NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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Nos. 25-1629 & 25-1635

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INTERNATIONAL CONSTRUCTION PRODUCTS, LLC,

Appellant in No. 25-1635

v.

CATERPILLAR, INC; KOMATSU AMERICA CORP.; ASSOCIATED AUCTION SERVICES, LLC d/b/a Cat Auction Services

Caterpillar, Inc.,

Appellant in No. 25-1629

On Appeal from the United States District Court
for the District of Delaware
(D. C. No. 1:15-cv-00108)
District Judge: Honorable Richard G. Andrews

Argued on July 9, 2026

Before: KRAUSE, FREEMAN and ROTH, *Circuit Judges*

(Opinion filed: November 19, 2026)

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NONPRECEDENTIAL OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

ROTH, *Circuit Judge*:

International Construction Products, LLC (ICP) sued Caterpillar Inc., alleging that Caterpillar violated the Sherman Antitrust Act and tortiously interfered with ICP's contract with IronPlanet, a third-party company, by pressuring IronPlanet to breach that contract. The jury rejected ICP's antitrust claim but found Caterpillar liable for tortious interference with contract, awarding ICP compensatory damages of $100 million. The District Court denied ICP's motion for a new trial on the antitrust claim and Caterpillar's motion for judgment as a matter of law (JMOL), and alternatively, for a new trial, on the tortious interference claim. Yet, the District Court vacated the jury's damages award to ICP, holding that ICP failed to present evidence during trial to support a reasonably certain award.

Both parties appealed. Caterpillar challenges the District Court's denial of its request for JMOL on the tortious interference with contract claim, and in the alternative, requests a new trial on that claim because it contends that the District Court allowed ICP to present inadmissible evidence. ICP asserts that the District Court improperly vacated the jury's $100 million damages award, and it seeks a new trial on its antitrust claim based on an allegedly erroneous jury instruction. Because neither party's arguments warrant disturbing the District Court's ruling, we will affirm.

I. BACKGROUND

ICP and Caterpillar are both in the heavy construction industry, but differ markedly in scale—ICP is a startup while Caterpillar is a major industry player. Although ICP and Caterpillar are the only parties to this litigation, other relevant companies include Caterpillar Auction Services (Cat Auction), a used construction equipment seller and IronPlanet, an online marketplace for such equipment. During the relevant period, Caterpillar owned stakes of approximately 30% in Cat Auction and 10% in IronPlanet.

In early 2014, Cat Auction was in talks to merge with IronPlanet. In March 2014, ICP contracted with IronPlanet to import newly-made construction equipment manufactured by Lonking, a Chinese competitor of Caterpillar, and sell it on IronPlanet's e-commerce platform. Internal Caterpillar emails show that employees expressed concerns about the ICP-Iron Planet contract, and relayed them to Cat Auction leadership given their ongoing merger discussions with IronPlanet. During the first month of the contract between ICP and IronPlanet, ICP made one sale of the Lonking equipment on IronPlanet's e-commerce platform. A month later, IronPlanet terminated the contract and removed ICP's online store from its website.

In January 2015, ICP sued Caterpillar in the District of Delaware, alleging that Caterpillar pressured IronPlanet to terminate its contract with ICP. The complaint asserted claims under the Sherman Antitrust Act and for tortious interference with contract under Illinois law.[1] After an eight day trial, the jury rejected ICP's antitrust claim, but found that

[1] During trial, the District Court observed that the "parties appear to have agreed that Illinois law applies" with respect to the tortious interference with contract claim. Appx. 808 n.12. On appeal, ICP disputes that characterization, contending that the law of North Carolina could apply because it is ICP's home state. ICP further argues that "the [D]istrict

Caterpillar tortiously interfered with ICP's contract with IronPlanet and awarded ICP $100 million in damages. Caterpillar moved for JMOL on the tortious interference with contract claim, while ICP moved for a new trial and a motion to alter or amend the judgment with respect to the antitrust claim. The District Court denied ICP's motions and partially granted Caterpillar's motion, vacating the jury's $100 million award. The two parties appealed.

II. DISCUSSION[2]

A. Tortious Interference with Contract Claim

In order to succeed on its tortious interference of contract claim, ICP had to prove by a preponderance of evidence that: (1) a contract existed between ICP and IronPlanet; (2) Caterpillar knew of the contract; (3) Caterpillar intentionally and unjustifiably induced IronPlanet to breach the contract; (4) IronPlanet subsequently breached the contract

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[C]ourt's application of Illinois law was premised on the assumption that there was no conflict of laws" between Illinois and North Carolina law "on any material issue," and that the District Court's vacatur of the jury's damages award undermined that premise. ICP Reply Br. 16. This argument comes too late. At no point before the District Court did ICP assert that the tortious interference claim could be governed by North Carolina law. Instead, at the motion-to-dismiss stage, ICP argued that either Illinois or Florida law applied; at summary judgment, it made no choice-of-law argument; and at trial, it jointly submitted with Caterpillar proposed jury instructions applying *Illinois* law. Having charted that course throughout the litigation, ICP cannot now change maps on appeal. By affirmatively arguing below that Illinois or Florida law governed the claim—and never suggesting that North Carolina law applied—ICP waived the choice-of-law argument it now pursues on appeal. *See Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist.*, 877 F.3d 136, 147 (3d Cir. 2017) ("Waiver . . . is the intentional relinquishment or abandonment of a known right.") (citation modified) (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993)); *see also Williams v. BASF Catalysts LLC*, 765 F.3d 306, 316 (3d Cir. 2014) ("[P]arties may waive choice-of-law issues."). Consequently, we analyze the tortious interference with contract claim under Illinois law.

[2] The District Court had jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367. We have appellate jurisdiction under 28 U.S.C. § 1291.

because of Caterpillar's wrongful conduct; and (5) the contractual breach resulted in damages to ICP.[3] Caterpillar argues it is entitled to JMOL on this claim because ICP failed to present evidence sufficient to prove the third, fourth, and fifth elements. In the alternative, Caterpillar requests a new trial based on its assertion that the District Court allowed ICP to present inadmissible evidence. ICP, in turn, challenges the District Court's vacatur of the $100 million in damages the jury awarded for this claim.

1. Caterpillar's Motion for JMOL[4]

i. Third Element

Caterpillar first asserts that ICP did not sufficiently prove that Caterpillar induced IronPlanet to breach the contract because it failed to present evidence showing any direct communications between Caterpillar and IronPlanet. Although the trial record is devoid of such evidence, that absence does not necessarily compel judgment in Caterpillar's favor. The record contains ample circumstantial evidence from which a jury could conclude that Caterpillar pressured IronPlanet to breach its contractual agreement, including numerous internal Caterpillar emails, emails between Caterpillar and Cat Auction, and emails between Cat Auction and IronPlanet, all discussing Caterpillar's concerns with the potential Cat Auction-IronPlanet merger in light of the IronPlanet-ICP contract.

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[3] *See Healy v. Metro. Pier & Exposition Auth.*, 804 F.3d 836, 842 (7th Cir. 2015).

[4] We exercise plenary review and apply the same standard as the District Court when reviewing an appeal of a JMOL—that is, we evaluate whether there was "insufficient evidence from which a jury reasonably could find liability." *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1167 (3d Cir. 1993).

Next, Caterpillar argues that even if there was sufficient evidence to demonstrate that it induced IronPlanet to breach the contract, its inducement was justified because Illinois law provides for a privilege excusing interference with a contract when "the defendant was acting to protect an interest which the law deems to be of equal or greater value than the plaintiff's contractual rights."[5] Caterpillar contends it has two interests that qualify for this privilege: (1) its own business interest in refusing to deal "with IronPlanet if IronPlanet was going to facilitate the sale of new, Chinese equipment, in direct competition with Caterpillar's business model and operations"; and (2) its shareholder interest as a partial owner of Cat Auction and IronPlanet.[6] Neither of these interests are applicable here, however.

While refusal to deal may provide a privilege against a tortious interference claim, that privilege does not apply when the defendant goes beyond merely refusing to deal and instead uses its economic leverage "as a means of affirmative inducement, compulsion or pressure to" cause a third party to breach its contract.[7] As discussed above, the jury heard substantial evidence that Caterpillar did just that by leveraging its influence over the Cat Auction-IronPlanet merger negotiations to induce IronPlanet to breach its contract with ICP.

Nor can Caterpillar invoke its shareholder status to claim the privilege, which does not apply when the shareholder defendant "acted in its own interests and contrary to the

[5] *Nation v. Am. Cap., Ltd.*, 682 F.3d 648, 651 (7th Cir. 2012) (citation modified).
[6] Caterpillar First-Step Br. 45–51.
[7] Restatement (Second) of Torts § 766 cmt. *l* (1979).

interests of its principal."[8] Sufficient evidence supported the jury's finding that Caterpillar acted to protect its own interests—not those of either Cat Auction or IronPlanet—when it interfered with the contract. After all, the evidence showed that the introduction of new, Chinese-made construction equipment into the United States only threatened Caterpillar's interests; Cat Auction and IronPlanet, by contrast, operated in the *used* construction equipment market and would not have been similarly affected. The jury also had sufficient evidence to conclude that Caterpillar acted contrary to both Cat Auction and IronPlanet's interests because IronPlanet viewed its agreement with ICP as a means to expand its offerings, and Caterpillar's interference with the merger negotiations undermined Cat Auction's stated intention to merge with IronPlanet.

ii. Fourth Element

Caterpillar argues that because IronPlanet had a valid basis to terminate the contract, ICP failed to prove that IronPlanet breached any contractual obligations. Specifically, Caterpillar points to the contract provision requiring ICP to possess "all necessary rights, permits, registrations and authorizations to resell Equipment," and contends that the evidence showed that ICP lacked certain authorizations.[9] Consequently, Caterpillar maintains that ICP's material breach justified IronPlanet's termination of the contract. But that argument overlooks a critical limitation in the agreement—even when a material breach occurs, the terminating party must provide 30 days' written notice and an opportunity to cure *before* terminating the contract. Yet, the record contains no evidence

[8] *Citylink Grp., Ltd. v. Hyatt Corp.*, 729 N.E.2d 869, 877 (Ill. App. Ct. 2000).
[9] Appx. 1918–19.

that IronPlanet satisfied that prerequisite for termination. The jury therefore had sufficient evidence to conclude that IronPlanet's termination did not comply with the contract and thus constituted a breach.

iii. Fifth Element

Because the District Court vacated the $100 million in damages the jury awarded ICP for the tortious interference claim, Caterpillar reasons that ICP necessarily failed to prove the damages element of the claim. Caterpillar misconstrues the District Court's ruling. The District Court did not conclude that ICP failed to prove it suffered any damages; to the contrary, it left intact the jury's liability finding and held only that the evidence did not support the damages *amount* awarded. As discussed below,[10] we agree that the evidence was insufficient to sustain the jury's $100 million award. But the insufficiency of evidence supporting ICP's damages *amount* does not entitle Caterpillar to JMOL on the issue of Caterpillar's *liability*.

For these reasons, the District Court did not err in denying Caterpillar's JMOL motion.

2. Caterpillar's Motion for a New Trial[11]

[10] *See infra* Part II.A.3.

[11] We review an appeal of a motion for new trial for abuse of discretion, *see Leonard v. Stemtech Int'l Inc*, 834 F.3d 376, 386 (3d Cir. 2016), and we evaluate a challenge to the District Court's admission of evidence for clear error, *see United States v. Vega*, 285 F.3d 256, 264 (3d Cir. 2002).

Caterpillar argues it is entitled to a new trial because the District Court clearly erred in admitting testimony from Tim Frank, ICP's founder, explaining that Jeff Jeter, IronPlanet's president, told Frank that Caterpillar was exerting pressure on IronPlanet to stop selling ICP's equipment on its website. Caterpillar contends that Jeter's out-of-court statement constituted inadmissible hearsay. Yet, any error would be harmless if "there is a 'high probability' that the discretionary error did not contribute to the verdict."[12] We can be assured that a high probability exists where the record contains substantial independent evidence supporting the jury's verdict.[13] Caterpillar emphasizes the importance of Frank's testimony because it is the closest the evidence comes to establishing a direct exchange between Caterpillar and IronPlanet. However, as discussed above,[14] the record contains ample circumstantial evidence from which the jury could have determined that Caterpillar induced IronPlanet to breach the contract. Given the plethora of other evidence before the jury, we readily conclude that any error in admitting Frank's testimony was harmless. Accordingly, the District Court did not abuse its discretion in denying Caterpillar's motion for a new trial.

3. The District Court's Vacatur of the Jury's Damages Award[15]

[12] *Langbord v. United States Dep't of Treasury*, 832 F.3d 170, 196 (3d Cir. 2016) (quoting *McQueeney v. Wilmington Trust Co.*, 779 F.2d 916, 924–25 (3d Cir. 1985)).
[13] *See id*. ("Our review of the entire record leads us to conclude that the Government was able to clearly and convincingly prove the elements of its case without reliance on the tainted evidence.").
[14] *See supra* Part II.A.1.i.
[15] We review ICP's appeal of the District Court's vacatur of the damages award under the JMOL standard, asking whether sufficient evidence supported the jury's award. *See Lightning Lube, Inc.*, 4 F.3d at 1167.

The District Court vacated the jury's damages award in favor of ICP for the tortious interference claim because in its view, "ICP failed to offer sufficient evidence to render its damages reasonably certain," as required by Illinois law.[16] ICP challenges that decision, arguing that the evidence it presented during trial sufficiently allowed the jury to determine the damages award with reasonable certainty.

Under Illinois' "new business rule," the expected profits of a new business "are considered too uncertain, specific and remote to permit recovery."[17] Despite this general rule, however, Illinois courts allow startups and other emerging enterprises to recover lost profits by showing "evidence of revenues of a similar product or a similar business in a similar market."[18] ICP contends that it met this requirement in two ways. First, it argues that it sufficiently presented evidence of revenue from a similar product in a similar market because the equipment it sought to sell was not materially different from equipment already sold in the North American heavy construction equipment market. Second, ICP points to testimony from industry veterans and its expert as its basis for establishing the revenues of a similar business operating in a similar market. Neither argument is persuasive.

i. Similar Product in a Similar Market

The Illinois Supreme Court discussed in *Ivey v. Transunion Rental Screening Solutions, Inc*., how challenging it is for a company to show lost profits when its product

[16] Appx. 19; *see Ivey v. Transunion Rental Screening Sols., Inc.*, 215 N.E.3d 871, 877 (Ill. 2022).
[17] *TAS Distrib. Co. v. Cummins Engine Co.*, 491 F.3d 625 (7th Cir. 2007) (citing *SK Hand Tool Corp. v. Dresser Indus., Inc.*, 284 Ill. App. 3d 417, 426 (1996)).
[18] *Ivey v. Transunion Rental Screening Sols., Inc.*, 215 N.E. 3d 871, 880 (Ill. 2022).

is wholly new and "did not have an established market."[19] There, the plaintiff sought to recover lost profits for his first-of-its-kind lease system, designed for integration into an electronic software platform, by relying on sales data from existing lease products.[20] Because landlords at the time were not using electronic leasing platforms, the court found that the plaintiff was "attempting to sell a new and untested product to a new market," giving rise to "the specter of impermissible speculation."[21] And the plaintiff was unable to overcome that specter because it "did not present evidence of revenues of a similar product or a similar business in a similar market."[22]

The holding in *Ivey* does not preclude a startup from ever showing lost profits. The court discussed *Milex Products, Inc. v. Alra Laboratories, Inc.*,[23] where an Illinois appellate court found a new business plaintiff to have sufficiently shown evidence of lost profits because its product was a type of generic medication, and the plaintiff successfully used data of sales of brand-name medication with the same active ingredient as support for its requested damages amount.[24] Because the product in *Milex* had a sufficiently comparable benchmark in a brand-name medication with actual sales data, the court found that the plaintiff's lost-profits estimate was supported with a "reasonable degree of certainty."[25]

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[19] *Ivey*, 215 N.E.3d at 880.
[20] *Id.* at 874.
[21] *Id.*
[22] *Id.* at 880.
[23] 603 N.E.2d 1226 (1992).
[24] *Id.* at 1235–37.
[25] *Id.* at 1235.

ICP's product more closely resembles the novel electronic lease platform in *Ivey* rather than the generic medication in *Milex*. ICP attempted to sell new, Chinese-made heavy construction equipment in North America via an online platform. There was much about this endeavor that was unprecedented: Chinese-manufactured heavy construction equipment had never been sold in North America, and new heavy construction equipment had never been available for purchase online.

ICP attempts to downplay the novelty of its product and market. It argues that the Lonking equipment was materially similar to heavy construction equipment already sold in North America and that its use of an online platform is irrelevant because the internet is merely a sales channel, not a distinct market. Neither argument is persuasive. The Lonking equipment was not necessarily comparable to existing North American products, as the record contains no evidence that it complied with Environmental Protection Agency requirements. But even assuming the equipment was materially similar, ICP's argument overlooks the salient point: Chinese-manufactured heavy construction equipment had never before been sold in North America. Any projected demand for such products was therefore necessarily speculative. Nor can ICP dismiss the significance of its use of an online platform. Whether labeled a "sales channel" or a "market," the online platform was not an incidental feature of ICP's business model. Much like the electronic platform in *Ivey*, ICP's approach of selling its products online was a core component of its effort to differentiate itself from existing industry offerings, rendering comparisons to brick-and-mortar sales inherently unreliable.

Accordingly, ICP did not provide sufficient evidence of a similar product in a similar market.

ii. Similar Business in a Similar Market

ICP contends the jury's damages award was also supported by evidence of a similar business in a similar market, pointing to the evidence it provided of Lonking and IronPlanet's revenues. This argument, however, fails for many of the same reasons as ICP's argument that it provided sufficient evidence of a similar product in a similar market. While ICP relies on IronPlanet's or Lonking's sales as evidence of a similar business in a similar market, neither company operated in a market sufficiently comparable to the unique niche that ICP tried to carve out. As discussed above, Chinese-manufactured heavy construction equipment had never before been sold in North America, meaning Lonking's sales could not provide a reliable baseline for ICP's projected sales. Likewise, IronPlanet's revenues from the online sales of used equipment shed little light on ICP's expected revenues from the online sale of new equipment, much less new Chinese-manufactured equipment. ICP also emphasizes the extensive industry experience of its leadership, who developed the company's projections, and its expert, who testified that ICP was more likely than not to achieve those projections. However, that experience cannot transform speculative projections into reliable evidence. ICP's leadership and its expert may have possessed industry knowledge, but they did not possess a crystal ball capable of revealing whether those projections would become reality. Without evidence grounding those projections in a similar business in a similar market, ICP's damages award rested on speculation rather than reasonable certainty.

Consequently, the District Court did not err in vacating the jury's damages award.

B. Antitrust Claim[26]

ICP asserts that it is entitled to a new trial on its antitrust claim because the District Court improperly instructed the jury. The District Court instructed the jury that ICP could prevail only if the jury found that Caterpillar and various other companies "agreed to pressure or to threaten IronPlanet to cut off ICP's access to" IronPlanet's online marketplace.[27] The District Court further instructed that, even if such an agreement existed, ICP could not succeed if it "had an active avenue of competition."[28] ICP challenges this latter instruction, arguing that Section 1 of the Sherman Antitrust Act requires only substantial foreclosure from competition—not complete foreclosure—to establish a group boycott.[29] ICP contends that the phrase "an active avenue of competition" improperly suggested that it needed to show that it was entirely excluded from the market, imposing a higher burden than the law requires.[30]

We need not decide the merits of ICP's challenge, however, because the jury never reached the issue of whether ICP had an active avenue of competition. Instead, the jury rejected the antitrust claim at an earlier stage, finding that Caterpillar and the other companies never agreed to pressure or threaten IronPlanet. Any error in the instruction

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[26] We apply the abuse of discretion standard to the District Court's choice of wording for jury instructions. *See United States v. Lee*, 359 F.3d 194, 203 (3d Cir. 2004).
[27] Appx. 1623.
[28] *Id.*
[29] 15 U.S.C. § 1.
[30] Appx. 1623.

was therefore harmless; as a result, the District Court did not abuse its discretion in denying IronPlanet's motion for a new trial.

III. CONCLUSION

For the foregoing reasons, we will affirm the District Court's denial of Caterpillar's motions for JMOL and a new trial on the tortious interference with contract claim, the District Court's vacatur of the jury's damages award on that claim, and the denial of ICP's motion for a new trial on the antitrust claim.