

1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS

2 COUNTY OF GEORGETOWN * TRANSCRIPT OF RECORD

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4 RYAN COBB, MARLON COBB, COBB *
5 TRUCKING, LLC, and BRANDY *
6 COBB, *

7 Plaintiffs, *

8 vs. * Case No. 2022-CP-22-00739

9 DAVID ALAN BIGELOW; HERITAGE *
10 HAULING, INC.; BOGGS *
11 CONTRACTING, INC.; and SAFE *
12 SHIELD, LLC, *

13 Defendants. *

14 -----X



February 20, 2025

11 B E F O R E:

12 The Honorable David P. Caraker, Jr., Presiding Judge

13 A P P E A R A N C E S:

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16 Scott C. Evans, Esq.
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18 Jerry L. Spivey, Esq.
19 Attorneys for the Plaintiffs

20 Mary Ashley Morgan, Esq.
21 Attorney for Defendant David Alan Bigelow
22 and Heritage Hauling, Inc.

23 Jay Thompson, Esq.
24 Diana August, Esq.
25 Attorneys for the Defendant

Ryan C. Holt, Esq.
Attorney for Defendant Safe Shield, LLC

Kenneth Michael Barfield, Esq.
Attorney for Cincinnati Insurance Company

Recorded by: WebEx Recording
Court Transcriber: Bobbi Fisher, RPR

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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--) Indicates an interruption in speech
Ellipses (...) Indicates trailing off in speech
(ph) Indicates phonetic word
[Verbatim] Indicates the word is said as written
(Indiscernible)[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

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THE COURT: Looks like the next matter is Ryan Cobb versus David Alan Bigelow.

All righty. Good afternoon, everybody. I've got Mr. Moore, Mr. Holt, Mr. Thompson (indiscernible) just came on.

I'm looking for Ms. Martin, Mr. (Indiscernible) and Mr. Barfield.

MR. MOORE: Good afternoon, Your Honor. This is James Moore. How are you doing?

THE COURT: All right. Good afternoon. Hope y'all are doing all right today.

MR. MOORE: Doing well.

THE COURT: We've got something that's bleeding over, guys, from somewhere.

MR. MOORE: I think that's coming from Mary Ashley's.

THE COURT: Ms. Martin, can you hear us?

Just so you guys know, I texted her and let her know we can hear her conversation.

While we're waiting on that, Mr. Barfield, are you there, sir?

MR. BARFIELD: I am.

THE COURT: I can hear you, but I can't see you.

MS. MARTIN: Okay, hey, this is Mary Ashley. Can you hear me?

1 THE COURT: Yes, ma'am. I can hear you but I can't see
2 you.

3 Ms. MARTIN: Okay. All right. Let me see. There we go.

4 THE COURT: All right. This is Ryan Cobb vs. David Alan
5 Bigelow, 2022-CP-22-00739. Have a couple of different motions
6 with regard to this: A Motion to Compel brought by the
7 plaintiff. We can take care of that first.

8 MR. MOORE: Yes, Your Honor. This is James Moore. And
9 I'm here with my co-counsel, Mr. Steve Culbreth and Jerry
10 Spivey and George O'Brien. And Scott Evans is my law partner;
11 he's actually on the call as well, but he's in a different
12 location.

13 There's two motions that are before you. The first
14 motion, I believe, is a Motion to Compel against Safe Shield,
15 which is one of the defendants in this action. We have
16 resolved that motion, Your Honor. Specifically, with respect
17 to the three Requests for Production, Request for Production
18 No. 15, 20, and 22, counsel for Safe Shield, Mr. Holt has
19 agreed to either supplement that response to the extent there
20 is supplemental documentation and provide a verification as to
21 those three Requests for Production, and that takes care of
22 that Motion to Compel.

23 Scott Evans will be handling the motion as it relates to
24 the other defendants.

25 THE COURT: All right. So Plaintiff's Motion to Compel.

1 That matter is completely resolved; is that correct?

2 MR. HOLT: Yes, Your Honor. Ryan Holt for the defendant.
3 I appreciate Mr. Moore working with us on that, and we've come
4 to a resolution that we'll get him some materials, to the
5 extent we have them, in the next 15 days.

6 THE COURT: All right. And then the next one is Motion
7 for Sanctions for Abuse of Discovery; is that correct?

8 MR. EVANS: That's correct, Your Honor. May it please
9 the Court.

10 THE COURT: Yes, sir.

11 MR. EVANS: If I may, Your Honor -- and I'm getting quite
12 a bit of feedback I think coming from Mary Ashley's side.
13 Sorry to speak out of turn.

14 But, Your Honor, if it's all right with the Court, I'd
15 like to share my screen to maybe cut through some of the
16 briefing and just give a brief summary of what this case is
17 and what the issues are before you.

18 THE COURT: Yes, sir.

19 All right. I see what looks like to be maybe a
20 PowerPoint with some photos. Okay. I'm with you.

21 MR. EVANS: So, Your Honor, this is a collision case.
22 It's simple in some respects but complicated in some others.

23 Our client was stopped at a road construction project
24 here in Georgetown County. He was driving his own commercial
25 truck. The road construction project was being managed by the

1 defendant, Boggs Construction, out of North Carolina. They
2 are a paving contractor. They also have a motor carrier's
3 license.

4 And he was struck by one of Boggs' subcontractors, who
5 happened to be delivering to the road construction site
6 58,000 pounds of asphalt to this site, which he testified was
7 a moving target. And I'll play for you just the very tail end
8 of this collision.

9 (Video plays.)

10 So he struck our clients without braking, carrying 58,000
11 pounds of asphalt. We represent Ryan Cobb, who was the
12 driver, and his brother, Marlon Cobb, who was the center seat
13 passenger, in this 40-foot box truck that Mr. Ryan Cobb owned.

14 They were stopped legally for this traffic stop. There
15 was a flagger up ahead. So they were in a 40-foot box truck.
16 The truck in front of them was a tractor-trailer with a dump
17 bed. Fortunately, there was no loss of life because of the
18 length of the two vehicles involved. Had there been passenger
19 vehicles, there could have been probably more lives lost.

20 Marlon Cobb, in the center seat, struck his head against
21 the rear window because there was no head restraint, causing a
22 brain bleed.

23 Ryan, unfortunately, had his leg pinned between his
24 driver's seat and the steering column, ultimately resulting in
25 his leg having to be amputated.

1 This particular paving project was awarded by the South
2 Carolina Department of Transportation to Defendant Boggs, and
3 they had certain duties to the public that they volunteered to
4 undertake, including ensuring that their subcontractors
5 followed all traffic control requirements and were trained on
6 how to behave when they were in a work zone; that they install
7 and maintain all traffic control devices -- that would be
8 things such as cones, barrels, and signage leading up to and
9 throughout the construction site -- and that they maintain the
10 traffic control in accordance with standards set by the United
11 States Department of Transportation and then adopted by the
12 South Carolina Department of Transportation. And that
13 included some things such as basically having some signs set
14 up, starting 2,000 feet back. You're supposed to set up some
15 signs for everybody approaching the work site.

16 Now, this work, again, was, as the defendant driver of
17 the dump drunk testified, a moving target. He was delivering
18 asphalt from a plant owned by Boggs multiple occasions each
19 day. And he would testify that the actual site where the
20 paving was taking place would move up to a mile each time he
21 left and came back.

22 And then, of course, there were supposed to be signs that
23 begin with "Prepare to stop: Flagger ahead," 2,000 feet back.
24 500 feet later, "Road work ahead." 500 feet later, "One-lane
25 road ahead." And then this graphic depiction of a flagger and

1 then the flagger (indiscernible).

2 In a dash cam video contained in the dump truck, it is
3 clear that several of the signs leading up to the site were
4 down. We see one here in the right-hand corner of the screen.
5 And one of Boggs' 30(b)(6) representatives testified that that
6 downed sign takes the job site out of compliance with the
7 traffic control plan as mandated by the South Carolina
8 Department of Transportation.

9 And at least a second sign was also down approaching our
10 client's box truck which, again, was admitted to by the
11 30(b)(6) representative, Boggs Contracting, took the traffic
12 control plan out of compliance with the SCDOT's requirements.

13 Now, what we do know is that, just minutes later, when
14 the South Carolina Highway Patrol was responding to the scene,
15 somebody present at the site which, again, is Boggs'
16 contractual responsibility to maintain they've got control of
17 the site and they're responsible for making sure that
18 everything is in compliance on the site, whether they subbed
19 that out or not, within minutes, somebody had gone back and
20 picked up those very same signs.

21 In the time it took for the first responders to get
22 there, somebody realized there was a deficiency and rushed to
23 pick up those signs. So we know that somebody was out there
24 tampering with the scene based on the video footage alone.

25 Now, two years after a discovery request was served, we

1 got, in the middle of a deposition, an email wherein one of
2 the project managers for Boggs reaches out to the Department
3 of Transportation and says, you know, "Can you provide me with
4 a traffic report for County Line Road to verify that we were
5 in compliance when this incident occurred?"

6 Now, we don't know what this individual's personal level
7 of knowledge is, but we know somebody with Boggs went out
8 there and tampered with the scene, and here we have the
9 project manager asking the DOT to provide them with
10 documentation to show that they were, in fact, in compliance,
11 which the video evidence irrefutably shows they were not.

12 And the Department of Transportation employee responds,
13 We are unable to retroactively do traffic control inspection
14 reports, particularly the day after, because we only do those
15 reports to document current conditions. We don't do those
16 reports to document whether or not somebody was in compliance
17 over the course of the week or over the course of a full day.

18 Those are spot checks. When we do a spot check, we
19 verify whether a site is in compliance, so we can't go back
20 and retroactively create one for you to show that you were in
21 compliance at the time of this collision when we later learned
22 they were not.

23 Now, this email which, again, came up during the course
24 of a deposition, was strange in that it lacked any sort of
25 transmittal features that you would normally see on an email.

1 It's got no source information such as whether it's being
2 printed from Gmail, Yahoo, Outlook. It's also got some
3 handwriting on it. So it does appear as though it was printed
4 by the sender, at least with his consent. And this
5 information, which, as it was later produced showing this
6 particular version, was printed from Gmail, this particular
7 version from Outlook, all of that stuff is missing.

8 So come to find out that this particular email was never
9 produced in discovery, although the parties seemed to be in
10 agreement that this is an email that should have been produced
11 in January of 2023, and it's December of 2024 when we find out
12 about this, what we would characterize as a smoking gun email,
13 in February of 2025 before this email is officially produced
14 to us some 25 months later.

15 Now, Your Honor, this is a case that's been pending for
16 over two years, and we are about 100 days away from our
17 date-certain trial, and we just now this month are finding out
18 about a smoking gun document.

19 Now, while discovery was ongoing, we were told that there
20 was only two emails back and forth between Boggs and its
21 subcontractor or Boggs and any third parties regarding this
22 collision, which we found to be suspect because, even if
23 somebody is to back their food truck into a mailbox and need
24 to make a claim with Allstate, there's going to be two dozen
25 emails associated with that.

1 Here, we have multi-million dollars in medical bills on a
2 \$7 million public contract, and they're claiming there was
3 only two emails.

4 Now, I forgot to start off with this: All parties in
5 this case -- although it's a very contentious case, all
6 parties in this case worked together very well. We've all
7 worked together on other cases. Boggs' counsel was recently
8 substituted with Mr. Thompson.

9 The prior lawyers with whom we engaged in some of these
10 disputes over discovery are lawyers who were very forthcoming
11 with us. And we know that nothing here involves any untoward
12 conduct by any lawyer anywhere close to this case.

13 But when we got that response saying that there's two
14 emails connected with this entire catastrophic collision, we
15 said, well, that can't be accurate. And, unfortunately, we
16 know you're telling us the truth, but we're going to need your
17 client to verify that because that just doesn't seem possible.
18 So the CFO of Boggs signed a Verification, affirming that
19 there were no additional communications. He was later deposed
20 and said the same thing.

21 Six months later, this email comes out in a deposition.
22 After our motion was filed, it comes to light that this email
23 was actually gathered by a former Boggs Contracting employee
24 and provided directly to the insurance carrier, who then sat
25 on it for over two years.

1 Now, there's a fundamental disagreement in the briefing
2 as to whether or not this was knowingly withheld and whether
3 or not there's any prejudice that resulted.

4 Now, we certainly know that counsel had no knowledge of
5 the smoking gun lurking in the background for two years, and
6 Mr. Hayes, who signed the verification, provided an affidavit
7 that was filed with the Court leading up to this hearing that
8 he knew nothing about this smoking gun email. But the
9 affidavits also indicate that the insurance adjuster not only
10 knew about it but had this in her file for over two years.

11 And as we know, in dealing with these cases, I think all
12 of us are aware that the insurance adjusters have a role
13 that's much larger than that of just insurance adjusters.
14 They are the shot-callers in these cases. They oftentimes are
15 the individuals with the most authority over how the
16 litigation is managed, and they have more day-to-day contact
17 with the parties than even the CEO of a company.

18 So we dispute that, because the carrier knew and had this
19 smoking gun in her file for two years, we believe that that is
20 something that the parties essentially are responsible for;
21 that that is attributed to -- much as though the case law
22 indicates that, if counsel has knowledge of something, that
23 knowledge is attributed to the party.

24 So we take issue with the contention by Boggs that this
25 was not a knowing withholding of this particular smoking gun

1 document because it was, by their own admission, contained in
2 the claims file of their insurance adjuster. And that just
3 came up in the hearing two hearings back. Our circuit has
4 consistent case law that there is no privilege to an insurance
5 adjuster's file until such time as counsel is retained.

6 Here's an order from this circuit entered by Judge
7 Culbertson. Here's a prior order from Judge Price, one of the
8 earlier ones, indicating that privilege does not step in until
9 an insurance adjuster has actually gone out and hired an
10 attorney. We know, based on the affidavit, that there was not
11 counsel assigned to the case at the time that this was
12 withheld.

13 You know, as to the prejudice, there is some assertion
14 that there is no prejudice here because discovery has not
15 concluded, but this is a situation, Your Honor, where our
16 client has lost his leg, he's lost his business. More
17 importantly, he's lost his income. He has been unable to
18 provide for his wife and children for the last 24 months, and
19 now we are just getting, in February of 2025, thousands of
20 documents that change the course and scope of discovery
21 drastically when we're about 100 days out from a date-certain
22 trial, and this raises additional potential causes of actions.
23 We think this would give rise to a potential fraud claim by
24 some of the co-defendants against Boggs, and we think that,
25 while we understand that striking an Answer is not something

1 that is done often, we believe this is one such extreme
2 situation that warrants an Answer being stricken.

3 Of course this is something that is totally within Your
4 Honor's discretion. There's several Court of Appeals' cases
5 that we've cited: Karppi v. Greenville Terrazzo, which is
6 327 S.C. 538; Griffin Grading v. Tire Service Equipment, which
7 is 334 S.C. 193.

8 Now, it's true, as referenced in Mr. Thompson's response,
9 generally, striking an Answer under Rule 37(b) only takes
10 place when there's been the direct violation of a Court Order.
11 There are no Court Orders in place here because, although
12 there were three Motions to Compel, there was also an
13 agreement by Boggs' prior counsel to supplement with these
14 materials.

15 And even more important or equally as important, I should
16 say, as a Court Order, we have a verification and then sworn
17 testimony that no such documents exist, and then one happens
18 to suddenly materialize in December of 2024 that, in fact, is
19 a smoking gun that may give rise to brand new causes of
20 action.

21 As our Supreme Court has long held that striking an
22 Answer can be appropriate even without a distinct showing of
23 prejudice if the violations are egregious and block the
24 opposing party's attempt to conduct meaningful discovery, we
25 would certainly contend that all parties' ability to conduct

1 meaningful discovery have been obstructed when thousands of
2 pages have been withheld for two years and we're just now
3 getting this on the eve of trial, including documents that,
4 quite frankly, blow this case wide open. And that language
5 that I was citing also comes from the Griffin Grading case,
6 334 S.C. 193.

7 In the event Your Honor is not inclined to strike the
8 Answer, we would have a few fallback positions, which would
9 include sanctions associated with two of the three prior
10 Motions to Compel with this motion, immediate production of
11 the adjuster's file without us having to go domesticate a
12 subpoena in North Carolina because they clearly put her in
13 issue -- she's been inserted as a witness into the case by her
14 own conduct -- the ability to depose her within 30 days, and
15 any other relief as Your Honor sees fit.

16 THE COURT: All right. Thank you, Mr. Evans.

17 Who is going to argue on the other side of that one?

18 MR. THOMPSON: That's me. Good afternoon, Your Honor.

19 THE COURT: Good afternoon, Mr. Thompson. Yes, sir.

20 MR. THOMPSON: Jay Thompson. May it please the Court.
21 Representing the defendant, Boggs Contracting, Inc.

22 Also sitting here in the room with me is my associate,
23 Diana August. You can't see her on the camera right now, but
24 she's sitting right over here next to me.

25 Your Honor, our firm was just retained and substituted in

1 for Boggs Contracting in December, just slightly over two
2 months ago. All of the assertions that are being made in the
3 plaintiff's Motions for Sanctions all predate our firm's
4 involvement.

5 We were retained and brought on to clean house and,
6 frankly, Your Honor, we have done that already. More on that
7 in just a minute.

8 We acknowledge that there were documents that were not
9 previously produced, that there were some discovery responses
10 before we were involved that were late. We're taking
11 ownership of that. We are fixing the problem. I believe we
12 have already fixed the problem to -- probably almost totally.

13 I am willing, as an officer of the court, Your Honor, to
14 say, under Rule 11, I have looked behind the curtain as to
15 what I have seen that has happened before our firm was
16 involved, and I genuinely do not believe that anything that --
17 any of the shortcomings -- that we do acknowledge -- were
18 intentional.

19 The ball was dropped in a lot of places. I am not
20 denying that one bit. The ball was dropped by my client. The
21 ball was dropped by the prior defense counsel. The ball was
22 dropped by the insurance carrier. I do not believe any bit of
23 it was intentional.

24 I strongly assert that there is no prejudice to the
25 plaintiff or any other party mostly because we still have

1 quite a while to go before this case is going to be up for
2 trial. There was already a lot of additional discovery that
3 was going to need to be done. We are working through that.
4 We've got depositions already on the calendar. There's a lot
5 of written discovery that is being exchanged.

6 Expert discovery had not even begun, so there was already
7 still already a lot of stuff that had to be done. That's
8 important, and I'm going to come back to that a little bit
9 more in just a moment with the Court's pleasure. That's
10 important because South Carolina law very clearly requires
11 that discovery sanctions are only appropriate if the opposing
12 party is prejudiced.

13 It further requires that sanctions should be aimed at the
14 specific misconduct of the party being sanctioned. But as I
15 indicated, it's already been cleared up.

16 Your Honor, since my firm got involved, for the Court's
17 context, we have had a dedicated team of four lawyers, two
18 paralegals, and, at times, up to six staff members working on
19 this file. We've put over 800 hours of time into this case
20 since my firm was retained in December, over 20 hours meeting
21 directly with employees at all levels (indiscernible) of the
22 client. We have retained an electronic discovery vendor that
23 has collected, as of the time we filed the brief, 648,787
24 documents from 34 separate email accounts, manually reviewing
25 -- our office has manually reviewed out of that set 37,097

1 documents. We have produced -- at the time we filed our
2 response brief, we had produced 133 responsive documents.
3 That discrepancy between 37,000 that were up for review and
4 only 133 of them were actually responsive, that, as a side
5 note, is an indication there wasn't actually that much missed.

6 There were only approximately, out of that set,
7 approximately 27 unique documents that pertain to the
8 collision incident itself.

9 Your Honor, we have obtained a number of photos and
10 videos that were taken at the scene the day after that were
11 not previously produced. They have now been produced.
12 Everything is in the hands of all parties with multiple months
13 still to go on all discovery.

14 This is a wreck case, Your Honor. It's a catastrophic
15 injury wreck case. The dump truck driver wasn't paying
16 attention, and for whatever reason, as Your Honor saw the
17 video of it just a moment ago or a few moments ago, for
18 whatever reason, crashed into the back of the plaintiff's
19 vehicle apparently without ever hitting the brakes.

20 That dump truck was not owned by my client. That driver
21 was not employed by my client. That was the action solely of
22 a co-defendant and an independent contractor. It's black
23 letter law that a contractor is not liable for the negligence
24 of an independent contractor.

25 We do, on the substance of it, take issue with quite a

1 lot of the characterization, the argument because that's what
2 it was -- it was argument that was presented earlier -- and we
3 don't need to deal with that in this particular motion. The
4 time to deal with the parties' differing legal arguments will
5 come later.

6 But some of the things that we do take issue with, for
7 example, are this characterization of the document that
8 received most of the attention as a quote/unquote "smoking gun
9 document." Your Honor, the document actually supports the
10 defense, and there is no way any defendant in their right mind
11 would have intentionally withheld a document like that when
12 that document says on its face that the Department of
13 Transportation was there on the day of the collision and saw
14 no problem. That is one of the documents that, if it were
15 knowingly in the hands of the defense counsel, they would have
16 been jumping to produce that document.

17 That is one of many reasons that I am firmly convinced,
18 as substitute counsel, that none of this was withheld with any
19 intent. It was -- the ball was dropped and it was overlooked,
20 and we acknowledge that, and we take ownership of that.

21 There were other characterizations that we take issue
22 with, too, that, again, they're not at issue in this motion,
23 but things like tampering with the scene. The evidence is not
24 going to support that. And so we will get back to that when
25 we get to the substance of those issues, but those aren't

1 before the Court at this time.

2 This is solely about documents that were not previously
3 produced that have now been produced either in their entirety
4 or very close to it because my firm has done that. And it is
5 solely about some earlier discovery responses that were late,
6 but that's all been remedied and that's all been cured.

7 And so, ultimately, our position, in response to the
8 sanctions motion, comes down to two things: One, it's not
9 intentional. The prior shortcomings were -- did not
10 constitute any sort of bad faith, did not constitute any sort
11 of willful disobedience, did not constitute any sort of gross
12 indifference to the plaintiff's rights. I use those phrases
13 intentionally because those phrases -- we quoted the case law
14 on page 11 of our response brief -- those phrases are straight
15 out of the South Carolina case law that says, if you're going
16 to exact a nuclear-level sanction like striking an Answer, it
17 can only be done for things like bad faith, willful
18 disobedience, gross indifference to the party's rights, and
19 that just doesn't exist here.

20 There's no prejudice for the reasons that we've stated.
21 We've still got all kinds of time. The parties are working
22 together to schedule depositions, to continue conducting
23 discovery as it needs to be done.

24 The case is presently on a trial schedule in June. It's
25 No. 3 as a date certain. I don't know if that means it's

1 actually going to try in June. We may still have quite a bit
2 more time than that. The case law that is cited in the
3 plaintiff's motion and that has been mentioned to Your Honor
4 earlier, when it refers to prejudice, it's talking about
5 things like documents that come out on the eve of trial or
6 during trial, things like that. It's not talking about
7 documents that come up months and months and months after.

8 Your Honor, the document -- the email that was shown on
9 the screen a little while earlier, I saw that personally for
10 the first time after 11:00 p.m. the night before that
11 deposition, less than 12 hours before the deposition began.
12 It became available to everyone within 12 hours of when
13 defense counsel -- substituted defense counsel first saw it.

14 It was used in the deposition of one of -- that morning.
15 It was used in the deposition of one of the recipients and
16 sender of the email chain. He was questioned fully about it.
17 And everyone has had the same opportunity to be able to do
18 that, and to the extent additional discovery is necessary, we
19 have plenty of time to do it.

20 The nuclear level of sanctions that have been requested
21 is unwarranted. We have cited the Balloon Plantation case in
22 our brief. It's on page 17 of our brief, which states that
23 "sanctions should be aimed at the specific misconduct of the
24 party sanctioned, akin to a rifle shot, not a hydrogen bomb."
25 Those are quotes out of the case, Court of Appeals (1990).

1 The request -- the sanctions that have been requested,
2 Your Honor, are hydrogen bomb-level sanctions, something like
3 striking an Answer for a contractor that doesn't even own or
4 operate the truck that was involved in the collision.

5 And I don't think I heard mention of it today, but in the
6 brief, there's an alternative request for a forensic
7 evaluation of every computer and electronic device owned by
8 the entire company. Your Honor, that's a multimillion-dollar
9 expense and things like that are hydrogen bomb-level
10 sanctions.

11 We are not opposed, if a witness needs to be redeposed
12 who has previously been deposed because of some document that
13 has now been produced, we will not oppose that as long as it's
14 reasonably limited to what has been produced. But to come in
15 because we -- in a situation where we have now cured the
16 unintentional shortcomings that previously occurred and ask
17 for hydrogen bomb/nuclear-level sanctions of striking an
18 Answer is not warranted because there's no prejudice and
19 because it wasn't intentional.

20 Your Honor, I think that's all I have at the moment,
21 unless I'm overlooking something. I'll be happy to answer any
22 questions Your Honor may have. Mr. Holt may have a comment
23 regarding some of the documentation.

24 THE COURT: Yes, sir, Mr. Holt. Do you need to be heard
25 on that matter, sir?

1 MR. HOLT: Your Honor, this is -- again, I represent Safe
2 Shield, which is not a party connected to this, and I have no
3 comment on the discoverability and things of that nature.

4 I just want to make sure that, when Your Honor issues an
5 Order, I would urge the Court not to create a factual finding
6 on the law of the case with respect to the import of this
7 email.

8 As Mr. Thompson indicated, my reading of it is entirely
9 different as is his from what the plaintiffs say. I read it
10 not as somebody trying to defraud a system but, rather,
11 somebody trying to obtain normal documentation that was issued
12 at these construction sites.

13 All of their reporting is retroactive in nature. It's
14 not as if they're out there at the scene typing up the
15 reports. They always go back to the office after the fact.
16 And this important detail about when the signage was up is
17 something that everybody involved would want to know.

18 So I make no comment about the (indiscernible) of this.
19 I just want to make sure that the Court does not render a
20 decision that becomes law of the case that this particular
21 email is saying one thing over another.

22 That's all I have to add, Your Honor. Thank you.

23 THE COURT: All right. Thank you, sir.

24 All right, Mr. Evans. It's your motion, sir. I'll be
25 happy to hear from you in rebuttal.

1 MR. EVANS: Thank you, Your Honor. Just a couple of
2 things.

3 Now, we, again, take issue with the assertion that this
4 was not done intentionally because the shot-caller in this
5 case had this in her file for over 24 months. We believe she
6 has inserted herself as a witness in this case. Her file is
7 certainly now relevant. She needs to be deposed on the issue
8 of what she knew and when.

9 It's clear that she has no privilege and that this was
10 done before any counsel was hired, whether it's Mr. Thompson's
11 firm or the other firm he substituted for.

12 The idea that we are not prejudiced, we also take great
13 exception to. We have got dozens of hours amongst the five of
14 us filing Motions to Compel, writing briefs, taking
15 depositions that now need to be reopened because people
16 testified to things that we now know are untrue.

17 We believe that, as a sanction, Plaintiff's counsel needs
18 to be compensated for all of that. We have had email servers
19 searched, and it costs nowhere near millions of dollars; it
20 can be done for under \$10,000. But I will say the search that
21 has been done by Mr. Thompson does satisfy us. Mr. Thompson
22 has given us his assertion that he's gone behind it and they
23 reviewed 37,000 pages of documentation. We don't believe that
24 that is necessary any longer.

25 And, again, we don't believe Mr. Thompson or prior

1 counsel had anything to do with this. But there are dozens
2 and dozens of hours that have been wasted as a result of these
3 false responses. We believe the Plaintiff is certainly
4 entitled to sanctions for that: The immediate production of
5 the insurance file, the immediate production of the adjuster
6 for deposition, fees associated with past depositions that
7 need to be reopened, two of the three Motions to Compel, this
8 motion.

9 And, fundamentally, Your Honor, again, our client is at
10 home with multiple kids, with a business that he built from
11 the ground up that was taken from him. He has been at home
12 since this collision, unable to work, unable to support his
13 family. His wife had to go back to work cleaning vacation
14 houses to support the family and their young children.

15 So the idea that having discovery blown wide open with
16 100 days left before a date-certain trial hasn't prejudiced
17 our clients, we take great exception to that, Your Honor.

18 THE COURT: All right. Thank you, sir.

19 MR. THOMPSON: Your Honor, may I comment on one point
20 that I meant to mention earlier and forgot?

21 THE COURT: Yes, sir.

22 MR. THOMPSON: Thank you.

23 I don't know how I forgot to respond to the request to
24 conduct discovery from the insurance adjuster. Your Honor,
25 the adjuster that is being referred to was not involved with

1 the case until after suit was filed. And when suit is filed
2 and then the named defendant receives the suit and it's
3 transmitting documents to (indiscernible) at that point.

4 If we're talking about conducting discovery with an
5 insurance carrier about things that are happening during the
6 pendency of a lawsuit, that is a request asking the Court to
7 just totally ignore or eliminate the privilege -- the
8 attorney-client privilege and work product protection over
9 documents and information being transmitted during the course
10 of litigation. And we strongly oppose any concept of
11 conducting discovery over communications with -- between a
12 defendant and an insurance carrier while the lawsuit is
13 ongoing.

14 That's all. Thank you.

15 THE COURT: All right. Thank you, sir.

16 All right. Does anyone else need to be heard on either
17 of these matters?

18 All right. Okay. Seeing no one respond there, I will
19 take this matter under advisement. There's some things I want
20 to review, and I will have you guys an answer out shortly.

21 Y'all have a nice day. Thank you.

22 (The above hearing concluded.)

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CASE NAME: Cobb v. Bigelow, et al.

DATE OF HEARING: 2/20/25

RECORDING METHOD: WebEx Recording

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/s/ Bobbi Fisher _____

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 6/8/25

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