

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

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

JOINT PRETRIAL ORDER

Plaintiff Carlex Glass America, LLC, and Defendant Sompo America Insurance Company stipulate and agree that the pleadings are amended to conform to the Joint Pretrial Order and that this Joint Pretrial Order supplants the pleadings, unless otherwise noted.

I. BASIS OF JURISDICTION

The Court has diversity jurisdiction pursuant to 28 U.S.C. §1332.

II. THEORIES OF THE CASE

A. Plaintiff's Theory

On March 3, 2020, an F4 tornado struck and severely damaged Plaintiff Carlex Glass America, LLC's ("Carlex") glass manufacturing facility. At the time of the tornado strike, Carlex was insured for such losses by a comprehensive all-risk insurance policy issued by Defendant, Sompo America Insurance Company ("Sompo"). Sompo initially accepted Carlex's claims for losses under the insurance policy and paid \$17,768,200 for some of Carlex's losses. Although Sompo has acknowledged that its insurance policy provides coverage for all losses resulting from the March 3, 2020, tornado, Sompo failed and refused to compensate Carlex for

damage caused to its float line equipment and has failed and refused to compensate Carlex for its time element claims. Carlex is entitled to damages for (1) the cost to repair or replace the damaged float line equipment, (2) for its time element claims which include business interruption losses, extra expenses, and professional fees and pre-and post-judgment interest on the foregoing, and (3) common law punitive damages for Sompo's intentional, fraudulent, malicious, or reckless conduct in handling Carlex's claim and this litigation.

B. Defendants' Theory

Carlex made a claim for tornado-related property damage, and Sompo paid \$18,268,200 to Carlex. In August 2023, Carlex submitted an untimely claim for loss in an amount that ranged from \$46,236,462 to \$68,198,792. On February 1, 2024, submitted an untimely Sworn Proof of Loss in the amount of \$65,910,544. When Sompo declined to pay Carlex's unsubstantiated claim, Carlex filed this lawsuit alleging Sompo breached the contract by declining to pay the demanded amount. Sompo does not have a contractual obligation to pay Carlex's \$65,910,544 in unsubstantiated losses. Coverage is precluded under the terms of the policy, exclusions contained in the policy, and the policy conditions. Carlex has not demonstrated actual damage to equipment. Carlex has not demonstrated any time element loss under the terms of the policy. Coverage is precluded by the exclusions related to consequential loss, indirect or remote loss or damage; equipment breakdown, wear and tear, deterioration, and dishonesty. Carlex has not complied with the conditions in the policy by bringing suit within twenty-four months. Carlex did not provide timely notice of the alleged new damage, did not timely provide a Sworn Proof of Loss, and the Proof of Loss submitted contained false statements. In addition, Carlex intentionally concealed and misrepresented material facts during the claims process. As such, Carlex has failed to comply with the policy conditions, and its claims are barred.

III. STATEMENT OF THE ISSUES

A. Issues for the Court's Determination

By Plaintiff:

1. Whether Sampo will be allowed to present evidence and argument regarding its claims of fraud, dishonesty, and misrepresentation which were not pled by Sampo.

2. Whether Sampo will be allowed to present evidence and argument regarding the 24-month limitation under the Sampo insurance policy which was not pled by Sampo, was not reserved by Sampo in its denial letter, and which Sampo's representative testified at deposition was not being claimed by Sampo.

3. Whether Carlex is entitled to a declaratory judgment holding that the damage to Carlex's furnace is a covered loss under the Sampo insurance policy.

4. Whether Carlex is entitled to a declaratory judgment holding that the damage to Carlex's float line equipment is a covered loss under the Sampo insurance policy.

5. Whether Carlex is entitled to a declaratory judgment holding that the time element coverage under the Sampo insurance policy has been triggered and the period of restoration.

6. After the jury's verdict in Carlex's favor on its claims for breach of contract, the Court must determine whether to award attorneys' fees and costs to Carlex and the amount of those attorneys' fees and costs it awards to Carlex.

7. Whether Carlex is entitled to a declaration that "Sampo has a duty to indemnify Carlex for covered loss adjustment expenses and time element and contingent time element losses, plus interest at the legal rate and attorney's fees" under the terms of the insurance policy and applicable Tennessee law.

Carlex objects to Sampo's attempt to present any evidence or argument regarding

Carlex's claimed fraud, dishonesty, and misrepresentation when the Court has explicitly denied Sompo's request to amend its pleadings regarding the same.

By Defendant:

1. Whether there is coverage under the terms of the policy for the alleged damage to the furnace and float glass line.
2. Whether the policy provides coverage for Carlex's alleged time element losses.
3. Whether Carlex has voided coverage by intentionally concealing or misrepresenting material facts.
4. Whether Carlex complied with its obligation to file this lawsuit within the 24 month limitation window as it agreed to do in the insurance contract.

B. Issues for the Jury's Determination

By Plaintiff:

1. The amount of damages to which Carlex is entitled for property damage to the float line equipment.
2. The amount of damages to which Carlex is entitled for time element losses including business interruption, extra expenses, and professional fees.
3. Whether Carlex is entitled to a declaratory judgment regarding property damage losses to the furnace.
4. Did Carlex sustain damages as a result of the March 3, 2020 tornado, beyond the \$17 million previously paid by Sompo?
5. Did Carlex sustain covered property damage as a result of the March 3, 2020 tornado, beyond the \$17 million previously paid by Sompo?
6. Did Carlex sustain lost profits, increased costs, and professional fees as a result of

the March 3, 2020 tornado?

7. Whether Carlex is entitled to punitive damages and the amount of such punitive damages due to Sompo's intentional, fraudulent, malicious, or reckless conduct during the loss adjustment and this lawsuit?

By Defendant:

1. Was there direct physical loss or damage to the furnace or float glass line due to the tornado?

2. If there was direct physical loss or damage to the furnace or float glass line due to the tornado, what is the amount of damage?

3. Did Carlex prove by a preponderance of the evidence that it had suffered \$65,910,544 in damages as of February 1, 2024?

4. Did Sompo breach the insurance contract by refusing to pay Carlex's demand for \$65,910,544 on February 1, 2024?

5. Did Carlex suffer any time element loss as a result of the tornado?

6. To the extent Carlex suffered a loss of production due to the tornado, was it able to make up the lost production within a reasonable time after the tornado?

7. To the extent Carlex suffered a loss of production due to the tornado, was it able to make up for the loss production by using existing inventory on hand?

8. Whether Carlex provided a timely sworn proof of loss based on Carlex's knowledge and/or good faith and honest beliefs?

9. Whether Carlex knowingly made false statements and/or misrepresentations on its Sworn Proof of Losses?

10. Whether Carlex can recover damages during the planned shutdown to repair and

rebuild the lip refractory?

11. Whether Carlex can recover damages during the voluntary and planned shutdown due to Covid?
12. Whether Carlex has complied with all conditions precedents under the policy?
13. Whether some or all of Carlex's claims are excluded from coverage?
14. Whether Carlex complied with its obligation to file this lawsuit within the 24 month limitation window as it agreed to do in the insurance contract?

Defendant objects to Plaintiff's attempt to amend the pleadings at this late stage to add claims for attorney's fees and punitive damages.

Defendant also objects to Plaintiff's attempt to amend the pleading and change its theory of recovery at this late stage with respect to the alleged damages. Plaintiff specifically plead a claim for breach of contract related to Defendant's alleged failure to pay Plaintiff's claim for \$65,910,544. *See* Complaint, ¶ 12, 32.

IV. TRIAL EXHIBITS

In accordance with the Court's order, the parties have separately submitted exhibits lists with exhibits numbered sequentially. All exhibits shall be pre-marked by counsel prior to trial in accordance with Local Rules so as not to delay the trial before the jury.

V. WITNESSES

The parties have disclosed all witnesses in accordance with Fed. R. Civ. P. 26(a)(3)(A). The parties have separately submitted lists comprised of the names of all witnesses, their addresses, and short summary of the expected testimony as required by the Court's order.

VI. RELIEF SOUGHT

Carlex seeks:

1. money damages for covered losses under the Sampo insurance policy including property damage losses, time element losses, extra expenses, professional fees, and punitive damages for Sampo's intentional, fraudulent, malicious, or reckless conduct during the loss adjustment and this lawsuit.
2. Declaratory judgment that damage to Carlex's furnace is a covered loss under the Sampo insurance policy.

Sampo seeks:

1. Dismissal of all claims by Carlex
 - a. Carlex has not demonstrated a covered loss beyond the amount already paid by Sampo;
 - b. Carlex did not file this lawsuit in a timely manner, within 24 months as required by the parties agreement; and
 - c. Carlex has not complied with all conditions precedent so as to be entitled to coverage under the policy.

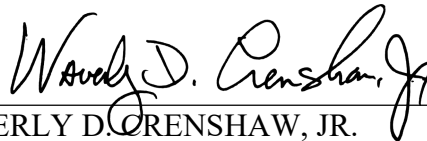
VII. EVIDENTIARY DISPUTES

The parties have filed Motions in Limine and Defendant has filed *Daubert* motions, which must be addressed by the Court. The parties are working on stipulations regarding the authenticity of certain exhibits and are working on narrowing the volume of exhibits and determining whether any stipulations as to admissibility can be reached.

VII. ESTIMATED LENGTH OF TRIAL

The parties estimate that trial will last 6 days. It currently is scheduled to begin January 13, 2026.

IT IS SO ORDERED.



WAVERLY D. GRENSHAW, JR.
U.S. DISTRICT JUDGE