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' ACE AMERICAN INSURANCE COMPANY AND GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA OMNIBUS MOTION IN LIMINE AND INCORPORATED MEMORANDUM OF LAW

Defendants, ACE AMERICAN INSURANCE COMPANY ("ACE") and GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA ("General Security") (collectively, "Defendants"), hereby serve this motion in limine seeking to preclude Plaintiff, JW ALUMINIMUM COMPANY ("JWA"), its counsel, and its witnesses, from introducing: (1) evidence related to or alleging improper claims handling; (2) evidence from lay witnesses concerning the permitting requirements and any assertions concerning JWA's ability to operate Legacy and Boilermaker simultaneously and within regulatory compliance after the August 4th fire (the "Loss"); (3) evidence asserting that the prevention doctrine applies to extend the period of interruption in the insurance policies issued by Defendants (collectively, the "Policy"); (4) evidence asserting that interest in purchasing cast coil, without any additional proof, would have resulted in sales; (5) inflammatory remarks about insurance companies; (7) evidence from Joseph Price of AIG, who is not a party to this lawsuit, and evidence from Brian Bennett of Sedgwick, the claims handler on behalf of Defendants; (6) evidence concerning JWA's claim that it lacked sufficient funding to repair or replace the Legacy equipment (with an affirmative motion in limine

to include evidence related to SEC filings of JWA's owners); (7) evidence concerning JWA's history of losses prior to August 4, 2020; (8) evidence or testimony concerning JWA shutting down the facility's utilities to avoid a catastrophic explosion; (9) evidence related to payments made by insurers who have settled and are no longer part of this lawsuit; and (10) evidence that contradicts the JWA 30(b)(6) testimony confirming that Marsh had authority to agree the business interruption deductible endorsement wording in the ACE Policy.

Legal Standard

A party may file a motion in limine to request that the court exclude the introduction of anticipated evidence. *Tompkins v. Eckerd*, 2012 U.S. Dist. LEXIS 46718 at *4 (D. S.C. 2012). A motion in limine is intended to streamline the trial by resolving evidentiary issues in advance and preventing unnecessary interruptions during the proceedings. *Id.* Generally, a motion in limine seeks a pretrial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury. *State v. Hill*, 331 S.C. 94, 501 S.E.2d 122 (1998). Pursuant to Rule 401 of the Federal Rules of Evidence, evidence is only relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the proceeding more or less probable than it would be without the evidence. Fed. R. Evid. 401. Moreover, under Rule 403 of the Federal Rules of Evidence, a court may exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403. In making Rule 403 determinations, the trial court is afforded "broad discretion." *Steves and Sons, Inc. v. JELD-WEN, Inc.*, 988 F.3d 690, 713 (4th Cir. 2021).

Therefore, as fully explained below, Defendants request that the Court preclude testimony and evidence regarding: (1) evidence related to or alleging improper claims handling; (2) evidence

from lay witnesses concerning the permitting requirements and any assertions concerning JWA's ability to operate Legacy and Boilermaker simultaneously and within regulatory compliance after the Loss; (3) evidence asserting that the prevention doctrine applies to extend the period of interruption in the Policy; (4) evidence asserting that interest in purchasing cast coil, without any additional proof, would have resulted in sales; (5) inflammatory remarks about insurance companies; (7) evidence from Joseph Price of AIG, who is not a party to this lawsuit, and evidence from Brian Bennett of Sedgwick, the claims handler on behalf of Defendants; (6) evidence concerning JWA's claim that it lacked sufficient funding to repair or replace the Legacy equipment (with an affirmative motion in limine to include evidence related to SEC filings of JWA's owners); (7) evidence concerning JWA's history of losses prior to August 4, 2020; (8) evidence or testimony concerning JWA shutting down the facility's utilities to avoid a catastrophic explosion; (9) evidence related to payments made by insurers who have settled and are no longer part of this lawsuit; and (10) evidence that contradicts the JWA 30(b)(6) testimony confirming that Marsh had authority to agree the business interruption deductible endorsement wording in the ACE Policy. We address each of these issues in turn below.

I. DEFENDANTS' MOTION IN LIMINE REGARDING PLAINTIFF'S PRESENTATION OF EVIDENCE RELATED TO OR ALLEGING IMPROPER CLAIMS HANDLING

Memorandum of Law

Defendants expect, based on JWA's pre-trial disclosures, that JWA will present evidence or testimony with intent to suggest that Defendants handled the claims process improperly or otherwise in bad faith. This evidence or testimony should be precluded because this claims handling evidence is irrelevant and prejudicial. Under the Federal Rules of Evidence, the Court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue

delay, wasting time, or needlessly presenting cumulative evidence." *See* Fed. R. Evid. 403. **The issues that are ripe for adjudication in this trial relate solely to damages, as there are no longer any questions of coverage or bad faith.** Thus, any evidence or testimony related to or alleging improper claims handling should be precluded.

Evidence related to claims handling that implies bad faith is irrelevant in a breach of contract action. Evidence is relevant if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. Fed. R. Evid. 401. Claims handling is irrelevant to the determination of coverage and damages, as it is of no consequence in determining the action. *See, i.e.*, *Royal Bahamian Ass'n v. QBE Ins. Corp.*, 745 F. Supp. 2d 1380 (S.D. Fla. 2010) (where the court sided with the defendant, ruling that evidence of an insurance company's claims handling procedures is irrelevant to the determination of coverage and damages and noted that such procedures are only pertinent in the context of a bad faith claim). Thus, evidence related to claims handling that implies bad faith is irrelevant in a breach of contract action.

The evidence regarding claims handling is irrelevant to the issues in this case and prejudicial to Defendants. The primary trial issues here are straightforward: whether coverage under the Policy should be limited to the actual cash value of the Legacy Equipment (*i.e.*, whether Defendants prevented JWA from complying with the Policy's requirement to repair or replace the Legacy Equipment) and whether Plaintiff's business interruption claim for its lost sales of cast coil can be substantiated. JWA dismissed its cause of action for bad faith against Defendants. *See* ECF. No. 184, Joint Stipulation of Partial Dismissal with Prejudice, p. 2 of 3 ("the parties agree to dismissal with prejudice of JWA's bad faith claim (Count III)"). As such, there is no cause of action related to bad faith or improper claims handling. To the extent any irrelevant evidence pertaining

to claims handling is admitted, JWA will have the opportunity to paint Defendants in a negative light before the jury, potentially inciting undue emotional bias by implying bad faith in handling the claim, an assertion that is entirely untrue. Thus, the evidence regarding claims handling is irrelevant to the issues in this case and prejudicial to Defendants.

To the extent JWA asserts that claims handling is relevant to show that Defendants prevented JWA from complying with the Policy's requirement to repair or replace the Legacy Equipment, this assertion is misplaced. Defendants anticipate that JWA will attempt to introduce claims handling by Defendants, and also by the other insurers who are no longer in the case, for purposes of the prevention doctrine. However, the only relevant factors regarding the prevention doctrine, which the parties have agreed to by stipulation, are that: (1) JWA timely requested money; and (2) Defendants did not give them the requested money. Irrelevant and prejudicial testimony regarding claims handling by Defendants and/or the other insurers has no bearing on the issues at hand and serves only to improperly suggest bad faith. Any reference to or implication of delay or omission in the handling of a claim risks misleading the jury, causing them to base their verdict on perceived bad faith rather than on the actual policy terms or contractual defenses. All of this evidence will additionally cause juror confusion because there is no claim challenging the claims handling process. Finally, the introduction of such evidence will cause undue delay and waste time because Defendants will have to present evidence defending the long course of claims handling in this matter. Fed. R. Evid. 403. As such, this evidence or testimony should be precluded because any probative value such evidence may have is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time.

II. DEFENDANTS' MOTION IN LIMINE REGARDING EXCLUSION OF JWA'S LAY WITNESS TESTIMONY CONCERNING JWA'S ABILITY TO OPERATE LEGACY AND BOILERMAKER EQUIPMENT SIMULTANEOUSLY AND WITHIN REGULATORY COMPLIANCE AFTER THE LOSS

Memorandum of Law

Defendants expect that JWA will present one or more lay witnesses to testify that JWA could have operated the Boilermaker and Legacy Equipment simultaneously after the Loss to produce cast coil. This testimony should be precluded as it depends on technical expertise. Federal Rule of Evidence 701 states: "If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Fed. R. Evid. 701. JWA failed to identify an expert to testify concerning the required regulatory compliance to operate Boilermaker and Legacy simultaneously. The required regulatory compliance requires expert testimony because the process involves knowledge of air emissions netting, complex engineering, air quality modeling, regulatory knowledge, and the demonstration of compliance with intricate federal and state laws. Experts are required to translate complex scientific and technical information into terms that regulators and the public can understand, ensuring that applications are accurate and that equipment will meet or exceed emissions standards. *See, e.g.* Exhibit A, Trauth Report. A lay witness does not have the requisite scientific, technical, or specialized knowledge to testify on this matter. Therefore, any lay witness testimony concerning same should be precluded.

While JWA claims it had the permits to operate both plants simultaneously in the fall of 2020, and into 2021 and 2022, it has no expert testimony to support this claim. JWA's corporate representative, Stan Brant, testified at deposition that JWA could run Boilermaker and Legacy

Equipment simultaneously pursuant to the construction permit for Boilermaker. Brant has no expertise as to emissions standards or the state requirements for use of the Legacy Equipment while Boilermaker was ramping up. Brant admitted at his deposition that that JWA is not qualified to assess or provide opinions on the scope of the permits and has deferred to their consultant, Meridian Energy & Environment, LLC ("Meridian"), for these matters. *See* Exhibit B, Brant Dep. 137:3-138:14. No consultant from Meridian has been identified as an expert in this case (or even as a fact witness). Therefore, JWA should not be permitted to offer lay witness testimony or speculation about the permits it could obtain. Fed. R. Evid. 701.

Additionally, any discussion regarding its ability to acquire permits for 2021, 2022, or beyond, is purely speculative. JWA has suggested that in 45 years of operation, it has never been denied a permit. In its history, JWA has never applied for a permit to run the Legacy Equipment and Boilermaker simultaneously. As such, that type of testimony is clearly prejudicial and must be precluded. JWA's past experience does not justify its ability to secure permits in the future for something it had never done, nor does it establish any certainty regarding the types of permits it would have pursued. To the extent JWA attempts to introduce any evidence or testimony on the required regulatory compliance to operate Boilermaker and Legacy Equipment simultaneously at any level of capacity, it should be precluded due to its highly prejudicial nature. The mere fact that JWA has previously obtained permits does not demonstrate that they could obtain the necessary permits in this situation, and any such testimony should be precluded.

III. DEFENDANTS' MOTION IN LIMINE REGARDING EXCLUSION OF EVIDENCE THAT JW IS ENTITLED TO DAMAGES BEYOND THE UNDISPUTED TEN-MONTH PERIOD OF INTERRUPTION

Memorandum of Law

Defendants expect that JWA may attempt to introduce evidence or testimony suggesting that the Period of Interruption ("POI") under the Policy extends beyond 40 weeks. This evidence

should be precluded. The Policy defines the "Period of Interruption" as "the length of time that would be required, with the exercise of due diligence and dispatch, to rebuild, repair, or replace such described property as has been lost or damaged with materials of like kind, size, capacity, and quality." (emphasis added). *See* Exhibit C, ACE Policy p. 35 of 106; Exhibit D, General Security Policy p. 39 of 96.. Any such evidence is irrelevant, as the duration of the POI is not a material fact in dispute. Under Federal Rule of Evidence 401, evidence is only relevant if it has any tendency to prove a material fact at issue. Fed. R. Evid. 401. Here, there is no dispute, as this Court has already determined that the POI is limited to 40 weeks. *See* ECF No. 217, Decision on Defendants' Motion for Partial Summary Judgment, p. 12 of 17 ("[t]he parties do not dispute that the period of interruption is 40 weeks.").

Moreover, JWA's argument that Defendants' delay in payment allows JWA to extend the period of interruption beyond 40 weeks is unfounded. JWA appears to rely on the prevention doctrine to assert that the POI should be extended beyond the 10-month limit because the lack of timely payment hindered rebuilding efforts. However, this reasoning is flawed. Under the "prevention doctrine," a ***condition precedent*** to a contract is excused when the promisor prevents or hinders its occurrence, and the condition would have otherwise occurred but for that interference. *See In re Peanut Crop Ins. Litig.*, 524 F.3d 458, 474 (4th Cir. 2008) (emphasis added); *Champion v. Whaley*, 311 S.E.2d 404, 406 (1984); *see also* 13 Williston on Contracts § 38:7 (4th ed. 2006) ("A condition precedent is either an act of a party that must be performed or a certain event that must happen before a contractual right accrues or contractual duty arises."); ("[t]he prevention doctrine is a generally recognized principle of contract law according to which if a promisor prevents or hinders fulfillment of a condition to his performance, the condition may be waived or excused."). The prevention doctrine does not apply here because the POI is a fixed term

defined by the policy itself, not a ***condition precedent*** dependent on the insurer's performance or payment. Whether or not the insurer paid has no bearing on the contractual length of the POI. Accordingly, any evidence or testimony suggesting that the POI extends beyond the undisputed 40 weeks based on the prevention doctrine is irrelevant under Rule 401. Such evidence or testimony is also unduly prejudicial under Rule 403, as it risks misleading the jury into believing that policy terms can be altered by equitable doctrines where no such legal basis exists. Based on the foregoing, any evidence or testimony suggesting that the POI extends beyond the undisputed 40 weeks should be precluded.

IV. DEFENDANTS' MOTION IN LIMINE REGARDING EXCLUSION OF SPECULATIVE EVIDENCE OR STATEMENTS BY JWA CONCERNING ITS CAST COIL CLAIM

Memorandum of Law

Defendants anticipate that JWA may introduce evidence from entities Novelis, Granges, and Arconic, concerning emails expressing interest in purchasing cast coil. This evidence should be precluded as highly prejudicial under Rule 403, because emails of interest alone, without further evidence that sales would have occurred, would improperly invite the jury to base their decision on speculation. Under South Carolina law, speculative testimony and evidence concerning lost profits cannot be used to meet the required standard of "reasonable certainty." *Bates v. Vandroff*, No. 4:17-CV-1838-SAL-TER, 2020 WL 3978173, at *4 (D.S.C. June 24, 2020), *report and recommendation adopted*, No. 4:17-CV-1838-SAL, 2020 WL 3977130 (D.S.C. July 14, 2020) (explaining that "the amount of damages cannot be left to conjecture, guess, or speculation."). Speculation is defined as "to take to be true on the basis of insufficient evidence." *See Speculate*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/speculate (last visited October 23, 2025). Consistent with these principles, courts have routinely precluded speculative damages from jury consideration and denied recovery on such grounds. *See e.g., Bates*,

2020 WL 3978173, at *4 (holding that plaintiff failed to present evidence of damages sufficient to allow the court to enter a judgment of lost profits damages without speculation); *Mali v. Odom*, 295 S.C. 78, 367 S.E.2d 166 (Ct.App.1988) (estimates of anticipated monthly income from new school held speculative and without reasonable basis where offered without reference to operational history or standard method for estimations); *Drews Co., Inc. v. Ledwith-Wolfe Associates, Inc.*, 371 S.E.2d 532, 536 (S.C. 1988) (stating that proof of lost profits "must pass the realm of conjecture, speculation, or opinion not founded on facts, and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of the loss can be logically and rationally drawn.").

Here, JWA should be precluded from introducing emails of interest from the entities Novelis, Granges, and Arconic, as evidence to prove that such sales would have occurred. Such speculation is highly prejudicial under Rule 403 and would improperly invite the jury to base their decision on conjecture about hypothetical sales. Fed. R. Evid. 403. Emails of interest alone are not evidence of a guaranteed purchase. A potential customer can lose interest, change their mind, or choose a competitor at any point. With only preliminary emails of interest, it is nearly impossible to prove that a sale would have been made "but for" the Loss. Additionally, these emails contain no price quotes or specific negotiations that could allow a jury to calculate lost profits without wandering into the realm of speculation. Novelis' corporate representative, Jim D'Amico, confirmed that no substantive discussion ever occurred regarding Novelis purchasing hot band or cast coil from JWA. *See* Exhibit E, D'Amico Dep. 38:20-40:6. Granges' corporate representative, Bradford Thomas, confirmed the same. *See* Exhibit F, Thomas Dep. 22:20-23:8. Additionally,

when asked if there was any possibility Granges might have been interested in purchasing reroll[1] from JWA, Mr. Thomas' only response was "Potentially." *See* Exhibit F, Thomas Dep. 20:10-13. This vague and speculative evidence from Novelis, Granges, and Arconic falls far short of the reasonable certainty standard under South Carolina law, which requires lost profit claims to be supported by concrete, factual evidence that enables a reliable and accurate assessment of both the cause and amount of loss. These standards are unmet here. *See Drews Co., Inc.* 371 S.E.2d at 536. Therefore, evidence or testimony implying that Arconic, Novelis, or Granges would have purchased cast coil from JWA should not be permitted. This type of evidence is clearly prejudicial, as it confuses the issues, distracts from the actual damages supported by the record, and poses a substantial risk that the jury's verdict could be influenced by emotion or conjecture rather than admissible, probative evidence. Finally, any testimony by JWA representatives discussing any conversations with such entities should be precluded as inadmissible hearsay. Fed. R. Evid. 801(c).

Moreover, the presentation of large, unsupported revenue figures related to JWA's cast coil claim could have a significant prejudicial effect. Submitting such evidence, including the evidence from Novelis, Granges, and Arconic, would suggest to the jury that JWA suffered massive business losses, despite lacking any concrete evidence of such a business even being viable, let alone profitable. *See Drews Co., Inc.* 371 S.E.2d at 536 (finding plaintiff's expectations that "at least a third" of eleven months' gross profit would constitute net profit were "wholly insufficient to provide the jury with a basis for calculating profits lost with reasonable certainty" absent "any particular standard or fixed method for establishing net profits"). This type of evidence confuses the issues, distracts from the actual damages supported by the record, and poses a substantial risk

[1] Cast coil is sometimes referred to as "hot-band," "semi-finished hot band," "reroll," or "reroll stock." *See* Exhibit G, McCarter Declaration ¶ 4.

that the jury's verdict could be influenced by emotion or conjecture rather than admissible, probative evidence. As such, evidence of large, unsupported revenue figures related to JWA's cast coil claim should be precluded under Rule 403 because any probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and/or misleading the jury. Fed. R. Evid. 403.

VII. DEFENDANTS' MOTION IN LIMINE REGARDING THE EXCLUSION OF THE DEPOSITION TRANSCRIPTS OF BRIAN BENNETT AND REPRESENTATIVES FROM INSURERS NO LONGER IN THE CASE

Memorandum of Law

Defendants expect that JWA will seek to introduce the deposition transcripts of Brian Bennett of Sedgwick into evidence, along with the deposition transcripts of representatives from the insurers no longer in the case. The introduction of these deposition transcripts should be precluded under Federal Rule of Evidence 401 as they are not relevant to the issues in this case. First, Brian Bennett's deposition concerns claims handling, which is not at issue here; as previously noted above, this case involves straightforward damages, not allegations of bad faith. Second, to the extent any designated testimony relates to coverage matters, testimony from Brian Bennett is irrelevant. As an independent adjuster, Brian Bennett lacks authority to bind the insurers on coverage matters, rendering any such statements inadmissible for that purpose. *See Charleston Dry Cleaners & Laundry, Inc. v. Zurich American Ins. Co.*, 355 S.C. 614 (2003). If JWA seeks information regarding damages, it may obtain such information directly from the parties to this action or relevant documents — Brian Bennett's deposition testimony is unnecessary, would cause undue delay, needlessly present cumulative evidence, and could mislead the jury. Accordingly, the deposition transcript of Brian Bennett should be precluded under Rules 401 and 402.

Moreover, any references in Joseph Price's deposition transcript concerning payments made by AIG, any differences in coverage opinions between AIG and the other insurers, or any speculation as to why other insurers did or did not issue payments are highly prejudicial and should be precluded. Such testimony lacks probative value and serves only to confuse the issues before the jury. Joseph Price is not authorized to speak on behalf of the other insurers and has no authority to bind them with respect to coverage determinations. Any commentary or conjecture offered by Joseph Price regarding the actions or decisions of other insurers would be inherently speculative and inadmissible. The introduction of this testimony appears to serve no legitimate evidentiary purpose other than to improperly influence the jury's perception of the remaining Defendants. As such, it should be precluded under Federal Rules of Evidence 401 and 403.

VIII. DEFENDANTS' MOTION IN LIMINE REGARDING EXCLUSION OF EVIDENCE OR TESTIMONY THAT JWA DID NOT HAVE THE FUNDS NECESSARY TO REPAIR OR REPLACE THE LEGACY EQUIPMENT AND AFFIRMATIVE MOTION TO TAKE JUDICIAL NOTICE OF SEC FILINGS OF JWA'S OWNERS

Memorandum of Law

Defendants anticipate that JWA will present testimony claiming that it was unable to repair or replace the Legacy Equipment within two years due to not receiving funds from Defendants. To the extent JWA argues that it did not have the funds necessary to repair or replace the Legacy Equipment, such testimony or evidence should be precluded. "Implementation of [Rule 403] ensures that prejudicial evidence will not be presented, that evidence will not be introduced which will confuse the issues and mislead the jury as to the determinative facts and that undue delay will not result and time will not be wasted by the presentation of marginally relevant or cumulative evidence." *Atkinson Warehousing & Distrib., Inc. v. Ecolab, Inc.*, 99 F. Supp 665, 666 (D. Md. 2000). Permitting this testimony would unduly prejudice Defendants because JWA admitted that its owners had the funds to replace the Legacy Equipment but failed to do so. Furthermore, this

Court agreed that JWA's recovery is limited to the actual cash value ("ACV") if the property was not repaired, rebuilt, or replaced within two years. Therefore, any probative value of JWA's statements is outweighed by the risk of unfair prejudice, confusion of the issues, and misleading the jury. Fed. R. Evid. 403.

JWA admitted that it had the funds to replace the Legacy Equipment. JWA's corporate representative, Stan Brant, stated in his deposition that JWA has four equity owners: Kohlberg Kravis and Roberts, Goldman Sachs, and Magnetar, and Pentwater. *See* Exhibit B, Brant Dep. 68:17-25. These equity owners were represented on JWA's board of directors. Additionally, Brant acknowledged that these four firms had financial decision-making authority for JWA. *See* Brant Dep. Further, these firms have full decision-making authority regarding this litigation. *See* Exhibit B, Brant Dep. 69: 24-70:8. Brant further acknowledged that these four firms possess the financial capacity to provide the funds necessary to rebuild or replace the Legacy Equipment. *See* Exhibit B, Brant Dep. 90:9-14. Brant further confirmed that the four firms refused to provide these funds, and rather opted to "wait for the insurance company to put up the money." *See* Exhibit B, Brant Dep. 89:14-90:8. Therefore, this testimony demonstrates that JWA's owners had the financial means to replace or rebuild the Legacy Equipment but chose not to, instead shifting blame onto Defendants as a last-ditch argument. Accordingly, the Court should exclude any testimony or evidence suggesting that Defendants prevented JWA from rebuilding or replacing the equipment, as such testimony is unduly prejudicial. It risks improperly influencing the jury by portraying Defendants as "big bad insurance companies," even though JWA itself is owned by large, well-capitalized hedge funds.

Relatedly, pursuant to Federal Rule of Evidence 201, Defendants respectfully request that the Court take judicial notice of the following forms on file with the Securities and Exchange Commission (collectively, "SEC Filings"):

> **Exhibit H:** Form 10-K for Goldman Sachs Group Inc. for the fiscal year ending December 31, 2020, filed with the SEC on February 22, 2021
> **Exhibit I:** Form 10-K for KKR & Co. Inc. for the fiscal year ending December 31, 2020, filed with the SEC on February 19, 2021
> **Exhibit J:** Form 13-F for Magnetar Financial LLC for the quarter ending September 30, 2020, filed with the SEC on November 16, 2020.
> **Exhibit K:** Form 13-F for Pentwater Capital Management LP for the quarter ending September 30, 2020, filed with the SEC on December 09, 2020.

Each of these documents reflect the financial means of the private equity owners of JWA. Under Federal Rule of Evidence 201(b), The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). Documents on file with the SEC are public disclosure documents of which courts routinely take judicial notice. In *Kramer v. Time Warner Inc*, the court took judicial notice of the contents of relevant public disclosure documents required to be filed with the SEC. 937 F.2d 767 (2d Cir. 1991). The court reasoned that the facts contained therein were "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Similarly, here, the SEC Filings attached herein are public disclosure documents required by law to be filed with the SEC. Thus, the SEC Filings are public disclosure documents of which this court may take judicial notice.

Additionally, courts may take judicial notice of information posted on official government websites. In *Daniels-Hall v. National Education Ass'n*, the Court found that it is appropriate to take judicial notice of information made publicly available by government entities and neither party

disputes the authenticity of the web sites, or the accuracy of the information displayed therein. 629 F.3d 992 (9th Cir. 2010). The SEC Filings are publicly available on the SEC website through the EDGAR search tool. Neither party disputes the authenticity of the website, nor the accuracy of the information displayed therein. Based on the foregoing, the SEC Filings are undisputed, publicly accessible records, subject to judicial notice. Thus, for the reasons stated above, Defendants respectfully request that the Court take judicial notice of Exhibits J through M.

IX. DEFENDANTS' MOTION IN LIMINE REGARDING THE EXCLUSION OF EVIDENCE OF JWA'S HISTORY OF LOSSES PRIOR TO AUGUST 4, 2020

MEMORANDUM OF LAW

Defendants anticipate that JWA may attempt to introduce evidence of losses it sustained prior to the August 4, 2020 fire. Such evidence should be precluded pursuant to Federal Rules of Evidence 401 and 403. First, any losses that occurred before August 4, 2020 are wholly irrelevant to the matter at hand, which involves a single, discrete event, namely, the loss that occurred on August 4, 2020. This case is limited to the damages arising from that specific incident, and any prior, unrelated losses have no bearing on the issues to be resolved. Accordingly, such evidence lacks relevance under Rule 401.

Even assuming JWA contends that losses prior to August 4, 2020 have some marginal relevance, their introduction would be unduly prejudicial, confusing, and misleading to the jury. This case does not concern how the insurers handled prior claims, nor does it involve any alleged pattern or practice of misconduct. Allowing the jury to hear evidence of unrelated prior losses could insinuate that the insurers acted improperly in the past, thereby inviting speculation and distracting from the central issues. Under Rule 403, any limited probative value such evidence might have is substantially outweighed by the risk of unfair prejudice, confusion of the issues, and

misleading the jury. For these reasons, evidence of any losses sustained by JWA prior to August 4, 2020, should be precluded.

XI. DEFENDANTS' MOTION IN LIMINE REGARDING EVIDENCE OR TESTIMONY CONCERNING JWA SHUTTING DOWN THE FACILITY'S UTILITIES TO AVOID A CATASTROPHIC EXPLOSION

Memorandum of Law

Defendants anticipate that JWA may seek to introduce evidence or testimony suggesting that JWA shut down the facility's utilities to avoid a catastrophic explosion. Such evidence or testimony is not relevant to the issues in this case. Evidence is relevant if "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. In this case, the only fact that are "of consequence in determining the action" is the fact that there was a fire which caused damage to JWA's equipment. Defendants are not contesting the fact that there was a fire, or that the utilities were shut down, causing aluminum to solidify. However, evidence or testimony suggesting that JWA shut down the utilities because the fire got close to a gas line or that an explosion was prevented has no tendency to make any fact more probable. Rather, the only reason for Plaintiff to offer such evidence is to get some "reward" from the jury. There is no dispute that the property was damaged by the utility shutdown and there is no allegation of fault for the shutdown. So, this evidence would undoubtedly be used to evoke sympathy from the jury to seek recovery for the damaged property. Accordingly, "what might have happened" is irrelevant, and any probative value it may have is substantially outweighed by the unfair prejudice to Defendants. Thus, such evidence or testimony should be precluded under Rules 401 and 403.

XII. DEFENDANTS' MOTION IN LIMINE REGARDING EXCLUSION OF JWA'S TESTIMONY OR EVIDENCE CONCERNING PAYMENTS BY OTHER INSURERS WHO HAVE SETTLED OUT OF THIS LAWSUIT, AND PARTIAL SETTLEMENT AND RELEASE AGREED TO BY THE PARTIES

Memorandum of Law

Defendants anticipate that JWA may seek to introduce evidence or elicit testimony concerning payments and settlements by other insurers. Such evidence or testimony would invite speculation as to why these other insurers issued payments when Defendants did not and would therefore be highly prejudicial. Such testimony also lacks probative value and serves only to confuse the issues before the jury. Coverage decisions made by other insurers have no bearing on coverage determinations made by Defendants. The introduction of this testimony appears to serve no legitimate evidentiary purpose other than to improperly influence the jury's perception of the remaining Defendants. As such, it should be precluded under Federal Rules of Evidence 401 and 403.

Defendants further anticipate that JWA may seek to introduce evidence or elicit testimony implying that its recoverable property damage is *not* limited to its expert's replacement cost estimate of $34,964,227, and that its business interruption damages are *not* subject to the Policy's sublimit of $80,153,418. Such evidence or testimony would directly contradict the parties' prior partial settlement agreement and release. These statements therefore lack probative value and are likely to mislead the jury. The partial settlement agreement unambiguously limits JWA's recoverable property damage to its expert's replacement cost estimate of $34,964,227 and caps its business interruption damages at the Policy's sublimit of $80,153,418. Any suggestion to the contrary is irrelevant under Rule 401 and risks unfair prejudice, confusion, and undue delay under Rule 403. As such, this evidence or testimony should be precluded.

XIII. DEFENDANTS' MOTION IN LIMINE REGARDING EXCLUSION OF EVIDENCE THAT MARSH DID NOT HAVE AUTHORITY TO BIND JWA REGARDING THE ISSUANCE OF THE ACE POLICY

Memorandum of Law

Defendants anticipate that JWA will attempt to introduce evidence or testimony at trial alleging that Marsh did not have the authority to bind JWA regarding the issuance of the ACE Policy's Endorsement R, which contains the 30 times 100% Average Daily Value business interruption deductible. First, any evidence or testimony alleging that Lindsay Grimes of Marsh was not JWA's fully authorized representative for insurance matters with full authority to bind JWA should be precluded as unduly prejudicial. The evidence establishes that JWA's broker of record, Marsh, was a fully authorized agent of JWA. Stan Brant, JWA's 30(b)(6) corporate representative, clearly and unequivocally admitted under oath that Lindsay Grimes of Marsh was JWA's fully authorized representative for insurance matters. *See* Exhibit B, Brant Dep. 38:21-39:4. He further admitted that whatever she agreed to bound JWA. *See* Exhibit B, Brant Dep. 126:13-14. Thus, the evidence establishes that JWA's broker of record, Marsh, was a fully authorized agent of JWA. The answers given by a 30(b)(6) witness are considered binding and can be used as admissions at trial. *See, e.g., Woods v. Smith*, 255 S.E.2d 174, 181 (N.C. 1979) (explaining that when a party gives unequivocal, adverse testimony, "his statements should be treated as binding judicial admissions"); *see also U.S. v. Taylor*, 166 F.R.D. 356, 362–63 (M.D.N.C. 1996), *aff'd*, 166 F.R.D. 367 (M.D.N.C. 1996) (stating that "if a party states it has no knowledge or position as to a set of alleged facts or area of inquiry at a Rule 30(b)(6) deposition, it cannot argue for a contrary position at trial without introducing evidence explaining the reasons for the change. Otherwise, it is the attorney who is giving evidence, not the party."). Permitting testimony to the contrary would not only be misleading but would also risk confusing the issues for the jury. Fed. R. Evid. 403. For these reasons, any evidence or testimony alleging that Lindsay Grimes of Marsh was not JWA's fully authorized representative for insurance matters with full authority to bind JWA should be precluded as unduly prejudicial.

Defendants further anticipate that JWA will make attempt to introduce evidence at trial alleging that Endorsement R is not properly part of the ACE Policy. The ACE Policy includes Endorsement R, which calculates the business interruption deductible at 30 times 100% Average Daily Value with an effective date of December 31, 2019. Exhibit C, ACE Policy, p. 103 of 105. JWA's fully authorized broker, Lindsay Grimes, agreed to ACE's 30 times 100% Average Daily Value deductible for business interruption ***prior*** to the Loss, and confirmed that Endorsement R was issued to reflect that agreement. *See* Exhibit L, Grimes Dep. 65:11-66:6. Ms. Grimes further confirmed that Endorsement R, with the effective date as December 2019, is properly part of the ACE Policy. *See* Exhibit L, Grimes Dep. 86:1-10. Additionally, JWA's corporate representative, Stan Brant, admitted under oath that Endorsement R is properly part of the ACE Policy, and that JWA was bound by the agreement made by Marsh. *See* Brant Dep. 126:12-24. Additionally, JWA signed a Request for Admission and admitted under oath that the ACE deductible is a valid part of the Policy and was effective as of the date of the Loss. *See* Exhibit M, Response to Request for Admission p. 9 of 12. Under Federal Rule of Civil Procedure 36(b), matters admitted are conclusively established unless the court, upon motion, allows the admission to be withdrawn or amended. Fed. R. Civ. P. 36. Courts in the Fourth Circuit and in South Carolina have consistently upheld Rule 36, holding that matters admitted under the rule are conclusively established unless the court on motion permits withdrawal or amendment of the admission. *See Com. Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545, 556 S.E.2d 718 (Ct. App. 2001) (explaining that any matter admitted under Rule 36 "is conclusively established unless the court on motion permits withdrawal or amendment of the admission."). JWA has not sought withdrawal or amendment of its admission that the ACE Policy, with inclusion of Endorsement R, is the "true, correct, and complete copy of the insurance policy issued by ACE to JW Aluminum."

See Exhibit N, Response to Request for Admission p. 9 of 12. Accordingly, any statements to the contrary would be unfairly prejudicial to Defendants and their presentation to the jury would outweigh any probative value they might have.

CONCLUSION

Based on the foregoing, the testimony or evidence listed above that JWA seeks to introduce is either irrelevant to the issues pending for trial or unduly prejudicial to Defendants. As such, Defendants respectfully request that this evidence or testimony be precluded from trial.

Dated: October 24, 2025

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AFFIRMATION OF GOOD FAITH MEET-AND-CONFER

Pursuant to the requirements of Local Civ. Rules 7.02 (D.S.C.), I affirm that, prior to filing this motion, I conferred with counsel for Plaintiff, and attempted in good faith to resolve that matters contained herein.

Dated: October 24, 2025

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