IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA CHARLESTON DIVISION

JW ALUMINUM COMPANY, Plaintiff, v. ACE AMERICAN INSURANCE COMPANY, GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA Defendants.	Case No.: 2:21-cv-1034-BHH

DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT ON PLAINTIFF'S CAST COIL CLAIM

Defendants ACE American Insurance Company and General Security Indemnity Company of Arizona (collectively, "Defendants") respectfully submit their renewed motion for judgment as a matter of law pursuant to Rule 50(b) of the Federal Rules of Civil Procedure. Even viewing all evidence in the light most favorable to Plaintiff JW Aluminum Company ("JWA" or "Plaintiff"), there is no legally sufficient evidentiary basis upon which a reasonable jury could have awarded damages for lost profits on cast coil sales. The jury's $80,712,037 verdict on this claim is unsupported by the record and impermissibly rests on conjecture and speculation. The jury's verdict must therefore be vacated, and judgment as a matter of law entered in favor of Defendants. Alternatively, Defendants respectfully request a new trial, or a new trial *nisi remittitur*, pursuant to Rule 59 of the Federal Rules of Civil Procedure.

I. LEGAL STANDARD

Rule 50(b) permits a party to renew a Rule 50(a) motion after the entry of verdict where "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); Fed. R. Civ. P. 50(b). Where a verdict can be reached only through speculation or conjecture, judgment as a matter of law is required. *See Tallon v. Seaboard Coast Line R. Co.*, 242 S.E.2d 418, 420 (S.C. 1978) (holding that trial court properly granted motion for directed verdict and stating that verdicts "are not allowed to rest on conjecture or speculation"). In ruling on a motion for judgment of a matter of law that has been renewed after a jury verdict, pursuant to Rule 50(b) of the Federal Rules of Civil Procedure, "the court should disregard any jury determination for which there is no legally sufficient evidentiary basis enabling a reasonable jury to make it. The court may then decide such issues as a matter of law." *See* Fed. R. Civ. P. 50(b), Notes of Advisory Committee on Rules-1991 Amendment.

A court may grant a motion for judgment as a matter of law if, "viewing the evidence in the light most favorable to the non-moving party and drawing every legitimate inference in that party's favor, the court determines that the only conclusion a reasonable trier of fact could draw from the evidence is in favor of the moving party." *Tools USA & Equip. Co. v. Champ Frame Straightening Equip.,* 87 F.3d 654, 656-657 (4th Cir. 1996) (internal citations and parenthesis omitted). However, the nonmovant must show "substantial evidence" to support the jury verdict; "that is, evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment could reasonably return a verdict for the nonmoving party." *Martin v. Cavalier Hotel Corp.,* 48 F.3d 1343, 1350 (4th Cir. 1995) *quoting Wyatt v. Interstate & Ocean Transport Co.,* 623 F.2d 888, 891 (4th Cir. 1980). Further, with respect to lost profits, the party seeking such must, under South Carolina law, prove entitlement to them with "reasonable certainty." *S.C. Fin. Corp. of Anderson v. W. Side Fin. Co*., 113 S.E.2d 329, 337 (S.C. 1960) (acknowledging the practical impossibility of exact calculation of such profits, but requiring a "fair and reasonable approximation of them from all the facts, circumstances, and data disclosed by the

evidence"). This standard of reasonable certainty is even higher when it comes to new enterprises. *See, e.g.*, *Mali v. Odom*, 367 S.E.2d 166, 170 (S.C. App. 1988) (showing that a court will not award future profits for a new business unless it is presented with evidence of the operational history of the business or of any particular standard or fixed method for estimating future income and expenses). As shown below, Plaintiff failed to introduce evidence legally sufficient to establish (1) that it could lawfully have produced cast coil during the claimed loss period, or (2) that it sustained $80,712,037 in lost profits from its new venture into cast coil sales with reasonable certainty. Even construing the evidence in the light most favorable to Plaintiff, no reasonable jury could have reached the challenged verdict. Therefore, Defendants respectfully renew their request that the Court grant Defendants judgment as a matter of law and vacate the jury's verdict pursuant to Rules 50 (a) and (b) of the Federal Rules of Civil Procedure.

Only in the alternative, should the Court determine that judgment as a matter of law is not appropriate, Defendants move for a new trial, or a new trial *nisi remittitur*, pursuant to Rule 59. Where a court concludes that verdict is excessive, "it is court's duty to require remittitur or order new trial, and failure to do so constitutes abuse of discretion." *See Cline v Wal-Mart Stores, Inc.*, 144 F3d 294 (4th Cir 1998) (citation omitted). A new trial may be granted "for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59(a). It is well-established in the Fourth Circuit that, pursuant to Rule 59, it is the duty of the Court to set aside the verdict and grant a new trial if "(1) the verdict is against the clear weight of the evidence, or (2) is based upon evidence which is false, or (3) will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict." *Atlas Food Sys. & Servs. Inc. v. Crane Nat'l Vendors, Inc.*, 99 F.3d 587, 594 (4th Cir.1996) (quoting *Aetna Casualty & Sur. Co. v. Yeatts*, 122 F.2d 350, 352–53 (4th Cir. 1941), *overruled on*

other grounds by Gasperini v. Ctr. for Human., Inc., 518 U.S. 415 (1996). Additionally, a new trial must be granted where an incorrect legal standard was applied. *See, e.g.*, *Doe v. Fairfax Cnty. Sch. Bd.*, 1 F.4th 257, 277 (4th Cir. 2021) (reversing the district court's denial of Rule 59 motion and remanding for a new trial consistent with correct legal standard); *see also Wilhelm v. Blue Bell, Inc.*, 773 F.2d 1429, 1433 (4th Cir. 1985) (discussing motion for new trial in jury trial context, stating that "the district court had a duty to order a new trial 'if this action [was] required in order to prevent injustice'") (citation omitted). Moreover, a new trial may be granted when "the amount of the verdict is so grossly inadequate or excessive as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or other improper motives." *Cantrell v. Target Corp.*, No. CV 6:06-2723-BHH, 2009 WL 10678353 at *10 (D.S.C. May 15, 2009). The decision to grant a new trial is "within the sound discretion of the trial court." *Doe*, 1 F.4th at 277. Here, even assuming any evidence introduced by Plaintiff is legally cognizable, the verdict is against the clear weight of the evidence introduced by Defendants, is based upon false evidence, and will result in a miscarriage of justice. The verdict was also based on an incorrect legal standard, and the amount of the figure reached clearly indicates that it was the result of passion, prejudice, or other improper motives. Thus, if the Court declines to enter judgment as a matter of law, Defendants request, in the alternative, that the verdict be set aside and a new trial granted under Rule 59.

II. ARGUMENT

A. Plaintiff Raised No Genuine Issue of Material Fact Concerning its Inability to Legally Produce and Sell Cast Coil During the Claimed Period

Plaintiff cannot meet its burden for lost profits of its hypothetical cast coil sales because it failed to create a genuine issue of material fact as to whether it could have lawfully operated Legacy and Boilermaker simultaneously. **This is the single dispositive issue that determines**

whether Plaintiff could have sold cast coil on the third-party market. Plaintiff admitted that, in order to conduct cast coil sales, dual operation of Legacy and Boilermaker required the proper permits. *See, e.g.*, November 12, 2025 Trial Transcript 58:25-59:2 ("Q: In order to operate the Boilermaker facilities, did JWA have to get additional permitting? A: Yes."). Whether Plaintiff's current permit enabled it to operate both Legacy and Boilermaker simultaneously, and if not, whether it could have obtained the necessary permits during the claimed period of time, are material, essential elements of its cast coil lost profits claim. These inquiries involve knowledge of air emissions netting, complex engineering, air quality modeling, regulatory knowledge, and the demonstration of compliance with intricate federal and state laws – matters far beyond lay knowledge. *See, e.g. Citizens Against Refinery's Effects, Inc. v. U.S. E.P.A* ., 643 F.2d 178, 181 (4th Cir. 1981) ("[a]nalysis of modeling results required for PSD applications is a highly technical area"); *see also* Substantive PSD requirements – Source impact analysis, 2 L. of Envtl. Prot. § 12:110 ("[a]ir quality modeling analyses needed for NSR permits will require input from experts in the field of air pollution emissions modeling"). Yet JWA presented no such expert testimony on the scientific and technical matters governing air-permitting. Rather, its case rested entirely on a lay witness's percipient impressions of the permit in place at the time of the Loss. Such testimony is legally insufficient to establish a material element requiring scientific, technical, and regulatory proof. *See, e.g.*, *Mt. Valley Pipeline, LLC v. 0.47 Acres of Land*, 853 Fed. Appx. 812, 815 (4th Cir. 2021) (rationale allowing lay witness testimony inapplicable where such testimony was merely "repetition of another's assessment" and for which lay witness lacked knowledge for much of the basis for his testimony). Moreover, that lay impression is directly contracted by the plain text of the only existing permit, which unmistakable required removal of the very equipment Plaintiff contends it would have used to produce additional cast coil for sale. *See* DX 256 p. 4-6 (explicitly

delineating all the Legacy Equipment as "Equipment to be Removed"). Not only did Plaintiff fail to adduce qualified expert testimony of its own, but Defendants' unrebutted expert testimony ***confirmed*** the absence of any factual dispute. Defendants called Stephen Trauth, accepted by the Court as an environmental permitting expert and unchallenged by Plaintiff. *See* November 17, 2025 Trial Transcript 5:6-11. Mr. Trauth's testimony provided affirmative, unrebutted expert evidence conclusively establishing that JWA did not have the permits to operate both Legacy and Boilermaker, and the timeline for approval of adequate permits was speculative at best.

The Court initially concluded that the permitting issue could go to the jury only because there was no "affirmative evidence" showing that JWA did not have the proper permits. Specifically, the Court stated:

> As to permitting, JWA did not put up a witness for Meridian. It appears JWA intends to rely on Mr. Brant's testimony that, from his conversations with Meridian, JWA was covered to be able to run both machines simultaneously, that during his time at JWA, the company was always able to get whatever permits we needed; **in the absence of evidence affirmatively showing that JWA could not get permits to do so**. Thus, the factual issue of whether JWA would have sold cast coil on the third-party market had there been no damage to the legacy equipment is a proper question for the jury.

November 14, 2025 Trial Transcript, 3:19-4:3 (emphasis added). Thus, the Court's ruling expressly hinged on the absence of "affirmative evidence" showing JWA could not lawfully operate both Legacy and Boilermaker during the period in question. That evidentiary gap no longer exists. Mr. Trauth provided comprehensive, unrebutted expert testimony establishing the following:

1. Plaintiff's permit applications repeatedly represented that the Legacy equipment would be removed from operation, and those representations were incorporated into the final approved Construction Permit. November 17, 2025 Trial Transcript, 9:13-10:11; 11:3-16.

2. Plaintiff never disclosed any plan for phased construction or dual operation; no such phasing appears in any application, revision, or permit condition. *Id.* at 6:2-17; 35:10-17; 53:4-10; 48:4-50:20; 53:4-10.
3. Had Plaintiff intended to run both systems simultaneously, it was required to initiate PSD permitting, which it did not. Dual operation would have triggered major-source regulatory requirements that JWA sought to circumvent. *Id.* at 48:21-49:14.
4. Any operation of the Legacy Equipment after construction was completed was a direct violation of the approved Construction Permit. *Id.* at 15:17-16:1; 38:5-9; 41:3-8; 44:5-9; 47:9-13; 48:9-20.
5. Plaintiff certified that construction had been completed as of May 2020. *Id.* at 12:11-16; 13:2-5.
6. Because Legacy emissions had been netted out to avoid PSD, the Legacy Equipment could not lawfully be operated at the same time as Boilermaker without first undergoing a new permitting process. *Id.* at 46:20-49:23.
7. Plaintiff had not even begun the PSD process as of August 4, 2020; there was no guarantee it would be approved, and the timeline was speculative, subject to community opposition, technical modeling, and regulatory review. *Id.* at 16:10-17:9; 45:17-46:2; 49:24-50:20.

This expert testimony eliminates any basis on which a reasonable jury could find that JWA could lawfully operate both Legacy and Boilermaker simultaneously during the period for which it claims cast coil losses. JWA called no expert and presented no technical or regulatory evidence to rebut Mr. Trauth's opinions. Without *expert* testimony to establish (1) that dual operation was permitted under JWA's existing construction permits, or (2) that JWA could have successfully obtained the additional permits necessary to run both furnaces simultaneously, JWA introduced no

competent evidence on an essential element of its claim. As a result, JWA failed to create any genuine question of fact for the jury under Rule 50(a), and Defendants are entitled to judgment as a matter of law.

Plaintiff's lay-witness testimony cannot create a genuine issue of material fact sufficient to defeat a motion for judgment as a matter of law. Courts consistently hold that lay testimony cannot substitute for expert evidence where the subject matter is technical and beyond ordinary experience. *See, e.g.*, *Certain Underwriters at Lloyd's, London v. Sinkovich*, 232 F.3d 200, 203 (4th Cir. 2000) (holding that the district court erred in admitting improper expert testimony from a lay witness and explaining that "[u]nlike a lay witness under Rule 701, an expert can answer hypothetical questions and offer opinions not based on first-hand knowledge because his opinions presumably 'will have a reliable basis in the knowledge and experience of his discipline'"); *Mt. Valley Pipeline, LLC*, 853 Fed. Appx. at 815 (where lay witness "openly admitted that the opinion was not his own," court ruled that same "would be unduly speculative and unhelpful to the jury"). The *only* evidence Plaintiff offered at trial to support its ability to legally operate Legacy and Boilermaker simultaneously was impermissible, speculative, lay witness testimony. *See, e.g.*, November 11, 2025 Trial Transcript 92:14-18 (Stan Brant asserting that, "to the best of my knowledge," JWA had the permits in place to operate both until approximately the end of the year); 129:13-130:1 (Stan Brant admitting that he is not an expert in permitting, does not know the difference between a construction permit and operating permit, but "believe[d]" that JWA had sufficient permits to operate); 110:19-22 (Mr. Brant's opinion that he was not concerned about getting the required modification to the permits). Such conclusory impressions, unsupported by regulatory knowledge, emissions analysis, or documentary evidence, cannot create a genuine issue

of factual dispute in the face of unrebutted expert testimony demonstrating that dual operation was unlawful under the permits JWA had during the claimed period.

Multiple courts throughout the country have held that uncontradicted, unimpeached expert testimony on technical issues creates "no genuine issue of material fact to be resolved." *Webster v. Offshore Food Serv., Inc.*, 434 F.2d 1191, 1194 (5th Cir. 1970) (explaining that "the trier of fact would not be at liberty to disregard arbitrarily the unequivocal, uncontradicted and unimpeached testimony of an expert witness, where, as here, the testimony bears on technical questions … beyond the competence of lay determination") (internal citations omitted); *see also, e.g.*, *Quintana-Ruiz v. Hyundai Motor Corp.*, 303 F.3d 62, 76–77 (1st Cir. 2002) ("[w]hile juries may decide what weight to give to the testimony of expert witnesses, they are not "at liberty to disregard arbitrarily the unequivocal, uncontradicted and unimpeached testimony of an expert witness where ... the testimony bears on technical questions ... beyond the competence of lay determination"). Here, Mr. Trauth's expert testimony is exactly that: unequivocal, unrebutted, and unimpeached expert evidence demonstrating that dual operation was unlawful, could not have occurred under the permits JWA possessed, and could have occurred only through a new, lengthy, uncertain permitting process. Based on the foregoing, Plaintiff's lay-witness testimony was not enough to create a genuine issue of material fact for the jury.

With Mr. Trauth's testimony unrebutted, there is no genuine issue of material fact, and no reasonable jury could have concluded that Plaintiff had the proper permits to conduct cast coil sales. Importantly, Plaintiff had ample opportunity to put forward its own permitting expert. Plaintiff admitted that it relied on Meridian for permitting expertise and could have called Meridian to support its theory that dual operation was permissible. Yet Plaintiff elected not to call Meridian, or any expert, despite knowing that its cast coil claim required proof of the proper permits and that

the permitting issue required specialized technical knowledge. With the benefit of the full trial record, it is clear that Plaintiff has not met its burden to show that it could have legally operated the Legacy Equipment during the relevant period. Moreover, the record contains affirmative, unrebutted evidence that operation of Legacy during the restoration period was prohibited by law. No reasonable jury could have concluded, based on lay speculation alone, that Plaintiff could legally have operated the Legacy facility, or that there was any legally cognizable loss. To conclude that Plaintiff "would have done precisely the opposite of what it actually did" – in this case, obtain or apply for the permits to run Boilermaker and Legacy simultaneously – "is to engage in inherently speculative and imaginary thinking." *Durachem Group, Inc. v. 3V Sigma USA, Inc*., No. 2:20-CV-04181-DCN, 2022 WL 1017767, at *3 (D.S.C. Apr. 5, 2022) (overturning claim for lost profits where the claim was based on plaintiff's "mere speculation that the parties would have ultimately renewed the contract"). Therefore, Defendants respectfully renew their request that the Court grant Defendants judgment as a matter of law and vacate the jury's verdict pursuant to Rules 50 (a) and (b) of the Federal Rules of Civil Procedure.

B. Instead of Presenting an Actual Lost Profits Number With Reasonable Certainty to the Jury, Plaintiff Requested a Number Manipulated to Maximize Recovery Under the Policy Limit; the Jury's $80,712,037 Award Is Speculative as a Matter of Law

Assuming, *arguendo*, that Plaintiff had shown it could have lawfully produced cast coil, its Cast Coil Claim still fails because Plaintiff never came close to proving lost profits with reasonable certainty. We are now more than five years from the August 4, 2020 fire, with multiple motions for summary judgment, an appeal, a remand, and a five-day trial with dozens of exhibits, multiple witnesses, and a completed verdict sheet, and no one on earth knows how much cast coil Plaintiff would have sold on the third-party market. Respectfully, the Court cannot say with reasonable certainty how much cast coil Plaintiff would have sold on the third-party market if not for the

August 4, 2020 fire; not even Plaintiff can answer that question. In closing argument, Plaintiff abandoned any pretense of a reasonably certain damages calculation and confessed:

> I can[‘t] sit here and tell you that that number is 67 million or 92 million or 112 million? **I can't do that.** The law does not require us to do that.

See November 18, 2025 Trial Transcript 141:17-19 (emphasis added). Despite counsel’s assertion, Plaintiff *does* have the burden of proving lost profits with reasonable certainty. As will be discussed herein, the jury’s verdict of $80,712,037 was calculated based on the Policy’s business interruption sublimit. The fact is, the record contains no calculation, no methodology, no analysis, and no coherent theory of actual cast coil production and sales that would support the jury’s verdict.

Under South Carolina law, lost-profit damages must be proven with reasonable certainty, and “must pass the realm of conjecture, speculation, or opinion not founded on facts.” *Drews Co., Inc. v. Ledwith-Wolfe Associates, Inc*., 371 S.E.2d 532, 536 (S.C. 1988) (citations omitted). Where a business has no operational history, courts apply an even higher standard for establishing lost-profit claims. *Id., see also Mali v. Odom*, 295 S.C. 78 (Ct. App. 1988) (holding that estimates of lost profits without reference to an operational history, or to any particular fixed method for estimating future income and expenses, is insufficient to quantify lost profits with reasonable certainty); *see also, e.g.*, *Al-Saud v. Youtoo Media, L.P.*, 754 F. App’x 246, 255 (5th Cir. 2018). (holding that the “mere hope of success of an untried enterprise, even when that hope is realistic, is not enough for recovery of lost profits.”); *In re Oil Spill by Oil Rig "Deepwater Horizon" in Gulf of Mexico*, on April 20, 2010, No. MDL 2179, 2021 WL 3602633, at *3-*4 (E.D. La. Aug. 13, 2021) (holding that “there is no genuine dispute that Plaintiffs cannot prove their damages with reasonable certainty” where Plaintiff’s business was never operational, had no sales contracts, and

had "countless unknowns"). Based on the foregoing, Plaintiff's Cast Coil Claim fails because Plaintiff never came close to proving lost profits of its new enterprise with any reasonable certainty.

Instead of providing evidence of any standard or fixed method by which its lost profits could be estimated with a fair degree of accuracy, Plaintiff simply asked the jury to issue an award directly tied to the business interruption limit of the Policy. The jury's verdict of $80,712,037 was based on reverse-engineering the numbers *solely* to reach the Policy's business interruption limit. Here's how the "lost profits" were calculated: Plaintiff took the business interruption limit of $80,153,418, added in the ACE Policy's deductible of $7,898,080, and subtracted the stipulated number of $7,339,461 for lost sales of pack pounds[1] to reach the number of $80,712,037. Plaintiff unabashedly admits that this is how it calculated its "lost profits." *See, e.g.*, ECF No. 273, JWA's Motion for Prejudgment Interest p. 14-15 ("[t]hat amount, as argued by JWA in its closing argument, represents the Policy's BI sublimit, plus the applicable deductible, less the stipulated amount of Pack Pounds BI"). Plaintiff's counsel provided the $80,712,037 number to the jury during closing argument, without identifying any standard or fixed method for connecting that figure to lost cast coil sales. The jury simply transcribed that number onto the verdict sheet. Based on the foregoing, the $80,712,037 number accepted by the jury has no connection to any lost profits calculation and, as such, the verdict must be vacated.

The jury verdict of $80,712,037 for lost sales of cast coil on the third-party market was not tied to any formula, spreadsheet, cost structure, forecast, or any data whatsoever presented at trial. This kind of lost-profits analysis, based solely on guesswork, conjecture, and speculation, flies in

[1] The jury verdict of $80,712,037 for lost sales of cast coil is further in error as it considers lost sales of pack pounds. As the Court knows, the lost sales of pack pounds was stipulated at $7,339,461, and should not have been considered by the jury in calculating lost sales of cast coil on the third-party market.

the face of South Carolina precedent and is entirely inappropriate. *See, e.g.*, *Drews Co., Inc.* 371 S.E.2d at 536 (holding that trial judge erred in failing to rule that claim for lost profits, unsupported by any particular standard or fixed method for establishing net profits, was "wholly insufficient to provide the jury with a basis for calculating profits lost with reasonable certainty," and reversing jury's award of lost profits). There was absolutely no evidence presented to the jury during the five days of trial to allow the jury to calculate lost profits of cast coil sales totaling $80,712,037. The Court can search the full trial record to confirm that this is the case. Rather, Plaintiff's counsel introduced the $80,712,037 number for the very first time during closing arguments. During trial, the *only* testimony Plaintiff has submitted is the "mere hope" of an untried enterprise. *See* November 12, 2025 Transcript 202:7-203:7 (admitting that selling cast coil on the third-party market was "one of the options" Plaintiff had, but that it had never done so before, and there were no written business plans or financial prospectives to do so). Plaintiff's own witnesses conceded that it had no written business plan, no budget, no financial forecast for what could be earned, and not a single contract to sell cast coil to any customer prior to the Loss. *See* November 12, 2025 Trial Transcript p. 122:17-123:5, 202:2-203:7. Plaintiff's marketing expert, Ibrahim Yucel, could not say with any certainty whether Plaintiff would meet any specific percentage of the market demand for cast coil. *See* November 13, 2025 Trial Transcript 77:11-13 (Q: "What percentage could [Plaintiff] have captured? A: I've already said in my deposition I don't have a specific percentage and I said a few minutes ago as well"). Plaintiff's accounting expert, John Petzold, admitted his cast-coil numbers were speculative. *See* November 13, 2025 Trial Transcript 174:22-175:2 ("Q: Okay. Now that you have seen the DHEC letter, this contract, would you agree with me that your assumption to—to get your assumption that they would, in fact, have gone to full dual capacity of Legacy and Boilermaker would require you to speculate? A: Yes."); 180:8-20

(Petzold admitted that relying on documents and analysis to support what customers Plaintiff would have sold to, what types of cast coil they would have produced and sold, what volume or quantity Plaintiff would have sold, any specific alloy or gauge Plaintiff would have produced and sold, what the marketplace looked like, or the process for selling cast coil was "all outside the scope of my work"); 182:13-15 ("Q: Can we agree with the second major assumption you made that [Plaintiff would have] sold everything is speculative? A: Yes"). Based on the foregoing, Plaintiff provided no evidence of a fixed, rational, or historical basis by which the jury could calculate lost profits of $80,712,037 with any reasonable certainty and, as such, the verdict must be vacated.

The verdict is further flawed because it is based on sales for a time period that its own witnesses acknowledged that Plaintiff had no permits to run the Legacy Equipment. In its Motion for Prejudgment Interest, Plaintiff admits that "[a]t trial, JWA's primary damages model involved the company selling all cast coil the Legacy Equipment could produce between January and October 2021." *See* ECF No. 273, JWA's Motion for Prejudgment Interest p. 3-4 of 25. Yet even Plaintiff's own witnesses admit that it had no permits to operate Legacy and Boilermaker beyond the end of 2020. *See* November 12, 2025 Trial Transcript, 92:8-20 (Stan Brant alleging that the permits in place enabled Plaintiff to operate until the end of the year "to cover the ramp-up period"). All Plaintiff offered was lay witness speculation that it could get the necessary permits in the future. *Id.* 110:19-22 (Mr. Brant's opinion that he was not concerned about getting the required modification to the permits). Such mere speculation cannot support a claim for lost profits. *See Durachem Group, Inc* 2022 WL 1017767, at *3 (overturning claim for lost profits where the claim was based on plaintiff's "mere speculation that the parties would have ultimately renewed the contract"). As such, Plaintiff's "primary damages model" is based on a time period

for which there is no evidence in the trial record that it had proper permits to run the Legacy Equipment and, as such, the verdict must be vacated.

C. Alternative Basis for Relief: A New Trial Should be Granted Under Rule 59

Should the Court decline to grant judgment as a matter of law under Rule 50(b), a new trial, or a new trial *nisi remittitur*, is warranted under Rule 59 because the jury's verdict is against the clear weight of the evidence, is based upon speculation, and risks a manifest injustice. As explained above, Plaintiff failed to offer evidence beyond lay witness speculation showing that it had the proper permits to operate both Legacy and Boilermaker simultaneously during the claimed period. Plaintiff's lay witness told the jury that he "believed" the facility had the permits necessary for dual-line operations, but the written record and the testimony of Defendants' expert showed the opposite. Defendants' expert made clear that the current permits did not allow for dual operation of Legacy and Boilermaker, and the path to obtaining such permits within the period relevant to Plaintiff's damages theory was speculative at best. *Supra* at 6-7. Additionally, the $80,712,037 verdict adopted by the jury was unsupported by any reliable analysis of capacity, contracts, customers, or profitability, which is completely contrary to South Carolina law. *Supra* at 12-13. This damages figure presented to the jury was reverse-engineered from the policy limit, rather than derived from facts or a reliable methodology. *Supra* at 11-12. Under South Carolina law, lost profits must be proven with reasonable certainty, and courts have repeatedly rejected awards based on speculation or hope of success in a new business venture. See *Drews Co., Inc. v. Ledwith-Wolfe Assocs*., 371 S.E.2d 532, 536 (S.C. 1988); *Mali v. Odom*, 367 S.E.2d 166, 170 (S.C. App. 1988). Here, the verdict plainly disregards these controlling principles and thus does not apply the correct legal standard. The full trial record establishes that the verdict is not merely unsupported, but against the clear weight of the evidence. The jury was left to speculate both as to

the legality of operations and the amount of profits allegedly lost, effectively substituting guesswork for proof. Based on the foregoing, allowing the verdict to stand on this is against the clear weight of the evidence, is based upon speculation, and would be a manifest injustice. The verdict also disregards controlling principles of law and does not apply the correct legal standard. As such, should the Court decline to grant judgment as a matter of law, Defendants respectfully move for a new trial, or a new trial *nisi remittitur*, under Rule 59.

A new trial, or a new trial *nisi remittitur*, is also warranted because the verdict reflects passion or prejudice inflamed by Plaintiff's repeated "local individuals versus big insurers" narrative. A new trial may be granted when "the amount of the verdict is so grossly inadequate or excessive as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or other improper motives." *Cantrell*, 2009 WL 10678353 at *10. Despite Defendants' pretrial motion in limine seeking to exclude references to bad faith claims handling, the Court permitted Plaintiff to pursue that theme throughout trial. *See* ECF No. 262, Order on Motions in Limine p. 6-7 of 16 (allowing Plaintiff to present evidence concerning claims handling "only as necessary to meet its burden under the prevention doctrine"). Defendants also sought to introduce evidence concerning the private equity owners of Plaintiff as it is relevant, and would prevent the risk of "improperly influencing the jury by portraying Defendants as 'big bad insurance companies,' even though JWA itself is owned by large, well-capitalized hedge funds." *See* ECF No. 256, Defendants' Motion in Limine p. 14 of 23. Yet the Court did not allow Defendants to introduce this evidence at trial. *See* ECF No. 262, Order on Motions in Limine p. 7 of 16. Plaintiff took full advantage of the Court's ruling, and the jury heard repeated testimony and argument emphasizing the supposed credibility and sacrifice of Plaintiff's "local" individuals, paired with repeated reminders that Defendants are "hated"

insurance companies. *See, e.g.* November 12, 2025 Trial Transcript 121:3 ("Q: How does it make you feel to be accused of making up this claim, Mr. Brant? A: Well, my first reaction, if I were sitting around with my buddies, I might use some colorful words that I would prefer not to use in this setting. So, let's just say on the one hand it makes me angry, because I felt like we operated the business in an honorable fashion. But if I step back from that and get past that personal reaction, I think, again, I'm perplexed and disappointed that five years later, we still don't have this resolved"); November 18, 2025 Trial Transcript 99:17-20 ("And rather than have our back, they're trying to sell you a story where they get to take advantage of us and get a discount"); 130:17-21 ("This is why people hate insurance companies. We paid for a policy. That created an obligation, one that they now admit they have. And they're still arguing nonsense to you about how we're entitled to zero damages."); 133:1-2 ("Another misrepresentation by the insurers, which is why people hate them"). None of this evidence or argument had any bearing on whether Plaintiff held the permits it claimed, could or would conduct cast-coil sales as alleged, or suffered the damages presented. The only purpose of this framing was to invite the jury to decide the case based on who it liked more, not on the evidence. The size of the verdict and the absence of competent proof supporting it strongly suggest that this "big insurers versus local individuals" theme improperly influenced the jury's decision. For these independent reasons as well, Defendants respectfully move for a new trial, or a new trial *nisi remittitur*, under Rule 59.

III. CONCLUSION

For all of the foregoing reasons, Plaintiff presented no legally sufficient evidence from which a reasonable jury could conclude that Plaintiff: (1) could have lawfully operated the Legacy equipment to produce cast coil during the claimed period; or (2) proved lost profits from cast coil sales with reasonable certainty. The jury's $80,712,037 award rests entirely on speculation and

conjecture, in direct violation of controlling South Carolina precedent. Defendants therefore respectfully request that the Court:

1. Enter judgment as a matter of law in favor of Defendants and dismiss Plaintiff's Cast Coil Claim;
2. Vacate the jury's award of $80,712,037 on that claim; or, in the alternative,
3. Grant Defendants a new trial, or a new trial *nisi remittitur*, pursuant to Rule 59 of the Federal Rules of Civil Procedure; and,
4. Grant such other and further relief as the Court deems just and proper.

Dated: December 15, 2025

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