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SC Court of Appeals

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF RICHLAND ) FOR THE FIFTH JUDICIAL CIRCUIT

MICHAEL L. PERRY and ) C/A NO. 2023-CP-40-04072  
LONNIE L. LONG, )  
 )

Plaintiffs, ) In Re:  
 ) Asbestos Personal Injury Litigation  
 ) Coordinated Docket

v. )

AMERICAN INTERNATIONAL ) ORDER ON PLAINTIFFS' MOTION TO  
INDUSTRIES, et al. ) COMPEL AND MOTION FOR  
 ) SANCTIONS AGAINST DEFENDANTS  
 ) KENVUE, INC. AND JOHNSON &  
Defendants. ) JOHNSON HOLDCO (NA) INC.

Before the Court is Plaintiffs' Motion to Compel and Motion for Sanctions Against Defendants Kenvue, Inc. and Johnson & Johnson Holdco (NA) Inc. (hereinafter "Kenvue", "Holdco" or "Defendants"). The Court received briefs from Plaintiffs and from Defendants and heard argument from the parties on August 7, 2024. The motion is granted.

**BACKGROUND**

The testimony of a Rule 30(b)(6) witness represents the collective knowledge of the organization, not the specific witness's knowledge. Regardless of whether the people whom the corporation designates have any personal knowledge of the matters in the deposition notice, the responding party must prepare its witnesses to provide non-evasive, complete and binding answers for the organization. The corporate representative for both Defendants failed to comply with this court's order.

**APPLICABLE LAW**

SCRCP Rule 30(b)(6) specifically requires a corporation to find requested information not just what is known to a company, but what is *knowable* to a company. In this case, this certainly applies to Defendants' predecessors, subsidiaries and parent companies including but not limited

to Johnson & Johnson. Kenvue and Holdco's refusal to provide a witness who took seriously the order of the court to inform himself of what is known at the company (from its own employees) or from information readily knowable. This is unreasonable conduct similar to what required an order compelling the depositions in the first place. That order was disregarded repeatedly.

Pursuant to Rule 37(b)(2)(C), SCRCP, when a party fails to obey an order to provide or permit discovery, the court may "make such orders in regard to the failure as are just," including an order dismissing the action or proceeding, or any part thereof. *Temple v. Tec-Fab, Inc.*, 370 S.C. 383, 390, 635 S.E.2d 541, 544 (Ct. App 2006). Here sanctions are appropriate. However, the amount of sanctions will be deferred to a later date. Neither defendant has been deposed before in litigation regarding talc. Neither Defendant cooperated with proper discovery requests, willfully ignoring a court order and did so when the timing was obviously extremely prejudicial to Plaintiffs.

### **CONCLUSION AND ORDER**

Defendants abuse of discovery and failure to prepare both corporate representatives as ordered by this court warrant the imposition of sanctions. Defendants unilaterally and, in violation of the Order granting the Plaintiffs' Motion to Compel, failed to prepare the corporate representatives on numerous topics.

For these reasons, the Court **GRANTS** Plaintiffs' motion, and **IT IS HEREBY ORDERED** that:

1. Defendants are ordered to produce a fully prepared witness to be deposed this Saturday or Sunday, August 10<sup>th</sup> or August 11<sup>th</sup> based on availability of Plaintiffs' counsel. The deponent shall identify employees at Kenvue and Holdco with knowledge on the noticed subject and educate

himself on what is known by those employees in addition to doing an inquiry with entities that are reasonably available to Defendants such as J&J and JJCI-3.

2. The corporate designee shall appear for trial as the last witness to take the stand in the pre-punitive stage should the Plaintiffs wish to call the witness. Plaintiffs' case-in-chief will not be completed until this witness is heard.

3. The court will also consider evidentiary sanctions after the continued deposition is complete to extent the witness is not prepared or Plaintiff is prejudiced by the timing of the evidence.

**AND IT IS SO ORDERED.**



Richland Common Pleas

**Case Caption:** Michael L Perry , plaintiff, et al vs American International Industries ,  
defendant, et al  
**Case Number:** 2023CP4004072  
**Type:** Order/Compel

So Ordered

Jean H. Toal