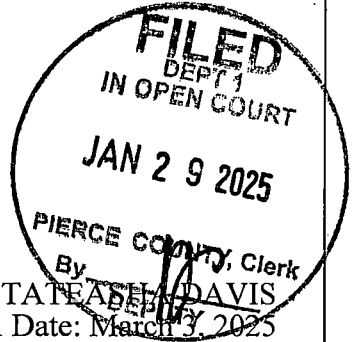


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Feb 05 2025

S.C. SUPREME COURT



THE HONORABLE TATE A. DAVIS  
Trial Date: March 3, 2025  
Hearing Date: January 24, 2025



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTY

JOLENE R. KOTZERKE, individually as the  
surviving spouse and as Executor for the  
Estate of STEVEN D. KOTZERKE, deceased,  
  
Plaintiff,  
  
vs.  
  
3M COMPANY, et al.,  
  
Defendants.

Case No. 23-2-05287-6  
  
**ORDER GRANTING PLAINTIFFS'  
MOTION FOR CONTEMPT  
AGAINST ASBESTOS  
CORPORATION LIMITED AND  
COUNSEL, STRIKING DEFENDANT  
ASBESTOS CORPORATION  
LIMITED'S ANSWER AND  
HOLDING ASBESTOS  
CORPORATION LIMITED IN  
DEFAULT**

This matter came on for hearing before the Court on plaintiff JOLENE R. KOTZERKE, individually as the surviving spouse and as Executor for the Estate of STEVEN D. KOTZERKE, deceased, Motion for Contempt and for an Order Striking the Answer of Asbestos Corporation Limited and placing Asbestos Corporation Limited into Default. The Court, having considered the arguments of the parties, the documents and pleadings on file herein, including the following:

1. Plaintiff's Motion for Contempt as to Defendant Asbestos Corporation Ltd. ("ACL") and Counsel and seeking an order striking ACL's answer and holding ACL in default;

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1 2. Declaration of Sarah E. Gilson in support of Plaintiff's Motion with exhibits;

2 3. Defendant Opposition to Plaintiff's Motion;

3 4. Declaration of Mark Tuvim in support of its Opposition to Plaintiff's Motion for  
4 Order of Default as to Defendant ACL America with exhibits, if any;

5 5. Plaintiff's reply in support of Plaintiff's Motion;

6 6. Plaintiff's Certification of Non-Compliance dated January 29, 2025;

7  
8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's motion for  
9 contempt, striking of ACL's answer and placing ACL in default is GRANTED.

10  
11 **ORDER**

12 This Court has provided ACL multiple opportunities to comply with the lawful discovery  
13 orders of this Court. Each time ACL has refused. ACL sought discretionary review of this  
14 Court's discovery order to the Washington Court of Appeals. The Washington Court of Appeals  
15 denied ACL's motion for discretionary review. Still ACL refused to comply.

16 Plaintiffs previously requested that this Court strike the answer of ACL. This Court, in an  
17 effort to avoid such a remedy, again sanctioned ACL in the amount of \$2,000 per day and ordered  
18 ACL to, again, comply with this Court's orders.

19 Rather than comply, counsel for ACL issued a letter to Plaintiff's counsel which read, in  
20 part

21 *Notwithstanding the rulings in the Kotzerke case by the trial court and Court of*  
22 *Appeals Commissioner with respect to the application of the QBCRA here, ACL*  
23 *has concluded that it cannot and will not violate its home law without risking civil*  
24 *and criminal penalties. Accordingly, ACL will not produce a witness to testify*  
*further on the topics specified in the CR 30(b)(6) deposition notice, and will not*  
*produce the documents Plaintiff demands therein.*

25 This letter was signed by counsel for ACL, Mark Tuvim and copied Frederick Goldfein, national  
26 counsel for ACL. This letter is nothing but a willful decision on the part of ACL to disobey the  
27

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1 orders of this Court. That result is not acceptable and flouts the very rule of law of the state of  
2 Washington.

3 On January 24, 2025, ACL was given a final opportunity, until January 28, 2025, to comply  
4 with the multiple prior discovery orders here. Plaintiffs have certified no such compliance  
5 occurred.

6 Therefore, it is hereby ORDERED that Asbestos Corporation Ltd. is in contempt of court.

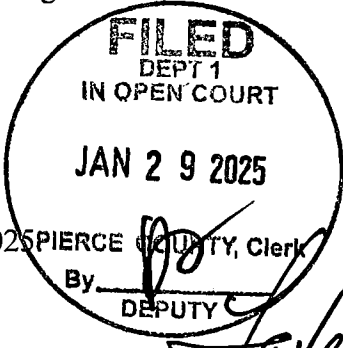
7 It is hereby ORDERED that Asbestos Corporation, Ltd.'s Answer(s) to Plaintiffs  
8 Complaint(s) for Damages be and are struck and an order of default be entered against it.

9 It is hereby ORDERED that the following monetary sanctions be issued against  
10 Defendant Asbestos Corporation, Ltd.:

- 11 1. \$68,000.00, for the failure to produce a witness pursuant to this Court's Order of
- 12 December 9, 2024, awarding sanctions in the amount of \$2000.00 per business day for
- 13 34 days.
- 14 2. For attorney's fees and costs associated with the briefing and hearings on Plaintiffs'
- 15 First and Second Motions for Sanctions. Counsel for the plaintiff shall submit
- 16 affidavits of the amount of time, fees, and expenses expended in this process through
- 17 the conclusion of this hearing.
- 18 3. The Court orders that this damages hearing will go forward on March 3, 2025,
- 19 concurrently with the trial against Fletcher Construction Company North America.

20  
21 SO ORDERED

22  
23 DATED this 29th day of January, 2025



Tateasha Davis

By \_\_\_\_\_  
DEPUTY

*Tateasha Davis*  
\_\_\_\_\_  
JUDGE TATEASHA DAVIS

1 Presented by:

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3 /s/ Alexandra B. Caggiano

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14 /s/ Sarah E. Gilson

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