelled because of the tornado. Moreover, Carlex's third-party claims adjuster Anthony Antzak testified on January 14 that Carlex informed him they did not lose any business income and gave no documentation supporting their business interruption claim. This alone dooms the business interruption claim.

b. There is no evidence that any loss of revenue from business interruption was caused by covered physical damage from the tornado.

Carlex's "business interruption" claim independently fails because even if Carlex could show any loss of revenue, no reasonable jury could find that those losses were "caused by" physical damage from the tornado.

First, because the tornado did not damage the furnace or tin bath, *supra* Section III.A.1.a, no "suspension" can be found to be "due to direct physical loss of or damage to property of the type insured," and thus there are no covered time element losses. Policy at 64. In other words, the Policy is clear that there is no coverage for business interruption without property damage.

Second, even if there were evidence of physical damage, Carlex presented no evidence that any "business interruption" was actually "due to" such damage. Instead, the evidence is undisputed as to the reasons behind Carlex's "interruptions" and lower business demands: a March 2020 shutdown was for pre-scheduled repairs; a March-May 2020 shutdown of the float glass line was a business decision due to Covid market uncertainty; and "lower yields" at certain points between 2020 and 2022 did not constitute a "suspension" of operations nor were they caused by the tornado.

March 9-14, 2020. From March 9-14, 2020, the float glass line was down for a lip repair that, as Qualls and Michelotti testified, was scheduled to be replaced before the tornado occurred. This shutdown, scheduled before the tornado, cannot be said to be caused by it.

March 14, 2020 to May 27, 2020. The evidence unequivocally shows that Carlex made a *business decision* to institute a float glass line “hot hold” from March 14, 2020 to May 20, 2020 because of market conditions during the early Covid pandemic. No witness testified that the hot hold was because of the tornado. Qualls admitted outright that the hot hold was not due to the tornado, and that any long-term defects the hot hold caused were thus not caused by the tornado.

Indeed, Rotolo testified that Carlex could have run the line and produced inventory as of March 14, 2020, once the scheduled lip repair was completed—i.e., that the tornado would not have prevented restarting the line. That is undisputed. But as Qualls testified, because Carlex was coming out of the scheduled lip repair as the pandemic began, it had to decide both whether to run the line and whether to restart it. Restarting the line would have presented challenges; as Rotolo testified, the line has a lot of issues getting back up after it has been shut down. Ultimately, even though the line was ready to restart, Rotolo testified that it would have been imprudent to do so given the Covid market uncertainty.

Indeed, demand for float glass had plummeted: Between March 14 and May 27, Qualls and Michelotti testified, the fabrication plants Carlex normally sold to were shut down because of Covid. And as Michelotti explained, if those plants do not need glass, then there is no need for Carlex to produce it. Michelotti testified that Carlex restarted the line at the end of May because by then, Covid market instability was subsiding, demand for float glass was bouncing back, and it made business sense to begin production again. No witness testified that the hot hold was because of any physical damage from the tornado, and the evidence demonstrates that any “loss of revenue” in that period was due to market conditions.

June 2020 through March 2022. Carlex has also claimed business interruption losses from June 2020, shortly after it restarted the float glass line, through March 2022. But the evidence

precludes coverage for such amounts for three independent reasons: (1) there is no evidence of any “suspension” of operations at all; (2) Carlex presented only a “loss of yield” but not a “loss of revenue,” and (3) Carlex has admitted it cannot connect any losses from that period to the tornado, which only emerged 2-3 years later following extended post-tornado periods of normal yield.

First, Time Element coverage applies only for losses from “necessary ‘**suspension**’ of the Insured’s business activities during the Period of Restoration.” Policy at 64. A “suspension” requires a “slowdown or cessation of the Insured’s business activities” *Id.* at 89. But Carlex presented no evidence of *any* slowdown or cessation of the plant operations. Instead, Carlex’s claimed Business Interruption losses for this period are entirely based on “loss of yield,” which Qualls testified is a measure of equipment efficiency. This does not constitute any “suspension” as witnesses admitted the plant was continuously operating for its “business activities” during this period.⁴ Without a suspension of operations, no Business Interruption coverage exists.

Second, even if Carlex could point to something constituting a “suspension,” “[t]here is recovery only to the extent that the Insured is... [a]ble to demonstrate a loss of revenue or the operations, services or production suspended,” and “only to the extent [such loss] cannot be reduced through... the use of inventory.” Policy at 64-65. Carlex seeks compensation only for “loss of yield”—i.e., relative outputs—but presented no evidence of lost revenue: no lost sales, no orders it was unable to fulfill. Carlex can recover Time Element damages only for a “demonstrate[d] loss of revenue,” and without it, there is no such coverage. *Id.*

⁴ The Period of Restoration also only runs from the time of direct physical loss or damage until the “date when the property... should be repaired, rebuilt, replaced or restored with reasonable speed and similar quality.” Policy at 73. Carlex presented no evidence that any work was even being done to repair, rebuild or restore the “damaged” equipment at issue during this two year period, much less that any necessary repairs would take two years to repair at “reasonable speed.” That is because, of course, there is no evidence of specific physical damage that needed to be repaired.

Third, even if Carlex could point to a “suspension,” causing a “loss of revenue,” there is no evidence that either was caused by the tornado. Rotolo acknowledged that float glass yields have *not* been consistently low since the tornado, as measured by pre-tornado levels. From October 2020 through April 2021, for example, Qualls testified that yields were within or near the normal range. Instead, Qualls admitted, issues with the tin bath only became evident *two to three years* after the tornado. And for those periods when yield may have been low, Carlex has not presented any evidence connecting that decrease to the tornado. Ultimately, Carlex’s story is that the tornado must have caused property damage, which caused decreased yield (but not decreased revenue), but not until two to three years later, and after periods of normal yield. No qualified witness explained how that could be the case if the physical damaged originated from the tornado.

March 3-8, 2020. That leaves only the five-day period from March 3-8, 2020, between the tornado and the pre-scheduled lip repair. But Carlex never provided documentation of any sales or revenue lost during this period, and the evidence proves that Carlex was able to offset halted production with existing inventory. *Supra* Section III.A.2.a.

c. Carlex’s Business Interruption Damages Model is Legally Insufficient

Instead of providing evidence of “loss of revenue” caused by the tornado, Carlex offers a damages model, via expert Theodore Woodburn, for business interruption losses that rests on “lost yield.” “Yield” measures the efficiency of Carlex’s machinery as a ratio of input raw materials to output glass. *See* Jnt. Ex. 54 at 12. This model is legally insufficient to carry Carlex’s burden to prove its damages for two independent reasons. First, it does not properly connect “lost yield” to recoverable “loss of revenue” because it relies on multiple assumptions contradicted by Carlex’s own witness testimony. One of those assumptions—that Carlex would have sold its inventory—is impermissibly speculative under Tennessee law absent evidence (missing here) that the inventory would have sold. Second, even accepting Woodburn’s use of yield as a proxy for earnings, Carlex’s

model provides no legally sufficient basis for the jury to separate recoverable from unrecoverable damages or to apportion the damages among those causes.

No reasonable basis to convert “lost yield” to “loss of revenue.” The Policy provides time element coverage only for “loss of revenue.” *Supra* at 11. But Carlex’s damages model provides no reasonable basis for the jury to convert “lost yield” to recoverable “loss of revenue.”

Woodburn calculated business interruption damages by multiplying the amount of glass his model predicts Carlex would have produced but-for the tornado by the price at which he predicts Carlex would have sold that glass. But Woodburn’s methodology for determining both the quantity of hypothetical lost glass and the price at which Carlex would have sold it are based on assumptions that Carlex’s own evidence disproves. The model thus provides no nonspeculative basis for the jury to determine any of these figures, and thus no basis to determine the amount (if any) of Carlex’s recoverable “loss of revenue.”

“But-for” amount of glass produced. To calculate the *amount* of float glass Carlex would have produced but-for the tornado, Woodburn calculated an average pre-tornado yield, and then multiplied that number (a percentage) by the input tonnage for each month during the post-tornado period for which Carlex claims damages.

Woodburn’s own testimony reveals the problem: he admitted that in basing his damages model on yield, he assumed that any decrease in yield is considered a loss of production. But Woodburn himself admitted that yield does not measure the amount of glass produced, and that it is possible to create the same usable output even if there is a decrease in yield (by increasing the amount of input raw materials). No witness testified that Carlex wanted to produce more in any given month but *could not*.

Testimony from Carlex’s own witnesses reveals another problem: yield rate changes depending on input quantities. As Qualls and Beckwith testified, myriad factors—including input tonnage—affect yield. But Woodburn used pre-tornado inputs to develop average pre-tornado “yield,” so those averages are necessarily speculative for any post-tornado month where the actual input tonnages were different (as they were for multiple months).

“But-for” sale price of glass. Nor does Woodburn’s model enable the jury to calculate the price at which Carlex would have sold the glass it was supposedly unable to produce because of the tornado. Woodburn’s price model rests on assumptions disproven by Carlex’s own witnesses, and is impermissibly speculative under Tennessee law.

Woodburn’s “valuation” of glass rests on three assumptions that Carlex’s own evidence disproves: that Carlex would have (1) sold its glass at a certain price (2) the month it was produced, and that (3) all glass produced each month would sell.

First, Woodburn valued the glass at a price unique to Carlex based on Carlex’s internal transfers of float glass. But as Rotolo testified, the value of Carlex’s float glass depends on market price. In his January 16 testimony, Woodburn admitted he did not even know that market price, let alone use it in his model.

Woodburn also testified that his valuation assumed that each month, Carlex would have sold *all* the float glass it produced at the internal *price for that month*. But Carlex’s own witnesses disproved that assumption: Rotolo testified that during a market downturn, Carlex builds inventory that it can sell *eventually*, not immediately. Trial testimony from Sompo’s accounting expert Douglas Coombs confirmed that: Carlex’s inventory *increased* month-over-month for the first *16-17 months* of Woodburn’s 22-month damages period—in other words, Carlex was stockpiling inventory, not selling all the glass it made each month.

Woodburn’s assumption that Carlex would have sold all glass it produced is legally insufficient for the independent reason that Tennessee law prohibits awarding damages for lost profits based on inventory alone. Under Tennessee law, hypothetical evidence that a plaintiff “could have sold” inventory is “purely speculative” absent more—for example, evidence of “contracts with buyers” to sell the goods. *Burge Ice Machine Co. v. Strother*, 273 S.W.2d 479, 406 (Tenn. 1954). Carlex has offered no such evidence. Woodburn attempted to explain away this gap by positing that Carlex’s customers *did* have demand for glass but simply stopped calling because they knew the plant had been damaged. But that is speculation, and is unsupported by any evidence like sales inquiries or contract negotiations. Even if Woodburn is right that a “ready market” for glass existed, that is an insufficiently “speculative” basis for awarding damages absent specific evidence that Carlex could have sold its inventory. *See Burge Ice Machine*, 273 S.W.2d at 406 (absent evidence of would-be buyers, “ready market” was too “speculative” to support damages award).

In sum, Carlex’s own, undisputed evidence contradicts the assumptions underlying Woodburn’s damages model. One of those assumptions—that Carlex would have sold all its inventory—is specifically prohibited by Tennessee law as a basis for lost-profit damages absent actual evidence that Carlex would have sold the inventory. For those reasons, Woodburn’s model provides no nonspeculative basis for the jury to determine “loss of revenue” caused by the tornado, as required under the Policy. Policy at 64-65; *see* Feldman, 22 Tenn. Prac. Cont. L. & Prac. at § 12:6 (damages cannot be based on “speculative evidence”).

Failure to Separate Damages. Even accepting yield as a proxy for output, Carlex’s damages model only calculates a total loss amount. Carlex presented no evidence to provide a reasonable basis for the jury to determine (1) which of the many potential causes of lost yield in

fact caused any decreased yield here, or (2) what percentage of the total lost yield is attributable to each of those causes. There is thus no nonspeculative basis for the jury to determine damages.

First, Business Interruption losses are recoverable only when the insured can demonstrate they “result from” covered property damage. Policy at 64. But as Qualls and Beckwith explained in their January 13 and 14 testimony, respectively, yield reductions have many causes: damage from the extended Covid hot hold, normal equipment breakdown, maintenance issues, poor quality raw materials, transitions between types and thickness of glass produced, market downturn—to name a few. Other than knowing that shutting down the line caused periods of zero yield, the jury has no reasonable basis for determining which of these factors actually caused the yield loss Carlex alleges—which is Carlex’s burden in order for coverage to attach.

Even if the jury could determine which causes are responsible for Carlex’s alleged damage, Carlex has offered no nonspeculative basis for the jury to apportion a percentage of lost yield to each cause. Carlex has admitted that some of its lower yield, and thus some of its supposed business interruption losses, were caused by things other than the tornado. Woodburn’s damages model gives the jury no basis to determine what percentage of the property damage caused what percentage of the lost yield (let alone lost revenue as the Policy requires).

B. Carlex’s Intentional Misrepresentations and Concealments of Material Fact Void the Policy

As discussed, the tornado did not cause the property damage or business interruption losses that Carlex claims. The evidence shows more than that: Carlex *knew* the tornado did not cause actual losses—yet submitted the Sworn Statement in Proof of Loss seeking \$65,910,544 in coverage anyway. Those misrepresentations void the Policy as a matter of law, so there is no coverage for Carlex’s claim. The Policy provides:

This policy is void as to all Insured’s in any case of fraud by any Insured as it relates to this policy at any time. It is also void if any

Insured, at any time, intentionally conceals or misrepresents a material fact concerning...B. The Covered Property...or D. A claim under this Policy.

Policy at 76. In other words, if at “any time” Carlex (1) intentionally (2) misrepresented or concealed (3) a fact that is (4) material, the Policy is void and there is no coverage. Because the Policy does not define “intent” or “materiality,” the Court should interpret those terms using their “usual, natural, and ordinary meaning.” *Am. Nat’l. Prop. & Cas. Co. v. Gray*, 803 S.W.2d 693, 696 (Tenn. Ct. App. 1990). Tennessee law interpreting both terms in similar contracts is instructive:

Intent. Under Tennessee law, “intent” is “inferred” “[i]f a false statement is knowingly made by the insured with regard to a material matter.” *McConkey v. Cont’l Ins. Co.*, 713 S.W.2d 901, 906 (Tenn. Ct. App. 1984); *see also* Tenn. Prac. Series: Tenn. Pattern Jury Instructions – Civil § 13.25 (intent is “inferred from a knowing and willful misrepresentation.”). Intent can be “reasonably inferred” from “material evidence” that the insured knowingly “falsified information in the claims process.” *PacTech, Inc. v. Auto-Owners Ins. Co.*, 292 S.W.3d 1, 8 (Tenn. Ct. App. 2008). Put simply, proving knowledge proves intent.

Materiality. Tennessee defines “materiality” broadly: “Any misrepresentation which naturally and reasonably influences the judgment of the insurer” is material. *Broyles v. Ford Life Ins.*, 594 S.W.2d 691, 693 (Tenn. 1980). There is no requirement that the misrepresented fact would have changed the outcome—that is, a fact can be material even if, “had the truth been disclosed,” the insurer would have made the same decision. *Smith v. Tenn. Farmers Life Reassurance Co.*, 210 S.W.3d 584, 591 (Tenn. Ct. App. 2006) (analyzing misrepresentation rules in context of policy application). Nor is the insurer “required to prove that it actually lost money as a result of the misrepresentation.” *Wassom v. State Farm Mut. Auto. Ins. Co.*, 173 S.W.3d 775, 784 (Tenn. Ct. App. 2005). Ultimately, to show materiality, the insurer need only show that it was

“denied information that it, in good faith, ... deemed necessary to an honest appraisal” of the claim. *Smith*, 210 S.W.3d at 591.⁵

Here, no reasonable jury could find that Carlex did not intentionally misrepresent or conceal a material fact with respect to its claims—because its witnesses testified it did so repeatedly. First, Carlex’s own witness confirmed that Carlex knew its Proof of Loss was not accurate, i.e., that Carlex (1) intentionally (2) misrepresented the (3) facts underlying its claim. Policy at 76. Carlex’s CFO, Alex Rotolo, signed the Proof of Loss submitted to Sompco and testified that he had reviewed the contents before he signed it. Yet at trial, he admitted that a number of Carlex’s representations in its Sworn Statement in Proof of Loss were false. He admitted that *none* of the line’s cold-end components were damaged by the tornado. This was directly contrary to the sworn Proof of Loss, which claimed damages specifically to the mill-water pipe, gas pipe, lehr, cullet/main line, spur 1 prototype; he admitted all of those are no longer part of Carlex’s claim. And despite claiming business interruption losses from supposed lost yield, Rotolo admitted that the yields have not been low every month since the tornado.

At trial, Rotolo did not deny these were misrepresentations; instead, he explained that the motive for such statements was that submitting a Proof of Loss was the only way to get Sompco’s attention, discuss the claim, and dispute Sompco’s initial denial. It is not clear what Rotolo meant by that testimony. But the reason for the misrepresentation is irrelevant: the provision requires

⁵ A Tennessee statute governing misrepresentations in insurance policy applications creates a disjunctive standard for determining materiality that allows the insurer to void a policy where a misrepresentation was *either* relevant to the employer (that is, based on the insurer’s assessment) *or* when the insured intended the misrepresentation (that is, based on the insured’s mental state). See Tenn. Code, § 56-7-103. Specifically the statute provides that a misrepresentation shall not “be deemed material or defeat or void the policy ... [1] *unless the misrepresentation or warranty is made with actual intent to deceive, or* [2] *unless the matter represented increases the risk of loss.*” *Id.* Meeting one of these conditions is sufficient to render a misrepresentation material. *Broyles*, 594 S.W.2d at 693. Both are satisfied here.

only that the insured “intentionally conceal[] or misrepresent[] a material fact.” Policy at 76. Rotolo admits he did exactly that.

Indeed, another Carlex witness, David Rasey, testified at trial that Carlex knowingly inflated the claim. For example, Rasey explained, there were \$2.6 million in supposed business interruption losses leftover from Carlex’s first Proof of Loss, which did not qualify under the Policy and were thus not covered in the \$17 million Sompo paid. Carlex sought to obtain coverage by reclassifying that \$2.6 million as a covered “extra expense,” i.e., by misrepresenting it. More importantly, Rasey testified that there was no correlation between the 2021-2022 yield data Carlex instructed him to compile and the tornado.

Sompo has already discussed the myriad ways in which Carlex “inflated,” and therefore misrepresented, the claim. As to property damage, Carlex knew that the tornado caused no immediate physical damage to the furnace or the tin bath; that the furnace and the tin bath experienced damage pre-dating the tornado; and that other issues like poor maintenance, equipment breakdown, and the Covid “hot hold” caused the property damage for which it seeks coverage. *Supra* Section III.A.1.a, III.A.1.b. As to business interruption losses, Carlex knew it did not lose a single sale because of the tornado; that it was able to use existing inventory to fill all orders when the tornado caused the plant to shut down from March 3-9, 2020; that it made a business decision to keep the plant shut down from March 14, 2020 to May 27, 2020 because of Covid, not because of the tornado; and that low yield in the 22 months following the tornado—to the extent yield was even low—resulted from other causes. *Supra* at III.A.2.a, III.A.2.b.

Carlex nevertheless submitted a Sworn Statement in Proof of Loss seeking \$42,595,096 in property coverage and \$23,315,448 in business interruption coverage for a “weather-related loss” whose “cause and origin” was “tornado winds” that occurred on March 3, 2020. Proof of Loss at

1. Alex Rotolo signed the Proof of Loss. *Id.* In doing so, he was representing that Carlex in fact suffered certain losses and needed certain repairs, that the “cause and origin” of those losses were “tornado winds,” and the cost of the covered damage totaled \$65,910,544. *Id.* And he was agreeing that “no attempt to deceive the [insurance] company, as to the extent of [the claimed] loss, has in any manner been made.” *Id.* After Sompo declined to pay those amounts, Carlex sued, seeking the identical amount in damages. Doc. 1, at 3 ¶ 10. Every single one of these facts is undisputed. Rotolo himself confirmed as much: he testified that Carlex intended for Sompo to rely on the sworn statement, that he was authorized as CFO to submit it, that he reviewed its contents before signing it, that Carlex had an opportunity to verify the accuracy of the numbers before swearing to them, and that Carlex represented that the calculations were accurate and truthful when it swore to it.

The Policy’s final requirement—materiality—is also plainly met. *See* Policy at 76. It is self-evident why Carlex’s misrepresentations are material: the amount and cause of the damage are the very facts Carlex misrepresented. The value of the claimed losses and whether those losses were “caused by” a “covered cause of loss” are obviously “necessary to an honest appraisal,” and are thus material. *Smith*, 210 S.W.3d at 591; *see* Policy at 32, 64, 88. The ample evidence that Carlex “knowingly overvalued” and “inflated” its damages claim proves both a material misrepresentation and intent, thus voiding the Policy. *PacTech, Inc.*, 292 S.W.3d at 6.

C. Carlex Failed to Timely File its Proof of Loss or its Lawsuit

Sompo is entitled to judgment as a matter of law because Carlex failed to timely file its Proof of Loss or its lawsuit.

Sompo failed to timely file the Proof of Loss from which this lawsuit arises. The Policy required Carlex to “[g]ive [Sompo] a signed and sworn proof of loss within 90 days after the loss, unless that time is extended in writing by [Sompo].” Policy at 78. But Carlex did not file the Proof of Loss under dispute until February 1, 2024—nearly four years after the March 3, 2020 tornado

that Carlex claims caused its losses. Carlex thus failed to comply with the Policy's condition precedent that it timely file a proof of loss, so "[n]o liability under the contract attache[s]." *Strickland*, 611 S.W.2d at 837.

Carlex's lawsuit is also untimely, and is thus barred. Tennessee law "has long held that an insurance policy provision establishing an agreed limitations period" to file suit "is valid and enforceable." *Brick Church Transmission, Inc. v. S. Pilot Ins. Co.*, 140 S.W.3d 324, 329 (Tenn. Ct. App. 2003). Tennessee courts and federal courts applying Tennessee law "consistently uph[o]ld" these "contractual periods of limitations that reduce the statutory period for filing suit." *Jones v. Allstate Ins. Co.*, 1994 WL 677676, at *2 (6th Cir. Dec. 2, 1994) (collecting Tennessee cases); *see, e.g., Hill-Satterfield v. Lauderdale*, 2025 WL 3687900, at *4 (E.D. Tenn. Dec. 19, 2025).

Here, the Policy specifically provides that any "[l]egal action must be started within (24) twenty-four months after the date of direct physical loss or damage to Covered Property" Policy at 80. However, the Policy also contains a "settlement" period, which provides that the "amount of loss ... will be paid within 30 days after" the insured's Proof of Loss is "received by [Sompo]." Policy at 81. In such cases, where the Policy "contain[s] language requiring a claim to be brought within so many days after a property loss, but which protect[s] the insurer from suit until after a settlement period," Tennessee courts interpret the policy "as meaning that suit must be brought within so many days after the cause of action accrues." *Certain Underwriters at Lloyd's of London v. Transcarriers Inc.*, 107 S.W.3d 496, 499 (Tenn. Ct. App. 2002) ("*Lloyds*"); *see Roberts v. Allstate Ins. Co.*, 2009 WL 2851017, at *3 (M.D. Tenn. Aug. 29, 2009). The cause of action for breach of the contract "accrues upon expiration of the settlement of loss period, when the insurer is no longer immune from suit." *Lloyds*, 107 S.W.3d at 499.

Here, Carlex’s cause of action accrued no later than April 18, 2020.⁶ The tornado occurred on March 3, 2020. The Policy required Carlex to submit a Proof of Loss “within 90 days after the loss, unless that time is extended in writing by [Sompo],” and provided that Sompo would settle the claim “within 30 days after” that Proof of Loss is “received.” Policy at 78, 81. Carlex timely filed its first Proof of Loss on March 19, 2020. Def. Ex. 57. The settlement period thus ended—and Carlex’s cause of action accrued—30 days later, on April 18, 2020. The Policy required Carlex to file its lawsuit within 24 months from that date, or April 18, 2022. Carlex failed to do so; it did not file this lawsuit until March 1, 2024, *see* Doc. 1-1, nearly 2 years after the deadline.

That this dispute arises from a subsequent Proof of Loss does not change the claim accrual date. *Daniel v. Allstate Ins. Co.*, 2015 WL 1578553 (Tenn. Ct. App. Apr. 6, 2015) (breach of contract claim accrued based on insured’s first proof of loss, not from contested partial denial of second proof of loss). If Carlex “w[as] not satisfied with the amount” Sompo paid for damages claimed in the first Proof of Loss, it “had [two years] from that date to challenge it in court.”⁷ *Id.*

No reasonable jury could find that Carlex complied with the Policy’s suit limitation period. Sompo is entitled to judgment as a matter of law.

IV. CONCLUSION

For the foregoing reasons, Sompo respectfully requests that the Court grant its Motion for Judgment as Matter of Law pursuant to Federal Rule of Civil Procedure 50.

⁶ Tennessee law “create[s] some confusion” about whether the immunity period comes from the insured’s deadline “to file a proof of loss within [a certain number of] days” or from “requiring the insurer to pay or deny the claim within [a certain number of] days.” *Roberts*, 2009 WL 2851017, at *3-4 (M.D. Tenn. Aug. 29, 2009) (discussing conflict). Here, Sompo has analyzed the date the claim accrued under the rule that would afford Carlex more time.

⁷ Any argument that Carlex’s claim did not accrue until it discovered the losses claimed in the February 1, 2024 Proof of Loss is unavailing. The “discovery rule cannot supersede a contractually agreed upon limitations period as [long] as the agreed upon period affords a reasonable time within which to file suit.” *Goot v. Metro. Gov’t. of Nashville & Davidson Cnty.*, 2005 WL 3031638, at *12 (Tenn. Ct. App. Nov. 9, 2005); *see Daniel*, 2015 WL 1578553, at *4 (same).

Respectfully submitted this 22nd day of January, 2026.

/s/ Alycen A. Moss

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CARLEX GLASS AMERICA, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 3:24-cv-00695
SOMPO AMERICA INSURANCE)	
COMPANY,)	
)	
Defendant.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2026, I electronically filed the foregoing *Memorandum in Support of Sampo America Insurance Company's Motion for Judgment as a Matter of Law* with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

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