PALMER, J., with whom KATZ, J., joins, dissenting. The sole issue raised by this appeal is a straightforward one: whether a new trial is required due to the fact that the trial court improperly failed to instruct the jury on the defense raised by the defendant, Hartford Fire Insurance Company (Hartford), that it suffered material prejudice because the plaintiff, National Publishing Company, Inc. (National), had provided Hartford with late notice of its business interruption claim. A new trial would be necessary only if Hartford could establish on appeal that the outcome of the trial likely would have been different—that is, that the jury likely would have returned a verdict in favor of Hartford instead of National—if the requested charge on notice had been given. Hartford's only claim of prejudice is that National's allegedly late notice deprived Hartford of the ability to resolve National's computer problems so that National could have resumed its business operations and thereby avoid or mitigate any covered losses. There is absolutely nothing in the trial record, however, to indicate that Hartford suffered any prejudice at all as a result of the allegedly late notice because there is no evidence even to suggest that Hartford could have remedied National's computer problems, in January, 1995, March, 1995, August, 1995, or at any other time. The majority does not suggest otherwise. In fact, the only evidence adduced at trial pertaining to the issue of prejudice affirmatively demonstrates that Hartford suffered *no* prejudice. I therefore see no reason whatsoever to disturb the jury verdict.[1] Accordingly, I respectfully dissent.

The following facts are necessary to an understanding of the parties' claims. At all times relevant to this action, Paul Cohen was the sole shareholder, chief executive officer and president of National. By 1994, his associates, Karen Clarke and Eric Richmond, were running the company's day-to-day operations. Clarke researched potential clients and managed the company's finances, while Richmond developed the customized computer software program on which National's advertising insert business was based.

During 1994, Cohen's relationship with Clarke and Richmond began to deteriorate. On December 30, 1994, Cohen received a letter from Clarke, Richmond and several other National employees demanding that Clarke and Richmond be given an equity share in National and that Cohen agree to reduce his ownership share. The letter further informed Cohen that if these demands were not met, the group would force the company into involuntary bankruptcy.

When Cohen next returned to National's headquarters on January 3, 1995, he discovered that computers

were missing from various offices throughout the building, and that money had been withdrawn from the company's bank accounts. In addition to various business and financial records, computer software was missing. Clarke, Richmond and several other employees never returned to work. Later in January, when Cohen attempted to fill an order for advertising inserts, he discovered that the computer program central to National's business had been corrupted, making it impossible for the company to operate.

Because insurance documents were among those missing from National's offices, Cohen did not become aware of National's insurance coverage until January 25, 1995, when he received an invoice from J. M. Layton and Company, Inc. (J. M. Layton), National's insurance agent, for the premium on an insurance policy that had been issued to National by Hartford. On January 30, 1995, Cohen contacted David Woodward, chief executive officer of J. M. Layton, and informed him of National's losses. By letter dated February 28, 1995, Susan Guthrie, counsel for National, again informed Woodward of the loss. On March 10, 1995, Woodward forwarded Guthrie's letter to Hartford via facsimile, marking the first direct notice to Hartford of National's loss. That letter, which was attached to a property loss notice form that described National's property losses,[2] stated in relevant part: "Please be advised that this office has been retained to represent the interests of . . . National . . . with respect to losses it sustained as a result of theft, sabotage and other damage caused by former employees of [National] in late December of 1994. I understand that you have already spoken with . . . Paul Cohen . . . regarding these losses. As you are aware, since the time these losses occurred, [National] has been unable to operate and this inability to operate arises out of both the physical loss of several computers as well as the deletion and/or destruction of various computer programs essential to the operation of the business of [National]. Therefore, under the above-referenced policy [National] is herein making a claim against various portions of the coverage afforded with respect to these losses. Please forward the appropriate claim forms to my office for completion by [National]. . . ."

The record further reflects that, in response to the March 10, 1995 facsimile, Gaspar Kuhn, a claims adjuster at Hartford, sent Guthrie a proof of loss form for a fidelity bond to be completed because the claim implicated the employee dishonesty section of the policy. The fidelity bond claim was capped under the insurance policy at $10,000 per claim. As the majority has explained, however, National did not return the proof of loss form to Hartford despite several requests from Kuhn over the following months.

In July, 1995, National hired Eric Von Brauchitsch, a

public adjuster, to represent its interests in connection with its losses. In August, 1995, Von Brauchitsch submitted to Hartford, on behalf of National, a completed set of proof of loss forms describing National's claimed losses. Thereafter, Hartford began its investigation of National's claim in earnest. In particular, in September, 1995, Hartford retained a computer expert, Gregory Ashayeri, to determine what had occurred at National and to evaluate Hartford's exposure. By late 1996, when Hartford still had refused to acknowledge liability under its policy, National initiated the present action, alleging that Hartford had breached the insurance agreement by failing to pay National's claim. In its reply to National's complaint, Hartford asserted, inter alia, the special defense of late notice under § E.3.b of the insurance policy.[3]

At trial, National presented the testimony of Cohen and other National employees describing the sabotage that allegedly had been committed against the company by its former employees, as well as National's attempts to reconstruct the advertising insert program, to maintain business operations and to procure payment from Hartford for its losses. Hartford's primary defense was that National's claim under the policy was fraudulent in that Cohen had fabricated the account of employee sabotage.[4] Hartford also claimed that Cohen intentionally had thwarted National's efforts to resume business operations after the alleged sabotage, and had inflated the company's value, in order to collect additional insurance money. In addition to its claim of late notice, Hartford also maintained that National had breached § E.3.i of the insurance agreement by failing to cooperate with Hartford's investigation of National's claim.[5] In particular, Hartford claimed, on the basis of Kuhn's testimony, that between March and June, 1995, National did not reply to several inquiries by Kuhn regarding the status of completion of the proof of loss form for employee dishonesty that Kuhn had sent to National in response to the March 10, 1995 facsimile.

Near the conclusion of the trial, the parties filed their proposed jury instructions with the court. Hartford's request to charge included proposed instructions on its contentions that National had failed to provide timely notice of its claim and had failed to cooperate with Hartford once it did file such notice. At the charge conference, however, which followed the close of evidence, there was no specific discussion of the requested late notice instruction, and the instructions that the trial court gave to the jury contained no mention of the defense of late notice. Counsel for Hartford excepted to this omission, which the trial court noted without comment. The trial court, however, did charge the jury on Hartford's defense of lack of cooperation by National. Thereafter, the jury returned a verdict awarding National $414,317.48 in damages for lost business income, $914,530.68 for extra expenses and $10,000 for

employee dishonesty.[6] The jury also made the specific finding, inter alia, that National had not breached its duty to cooperate with Hartford in its investigation of National's claims.[7]

Hartford appealed from the judgment of the trial court to the Appellate Court, which, after a thorough analysis of each of Hartford's five separate claims, affirmed the trial court's judgment.[8] *National Publishing Co.* v. *Hartford Fire Ins. Co.*, 94 Conn. App. 234, 237, 892 A.2d 261 (2006). With respect to Hartford's contention that the trial court improperly had failed to instruct the jury on Hartford's claim of late notice, the Appellate Court, after a careful and detailed review of the record, concluded that, even if that failure was improper, it was harmless. Id., 278. We granted Hartford's petition for certification limited to the following issue: "Did the Appellate Court properly affirm the trial court's refusal to charge the jury on [Hartford's] late notice of special defense?"[9] *National Publishing Co.* v. *Hartford Fire Ins. Co.*, 278 Conn. 903, 896 A.2d 105 (2006). I do not agree that Hartford has met its burden of demonstrating that the instructional impropriety was harmful because Hartford cannot establish that the outcome of the trial likely would have been different if the court had given the requested instruction.[10]

Before explaining my disagreement with the majority on the ultimate issue of whether Hartford has met its burden of demonstrating that the instructional impropriety affected the verdict, I first address Hartford's claim, endorsed by the majority, that the jury reasonably could have found that the March 10, 1995 facsimile was insufficient to constitute notice of a potential business interruption loss as required under National's policy and, therefore, that National did not receive such notice until August, 1995. Although Hartford cannot prevail on its claim that it is entitled to a new trial even if it did not receive notice until August of 1995, Hartford's claim of prejudice is predicated on its assertion that it did not receive notice until August, an assertion that is defeated by the contents of the March 10, 1995 facsimile.

It is clear that Guthrie's letter, which was attached to the property loss notice in the March 10, 1995 facsimile, provided Hartford with sufficient notice of National's claims as a matter of law. The specific terms of the insurance policy required only that National provide "prompt notice of the loss or damage," including a "description of the property involved." Thus, the policy obligated National to provide Hartford with notice of the general nature of the loss, and not with notice of the specific claim or claims that it intended to make. See 13 G. Couch, Insurance (L. Russ & T. Segalla eds., 3d Ed. 2005) § 186:32, p. 186-60 ("[i]n the context of property insurance . . . notice of loss requires only that the [insured] furnish the insurer with the best information as to the facts which [the insured] possesses at

the time, and that [the insured] act in good faith in giving such notice"). The import of Guthrie's March 10, 1995 letter as notice of a business interruption loss is perfectly apparent: the letter stated that "since the time these losses occurred, [*National*] *has been unable to operate and this inability to operate* arises out of both the physical loss of several computers as well as the deletion and/or destruction of various computer programs *essential to the operation of the business of* [*National*]." (Emphasis added.) It is hard to imagine how National could have provided any clearer notice to Hartford that its business had been interrupted. Indeed, National explained that it had been unable to operate its business *at all* following the acts of theft and sabotage that were committed against the company in late December, 1994.[11] Guthrie closed the letter, moreover, by stating, "[t]herefore, under the above-referenced policy [National] is herein making a claim against *various portions of the coverage afforded with respect to these losses.*" (Emphasis added.) As Kuhn testified, it was Hartford's duty, and not National's responsibility, to determine what specific coverage provisions of the policy were triggered by the notice.[12]

Although Kuhn initially testified that he thought that the employee dishonesty section of the policy was applicable, his opinion was based on his reading of the property loss notice form, which comprised the first page of the March 10, 1995 facsimile. Kuhn further stated that if he had read the notice form together with Guthrie's letter, which was attached, other sections of the policy, including the business interruption coverage provision, might have been triggered. Indeed, the property loss notice form that Kuhn had relied on explicitly stated, in the box designated "[r]emarks," that the reader should "see [attorney] letter."[13] The fact that Kuhn, through inadvertence or neglect, failed to read Guthrie's letter, cannot possibly justify the conclusion that the March 10, 1995 facsimile was insufficient to constitute notice of a possible business interruption loss, especially in light of Kuhn's duties as the adjuster responsible for National's account. In addition, Woodward testified that the notice form that had been sent to Hartford via facsimile on March 10, 1995, when read in conjunction with the attached letter from Guthrie, should have alerted Hartford to a potential business interruption loss claim.

Despite this notice in March, the record demonstrates that Hartford did not begin to investigate the circumstances surrounding National's possible business interruption loss until September.[14] Thus, any prejudice that Hartford might have suffered by virtue of its failure to investigate the matter until September is due solely to its failure to act more promptly. The fact is, however, that there is nothing in the record to indicate that Hartford suffered any prejudice, irrespective of whether it received notice of National's potential business inter-

ruption loss claim in January, March or August. Consequently, even if Hartford is deemed to have received untimely notice of that potential claim, Hartford cannot satisfy its burden of demonstrating that the outcome of the trial would have been different if the trial court had instructed the jury on its claim of late notice, the issue to which I now turn.

The standard of review for an instructional impropriety is well established. "[I]t is axiomatic . . . that not every error is harmful. . . . [B]efore a party is entitled to a new trial . . . he or she has the burden of demonstrating that the error was harmful. . . . An instructional impropriety is harmful if it is likely that it affected the verdict. . . . In determining whether an instructional impropriety was harmless, we consider not only the nature of the error, including its natural and probable effect on a party's ability to place his full case before the jury, but the likelihood of actual prejudice as reflected in the individual trial record, taking into account (1) the state of the evidence, (2) the effect of other instructions, (3) the effect of counsel's arguments, and (4) any indications by the jury itself that it was misled." (Internal quotation marks omitted.) *Allison* v. *Manetta*, 284 Conn. 389, 400, 933 A.2d 1197 (2007). Thus, in deciding whether the improper failure to give a requested jury instruction constituted harmful error, we must examine the record to determine whether the jury likely would have reached a different verdict had the requested charge been given. See, e.g., *George* v. *Ericson*, 250 Conn. 312, 327, 736 A.2d 889 (1999) ("[t]he harmless error standard in a civil case is whether the improper ruling would likely affect the result" [internal quotation marks omitted]).

Hartford contends that it suffered material prejudice as a result of the allegedly late notice because that tardy notice prohibited Hartford from investigating *and resolving* National's computer problems, a course of action that Hartford contends would have made it possible for National to resume its business operations instead of shutting down. There simply is nothing in the record, however, to indicate that Hartford had the ability or the expertise to accomplish that task, no matter how early it received notice that National's computers had been sabotaged. Moreover, as the Appellate Court observed in rejecting Harford's claim, the only evidence adduced at trial that specifically concerned the issue of prejudice demonstrated that Hartford had suffered none. See *National Publishing Co.* v. *Hartford Fire Ins. Co.*, supra, 94 Conn. App. 278. In particular, when questioned whether Hartford had been prejudiced by National's alleged failure to provide more timely notice, Kuhn, who had twenty-five years experience as an adjuster, was unable to identify any such prejudice on the basis of the contents of his file. As the adjuster responsible for National's file from the time he personally became aware of National's possible loss in March

until he turned the case over to another Hartford adjuster in August, Kuhn's inability to point to any harm resulting from the notice that Hartford received completely undermines Hartford's claim of prejudice.[15] In addition, Woodward, the former chief executive officer of J. M. Layton, testified that he did not believe that Hartford had been prejudiced by the timing of the March 10, 1995 notice.

In contrast to the testimony of Kuhn and Woodward, there is not one shred of evidence to indicate that National's failure to provide Hartford with more timely notice was prejudicial to Hartford. Thus, there is nothing in the record to indicate that Hartford was hampered in its investigation of National's claim because, for example, a key witness had died or otherwise had become unavailable to Hartford at any time before it received notice under the policy. Nor is there any suggestion in the record that any documents were lost or that any other evidence was rendered unavailable prior to that notice date. Finally, as stated previously, there is no evidence—none—indicating that Hartford could have remedied National's computer problems, and thereby reduced Hartford's exposure under its policy, if it had received earlier notice of National's potential loss. On the basis of the record, therefore, ordinarily there would be no question that the trial court's failure to give the requested charge on notice was harmless because there is absolutely nothing on which the jury could have predicated a finding of prejudice stemming from late notice.

As the majority has explained, however, this court held in *Aetna Casualty & Surety Co.* v. *Murphy*, supra, 206 Conn. 419, that when an insured provides late notice of an insurance loss, the insured bears the burden of establishing that the insurer suffered no material prejudice as a result of the late notice.[16] Thus, at trial, if the requested instruction had been given, and if the jury had found that notice was late, the jury would not have been required to find prejudice stemming from the late notice; rather, National would have been required to demonstrate to the jury that Hartford suffered no material prejudice due to the late notice. In concluding that National probably would not have met this burden, the majority ignores the complete absence of prejudice in the record.

Because Hartford raised the special defense of late notice in its answer to National's complaint, and because the trial court did not decline to charge the jury on the issue until *after* the parties had presented all of the evidence favorable to their respective positions, we are compelled to presume that both parties adduced all of the evidence that they believed the jury needed to know about the issue of prejudice or lack thereof. Thus, for purposes of determining whether the trial court's failure to instruct the jury on late notice was

prejudicial to Hartford, we must examine the record to ascertain whether the evidence of prejudice was sufficient to support the conclusion that, if the court had instructed the jury on Hartford's notice defense, the verdict most likely would have been different because the jury would have concluded that National had not rebutted the presumption of prejudice. As I have explained, however, the only evidence adduced on the issue indicates that Hartford was not prejudiced by the notice that it received from National.

The majority ignores this critical aspect of the record. Instead, its opinion is devoted almost entirely to establishing why, because of National's alleged delay in providing notice, the trial court improperly failed to instruct the jury on Hartford's claim of untimely notice. As I have indicated, I agree that the court should have given the requested instruction. In focusing solely on the alleged delay, however, the majority fails to address meaningfully the key issue in the case, namely, whether Hartford has demonstrated that it is entitled to a new trial because of that instructional impropriety.[17] Indeed, the majority's analysis of that question begins and ends with its conclusory assertion that National's burden of proving the absence of material prejudice would have been difficult to meet. One searches the majority opinion in vain for any evidence supporting this assertion.

Ultimately, the majority's conclusion is wholly unpersuasive because it disregards the facts in the record. Since the only evidence pertaining to the issue of prejudice indicates that there was none, and because the trial record otherwise is devoid of evidence from which an inference of prejudice might be drawn, it is highly implausible that a properly instructed jury would have found that National had failed to satisfy its burden of demonstrating a lack of material prejudice. Put differently, there simply is no reason to believe that, in such circumstances, the jury would have found that National, which otherwise was entitled to invoke the protections of the policy for which it had made regular premium payments, had forfeited its rights under the policy because it had not adduced *enough* evidence to establish that Hartford was not materially prejudiced by the notice that it received. I do not see why we would presume that the jury would come to such a conclusion when, after weeks of testimony and evidence, the record revealed not a hint of prejudice, material or otherwise. Indeed, the majority's conclusion is even less supportable in view of the jury's express finding that National had cooperated with Hartford in accordance with policy requirements.[18]

In sum, I fully agree with the Appellate Court that Hartford has failed to demonstrate that the outcome of the trial would have been different if the trial court had instructed the jury on its claim of late notice. The majority's contrary conclusion is belied by the record,

which contains no evidence even to suggest that Hartford was prejudiced by the arguably late notice that it received. In view of that record, it is extremely unlikely that a jury properly instructed on Hartford's defense of late notice nevertheless would have found that National had forfeited its payment rights under the policy because it did not adduce more evidence of the lack of prejudice. Accordingly, I respectfully dissent.

[1] It is true, of course, that under *Aetna Casualty & Surety Co.* v. *Murphy*, 206 Conn. 409, 419, 538 A.2d 219 (1988), National would have borne the burden of persuading a properly instructed jury that Hartford had not suffered any material prejudice as a result of National's allegedly untimely notice. As I discuss more fully hereinafter, however, because the only evidence adduced at trial concerning prejudice indicated that Hartford suffered *none*, there simply is nothing in the record to support the majority's conclusion that a properly charged jury would have returned a verdict for National on its defense of prejudicial late notice.

[2] The items identified on the form, which had been generated by J. M. Layton, included "computers, scanners, printers and computer programs stolen by former employees."

[3] Section E.3 of the policy, which describes the insured's duties in the event of loss or damage, provides in relevant part: "[The insured] must see that the following are done in the event of loss or damage to [c]overed [p]roperty . . .

"b. Give us prompt notice of the loss or damage. Include a description of the property involved. . . ."

[4] In his closing argument, counsel for Hartford argued: "[W]hat is at issue in this case is concealment, misrepresentation and fraud. Ladies and gentlemen, this is a fraudulent insurance claim. This claim was brought to scam the insurance company. It was brought to rip off the insurance company . . . . [T]hat is what this case is about . . . ."

[5] Section E.3.i of the policy provides that the insured must "[c]ooperate with [Hartford] in the investigation or settlement of the claim." Section E.3.c of the policy requires that, "[a]s soon as possible," National must provide Hartford with a "description of how, when and where the loss or damage occurred."

[6] The trial court rendered judgment for National in accordance with the jury verdict but ordered a remittitur of $238,533.79. The remittitur is not an issue in this appeal.

[7] The jury interrogatory on the issue of cooperation under the policy provides in pertinent part: "Has . . . National . . . proved, by a preponderance of the evidence, that it complied with the conditions of the subject insurance policy requiring cooperation in the investigation, the provision of statements of loss containing requested information, and the provision of inventories of damaged property and amount of loss claim?" The jury answered "Yes."

[8] On appeal to the Appellate Court, Hartford claimed that the trial court improperly had denied its postverdict motions for judgment notwithstanding the verdict and to set aside the verdict because: "(1) National failed to establish any damages . . . (2) the court improperly admitted a summary spreadsheet into evidence without a proper foundation; (3) the court failed to charge the jury on Hartford's special defense that National failed to give proper notice of its claim pursuant to the policy; (4) the court improperly denied Hartford's motion for a mistrial after National's counsel made inflammatory remarks during closing argument; and (5) the court improperly excluded evidence regarding a prior felony conviction of National's principal . . . Cohen." *National Publishing Co.* v. *Hartford Fire Ins. Co.*, 94 Conn. App. 234, 237, 892 A.2d 261 (2006).

[9] For purposes of the certified question, there is no dispute that, if this court concludes that the trial court improperly failed to charge the jury on Hartford's defense of late notice, then we also must decide whether that impropriety was harmful.

[10] I do agree with the majority that the trial court should have given the requested charge because the timeliness of the notice was a question for the jury to decide. As the majority has indicated, the jury reasonably could have concluded that Hartford received notice of National's loss via J. M. Layton on January 30, 1995, if the jury also concluded that J. M. Layton was Hartford's agent. The determination of whether an agency relationship

exists, however, involves a factual inquiry and, therefore, ordinarily gives rise to a jury question. Although it is reasonably likely that the jury would have found that J. M. Layton was, in fact, Hartford's agent, the jury could have come to a contrary conclusion. As I explain more fully hereinafter, however, the record establishes that Hartford received notice of a possible business interruption claim no later than March 10, 1995.

[11] In concluding that a legitimate factual question existed as to whether the March 10, 1995 notice was sufficient, the majority ignores Guthrie's letter and examines the contents of the property loss notice form in isolation. The majority states that "[t]he form made no mention of a loss based on business interruption." The facsimile notice, however, also included Guthrie's letter, which plainly stated that National "has been unable to operate" since it had lost the use of its computers in January, 1995.

[12] Kuhn acknowledged that it was part of his job to determine, on the basis of the notice provided, what coverage might be triggered under the policy. Kuhn also testified that he did not consult with anyone who had more experience in dealing with computer loss claims, and that to his knowledge, there was no one at Hartford who had experience in handling claims related to allegations of computer sabotage and theft.

[13] The majority relies on Kuhn's testimony to support its conclusion that the jury reasonably could have found that the March 10, 1995 facsimile did not suffice as adequate notice of a possible business interruption loss under the policy. In particular, the majority contends that Kuhn testified that the March 10, 1995 facsimile "did not provide him with enough information to determine whether the policy's business interruption coverage was triggered." Contrary to the majority's assertion, however, Kuhn testified merely that he could not discern from the March 10, 1995 facsimile whether National had suffered *any compensable loss* under the policy, including any loss due to employee dishonesty, sabotage or theft; such a determination could be made only after an investigation of the representations set forth in the notice.

[14] The majority suggests that the jury reasonably could have found that Hartford commenced its investigation shortly after receiving the March 10, 1995 facsimile, but that its efforts were thwarted by National's failure to respond to several inquiries by Hartford concerning the status of National's completion of the proof of loss form for employee dishonesty that Kuhn had forwarded to National after receiving the March 10, 1995 facsimile. To the extent that these inquiries possibly could be characterized as investigatory in nature, however, Kuhn's testimony established that they related only to a possible claim under the employee dishonesty section of the policy. Moreover, the jury expressly found that National had cooperated with Hartford as required under the policy.

[15] Kuhn's testimony is powerful—and uncontroverted—evidence of lack of prejudice. Indeed, it is hard to imagine testimony from a Hartford employee that would be more probative of the fact that National had not suffered any prejudice, let alone any material prejudice. After all, Kuhn was the Hartford employee assigned to National's account from the date of the loss in January, 1995, an assignment he retained until August, 1995. As the Hartford adjuster responsible for handling National's claim, Kuhn was uniquely situated to know whether Hartford had been prejudiced in any way by the allegedly late notice. If Kuhn could not identify any such prejudice, there is no reason to think that anyone else could have done so, and neither Hartford nor the majority has suggested any such person.

[16] I have a serious question as to whether the burden shifting approach that we adopted in *Murphy* is the best and most fair approach because it places the burden on an insured to prove a negative, that is, that the late notice under the policy did not prejudice the insurer. Because the insurer, and not the insured, will possess the information relevant to the question of whether the untimely notice resulted in any undue prejudice to the insurer, it seems more reasonable for the insurer to bear the burden of proving that it was so prejudiced by the late notice that it is entitled to be relieved from its payment obligation under the policy. This issue is not the subject of this appeal, however, and I therefore do not address it further.

[17] Of course, delay alone is not evidence of prejudice.

[18] In support of its claim that the outcome of the trial would have been different because of the likelihood that the jury would have found that National had not met its burden of persuading the jury of a lack of material prejudice, Hartford suggests several scenarios pursuant to which it conceivably might have been able to mitigate National's losses if it had received earlier notice of those losses. For example, Hartford posits that Ashayeri, its computer consultant, or some other expert retained by Hartford, possibly

might have been able to solve National's systemic computer problem, thereby permitting National to maintain its business operations, if Hartford had been given more prompt notice of the problem. Hartford acknowledges, however, that there is nothing in the record to indicate whether Ashayeri or anyone else could have succeeded in such an endeavor. Because the scenarios posed by Hartford are speculative and find no support in the record, I, like the majority, see no reason to elaborate further on them. Suffice it to say that there is no reasonable possibility that the jury would have been persuaded by Hartford's hypothetical theories of potential prejudice because those theories are disconnected from the evidence. See *Coughlin* v. *Anderson*, 270 Conn. 487, 497–98, 853 A.2d 460 (2004) ("[a]lthough it is the jury's right to draw logical deductions and make reasonable inferences from the facts proven . . . it may not resort to mere conjecture and speculation" [internal quotation marks omitted]).