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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable David P. Caraker, Circuit Court Judge

Appellate Case No. 2025-001074

Ryan Cobb, Malon Cobb, Cobb Trucking, LLC, and Brandy Cobb, ... Respondents,

v.

David Alan Bigelow, Heritage Hauling, Inc., Boggs Contracting, Inc., and Safe
Shield, LLC, Defendants, ... Defendants,

of which Boggs Contracting, Inc. is the Appellant.

RECORD ON APPEAL
VOLUME 1

BARNES LAW FIRM, LLC
Kathleen C. Barnes, SC Bar No. 78854
P.O. Box 897
Hampton, SC 29924
kbarnes@barneslawfirmssc.com
Counsel for Respondents

JERRY L SPIVEY LAW FIRM
Jerry L. Spivey, Esquire (*Pro Hac Vice*)
206 N. 4th Steet, Ste 2
Wilmington, NC 28401
Jspivey1@ec.rr.com
Counsel for Respondents

CULBRETH LAW FIRM
Stephen E. Culbreth (*Pro Hac Vice*)
PO Box 446
Wilmington, NC 28402
culbrethlaw@juno.com
Counsel for Respondents

MURPHY & GRANTLAND, P.A.
J.R. Murphy, Esquire, S.C. Bar No. 7941
Jay Thompson, Esquire, S.C. Bar No. 75030
Diana August, Esquire, S.C. Bar No. 105713
Post Office Box 6648
Columbia, SC 29260
Tel: (803) 782-4100
jrmurphy@murphygrantland.com
jay.thompson@murphygrantland.com
dmaugust@murphygrantland.com
Counsel for Appellant

EVANS MOORE, LLC
Scott C. Evans, SC Bar No. 77684
James B. Moore, III, SC Bar No. 74268
George W. Bryan, III, SC Bar No. 104088
121 Screven Street
Georgetown, SC 29440
scott@evansmoorelaw.com
James@evansmoorelaw.com
george@evansmoorelaw.com
Counsel for Respondents

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	CIVIL ACTION 2022-CP-22-00739
RYAN COBB, MALON COBB, COBB	)	
TRUCKING, LLC, and BRANDY COBB,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CONSENT ORDER RE: PLAINTIFFS'
	)	FIRST MOTION TO COMPEL
DAVID ALAN BIGELOW, HERITAGE	)	RESPONSES BY BOGGS
HAULING, INC. and BOGGS	)	CONTRACTING, INC.
CONTRACTING, INC.,	)	
	)	
Defendants.	)	
	)	
	)	

This matter came before the Court for consideration of the Plaintiffs' motion to compel responses to the first set of interrogatories and requests for production to Defendant Boggs Contracting, Inc. Prior to the hearing, the Plaintiffs and Boggs Contracting, Inc. were able to consult and come to an agreement which has now been presented to this Court.

Pursuant to the agreement:

- a. Boggs Contracting, Inc. is to provide a copy of the Declarations Page and Certified Copies of all applicable insurance policies issued to Boggs Contracting, Inc. in response to Plaintiff's Request for Production No. 2 within 15 days from the date of this Order.
- b. Boggs Contracting, Inc. is to provide a supplement answer to Plaintiff's Interrogatory No. 5 denying that, to the best of Boggs' knowledge at this time, the Plaintiffs were negligent in any way (reserving the right to amend or supplement the response) within 15 days of the date of this Order.
- c. Boggs Contracting, Inc. is to provide the captions of any motor vehicle accident and/or

- commercial vehicle accident lawsuits filed against Boggs Contracting, Inc. during the time period of January 1, 2018 through December 31, 2022 in response to Plaintiffs' Interrogatory No. 9 within 15 days from the date of this Order.
- d. Boggs Contracting, Inc. is to provide all pages to the 12-page contract produced in response to Plaintiffs' Request for Production No. 17 within 15 days from the date of this Order to the extent these pages exist.
- e. Boggs Contracting, Inc. is to identify all subcontractors utilized in connection with the road maintenance project on US-17 Alternate within 15 days from the date of this Order.

The Court hereby incorporates the agreement of the Parties into this Order.

AND IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
South Carolina Circuit Court Judge

WE CONSENT:

EVANS MOORE, LLC

s/James B. Moore, III
James B. Moore, III, SC Bar #74268
Scott C. Evans, SC Bar #77684
121 Screven Street
Georgetown, SC 29440
Office: (843) 995-5000
Fax: (843) 527-4128
james@evansmoorelaw.com
scott@evansmoorelaw.com

THE MCKAY FIRM, P.A.

s/Janet Brooks Holmes
Janet Brooks Holmes, Esq.
3700 Forrest Drive
Suite 404
Columbia, SC 29204
Office: (803) 256-4645
Fax: (803) 765-1839
jholmes@mckayfirm.com

*Attorney for Defendant Boggs Contracting,
Inc.*

CULBRETH LAW FIRM

Stephen E. Culbreth, *Admitted Pro Hac Vice*
P.O. Box 446
Wilmington, NC 28402
Office: (910) 763-3416
Fax: (910) 763-9975

JERRY L. SPIVEY LAW FIRM

Jerry L. Spivey, *Admitted Pro Hac Vice*
206 N. 4th Street, Suite 2
Wilmington, NC 28401
Office (910) 763-6585
Fax: (910) 763-6525

Attorneys for the Plaintiffs

May 11, 2023



Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Consent Order

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-05-11 15:40:52 page 4 of 4

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2200739

Ryan Cobb et al
PLAINTIFF(S)

David Alan Bigelow et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Motion to Compel Discovery - Atty Moore - Granted. A formal Order to follow by Attorney Evans.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/11/2023 .

Matthew Richard Sanford for David Alan Bigelow, Heritage Hauling Inc
Mary Ashley Martin for David Alan Bigelow, Heritage Hauling Inc
L. Morgan Martin for David Alan Bigelow, Heritage Hauling Inc
Janet Brooks Holmes for Boggs Contracting Inc
Joseph Andrew Catalano for Boggs Contracting Inc
Kenneth Michael Barfield for Cincinnati Insurance Company
Jerry L Spivey for Ryan Cobb, Cobb Trucking Llc, Brandy Cobb, Malon Cobb
Stephen E Culbreth for Ryan Cobb, Cobb Trucking Llc, Brandy Cobb, Malon Cobb
James Bernice Moore, III for Ryan Cobb, Cobb Trucking Llc, Brandy Cobb, Malon Cobb
Scott Christopher Evans for Ryan Cobb, Cobb Trucking Llc, Brandy Cobb, Malon Cobb
Curtis Lyman Ott for David Alan Bigelow, Heritage Hauling Inc

NOTICE OF JUDICIAL OFFICIAL'S SERVICE BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-05-11 16:33:22 page 3 of 3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB
TRUCKING, LLC, and BRANDY COBB,

Plaintiffs,

v.

DAVID ALAN BIGELOW, HERITAGE
HAULING, INC. and BOGGS
CONTRACTING, INC.,

Defendants.

ORDER ON PLAINTIFFS' FIRST
MOTION TO COMPEL RESPONSES
BY DAVID ALAN BIGELOW AND
HERITAGE HAULING, INC.

This matter came before the Court for consideration of the Plaintiffs' motion to compel responses to the first set of interrogatories and requests for production to Defendants David Alan Bigelow and Heritage Hauling, Inc. Prior to the hearing, the Plaintiffs and these two Defendants were able to resolve several disagreements as to many of the contested requests. However, the parties were unable to resolve their respective disagreements as to the Defendants' claim of a privilege over a series of photographs of the dump truck driven by Mr. Bigelow at the time of the collision which were taken by a consulting expert retained by Defendants. The dump truck was owned by Heritage Hauling, Inc. at the time of the collision but has since been sold for salvage to an unknown buyer.

While Plaintiffs agreed that materials such as reports, calculations, findings, mental impressions and opinions generated by a consulting expert who will not be testifying at trial are privileged pursuant to South Carolina Rule of Civil Procedure 26, they contend that the simple photographs of a piece of crucial evidence, previously owned and under the control of Defendants, which no longer exists do not contain or reveal the mental impressions, thought process, or expert

opinions of the consulting expert. Further, Plaintiffs contend that the photographs in the possession of Defendants depicting a piece of key evidence which no longer exists is discoverable pursuant to Rule 26 whether these photographs were taken by a photographer, private investigator, or consulting expert, particularly since limited photographs of the post-collision condition of the dump truck exist. Finally, the Plaintiffs contend that even if the photographs were privileged pursuant to South Carolina Rule of Civil Procedure 26, that the exception contained in 26(b)(4)(B) is applicable to this dispute because the subsequent salvage of the dump truck and the existence of limited photographs of the dump truck in its post-collision condition constitute “exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts [. . .] on the same subject by other means.”

Having considered the arguments presented by the parties, the Court agrees that the photographs of the salvaged dump truck which are in the possession of Defendants are subject to disclosure pursuant to South Carolina Rule of Civil Procedure 26. The Defendants are directed to produce the photographs contained on these Defendants’ privilege log within 15 days from the date of this Order.

Given the relatively short time before this case is transferred to the active trial docket, any problems with discovery henceforth will be addressed by the Court.

AND IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
South Carolina Circuit Court Judge

Georgetown, South Carolina
May __, 2023



Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Compel

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-05-17 13:20:42 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	CIVIL ACTION 2022-CP-22-00739
 RYAN COBB, MALON COBB, COBB	)	
TRUCKING, LLC, and BRANDY COBB,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CONSENT ORDER FOR DATE
	)	CERTAIN TRIAL
DAVID ALAN BIGELOW, HERITAGE	)	
HAULING, INC. and BOGGS	)	
CONTRACTING, INC.,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court for consideration of the joint request of all parties to have this case placed on the date certain trial roster.

The parties submit that multiple factors support this case being assigned a date certain trial. As an initial matter, all four plaintiffs as well as defendant Boggs Contracting, Inc. are citizens and residents of North Carolina. Much of the medical treatment received by the Plaintiff's was provided by witnesses/providers who are located out of the state of South Carolina, and many of the witnesses, particularly corporate witnesses, are located outside of South Carolina. Further, each of the parties anticipates calling several expert witnesses to testify, many of whom are located outside of South Carolina.

Plaintiff Ryan Cobb is a leg amputee, who receives ongoing medical treatment outside of South Carolina. Finally, this case implicates complex issues of law, medicine, and fact which would support a designation as complex pursuant to South Carolina Supreme Court Administrative Order 2006-07-26-01. However, the parties agree that the complexity of this case would be manageable without a formal designation provided that the parties are given advance notice of the

trial date by way of having the case placed on the date certain trial roster.

For the reasons set forth herein, the joint motion of all parties is **GRANTED**. The Clerk of Court is directed to place this case on the date certain trial roster.

AND IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
South Carolina Circuit Court Judge

WE SO MOVE:

EVANS MOORE, LLC

s/Scott C. Evans

Scott C. Evans, SC Bar #77684
James B. Moore, III, SC Bar #74268
121 Screven Street
Georgetown, SC 29440
Office: (843) 995-5000
Fax: (843) 527-4128
james@evansmoorelaw.com
scott@evansmoorelaw.com

CULBRETH LAW FIRM

Stephen E. Culbreth, *Admitted Pro Hac Vice*
P.O. Box 446
Wilmington, NC 28402
Office: (910) 763-3416
Fax: (910) 763-9975

JERRY L. SPIVEY LAW FIRM

Jerry L. Spivey, *Admitted Pro Hac Vice*
206 N. 4th Street, Suite 2
Wilmington, NC 28401
Office (910) 763-6585
Fax: (910) 763-6525

Attorneys for the Plaintiffs

THE MCKAY FIRM, P.A.

s/Joseph A. Catalano

Janet Brooks Holmes, SC Bar #11826
Joseph A. Catalano, SC Bar #102441
3700 Forrest Drive
Suite 404
Columbia, SC 29204
Office: (803) 256-4645
Fax: (803) 765-1839
jholmes@mckayfirm.com
jcatalano@mckayfirm.com

Attorneys for Defendant Boggs Contracting, Inc.

THE LAW OFFICES OF L. MORGAN MARTIN, P.A.

s/Mary Ashley Martin

Mary Ashley Martin, SC Bar #67858
L. Morgan Martin, SC Bar #3367
1121 3rd Avenue
Conway, SC 29526
Office: (843) 484-0993
mamartin@lmorganmartin.com
mmartin@lmorganmartin.com

GALLAVAN, WHATE & BOYD, P.A.

Curtis L. Ott
1201 Main Street
Suite 1200
Columbia, SC 29201
Office: (803) 779-1833
coott@gwblawfirm.com

Attorneys for Defendants Heritage Hauling, Inc. and David Alan Bigelow



Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-11-14 11:08:30 page 4 of 4

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2200739

Ryan Cobb et al
PLAINTIFF(S)

David Alan Bigelow et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Motion to Compel - Atty Moore - Under Advisement

Motion to Compel - Atty Evans - Under Advisement

Motion to Compel Discovery Responses - Atty Evans - Resolved Motion is Moot

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/05/2024 .

Jerry L Spivey for Ryan Cobb,Cobb Trucking Llc,Brandy Cobb,Malon Cobb
Stephen E Culbreth for Ryan Cobb,Cobb Trucking Llc,Brandy Cobb,Malon Cobb

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2024-02-05 13:05:51 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	CIVIL ACTION 2022-CP-22-00739
	)	
RYAN COBB, MALON COBB, COBB	)	
TRUCKING, LLC, and BRANDY COBB,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CONSENT ORDER DEFERRING
	)	MEDIATION
DAVID ALAN BIGELOW, HERITAGE	)	
HAULING, INC. and BOGGS	)	
CONTRACTING, INC.,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court for consideration of the joint request of all parties to allow the parties to mediate with mediator Christopher Daniels outside of the previously set ADR deadline. The Court is informed that the parties jointly agreed upon a mediator in the fall of 2023, and have since scheduled a mediation to take place on March 26, 2024. Since the date and selection of mediator is agreeable to all parties, the Court finds that good cause exists to extend the mediation deadline through **March 26, 2024**.

AND IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
South Carolina Circuit Court Judge

WE SO MOVE:

EVANS MOORE, LLC

s/Scott C. Evans

Scott C. Evans, SC Bar #77684
James B. Moore, III, SC Bar #74268
121 Screven Street
Georgetown, SC 29440
Office: (843) 995-5000
Fax: (843) 527-4128
james@evansmoorelaw.com
scott@evansmoorelaw.com

CULBRETH LAW FIRM

Stephen E. Culbreth, *Admitted Pro Hac Vice*
P.O. Box 446
Wilmington, NC 28402
Office: (910) 763-3416
Fax: (910) 763-9975

JERRY L. SPIVEY LAW FIRM

Jerry L. Spivey, *Admitted Pro Hac Vice*
206 N. 4th Street, Suite 2
Wilmington, NC 28401
Office (910) 763-6585
Fax: (910) 763-6525

Attorneys for the Plaintiffs

THE MCKAY FIRM, P.A.

s/Joseph A. Catalano

Janet Brooks Holmes, SC Bar #11826
Joseph A. Catalano, SC Bar #102441
3700 Forrest Drive
Suite 404
Columbia, SC 29204
Office: (803) 256-4645
Fax: (803) 765-1839
jholmes@mckayfirm.com
jcatalano@mckayfirm.com

Attorneys for Defendant Boggs Contracting, Inc.

THE LAW OFFICES OF L. MORGAN MARTIN, P.A.

s/Mary Ashley Martin

Mary Ashley Martin, SC Bar #67858
L. Morgan Martin, SC Bar #3367
1121 3rd Avenue
Conway, SC 29526
Office: (843) 484-0993
mamartin@lmorganmartin.com
mmartin@lmorganmartin.com

GALLAVAN, WHATE & BOYD, P.A.

Curtis L. Ott
1201 Main Street
Suite 1200
Columbia, SC 29201
Office: (803) 779-1833
coott@gwblawfirm.com

Attorneys for Defendants Heritage Hauling, Inc. and David Alan Bigelow



Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Defer Mediation

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2024-02-12 09:29:56 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2200739

Ryan Cobb et al
PLAINTIFF(S)

David Alan Bigelow et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

PURSUANT to the ADR hearing held on 2/20/24, it is hereby ORDERED, that mediation in this case be deferred until 3/26/24

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/20/2024 .

Jerry L Spivey for Ryan Cobb,Cobb Trucking Llc,Brandy Cobb,Malon Cobb
Stephen E Culbreth for Ryan Cobb,Cobb Trucking Llc,Brandy Cobb,Malon Cobb

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2024-02-20 16:19:37 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2200739

Ryan Cobb et al
PLAINTIFF(S)

David Alan Bigelow et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
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☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Motion to Compel Discovery by Attorney Moore is Resolved per Email.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/26/2024 .

Jerry L Spivey for Ryan Cobb,Cobb Trucking Llc,Brandy Cobb,Malon Cobb
Stephen E Culbreth for Ryan Cobb,Cobb Trucking Llc,Brandy Cobb,Malon Cobb

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2024-04-26 12:12:31 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2200739

Ryan Cobb et al
PLAINTIFF(S)

David Alan Bigelow et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Number 3 Date Certain 6-16-25

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/26/2024 .

Jerry L Spivey for Ryan Cobb,Cobb Trucking Llc,Brandy Cobb,Malon Cobb
Stephen E Culbreth for Ryan Cobb,Cobb Trucking Llc,Brandy Cobb,Malon Cobb

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2024-11-26 23:21:54 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

CIVIL ACTION NO: 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB
TRUCKING, LLC, AND BRANDY COBB,

Plaintiffs,

v.

DAVID ALAN BIGELOW, HERITAGE
HAULING, INC.; BOGGS CONTRACTING,
INC.; AND SAFE SHIELD, LLC,

Defendants.

**ORDER GRANTING
MOTION FOR
SUBSTITUTION OF COUNSEL**

THIS MATTER comes before the Court upon Defendant Boggs Contracting, Inc.'s motion for substitution of counsel. It appearing to the Court that Defendant Boggs Contracting, Inc. desires to substitute its counsel in the above-captions matter; and

It further appearing that Jay Thompson and Diana August of Murphy & Grantland, P.A. have been retained to replace Janet Brooks Holmes and Joseph A. Catalano of The McKay Law Firm as counsel of record for Defendant Boggs Contracting, Inc.;

IT IS HEREBY ORDERED that Janet Brooks Holmes and Joseph A. Catalano of The McKay Law Firm are hereby relieved as counsel for Defendant Boggs Contracting, Inc. and Jay Thompson and Diana August of Murphy & Grantland, P.A. are substituted as counsel for Defendant Boggs Contracting, Inc.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Substitution Of Counsel

Resident Circuit Court Judge, 15th Judicial Circuit

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2024-12-05 13:00:52 page 2 of 2

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2200739

Ryan Cobb et al
PLAINTIFF(S)

David Alan Bigelow et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Motion to Compel - Atty Moore - Resolved

Motion for Sanctions for Abuse of Discovery - Atty Evans - Under Advisement

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/25/2025 .

Jerry L Spivey for Ryan Cobb,Cobb Trucking Llc,Brandy Cobb,Malon Cobb
Stephen E Culbreth for Ryan Cobb,Cobb Trucking Llc,Brandy Cobb,Malon Cobb

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ David P. Caraker, Jr.

Electronically signed on 2025-02-25 13:05:49 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO.: 2022-CP-22-00739
RYAN COBB, MALON COBB, COBB	)	
TRUCKING, LLC, and BRANDY COBB,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	ORDER
	)	
DAVID ALAN BIGELOW, HERITAGE	)	
HAULING, INC.; BOGGS	)	
CONTRACTING, INC.; and SAFE	)	
SHIELD, LLC,	)	
	)	
DEFENDANTS.	)	

THIS MATTER came before the Court on Plaintiffs' Motion for Sanctions Against Defendant Boggs Contracting Inc. for Abuse of Discovery.

THE MOTION was filed on January 2, 2025, and incorporated a memorandum in support detailing Boggs Contracting Inc.'s ("Boggs") discovery abuses and requested, *inter alia*, that the Court strike Boggs' Answer to Plaintiffs' Amended Complaint. On February 11, 2025, Boggs filed a Response in Opposition to Plaintiff's Motion for Sanctions conceding many of the discovery abuses alleged by the Plaintiffs, but contending that they were unintentional.

THIS MATTER came before the Court for a hearing on February 20, 2025. The Court, having thoroughly considered the Motion, the memoranda in support of and in opposition to the Motion, the parties' exhibits, the arguments of counsel at the hearing, the applicable law, and other appropriate matters of record, finds and concludes that the Motion should be GRANTED for the reasons and in the manner set forth below.

FINDINGS OF FACT

This case arises out of a February 3, 2022 collision that severely injured Plaintiffs. The motion before the Court arises out of alleged discovery abuses committed by Defendant Boggs.

For two years, Boggs did not produce discoverable information and twice stated under oath that documents did not exist that Plaintiffs since discovered do exist.

On February 3, 2022, Plaintiffs Ryan and Malon Cobb were traveling in a commercial delivery truck. They stopped in paving construction traffic on US-17 Alternate near Andrews, South Carolina. Boggs managed the paving project. The paving project necessitated a one-lane traffic pattern. Defendant David Bigelow drove a dump truck owned by Defendant Heritage Hauling and working for Boggs to deliver materials to the paving project. Bigelow did not stop when he approached the construction traffic but, instead, ran into the back of Plaintiffs' vehicle and pushed them off the road and into a ditch. Plaintiffs suffered severe injuries, including a partial leg amputation and brain injury.

Part of Plaintiffs' theory of liability in the case is that the construction warning signs did not comply with the traffic control safety plan because, on the dash cam footage of the dump truck that hit Plaintiffs, two signs appear face down on the side of the road. (Exhs. 20-21 to Pl. Memo.). The present dispute before the Court arises out of emails (related to the warning signs) that Boggs did not produce and stated under oath did not exist.

On August 30, 2022, Plaintiffs sued Boggs, Bigelow, and Heritage Hauling, and then proceeded with discovery. (Cmplt.). A pattern ensued in which Boggs repeatedly did not respond at all or did not fully respond to discovery.

On December 15, 2022, Plaintiff sent Boggs a First Set of Requests for Production. (Exh. 6 to Pl. Memo.). Relevant to the sanctions motion, Plaintiffs made the following routine request:

15. Any and all email messages, text messages, or messages of any kind the Defendant sent to or received from anyone regarding this motor vehicle collision.

(Exh. 6 p. 5). Boggs did not respond at all to the First Set of Requests for Production. On April 4, 2023, Plaintiffs filed a motion to compel. (Exh. 7 to Pl. Memo.). The motion was set on the

May 11, 2023 motion roster. (Public Index). On May 10—the day before the hearing—Boggs sent some discovery responses to Plaintiffs. (Exh. 8 to Pl. Memo.). However, Boggs produced nothing in response to Request 15 and stated a boilerplate objection.

Defendant objects to this Request to the extent that it is irrelevant, overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to the extent that it seeks work product, attorney-client privileged communications or communications prepared in anticipation of litigation. Boggs reserves the right to supplement this Response as litigation and discovery of this matter are ongoing.

(Exh. 8 p. 7).

On September 1, 2023, Plaintiffs sent a Third Set of Requests for Production to Boggs. (Exh. 9 to Pl. Memo.). It included the following relevant request:

42. All communications of any kind (regardless of electronic format, medium, or application) between Boggs and any third party relating to the subject collision or the subject load.

(Exh. 9 p. 6). Again, Boggs did not produce any documents in response to this request and made a boilerplate objection with no indication of whether any such documents existed.

Defendant objects to this Request on the grounds that it calls for material prepared in anticipation of litigation, work product or material protected by work product privilege, to the extent that it calls for material protected by attorney-client privilege and that it is not reasonably calculated to lead to the discovery of admissible evidence.

(Exh. 10 to Pl. Memo. p. 8).

On December 4, 2023, Plaintiffs filed a second motion to compel against Boggs. (Exh. 11 to Pl. Memo.). The motion was set on the February 2024 roster for a hearing. (Public Index). On January 31, counsel for Plaintiffs and Boggs discussed the pending motion. Plaintiffs agreed to withdraw the motion based on the promise that Boggs would provide a written verification of its responses. (Exh. 15 to Pl. Memo.).

The following day, on February 1, 2024, Boggs served its Supplemental Responses to

Plaintiffs' Third Requests for Production. (Exh. 12 to Pl. Memo.). The supplemental response to Request 42 states:

SUPPLEMENTAL RESPONSE: Based on Defendants' attorneys' conference with Plaintiffs' attorneys on January 31, 2024, Defendants understand that Plaintiffs are not seeking any material protected by the privileges outlined above. Additionally, Defendants agree to withdraw their objection that Request No.: 22¹ is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding the remaining objections asserted herein, **no materials responsive to this Request exist.**

This Defendant reserves the right to supplement this Response as additional information becomes available during the course of discovery.

(Exh. 12 p. 4) (emphasis added). Just after Boggs' counsel emailed the supplemental responses, he sent another email to Plaintiffs' counsel stating: "In response to our conference, we will provide a verification to these responses signed by a representative of Boggs." (Exh. 13 to Pl. Memo.). Two weeks later, on February 16, 2024, Boggs still had not provided a verification. (Exh. 14 to Pl. Memo.).

On March 7, 2024, Plaintiffs filed a third motion to compel against Boggs. (Exh. 15 to Pl. Memo.). One basis for the motion was Boggs' failure to provide the promised verification. Plaintiffs explained that counsel was preparing for Boggs' Rule 30(b)(6) deposition and needed the verification or complete responses before that deposition. (Exh. 15 pp. 5-6). Plaintiffs requested sanctions of attorney's fees and an order striking Boggs' answer. (Exh. 15 p. 10).

The motion was set on the April 18, 2024 roster for a hearing. (Public Index). On April 17, 2024—the day before the hearing—Boggs provided a verification. (Exh. 16 to Pl. Memo.). The verification of Boggs' discovery responses was signed by Kevin J. Hayes, Jr., as an "officer of Boggs Contracting." *Id.*

Plaintiffs took a Rule 30(b)(6) deposition of Mr. Hayes on April 24, 2024. (Exh. 17 to Pl.

¹ The Court presumes this is a typo and Boggs meant to say "Request No.: 42."

Memo.). He testified under oath that the verification is accurate. (Exh. 17). He testified that Boggs' search for responsive documents consisted of him searching his own emails and asking a few other Boggs employees to search their emails. *Id.* He testified that two emails produced by Boggs were the only responsive documents. *Id.*

Over six months later, On December 4, 2024, new counsel appeared for Boggs. (Mot. & Order for Substitution). On December 13, 2024, Plaintiffs took the deposition of Christopher Bourque, a representative of the South Carolina Department of Transportation ("SCDOT"). During that deposition, Boggs' new counsel asked Mr. Bourque questions about an email between Mr. Bourque and Matt Guillot—a Boggs employee that worked on the subject construction site. The email had not been produced to Plaintiffs.

The subject line of the email is "County Line Road Accident – 2/3/22" and it is a discussion between SCDOT and Boggs about whether the traffic control plan was in order at the time of the accident. (Exh. 18 to Pl. Memo.). Boggs concedes that the email should have been produced in discovery. (Boggs Memo.).

This discovery of the unproduced email resulted in Boggs then producing at least 133 responsive documents. (Boggs' Memo. in Opp. pp. 6-7). The production included an investigative report of a forensic engineering company with accompanying video and photos taken the day after the collision. This is the first time in over two years of litigation that Plaintiffs learned of the investigation.

On January 2, 2025, Plaintiffs filed a motion for sanctions against Boggs asking, *inter alia*, for the Court to strike Boggs' answer. Boggs filed a response in opposition arguing that its discovery failures were unintentional, Plaintiffs did not suffer prejudice, prior defense counsel is at fault, and Rule 37 does not apply because Boggs did not violate a court order. (Resp. in Opp.).

Boggs filed a second affidavit of Kevin J. Hayes, Jr., along with its memorandum in opposition to the motion. (2nd Aff. of Hayes). In this affidavit, Mr. Hayes changes his testimony about the existing responsive discovery and blames Boggs' prior defense counsel.

Mr. Hayes stated that, after Plaintiffs filed the motion for sanctions, he learned that an employee of its management services affiliate provided documents related to the collision to Boggs' insurer in September 2022. (2nd Aff. of Hayes pp. 1-2). The documents included an investigation report done the day after the collision. The report included the email discovered during Mr. Bourque's deposition, as well as photos, video, and other documents. The employee left the company a few weeks later and, according to Hayes, no one else at Boggs besides that one person had knowledge of the investigative report. Yet, Hayes states that he is the most knowledgeable person at Boggs about the litigation.

LEGAL STANDARD

"The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court." *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987).

ANALYSIS

After much deliberation, and for the reasons explained below, the Court grants Plaintiffs' motion for sanctions and strikes Boggs' answer. This decision is not made lightly and is made with a full understanding of its ramifications in this case. Central to the Court's ruling is its belief that Boggs' conduct is more than just a discovery violation—it includes the use of a false affidavit and false testimony under oath at a deposition. Plaintiffs made every attempt to obtain discoverable information and then to receive a satisfactory assurance that it did not exist. Boggs twice gave Plaintiffs false assurances while under oath. This thwarts the judicial process and upends the purposes of the discovery rules.

“Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.” *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983). “[C]ourts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice.” *Brandt v. Gooding*, 368 S.C. 618, 628, 630 S.E.2d 259, 264 (2006) (holding in part that “[d]ismissal of a complaint is a proper sanction against a complainant who submits fraudulent documents to the court”).

Boggs’ conduct warrants a sanction. It withheld discoverable, relevant, material evidence for two years. Plaintiffs filed three motions to compel seeking discovery responses. Because of their disbelief that a corporation could only have two emails about a major collision at its worksite, Plaintiffs sought a verification from Boggs and questioned Boggs in its Rule 30(b)(6) deposition. Boggs gave a false affirmation and false testimony under oath. This conduct was intentional and in bad faith. The conduct is sanctionable.

Boggs argues that a sanction is not warranted because its failure to disclose was unintentional—blaming its prior counsel and a departing employee who sent the investigation information and other documents to the insurance company. The Court does not accept these arguments. The Court finds the failure to disclose was intentional. Boggs knew that Plaintiffs wanted all communications and information about the accident yet, Boggs twice stated it had (almost) none. It made these statements *under oath*. The Court finds it almost inconceivable that there would be only two corporate emails that discuss an event such as this accident. Mr. Hayes states that he is the person most knowledgeable at Boggs about this litigation. Yet, he omits any knowledge of the documents regarding the investigation that Boggs ordered the day after the accident. This omission is telling, especially given that it was seemingly simple for him to find the documents after Plaintiffs filed the motion for sanctions. Further, his affidavit states that no

one affiliated with Boggs had knowledge of the information sent to the insurance carrier. The record belies this assertion. Matt Guillot is the Boggs employee who communicated with Mr. Bourque on the missing email that started this dispute. Mr. Hayes testified in the Boggs Rule 30(b)(6) deposition that he asked Mr. Guillot for responsive documents. (Exh. 17 to Pl. Memo., depo. p. 98). Mr. Guillot certainly had knowledge of his own email and that it was not produced.

As to the former employee, that employee's knowledge of the documents sent to the insurer is imputed to Boggs. *Palmer v. Sovereign Camp, Woodmen of the World*, 197 S.C. 379, 389, 15 S.E.2d 655, 660 (1941) (stating knowledge of agent on matters within agent's scope of duty is imputable to the principal, and the principal is bound by the knowledge of such agent); 18B Am. Jur. 2d *Corporations* § 1442 (2004) ("A corporation's knowledge is entirely imputed to it from the knowledge possessed by its officers and agents. In accordance with general agency principles, a corporation generally is charged with knowledge of facts that its agents learn within the scope of their employment.").

As to the prior counsel, the Court's ruling in no way touches upon the actions of any of the lawyers involved. Boggs is the one who provided the verification and Rule 30(b)(6) testimony. Further, Boggs' attempt to place blame on its attorney is not legally supported because "the acts of an attorney are directly attributable and binding on the client." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 200, 511 S.E.2d 716, 719 (Ct. App. 1999).

Having decided that a sanction is warranted, the Court turns to the particular sanction—striking Boggs' answer. "The selection of a sanction for discovery violations is within the trial court's discretion." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198 S.E.2d 716, 718 (Ct. App. 1999). While the Court does not grant a sanction under Rule 37, SCRPC, the law regarding an appropriate choice of sanction informs the Court's decision.

“[T]he sanction should be aimed at the specific conduct of the party sanctioned and not go beyond the necessities of the situation to foreclose a decision on the merits of a case.” *Griffin Grading*, 334 S.C. at 198, 511 S.E.2d at 719. “In deciding what sanction to impose for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice.” *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997).

As to the nature of the discovery requests—they were aimed at highly relevant information of Boggs’ communications regarding the collision.

As to the discovery posture of the case—Plaintiffs spent two years of litigation without the information and even without knowledge that Boggs conducted an engineering investigation the day after the collision. Indeed, Plaintiffs spent two years believing no such evidence existed based on Boggs’ representations. This affected questions asked at depositions, including Boggs’ Rule 30(b)(6) witnesses, as well as trial preparation.

As to willfulness—the Court discussed above its finding that Boggs’ conduct is intentional and willful. Boggs stated in its discovery responses, in a verification of those responses, and in its Rule 30(b)(6) deposition that responsive documents did not exist. In fact, they did exist, and that was well within Boggs’ knowledge. Here, where Boggs signed a verification and then gave testimony under oath about a particular fact within its knowledge, and gave false information, the Court finds it is willful and in disregard of Plaintiffs’ discovery rights.

As to prejudice, the Court finds Plaintiffs suffered prejudice because of Boggs’ conduct. “The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial. Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice, reversal is required.” *Downey v.*

Dixon, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). Here, prejudice is not only presumed but is, in fact, proven. Plaintiffs were denied discoverable, relevant information for two years of litigation—including Boggs’ accident investigation done the day after the collision. Plaintiffs took a Rule 30(b)(6) deposition of Boggs and accepted false testimony based on a false verification. Compounding these problems is that Boggs cannot be believed when it says that everything responsive has been produced.

Boggs cannot show a lack of prejudice. It argues that its conduct was not intentional, and that the missing discovery has now been provided with “ample time to fully prepare for trial.” (Boggs’ Memo. in Opp. pp. 14-16). The Court disagrees that this rebuts a finding of prejudice.² As explained throughout this Order, Boggs’ conduct was intentional. The case is currently on a June 16, 2025 trial roster. That there is time before trial does not negate the lost opportunities in discovery caused by Boggs’ untruthfulness. Plaintiffs specifically told Boggs they wanted the verification to prepare for its Rule 30(b)(6) deposition. (Exh. 15 to Pl. Memo. pp. 5-6). Plaintiffs then deposed Boggs’ Rule 30(b)(6) witness without the information after receiving Boggs’ assurances that Plaintiffs had all discoverable, existing information. Plaintiffs deposed an additional 30(b)(6) witness, Matt Guillot (the Boggs’ employee who wrote a withheld email), without the information. Guillot was questioned about the traffic control plan and the signs on the day of the accident. (Exh. 21 to Pl. Memo.). The newly-produced emails and investigation

² Boggs mistakenly relies on *Jamison v. Ford Motor Co.*, 373 S.C. 248, 644 S.E.2d 755 (Ct. App. 2007), as supporting a finding of no prejudice in this situation. (Boggs’ Memo. in Opp. pp. 15-16). In *Jamison*, the Court found “Ford complied with the rules of discovery” where “the record fail[ed] to substantiate that Ford either knew about or possessed the evidence in question when initially responding to Jamison’s discovery requests.” *Id.* at 271, 644 S.E.2d at 767. In contrast, in this case Boggs had direct knowledge of the investigation that it ordered, that was within its possession, and that it sent to the insurance carrier. Further, it undeniably failed to comply with the rules of discovery numerous times.

materials were highly relevant to both of those depositions. “The entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party.” *Samples v. Mitchell*, 329 S.C. 105, 113, 495 S.E.2d 213, 217 (Ct. App. 1997) (internal quotation marks omitted).³ Boggs essentially argues “no harm, no foul”—that because Plaintiffs now have the information and trial is still weeks away, they can simply produce the documents and avoid any consequences. That is contrary to the law cited above. The Court in its discretion finds that Plaintiffs were prejudiced by Boggs’ conduct.

The Court exercises its discretion in weighing all four factors and finds that all four are present in this case and weigh in favor of granting Plaintiffs’ motion and striking Boggs’ answer.

“Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery.” *Samples v. Mitchell*, 329 S.C. 105, 114, 495 S.E.2d 213, 217 (Ct. App. 1997). For a sanction that amounts to default, courts generally require “some element of bad faith, willfulness, or callous disregard of the rights of other litigants.” *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990) (internal quotation marks omitted). As explained above, Boggs’ conduct amounts to bad faith, willfulness, and a disregard of the rights of Plaintiffs to fair and honest discovery. It would be overly lenient to impose no sanction, as Boggs asks the Court to do. After considering numerous sanctions, the Court, in its discretion, believes that striking Boggs’ answer is an appropriate sanction supported by the law and evidence in this situation.

³ “The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed. . . . In this respect, the discovery process is designed to make a trial less a game of blind man’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” *In re Anonymous Mbr. of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001) (internal quotation marks and citations omitted).

The Court is fully aware of the severity and effect of the sanction but believes that anything less would “encourage, rather than discourage, noncompliance with the Rules” and the oath to testify truthfully in sworn verifications and depositions. *Downey v. Dixon*, 294 S.C. 42, 45, 46 n.2, 362 S.E.2d 317, 318 n.2 (Ct. App. 1987). The Court also considered the effect that striking Boggs’ Answer may have on Boggs’ co-defendants and finds that, under the allegations in the Complaint, striking Boggs’ answer will have no prejudicial effect on the remaining defendants’ ability to defend themselves.

Boggs argues that striking its answer is a “nuclear-level” sanction. (Memo. in Opp. p. 12). The Court disagrees. “[W]hatever sanction is imposed should serve to protect the rights of discovery provided by the Rules” and should not be so minimal as to “encourage, rather than discourage, noncompliance with the Rules.” *Downey v. Dixon*, 294 S.C. 42, 45, 46 n.2, 362 S.E.2d 317, 318 n.2 (Ct. App. 1987). Boggs consistently provided not only incomplete but, more importantly, false responses to discovery. When Plaintiffs’ counsel focused in on the absence of responsive documents, which should have prompted a thorough and detailed search, Boggs doubled down on its denial of the documents’ existence. It signed a verification and provided Rule 30(b)(6) testimony that is false. A sanction striking Boggs’ answer is not “nuclear-level” but, instead, is “rifle-shot” aimed at the specific misconduct of the party. *Balloon Plantation*, 303 S.C. at 154, 399 S.E.2d at 441. Any lesser sanction would encourage, rather than discourage, noncompliance with the Rules and would make a verification a meaningless discovery tool.

Boggs argues that because it did not violate a discovery order, Rule 37, SCRCP, does not allow for sanctions in this situation. Its argument is misplaced and disingenuous. First, the Court grants sanctions using its inherent powers and not based on Rule 37. Sanctions are permissible for discovery violations outside of Rule 37. *See, e.g., Gathers v. S.C. Elec. & Gas Co.*, 311 S.C. 81,

427 S.E.2d 687, 689 (Ct. App. 1993) (discussing an adverse jury charge as a sanction for destruction or loss of evidence). Second, Boggs' argument is disingenuous because part of its bad faith conduct was aimed at avoiding entry of a court order. Plaintiffs filed three motions to compel against Boggs. Each time Boggs avoided a court order with an eleventh-hour response. Importantly, all of these responses were incomplete, dishonest, and nonresponsive as to the discovery at issue. Because of these responses, Plaintiffs believed there was no basis for entry of a court order. If Boggs had been honest in its responses, Plaintiffs could have obtained a court order. Instead, Boggs wants to restrict Plaintiffs' remedies because of its conduct intended to avoid a court order. Boggs cannot avoid a court order under false pretenses and then seek to avoid sanctions because there is no court order.

The Court recognizes the law regarding a sanction to strike a defendant's answer and has not taken the decision to do so lightly. In this case, however, the Court concludes that this sanction is fully warranted. This decision is in no way a comment on the merits of this case, nor upon the actions of any of the lawyers that were, or are, involved in this case. The Court's decision is rooted in its sound discretion and based upon the applicable law, the conduct of the corporate defendant, Boggs, and the resulting prejudice to Plaintiffs.

THEREFORE, IT IS ORDERED that the Plaintiffs' Motion for Sanctions Against Defendant Boggs Contracting Inc. for Discovery Abuse is GRANTED, and Bogg's Contracting Inc.'s Answer to Plaintiff's Amended Complaint is hereby STRICKEN.

SO ORDERED, this the ____ day of April, 2025.

The Honorable David P. Caraker, Jr.
South Carolina Circuit Court Judge



Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Other

IT IS SO ORDERED

s/ David P. Caraker, Jr.

Electronically signed on 2025-04-22 11:18:10 page 14 of 14

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Georgetown
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2200739

Ryan Cobb et al
PLAINTIFF(S)

David Alan Bigelow et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Defendant's Motion to Reconsider the court's prior ruling, striking Defendant Boggs' Answer is respectfully denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/20/2025 .

Jerry L Spivey for Ryan Cobb,Cobb Trucking Llc,Brandy Cobb,Malon Cobb
Stephen E Culbreth for Ryan Cobb,Cobb Trucking Llc,Brandy Cobb,Malon Cobb

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ David P. Caraker, Jr.

Electronically signed on 2025-05-20 10:41:59 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO.: 2022-CP-22-_____
RYAN COBB, MALON COBB, COBB	)	
TRUCKING, LLC, and BRANDY COBB,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	SUMMONS
	)	
DAVID ALAN BIGELOW, HERITAGE	)	
HAULING, INC. and BOGGS	)	
CONTRACTING, INC.,	)	
	)	
DEFENDANTS.	)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint in the subscribed to James B. Moore, III, EVANS MOORE, LLC, 121 SCREVEN STREET, GEORGETOWN, SOUTH CAROLINA, 29440 within THIRTY (30) DAYS after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

EVANS MOORE, LLC

s/Scott C. Evans

Scott C. Evans, SC Bar #77684

James B. Moore III, SC Bar #74268

121 Screven Street

Georgetown, SC 29440

Office: (843) 995-5000

Fax: (843) 527-4128

Attorneys for the Plaintiff

August 30, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	2022-CP-22-_____
	)	
RYAN COBB, MALON COBB, COBB	)	
TRUCKING, LLC, and BRANDY COBB,	)	
	)	
PLAINTIFFS,	)	COMPLAINT
	)	
vs.	)	
	)	
DAVID ALAN BIGELOW, HERITAGE	)	Jury Trial Requested
HAULING, INC., and BOGGS	)	
CONTRACTING, INC.,	)	
	)	
DEFENDANTS.	)	
_____	)	

The Plaintiffs, Ryan Cobb, Individually and as Owner and Operator of Cobb Trucking, LLC, Malon Cobb, Cobb Trucking, LLC, and Brandy Cobb, by and through their undersigned attorneys, complaining of the above-named Defendants, would allege and show unto the Court the following:

JURISDICTION AND VENUE

1. Plaintiffs, Ryan Cobb and Brandy Cobb are a married couple and are citizens and residents of New Hanover County, State of North Carolina.
2. Plaintiff Cobb Trucking, LLC is a limited liability company incorporated under the laws of the State of North Carolina and owned and operated by the Plaintiff, Ryan Cobb.
3. Plaintiff, Malon Cobb is a citizen and resident of Brunswick County, State of North Carolina.
4. Upon information and belief, the Defendant, David Alan Bigelow, is a resident of Horry County, State of South Carolina. During the time period in question, David Alan Bigelow was operating and driving a tractor trailer owned by the Defendant Heritage Hauling, Inc. and operated under the supervision and direction of Defendant Boggs Contracting, Inc.

5. Upon information and belief, the Defendant Heritage Hauling, Inc. is a business incorporated under the laws of the State of South Carolina with its principal place of business is Horry County, South Carolina. During the time period in question, Defendant Heritage Hauling, Inc. had been hired by Defendant Boggs Contracting, Inc. to act as co-motor carriers in a joint venture/enterprise involving a road paving project that was taking place in Georgetown County, South Carolina.

6. Upon information and belief, the Defendant Boggs Contracting, Inc. is a business incorporated under the laws of the State of North Carolina with its principal place of business is Union County, North Carolina. During the time period in question, Defendant Boggs Contracting, Inc. was overseeing and managing a road paving project in Georgetown County, South Carolina which was the site of the severe collision detailed herein.

7. This suit arises out of catastrophic tractor-trailer collision which occurred on February 3, 2022, in Georgetown County, State of South Carolina.

8. This Court has personal jurisdiction over the parties hereto and subject matter jurisdiction over the claims asserted herein. The Plaintiffs are informed and believe that venue is proper in Georgetown County as the most substantial part of the alleged acts and omissions giving rise to the causes of action took place in Georgetown County.

FIRST CAUSE OF ACTION

**By Plaintiffs Ryan Cobb, Malon Cobb and Cobb Trucking, LLC
Against the Defendants David Alan Bigelow and Heritage Hauling, Inc.
(Negligence/Gross Negligence)**

9. On February 3, 2022, at approximately 2:05 pm, Plaintiffs Ryan Cobb and Malon Cobb were traveling southbound on US-17 Alternate near Andrews, South Carolina while operating a commercial delivery truck leased to Cobb Trucking, LLC.

10. Upon information and belief, at the time and date mentioned above, Defendant Bigelow

was traveling Southbound on US-17 Alternate in his dump truck owned by the Defendant Heritage Hauling, Inc. and operated under the direction and supervision of Boggs Contracting, Inc.

11. Plaintiffs Ryan Cobb & Malon Cobb were stopped in traffic as required by the single-lane traffic pattern necessitated by the ongoing paving project managed by Defendant Boggs Contracting, Inc., when the Defendant Bigelow, who was driving the dump truck owned by Heritage Hauling, Inc. too fast for conditions, collided with the rear end of the Plaintiff's commercial delivery vehicle despite the fact that Bigelow's final destination was the paving project itself. The impact, in turn, caused the Plaintiff's vehicle to rear end the tractor-trailer in front of them.

12. After striking the tractor-trailer immediately in front of the Cobb Trucking, LLC commercial delivery vehicle, the commercial delivery vehicle in which Plaintiffs were riding was pushed off the right shoulder of the road and partially into a ditch.

13. Plaintiffs were acting in a reasonably prudent and careful manner at all times pertinent hereto. Defendant Heritage Hauling, Inc.'s Driver, David Alan Bigelow, caused the accident by "driving too fast for conditions" and was cited for violating South Carolina law. Plaintiffs, on the other hand, did not contribute to the collision in any way.

14. The Plaintiffs are informed and believe that the Defendant Heritage Hauling, LLC's driver, David Alan Bigelow, violated numerous South Carolina Statutes including S.C. Code Ann. Sections 56-5-3230 and 56-5-3810 and that these violations proximately caused the collision and resulting injuries. Defendant's driver had more than adequate opportunity to perceive Plaintiffs, was well acquainted with the single-lane traffic pattern taking place in the construction zone in which he was employed, and it was by and through the negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Defendant's Driver that he failed to yield

to the Plaintiffs, striking them.

15. The collision and damages herein described were the direct, foreseeable and proximate result of the negligent and careless, and willful, wanton, reckless, and grossly negligent acts and/or omissions of Defendant Heritage Hauling, Inc.'s driver, David Alan Bigelow, in the following particulars:

- a. In failing to exercise reasonable or slight care;
- b. In failing to exercise reasonable or slight care to maintain proper control over Defendants' truck dump truck;
- c. In failing to maintain a proper distance;
- d. In failing to observe the Plaintiffs and to avoid the collision described herein, when the Plaintiffs were at all times in plain and unobstructed view;
- e. In failing to use that degree of care and caution which a reasonable person would have used under the circumstances then and there prevailing;
- f. In failing to exercise reasonable or slight care to avoid striking the Plaintiffs;
- g. In failing to keep a proper lookout to avoid striking the Plaintiffs;
- h. In driving a dump truck in utter and complete disregard of other drivers on the highway;
- i. In failing to take advantage of any last clear chance to avoid colliding with Plaintiffs;
- j. In violating the laws, statutes and ordinances in such cases made and provided;
- k. In operating a dump truck with a reckless disregard for the right and safety of others, and especially the rights and safety of Plaintiffs; and
- l. In then and there failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances.

16. The above-referenced acts of negligence were a direct and proximate cause of the injuries to the Plaintiffs and the resulting damages sustained by the Plaintiffs as alleged herein. Said acts being in violation of the Statues and Laws of the State of South Carolina.

17. That as a direct and proximate cause of the acts and/or omissions of Defendants, Plaintiffs suffered permanent physical harm and injuries which has caused, and in the future will cause, Plaintiffs to suffer one or more of the following elements of damage:

- a. Physical pain and suffering;
- b. Permanent impairment;
- c. Mental distress;
- d. Loss of income;
- e. Loss of Plaintiffs' enjoyment of life;
- f. Increased susceptibility to future injury;
- g. Substantial expenses for medical services, including surgery;
- h. Business losses;
- i. Property losses;
- j. Expenses for transportation to and from medical services; and
- k. Such other and further particulars of as the evidence at the trial may show.

18. Due to the willful, wanton, reckless, grossly negligent and negligent acts of the Defendants set out above, Plaintiffs are entitled to judgment against the Defendants for the above-described actual damages and injuries to Plaintiffs and for punitive damages, in an amount to be determined by the jury.

SECOND CAUSE OF ACTION

**By Plaintiffs Ryan Cobb, Malon Cobb, and Cobb Trucking, LLC
Against Defendant Heritage Hauling, Inc.
(Negligent Hiring/Retention/Supervision)**

19. The Plaintiff incorporates all above allegations by reference as though fully set forth herein.

20. Defendant Heritage Hauling, Inc. entrusted Defendant Bigelow with the dump truck

involved in the above-referenced collision.

21. Defendant Heritage Hauling, Inc. had a duty to exercise due care in the hiring, retention, training, and supervision of employees driving its vehicles.

22. Defendant Heritage Hauling, Inc. had a duty to prevent its employees from creating an unreasonable risk of harm to the public.

23. Plaintiff is informed and believes that Defendant Heritage Hauling, Inc. was careless, reckless and negligent in one or more of the following particulars.

- a. Failing to properly monitor Defendant Bigelow's driving record;
- b. Failing to monitor Defendant Bigelow's driving patterns;
- c. Failing to exercise the degree of care and caution that a reasonably prudent contractor would exercise under the same or similar circumstances;
- d. Failing to direct and instruct its employees on the safe operation of its vehicles;
- e. Failing to provide proper discipline to its employees.

24. At all times mentioned, Defendant Driver, David Alan Bigelow, was an employee of Heritage Hauling, Inc., acting within the course and scope of his employment.

25. Further, at all times relevant herein, Defendant's driver, David Alan Bigelow, was operating an instrumentality/vehicle furnished by Defendant Heritage Hauling, Inc.

26. The above-referenced acts of negligence were a direct and proximate cause of the injuries to the Plaintiffs and the resulting damages sustained by the Plaintiffs as alleged herein. Said acts being in violation of the Statutes and Laws of the State of South Carolina.

27. That as a direct and proximate cause of the acts and/or omissions of Defendant Heritage Hauling, Inc., Plaintiffs suffered permanent physical harm and injuries which has caused, and in the future will cause, Plaintiffs to suffer one or more of the following elements of damage:

- a. Physical pain and suffering;
- b. Permanent impairment;
- c. Mental distress;
- d. Loss of income;
- e. Loss of Plaintiffs' enjoyment of life;
- f. Increased susceptibility to future injury;
- g. Substantial expenses for medical services, including surgery;
- h. Business losses;
- i. Property losses;
- j. Expenses for transportation to and from medical services; and
- k. Such other and further particulars of as the evidence at the trial may show.

28. Defendants' conduct as outlined above was reckless, wanton, and willful, as such Plaintiffs are further entitled to and hereby requests an award of PUNITIVE DAMAGES.

29. Plaintiffs are entitled to judgement against the Defendants, jointly and severally, for the above-described actual damages and injuries to the Plaintiffs and for punitive damages, in an amount to be determined by the jury.

THIRD CAUSE OF ACTION

**By Plaintiffs Ryan Cobb, Malon Cobb and Cobb Trucking, LLC
Against Defendant Boggs Contracting, Inc.
(Negligence/Gross Negligence)**

30. The Plaintiff incorporates all above allegations by reference as though fully set forth herein.

31. Defendant Boggs Contracting, Inc. was the motor carrier responsible for the delivery of asphalt, aggregate, and related materials to the road construction project at which this collision occurred.

32. At all times relevant hereto, employees of Heritage Hauling, Inc. were the statutory employees of Defendant Boggs Contracting, Inc. such that Defendant Boggs Contracting, LLC is liable for the negligent acts or omissions of its employees/agents under the common law, the Federal Motor Carrier Safety Regulations, and the theories of *respondeat superior*, agency, master/servant liability, and vicarious liability.

33. Defendant Boggs Contracting, Inc. possessed the right and power to direct and control Heritage Hauling, Inc. and its employees, including Bigelow, in the performance of the work and in the manner in which the work was to be done.

34. Defendant Boggs Contracting, Inc. and Heritage Hauling, Inc. acted as co-motor carriers in a joint venture/enterprise. Both motor carriers exercised control over the load being transported in that both carriers shared profits for a common purpose.

35. Defendant Boggs Contracting, Inc. and its statutory employees/agents had a duty to use reasonable care and due care while operating a commercial motor vehicle.

36. Defendant Boggs Contracting, Inc. and its statutory employees/agents had a duty to comply with all applicable traffic laws, rules and regulations of the Federal Motor Carrier Safety Act, rules and regulations of the Occupational Safety and Health Administration, and other applicable laws, regulations, and industry standards.

37. Defendant Boggs Contracting, Inc. is vicariously liable for the acts and omissions of its statutory employees and agents, including the acts and omissions of Bigelow committed in the course and scope of his employment on February 3, 2022.

38. The collision and damages herein described were the direct, foreseeable and proximate result of the negligent and careless, and willful, wanton, reckless, and grossly negligent acts and/or omissions of Defendant Boggs Contracting, Inc. by and through its statutory employees/agents in the

following particulars:

- a. In failing to exercise reasonable or slight care;
- b. In failing to exercise reasonable or slight care to maintain proper control over Defendants' truck dump truck;
- c. In failing to maintain a proper distance;
- d. In failing to observe the Plaintiffs and to avoid the collision described herein, when the Plaintiffs were at all times in plain and unobstructed view;
- e. In failing to use that degree of care and caution which a reasonable person would have used under the circumstances then and there prevailing;
- f. In failing to exercise reasonable or slight care to avoid striking the Plaintiffs;
- g. In failing to keep a proper lookout to avoid striking the Plaintiffs;
- h. In driving a dump truck in utter and complete disregard of other drivers on the highway;
- i. In failing to take advantage of any last clear chance to avoid colliding with Plaintiffs;
- j. In violating the laws, statutes and ordinances in such cases made and provided;
- k. In operating a dump truck with a reckless disregard for the right and safety of others, and especially the rights and safety of Plaintiffs; and
- l. In then and there failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances.

39. The above-referenced acts of negligence were a direct and proximate cause of the injuries to the Plaintiffs and the resulting damages sustained by the Plaintiffs as alleged herein. Said acts being in violation of the Statutes and Laws of the State of South Carolina.

40. That as a direct and proximate cause of the acts and/or omissions of Defendant, Plaintiffs suffered permanent physical harm and injuries which has caused, and in the future will cause, Plaintiffs to suffer one or more of the following elements of damage:

- m. Physical pain and suffering;

- n. Permanent impairment;
- o. Mental distress;
- p. Loss of income;
- q. Loss of Plaintiffs' enjoyment of life;
- r. Increased susceptibility to future injury;
- s. Substantial expenses for medical services, including surgery;
- t. Business losses;
- u. Property losses;
- v. Expenses for transportation to and from medical services; and
- w. Such other and further particulars of as the evidence at the trial may show.

41. Due to the willful, wanton, reckless, grossly negligent and negligent acts of the Defendants set out above, Plaintiffs are entitled to judgment against the Defendants for the above-described actual damages and injuries to Plaintiffs and for punitive damages, in an amount to be determined by the jury.

FOURTH CAUSE OF ACTION

**By Plaintiffs Ryan Cobb, Malon Cobb and Cobb Trucking, LLC
Against Defendant Boggs Contracting, Inc.
(Negligent Hiring/Retention/Supervision)**

42. Plaintiffs incorporate all above allegations by reference as though fully set forth herein.

43. At the time of the events giving rise hereto, Defendant Boggs Contracting, Inc. hired Defendants Bigelow and Heritage Hauling, Inc. to haul materials exclusively for its benefit despite actual or constructive knowledge of a history of driving and safety violations by Bigelow and Heritage Hauling, Inc.

44. Defendant Boggs Contracting, Inc. had a duty to exercise care in the hiring, retention, training, and supervision of individuals who were entrusted to work on the construction projects

managed by Boggs Contracting, Inc.

45. Plaintiff is informed and believes that the Defendant Boggs Contracting, Inc. was careless, reckless and negligent in one or more of the following particulars.

- a. Failing to properly monitor Defendant Bigelow's driving record;
- b. Failing to monitor Defendant Bigelow's driving patterns;
- c. Failing to exercise the degree of care and caution that a reasonably prudent contractor would exercise under the same or similar circumstances;
- d. Failing to direct and instruct Defendant Heritage Hauling, Inc. on the safe operation of its vehicles; and
- e. Failing to provide proper discipline for Defendant Heritage Hauling, Inc.'s employees.

46. At all times mentioned herein, Defendants Bigelow and Heritage Hauling, Inc. were (acting on behalf of Defendant Boggs Contracting, Inc. as contractors) for Defendant Boggs Contracting, Inc. acting within the scope of their agreement with Boggs.

47. Defendant's conduct as outlined above was reckless, wanton, and willful, as such Plaintiffs are further entitled to and hereby requests an award of PUNITIVE DAMAGES.

48. Plaintiffs are entitled to judgement against the Defendants, jointly and severally, for the above-described actual damages and injuries to the Plaintiffs and for punitive damages, in an amount to be determined by the jury.

FIFTH CAUSE OF ACTION
By Brandy Cobb
Against All Defendants
(Loss of Consortium by Plaintiff Ryan Cobb's Spouse)

49. The Plaintiffs incorporate all above allegations by reference as though fully set forth herein.

50. Mr. Ryan Cobb and Mrs. Brandy Cobb are husband and wife and were married at the time of the events alleged herein.

51. As a result of the Defendants' action which resulted in severe and permanent injuries to Mr. Ryan Cobb, Plaintiff Brandy Cobb has been injured and has suffered damages as result of the loss of consortium caused by her husband's injuries.

52. Defendants' conduct as outlined above was reckless, wanton, and willful, as such Plaintiffs are further entitled to and hereby requests an award of PUNITIVE DAMAGES.

53. Plaintiffs are entitled to judgement against the Defendants, jointly and severally, for the above-described actual damages and injuries to the Plaintiffs and for punitive damages, in an amount to be determined by the jury.

WHEREFORE, Plaintiffs requests a trial by jury against the Defendants; an award of ACTUAL, CONSEQUENTIAL AND PUNITIVE DAMAGES, together with costs of this action; and such other and further relief as this Court may deem fit, just, and proper.

s/Scott C. Evans

Scott C. Evans, SC Bar# 77684
James B. Moore III, SC Bar# 74268
EVANS MOORE, LLC
121 Screven Street
Georgetown SC 29440
Office: (843) 995-5000
Fax: (843) 527-4128

Attorneys for the Plaintiff

August 30, 2022
Georgetown, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

Ryan Cobb, Malon Cobb, Cobb
Trucking, LLC and Brandy Cobb,

Civil Action No. 2022-CP-22-00739

Plaintiffs,

ANSWER ON BEHALF OF DEFENDANT
BOGGS CONTRACTING, INC.

v.

David Alan Bigelow, Heritage Hauling,
Inc. and Boggs Contracting, Inc.,

Defendants.

**TO: SCOTT C. EVANS AND JAMES B. MOORE III, ESQUIRE, ATTORNEYS FOR
PLAINTIFF:**

Defendant Boggs Contracting, Inc. ("This Defendant" or "Defendant Boggs"), named by Plaintiffs Ryan Cobb, Brandy Cobb and Cobb Trucking, LLC ("Plaintiffs"), by and through its undersigned counsel, not waiving but specifically reserving his right to be heard under all Rule 12 or other Motions, answering the Complaint of the Plaintiff, would show unto the Court as follows:

FOR A FIRST DEFENSE

1. The Complaint fails to state facts sufficient to constitute any cause of action or claim upon which relief may be granted against Defendants and should be dismissed against Defendants pursuant to SCRCF Rule 12(b)(6) and SCRCF Rule 8.

FOR A SECOND DEFENSE

2. This Defendant specifically denies each and every allegation contained within the Complaint not here and after either expressly admitted, qualified or explained further, this Defendant demands strict proof thereof.

3. This Defendant lacks information sufficient to form a belief as to the allegations of Paragraphs 1, 2, and 3 of the Complaint, and therefore denies the same.

4. As to the allegations of Paragraph 4 of the Complaint, this Defendant admits so much that, upon information and belief, Defendant Bigelow resides in Horry County, State of South Carolina. Further responding, this Defendant admits so much of the allegations of Paragraph 4 of the Complaint that Defendant Heritage Hauling (“Defendant Heritage”) owned a truck operated by Defendant David Allan Bigelow (“Defendant Bigelow”) in the scope of agency for this Defendant. Any and all other allegations are denied. To the extent that these allegations attempt to establish wrongdoing or liability on the part of this Defendant, Defendant denies same and demands strict proof thereof.

5. This Defendant admits, upon information and belief, the allegations contained in the first sentence of Paragraph 5. Further responding, all other allegations of Paragraph 5 are denied as worded. To the extent that these allegations attempt to establish wrongdoing or liability on the part of this Defendant, Defendant denies same and demands strict proof thereof.

6. This Defendant admits so much of the allegations of Paragraph 6 of the Complaint that it is incorporated under the laws of the State of North Carolina with its principal place of business in Union County, State of North Carolina. All other allegations are denied as worded. To the extent that these allegations attempt to establish wrongdoing or liability on the part of this Defendant, Defendant denies same and demands strict proof thereof.

7. This Defendant only admits so much of the allegations of Paragraph 7 of the Complaint that this suit arises out of an accident that occurred on February 3, 2022 in Georgetown County, State of South Carolina. All remaining allegations are denied. To the

extent that these allegations attempt to establish wrongdoing or liability on the part of this Defendant, Defendant denies same and demands strict proof thereof.

8. The allegations of Paragraph 8 of the Complaint pertaining to venue and jurisdiction attempt to state a conclusion of law to which a response is not required. To the extent that a response is required, this Defendant denies the allegations of Paragraph 8 of the Complaint.

9. This Defendant is without information to admit or deny the allegations of Paragraph 9 of the Complaint and therefore denies the same.

10. This Defendant admits only so much of the allegations of Paragraph 10 that Defendant Bigelow was operating a dump truck in the course of his agency for this Defendant at the times relevant to this Action. All remaining allegations are denied.

11. This Defendant denies the allegations of Paragraph 11, 12, 13, 14, 15, 16, 17 and 18 of the Complaint.

12. The allegations of Paragraph 19 require no response. To the extent that a response is required, this Defendant reasserts its answers to each and every allegation of the Complaint.

13. This Defendant denies as worded the allegations of Paragraph 20.

14. The allegations of Paragraph 21 and Paragraph 22 of the Complaint pertaining to Defendants' duties under law call for legal conclusions to which a response is not required. To the extent a response is required, this Defendant denies the allegations as worded. To the extent that these allegations attempt to establish wrongdoing or liability on the part of this Defendant, Defendant denies same and demands strict proof thereof.

15. This Defendant denies the allegations of Paragraph 23 of the Complaint, including any and all subparts.

16. This Defendant admits the allegations of Paragraph 24 and 25 of the Complaint upon information and belief.

17. This Defendant denies the allegations of Paragraphs 26, 27, 28 and 29 of the Complaint.

18. The allegations of Paragraph 30 require no response. To the extent that a response is required, this Defendant reasserts its answers to each and every allegation of the Complaint.

19. This Defendant denies as worded the allegations of Paragraph 31 of the Complaint.

20. The allegations of Paragraphs 32, 33, 34, 35, 36, and 37 call for legal conclusions to which a response is not required. To the extent that a response is required, this Defendant denies the allegations as worded. To the extent that these allegations attempt to establish wrongdoing or liability on the part of this Defendant, Defendant denies same and demands strict proof thereof.

21. This Defendant denies the allegations of Paragraphs 38, 39, 40 and 41 of the Complaint.

22. The allegations of Paragraph 42 of the Complaint require no response. To the extent that a response is required, this Defendant reasserts its answers to each and every allegation of the Complaint.

23. This Defendant denies the allegations of Paragraph 43, 44, 45, 46, 47 and 48 of the Complaint.

24. The allegations of Paragraph 49 require no response. To the extent that a response is required, this Defendant reasserts its answers to each and every allegation of the Complaint.

25. This Defendant is without information to admit or deny the allegations of Paragraph 50 of the Complaint and therefore denies the same.

26. This Defendant denies the allegations of Paragraphs 51, 52 and 53 of the Complaint.

27. This Defendant denies all remaining allegations contained within the Complaint, including the Paragraph beginning “WHEREFORE” including Plaintiff’s prayer for judgment, actual damages, special damages, consequential damages, punitive damages, costs, property loss, and for any other relief requested and prays that this action against this Defendant be dismissed, or in the alternative, demand a jury trial.

FOR A THIRD DEFENSE

28. The Complaint fails to state a claim against this Defendant upon which relief can be granted.

FOR A FOURTH DEFENSE

29. Such injuries or losses as the Plaintiffs sustained, if any, and the same are hereby expressly denied, were due to and caused by the contributory negligence, carelessness, recklessness, and wantonness of Plaintiff Ryan Cobb, and this Defendant pleads Plaintiffs’ contributory negligence as a complete bar to the action.

FOR A FIFTH DEFENSE

30. This Defendant would further show, upon information and belief, and in the alternative, that if Defendant was negligent, which this Defendant denies, then Plaintiff Ryan Cobb was likewise negligent and this negligence, carelessness, and recklessness directly and proximately caused Plaintiffs’ damages and injuries and that Plaintiffs’ negligence, carelessness, and recklessness exceeds any negligence, carelessness, or recklessness on the

part of Defendant, and therefore, Defendant pleads Plaintiff's greater degree of comparative fault as a complete bar to Plaintiffs' recovery against Defendant.

FOR A SIXTH DEFENSE

31. If this Defendant was negligent in any respect, which is expressly denied, and if Defendant's conduct operated as any cause of Plaintiffs' injuries or damages, if any, which is also expressly denied, Defendant is entitled to a determination as to the percentage of Plaintiffs' negligent, grossly negligent, reckless, willful and wanton conduct that contributed to this incident and to a reduction of any amount awarded to Plaintiffs equal to the percentage of Plaintiffs' own negligence, gross negligence, recklessness, willful and wanton conduct.

FOR A SEVENTH DEFENSE

32. Defendant denies any negligence whatsoever and allege that the sole negligent acts and omissions of Plaintiff Ryan Cobb was the sole and proximate cause of Plaintiffs' injuries and damages, if any.

33. These acts and omissions by Plaintiffs were the sole and proximate cause of her injuries and damages, if any, and therefore, the action against Defendant should be dismissed.

FOR AN EIGHTH DEFENSE

34. Defendant denies any negligence whatsoever and allege that the sole negligent acts of a third party or parties were the sole and proximate cause of injuries and damages to Plaintiffs, if any, and any one or more of those parties caused the injuries and damages to Plaintiffs.

35. These acts and omissions by the third party or parties were the sole and proximate cause of any injuries or damages to Plaintiffs, and therefore, the action against Defendant should be dismissed.

FOR A NINTH DEFENSE

36. Defendants asserts that even if it were negligent or reckless in any respect, which is expressly denied, they are not liable to Plaintiffs for the resulting injuries and damages, if any, because of the intervening negligent, grossly negligent, reckless, willful and wanton acts of third parties, including those parties whose identities are unknown at the present time, which negligent and reckless acts on their part were not reasonably foreseeable, and intervened and acted as the direct and proximate cause of the injuries and damages, if any, sustained by Plaintiffs.

37. Defendant asserts that the intervening acts of a third party or parties were the sole and proximate cause of injuries and damages to Plaintiffs and the action should be dismissed.

FOR A TENTH DEFENSE

38. Defendant would show the Plaintiffs' claim for punitive damages is violative of the due process and equal protection laws of the United States Constitution and the Constitution of the State of South Carolina.

FOR AN ELEVENTH DEFENSE

39. Pursuant to S.C. CODE ANN. § 15-32-520, any proceeding to determine punitive damages should be bifurcated from any trial to determine liability and/or compensatory damages.

FOR A TWELFTH DEFENSE

40. Any award of punitive damages should not exceed the greater of three (3) times the amount of compensatory damages as provided for in S.C. CODE ANN. § 15-32-530.

FOR A THIRTEENTH DEFENSE

41. This Defendant alleges that Defendant Driver was placed in a sudden emergency and compelled to act instantly to avoid further damages and collisions with other vehicles on the roadway or to maintain control of the vehicle in adverse conditions and that he acted reasonably in light of the emergency. Defendant further alleges that the sudden emergency was not caused or contributed to by the Defendants, and that in meeting the emergency, Defendant Driver acted as a person(s) of reasonable prudence would or might have acted under the same or similar circumstances. Accordingly, the Complaint should be dismissed.

FOR A FOURTEENTH DEFENSE

42. The Plaintiff, at all times mentioned in the Complaint, having full knowledge and conditions existing at or near the place where the alleged accident occurred, assumed the risk of injury to himself and others, in failing to use due care, in failing to yield the right-of-way, in failing to keep a proper lookout, in failing to maintain appropriate speed, in failing to operate her vehicle in a safe condition upon the roadways of the State of South Carolina, in failing to maintain proper control over her vehicle, in failing to exercise a degree of care and caution that reasonably prudent persons would have used under the circumstances then and there prevailing, in failing to comply with the traffic rules and regulations of the State of South Carolina and the South Carolina Department of Public Safety, and/or such other acts as may be discovered during the litigation of this matter; any injury or damages resulting from the accident complained of was sustained by Plaintiff by reason of such assumption of risk to himself or otherwise, and therefore, Plaintiffs are barred from recovery.

FOR A FIFTEENTH DEFENSE

43. Defendant would show, upon information and belief, that the accident alleged in the Complaint was an accident which was allegedly brought about by acts and events over which the Defendant could not have foreseen, and which the Defendant had no role in causing, and the Defendant, therefore, pleads the defense of unavoidable accident as it pertains to the Defendant.

WHEREFORE, this Defendant prays that Plaintiffs' action be dismissed, or in the alternative for a jury trial, and further pray for relief as set forth in this Answer, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

s/ Janet Brooks Holmes

Janet Brooks Holmes; SC Bar No: 11826

Joseph A. Catalano; SC Bar No.: 102441

THE MCKAY FIRM, P.A.

3700 Forest Dr., Ste. 404 (29204)

P.O. Box 7217

Columbia, SC 29202

Tel: (803) 256-4645

Email: JanetHolmes1@mac.com

JHolmes@McKayFirm.com

Email: JCatalano@McKayFirm.com

Attorneys for Defendant Boggs Contracting, Inc.

Columbia, South Carolina
November 22, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB
TRUCKING, LLC, and BRANDY COBB,

Plaintiffs,

v.

DAVID ALAN BIGELOW, HERITAGE
HAULING, INC. and BOGGS
CONTRACTING, INC.,

Defendants.

MOTION TO COMPEL DISCOVERY
RESPONSES FROM ALL
DEFENDANTS

**TO: CURTIS OTT & MATTHEW R. SANFORD, ATTORNEYS FOR DEFENDANTS
DAVID ALAN BIGELOW AND HERITAGE HAULING, INC. AND TO JANET BROOKS
HOLMES & JOSEPH CATALANO, ATTORNEYS FOR THE DEENDANTS BOGGS
CONTRACTING, INC.**

PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned attorneys, will move at the first available hearing no sooner than ten (10) days after service, before the Presiding Judge, or at such time as counsel is scheduled to be heard, for an Order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure compelling Defendants to respond fully to Plaintiffs' First Set of Interrogatories and Requests for Production served on or about December 15, 2022 (*Attached as Exhibit 1*).

Plaintiff's Counsel has provided Defendants with extensions to respond to the discovery in a good faith effort to communicate in compliance with Rule 11 of the South Carolina Rules of Civil Procedure. To date, Plaintiffs' Counsel has not received any of the requested discovery responses or a request for additional time to respond. Pursuant to Rule 11, this affirms that Plaintiffs' counsel has endeavored in good faith to communicate and resolve this matter prior to

the filing of this Motion.

Additionally, as a result of the Defendants' refusal to timely respond to discovery and/or resolve this matter without court intervention, the Plaintiffs would respectfully request that the Court consider reasonable sanctions be imposed to protect the rights of discovery provided by the S.C. Rules of Civil Procedure. Pursuant to Rule 37(a)(4), if the motion is granted, the court shall "require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees...." While Rule 37(b) provides for sanctions for failure to comply with an order of the circuit court, Rule 37(d) also provides that the same sanctions shall be available "if a party... fails to serve answers... to interrogatories submitted under Rule 33." In such a case, the court in which such action is pending may make such orders as are just, including the following sanctions under Rule 37(b)(2):

- (A) An order that the matters regarding which the order was made, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;
- (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment against the disobedient party;

Rule 37(b)(2) SCRCF

Based on the above, the Plaintiffs respectfully request an Order compelling the Defendants to fully answer Plaintiffs' First Set of Interrogatories and Requests for Production as well as Order granting sanctions based on Defendants' willful violation of Rule 33, 34, and 37 of the S.C. Rules of Civil Procedure, to include reasonable expenses and attorneys fees incurred as result of

compelling Defendants' responses to basic discovery requests and any other relief the Court deems appropriate under the circumstances to discourage similar conduct in the future.

Respectfully submitted,

EVANS MOORE, LLC

s/James B. Moore III

James B. Moore III, SC Bar #74268

Scott C. Evans, SC Bar #77684

121 Screven Street

Georgetown, SC 29440

Office: (843) 995-5000

Fax: (843) 527-4128

scott@evansmoorelaw.com

james@evansmoorelaw.com

CULBRETH LAW FIRM

Stephen E. Culbreth, *Admitted Pro Hac Vice*

P.O. Box 446

Wilmington, NC 28402

Office: (910) 763-3416

Facsimile: (910) 763-9975

JERRY L. SPIVEY LAW FIRM

Jerry L. Spivey, *Admitted Pro Hac Vice*

206 N. 4th Street, Suite 2

Wilmington, NC 28401

Office: (910) 763-6585

Facsimile: (910) 763-6525

Attorneys for the Plaintiffs

April 4, 2023
Georgetown, South Carolina

Exhibit 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION NO.: 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB
TRUCKING, LLC and BRANDY COBB,

Plaintiffs,

v.

DAVID ALAN BIGELOW, HERITAGE
HAULING, INC. and BOGGS
CONTRACTING, INC.,

Defendants.

PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO THE
DEFENDANTS DAVID ALAN
BIGELOW AND HERITAGE
HAULING, INC.

To: A. GRAYSON SMITH, ATTORNEY FOR THE DEFENDANTS DAVID ALAN BIGELOW AND HERITAGE HAULING, INC.

The following written interrogatories are served on you pursuant to the provisions of S.C.R.C.P. 33. You are required to answer these interrogatories separately and fully, in writing, under oath and serve a copy of such answers upon me to the law offices of Evans Moore, LLC, located at 121 Screven Street, Georgetown, South Carolina on the 30th day following service of these discovery requests.

A. SPECIAL INSTRUCTIONS

In responding to the Plaintiffs Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiff believes are consistent with the Rules:

1. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.
2. The Plaintiffs Discovery Requests are intended to call into question any and all responsive discoverable matter known or reasonably available to you and all your attorneys, agents, employees, representatives, private investigators, and others who are in possession custody or control of such matter, or who have or who have obtained such matter for you or on your behalf.
3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys, (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

4. In answering Discovery Requests, you may wish to refer to your business records. In this event, please follow the directions of S.C.R.C.P. 33(c) and identify specifically the records from which the answer may be derived or ascertained and state when and where such business records will be made available to the Plaintiff for inspection and copying.

5. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests:

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary by you through appropriate and necessary devices into reasonably usable and intelligible form.

"Identify", when used with respect to individual persons, means to state the full name, address, telephone number, place of employment, job title and present whereabouts of such person.

"Identify", when used with respect to artificial persons, i.e. corporations, partnerships, joint ventures, legal entities, and associations-in-fact although not legal entities, means to state the full name, address and telephone number of such "person" together with the name, address, telephone number and job title of the employee, agent, servant or representative of such "person" who has knowledge of the particular facts or possession, custody or control of the particular documents or things of which discovery is sought.

"Identify", when used with respect to facts, opinions, circumstances or information, means to give a concise summary of the nature and substance of the facts, opinions, circumstances or information of which discovery is sought.

"Identify", when used with respect to meetings, means to state the date, time, and place of the meeting, state whether there was a written agenda, identify all persons who participated in the meeting, state whether minutes were kept or a document containing a report of the meeting was created, and identify the custodian of such minutes or reports;

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items

of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for the document or thing if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

"Person" includes any individual, public or private corporation, partnership, government agency, incorporated association, or unincorporated association.

"Plaintiff" means the Plaintiff in this action.

"You" and *"your"* mean and refer to the particular party to whom Plaintiffs Discovery Requests are specifically directed and who is undertaking to respond to them.

INTERROGATORIES

1. Give the names and addresses of all persons known to you or your counsel to be witnesses concerning the facts of this case and state whether or not written or recorded statements have been taken from the witnesses and give the name of the person or organization having possession of such statement.
2. For each party known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.
3. Set forth a list of documents, photographs, pamphlets, memorandums, diagrams, charts, sketches or other prepared documents in your possession or in the possession of your representative or attorney that relate to any claim or defense in this case.
4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, providing the name, address, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.
5. Please state whether you claim that Plaintiffs were negligent in any way, proximately causing his/her injuries or damages alleged in this suit. If so, please describe the act and the effect of each such act of negligence alleged, and identify all persons with knowledge of facts supporting such claim.
6. Please state whether you claim that any person or entity (whether a party to this lawsuit or not) was negligent in causing the injuries or damages which are claimed or alleged in this suit. If so, please identify each such person or entity and describe the act and the effect of each such act of negligence; identify all discoverable matter, documents, or things, on which Defendant may

rely as the basis for each such contention; and identify every person who claims to have knowledge of same.

7. Please indicate the names and addresses of each person(s) responsible for and/or assisting in responding to Plaintiffs' Interrogatories and Requests for Production of Documents.

8. Please state the name, address, place of employment and qualifications of each and every expert witness the Defendants plans to call at the trial of this case. As to each person named in this Interrogatory, state:

- a. The subject matter on which the expert or experts are expected to testify;
- b. The substance of the facts and opinions to which each of the experts named in response to the preceding interrogatory is expected to testify;
- c. A summary of all opinions to be offered at trial;
- d. A summary of the grounds for each opinion expected to be elicited from each of the experts named in response to this Interrogatory;
- e. Whether or not a written report, memorandum or other written document was prepared by each expert witness;
- f. Whether said expert has conducted any investigation, inspection, examination and/or testing in connection with the issues involved with this suit, and, if so, the nature of each such investigation, inspection, examination and/or testing, the results of same and the dates on which such work was performed;
- g. A complete list of any and all records, documents, journals, periodicals, texts, treatises, statements, photographs, videos, electronic information, and any other source of information which the expert reviewed in formulating his or her opinion(s) in this case;

- h. Any articles, texts, journals, papers, publications, or presentations authored or co-authored by the expert which is relevant to the subject matter of this case;
 - i. Any articles, texts, journals, papers, publications, or presentations upon which the expert intends to rely at trial.
 - j. Please identify the dates that any named expert communicated directly with a party to this case, as well as the substance of all communications between an expert and a party, if any, made outside the presence of counsel.
9. State whether any or all Defendants have ever been involved in previous litigation as a Defendant, including whether or not an action was instituted or if Defendant obtained a settlement prior to filing an action, the name and caption of any such action, the nature of any such action or pre-action settlement, the date of any such action or pre-action settlement, and injuries complained of by the Plaintiff from any such action or pre-action settlement.
10. Please identify any and all investigations and/or surveillance of the Plaintiffs, including but not limited to all photographs, videos, correspondence, receipts, invoices, and/or requests.
11. Please identify any and all tests the Defendant David Bigelow may have been subjected to after the accident on 02/03/2022, including any results of said tests.



EVANS MOORE, LLC
Scott C. Evans, SC Bar #77684
James B. Moore, III, SC Bar #74268
121 Screven Street
Georgetown, SC 29440
Office: (843) 995-5000
Fax: (843) 527-4128

Stephen E. Culbreth

CULBRETH LAW FIRM
P.O. Box 446
Wilmington, NC 28402
Office: (910) 763-3416
Fax: (910) 763-9975
(*Pro Hac Vice*)

Jerry L. Spivey
JERRY L. SPIVEY LAW OFFICE
206 N. 4th Street
Suite 2
Wilmington, NC 28401
Office: (910)-763-6585
Fax: (910) 763-6525
(*Pro Hac Vice*)

ATTORNEYS FOR PLAINTIFFS

Georgetown, SC
December 15, 2022

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2022-CP-22-00739
COUNTY OF GEORGETOWN	)	
	)	
RYAN COBB, MALON COBB, COBB	)	
TRUCKING, LLC, and BRANDY	)	
COBB,	)	
	)	
Plaintiffs,	)	PLAINTIFFS' FIRST SET OF
	)	REQUESTS FOR PRODUCTION TO
vs.	)	THE DEFENDANTS DAVID ALAN
	)	BIGELOW AND HERITAGE
DAVID ALAN BIGELOW,	)	HAULING, INC.
HERITAGE HAULING, INC., and	)	
BOGGS CONTRACTING, INC.,	)	
	)	
Defendants,	)	
	)	
	)	

TO: A. GRAYSON SMITH, ATTORNEY FOR DEFENDANTS DAVID ALAN BIGELOW AND HERITAGE HAULING, INC.

The following requests for production are served on you pursuant to the provisions of South Carolina Rules of Civil Procedure 26 and 34. You are requested to produce each of the following described documents and things at the law offices of Evans Moore, LLC, located at 121 Screven Street, Georgetown, South Carolina on the 30th day following service of these discovery requests.

A. SPECIAL INSTRUCTIONS

In responding to the Plaintiffs' Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiff believes are consistent with the Rules:

1. Unless otherwise requested, please produce all requested documents and things at the offices of your lead counsel at the time indicated in the Discovery Request.
2. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.
3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys, (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which

because of your business relationship would readily respond to your inquiry in the ordinary course of business.

4. Where documents and things exist which fall within the descriptive terms of one of the Plaintiff's Discovery Requests, and production of the same will be made by you, please produce such documents and things in a manner corresponding to the numbered request in which they are described, so that identification with the appropriate request can readily be made.

5. In addition to the original of any such requested documents, any request for a document also includes:

- a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
- b. any and all attachments to the original;
- c. any and all documents referred to in the original;
- d. any and all subsequent additions, deletions, substitutions, amendments, or modifications to the original of any sort.

6. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests without engaging in semantic arguments:

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary by you through appropriate and necessary devices into reasonably usable and intelligible form.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for the document or thing if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

"Person" includes any individual, public or private corporation, partnership, government agency, incorporated association, or unincorporated association.

"Plaintiff" means the Plaintiff in this action.

"Senior Management" means and refers to all members of management which if looking at an organizational chart include all members or department heads for the first 4 tiers of any organizational structure.

"You" and "your" mean and refer to the particular party to whom Plaintiff's Discovery Requests are specifically directed and who is undertaking to respond to them.

REQUESTS FOR PRODUCTION

1. All documents, reports, writings, correspondence, photographs, videos, films of whatever nature referred to in response to Plaintiffs' Interrogatories.
2. A certified copy of any liability insurance policies, including, but not limited to any excess or umbrella policies, covering the Defendants or the Plaintiffs on the date of the incident. This request is also meant to discover and shall include any information regarding any agreements to extend coverage beyond the original limits.
3. Any document, reports, correspondence, notes, diaries, calendars, videotapes, diagrams, charts, memos, and any other documents concerning any issues raised by this lawsuit produced by any witness, including any expert witness or any other person having or claiming to have knowledge of any matter relevant to the issues in this case.
4. Any and all statements, whether written, oral, or transcribed, of any individual that relate in any manner to the allegations of the Complaint or any defenses of the Defendants, whether the Defendants, investigators, adjusters have taken these statements, or individuals acting on behalf of the Plaintiffs.
5. All materials reflecting any investigation into the cause of the automobile collision and the cause of the Plaintiffs' alleged injuries.
6. A digital and physical color copy of any photographs taken by any insurance company related to this automobile collision.
7. Any and all documents related to property damage sustained by any and all vehicles to the collision.
8. Any and all documents from expert witnesses that may testify on behalf of Defendants at trial, including but not limited to written reports and resumes.

9. All documents reflecting any and all complaints, accidents, injuries, demands, claims, or lawsuits regarding the Defendants.
10. Please produce a complete copy of any file pertaining to any and all investigations and/or surveillance of the Plaintiffs, including but not limited to all photographs, videos, correspondence, receipts, invoices, and/or requests.
11. A certified copy of a ten (10) year driving record of the Defendant David Alan Bigelow.
12. Any demonstrative evidence the Defendants may use at the trial of this case.
13. If an internal investigation or review was conducted of the incident or claim, provide any and all documentation relating to such investigations, including but not limited to:
 - a. All documents, reports, drawings, films, models or other items generated or obtained.
 - b. All statements obtained by or on behalf of the Defendants;
 - c. All physical and/or tangible items and/or potentially usable evidence obtained by or on behalf of the Defendants from the scene of the occurrence in question.
14. Any and all documents received via subpoena, the South Carolina Freedom of Information Act, or voluntarily from a third-party source for purposes of this matter.
15. Any and all claims reports or list of prior claims that Defendants may have filed against any insurance company related to a loss.
16. Any and all email messages, text messages, or messages of any kind the Defendants sent to or received from anyone regarding this motor vehicle collision.
17. Any and all results of any tests Defendant David Bigelow may have been subjected to after the accident on 02/03/2022.

Respectfully submitted



EVANS MOORE, LLC
Scott C. Evans, SC Bar #77684
James B. Moore, III, SC Bar #74268
121 Screven Street
Georgetown, SC 29440
Office: (843) 995-5000
Fax: (843) 527-4128

Stephen E. Culbreth
CULBRETH LAW FIRM
P.O. Box 446
Wilmington, NC 28402
Office: (910) 763-3416
Fax: (910) 763-9975
(*Pro Hac Vice*)

Jerry L. Spivey
JERRY L. SPIVEY LAW OFFICE
206 N. 4th Street
Suite 2
Wilmington, NC 28401
Office: (910)-763-6585
Fax: (910) 763-6525
(*Pro Hac Vice*)

Attorneys for Plaintiffs

Georgetown, SC
December 15, 2022

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION NO.: 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB
TRUCKING, LLC, and BRANDY
COBB,

Plaintiffs,

vs.

DAVID ALAN BIGELOW,
HERITAGE HAULING, INC., and
BOGGS CONTRACTING, INC.,

Defendants,

CERTIFICATE OF MAILING

I hereby certify that the **Plaintiffs' First Set of Interrogatories and First Set of Requests for Production to Defendants David Alan Bigelow and Heritage Hauling, Inc.** was served upon A. Grayson Smith, Attorney for the Defendants David Alan Bigelow and Heritage Hauling, Inc., Gallivan White Boyd, 40 Calhoun Street, Suite 315, Charleston, SC 29401 on December 15, 2022.



Tina L. Todd, Paralegal
Evans Moore, LLC
121 Screven Street
Georgetown, SC 29440
Telephone (843) 995-5000
Facsimile (843) 527-4128

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF GEORGETOWN) CIVIL ACTION NO.: 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB
 TRUCKING, LLC and BRANDY COBB,

Plaintiffs,

v.

DAVID ALAN BIGELOW, HERITAGE
 HAULING, INC. and BOGGS
 CONTRACTING, INC.,

Defendants.

PLAINTIFFS' FIRST SET OF
 INTERROGATORIES TO THE
 DEFENDANT BOGGS
 CONTRACTING, INC.

**To: JANET BROOKS HOLMES, ATTORNEY FOR THE DEFENDANT BOGGS
 CONTRACTING, INC.**

The following written interrogatories are served on you pursuant to the provisions of S.C.R.C.P. 33. You are required to answer these interrogatories separately and fully, in writing, under oath and serve a copy of such answers upon me to the law offices of Evans Moore, LLC, located at 121 Screven Street, Georgetown, South Carolina on the 30th day following service of these discovery requests.

A. SPECIAL INSTRUCTIONS

In responding to the Plaintiffs Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiff believes are consistent with the Rules:

1. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.

2. The Plaintiffs Discovery Requests are intended to call into question any and all responsive discoverable matter known or reasonably available to you and all your attorneys, agents, employees, representatives, private investigators, and others who are in possession custody or control of such matter, or who have or who have obtained such matter for you or on your behalf.

3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys, (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

4. In answering Discovery Requests, you may wish to refer to your business records. In this event, please follow the directions of S.C.R.C.P. 33(c) and identify specifically the records from which the answer may be derived or ascertained and state when and where such business records will be made available to the Plaintiff for inspection and copying.

5. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests:

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary by you through appropriate and necessary devices into reasonably usable and intelligible form.

"Identify", when used with respect to individual persons, means to state the full name, address, telephone number, place of employment, job title and present whereabouts of such person.

"Identify", when used with respect to artificial persons, i.e. corporations, partnerships, joint ventures, legal entities, and associations-in-fact although not legal entities, means to state the full name, address and telephone number of such "person" together with the name, address, telephone number and job title of the employee, agent, servant or representative of such "person" who has knowledge of the particular facts or possession, custody or control of the particular documents or things of which discovery is sought.

"Identify", when used with respect to facts, opinions, circumstances or information, means to give a concise summary of the nature and substance of the facts, opinions, circumstances or information of which discovery is sought.

"Identify", when used with respect to meetings, means to state the date, time, and place of the meeting, state whether there was a written agenda, identify all persons who participated in the meeting, state whether minutes were kept or a document containing a report of the meeting was created, and identify the custodian of such minutes or reports;

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items

of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for the document or thing if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

"Person" includes any individual, public or private corporation, partnership, government agency, incorporated association,, or unincorporated association.

"Plaintiff" means the Plaintiff in this action.

"You" and *"your"* mean and refer to the particular party to whom Plaintiffs Discovery Requests are specifically directed and who is undertaking to respond to them.

INTERROGATORIES

1. Give the names and addresses of all persons known to you or your counsel to be witnesses concerning the facts of this case and state whether or not written or recorded statements have been taken from the witnesses and give the name of the person or organization having possession of such statement.
2. For each party known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.
3. Set forth a list of documents, photographs, pamphlets, memorandums, diagrams, charts, sketches or other prepared documents in your possession or in the possession of your representative or attorney that relate to any claim or defense in this case.
4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, providing the name, address, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.
5. Please state whether you claim that Plaintiffs were negligent in any way, proximately causing his/her injuries or damages alleged in this suit. If so, please describe the act and the effect of each such act of negligence alleged, and identify all persons with knowledge of facts supporting such claim.
6. Please state whether you claim that any person or entity (whether a party to this lawsuit or not) was negligent in causing the injuries or damages which are claimed or alleged in this suit. If so, please identify each such person or entity and describe the act and the effect of each such act of negligence; identify all discoverable matter, documents, or things, on which Defendant may

rely as the basis for each such contention; and identify every person who claims to have knowledge of same.

7. Please indicate the names and addresses of each person(s) responsible for and/or assisting in responding to Plaintiffs' Interrogatories and Requests for Production of Documents.

8. Please state the name, address, place of employment and qualifications of each and every expert witness the Defendants plans to call at the trial of this case. As to each person named in this Interrogatory, state:

- a. The subject matter on which the expert or experts are expected to testify;
- b. The substance of the facts and opinions to which each of the experts named in response to the preceding interrogatory is expected to testify;
- c. A summary of all opinions to be offered at trial;
- d. A summary of the grounds for each opinion expected to be elicited from each of the experts named in response to this Interrogatory;
- e. Whether or not a written report, memorandum or other written document was prepared by each expert witness;
- f. Whether said expert has conducted any investigation, inspection, examination and/or testing in connection with the issues involved with this suit, and, if so, the nature of each such investigation, inspection, examination and/or testing, the results of same and the dates on which such work was performed;
- g. A complete list of any and all records, documents, journals, periodicals, texts, treatises, statements, photographs, videos, electronic information, and any other source of information which the expert reviewed in formulating his or her opinion(s) in this case;

- h. Any articles, texts, journals, papers, publications, or presentations authored or co-authored by the expert which is relevant to the subject matter of this case;
 - i. Any articles, texts, journals, papers, publications, or presentations upon which the expert intends to rely at trial.
 - j. Please identify the dates that any named expert communicated directly with a party to this case, as well as the substance of all communications between an expert and a party, if any, made outside the presence of counsel.
9. State whether any or all Defendants have ever been involved in previous litigation as a Defendant, including whether or not an action was instituted or if Defendant obtained a settlement prior to filing an action, the name and caption of any such action, the nature of any such action or pre-action settlement, the date of any such action or pre-action settlement, and injuries complained of by the Plaintiff from any such action or pre-action settlement.
10. Please identify any and all investigations and/or surveillance of the Plaintiffs, including but not limited to all photographs, videos, correspondence, receipts, invoices, and/or requests.
11. Please provide a description of the agency relationship existing between this Defendant and Heritage Hauling, Inc.
12. Please identify all subcontractors utilized by this Defendant in connection with the road maintenance project on US-17 Alternate wherein this collision occurred.



EVANS MOORE, LLC
Scott C. Evans, SC Bar #77684
James B. Moore, III, SC Bar #74268
121 Screven Street
Georgetown, SC 29440
Office: (843) 995-5000
Fax: (843) 527-4128

Stephen E. Culbreth
CULBRETH LAW FIRM
P.O. Box 446
Wilmington, NC 28402
Office: (910) 763-3416
Fax: (910) 763-9975
(*Pro Hac Vice*)

Jerry L. Spivey
JERRY L. SPIVEY LAW OFFICE
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Suite 2
Wilmington, NC 28401
Office: (910)-763-6585
Fax: (910) 763-6525
(*Pro Hac Vice*)

ATTORNEYS FOR PLAINTIFFS

Georgetown, SC
December 15, 2022

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2022-CP-22-00739
COUNTY OF GEORGETOWN	)	
	)	
RYAN COBB, MALON COBB, COBB	)	
TRUCKING, LLC, and BRANDY	)	
COBB,	)	
	)	
Plaintiffs,	)	
	)	PLAINTIFFS' FIRST SET OF
vs.	)	REQUESTS FOR PRODUCTION TO
	)	THE DEFENDANT BOGGS
DAVID ALAN BIGELOW,	)	CONTRACTING, INC.
HERITAGE HAULING, INC., and	)	
BOGGS CONTRACTING, INC.,	)	
	)	
Defendants,	)	
	)	
	)	

TO: JANET BROOKS HOLMES, ATTORNEY FOR DEFENDANT BOGGS CONTRACTING, INC.

The following requests for production are served on you pursuant to the provisions of South Carolina Rules of Civil Procedure 26 and 34. You are requested to produce each of the following described documents and things at the law offices of Evans Moore, LLC, located at 121 Screven Street, Georgetown, South Carolina on the 30th day following service of these discovery requests.

A. SPECIAL INSTRUCTIONS

In responding to the Plaintiffs' Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiff believes are consistent with the Rules:

1. Unless otherwise requested, please produce all requested documents and things at the offices of your lead counsel at the time indicated in the Discovery Request.
2. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.
3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys, (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which

because of your business relationship would readily respond to your inquiry in the ordinary course of business.

4. Where documents and things exist which fall within the descriptive terms of one of the Plaintiff's Discovery Requests, and production of the same will be made by you, please produce such documents and things in a manner corresponding to the numbered request in which they are described, so that identification with the appropriate request can readily be made.

5. In addition to the original of any such requested documents, any request for a document also includes:

- a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
- b. any and all attachments to the original;
- c. any and all documents referred to in the original;
- d. any and all subsequent additions, deletions, substitutions, amendments, or modifications to the original of any sort.

6. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests without engaging in semantic arguments:

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"*Identify*", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
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- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing.

"*Identify*", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

"*Person*" includes any individual, public or private corporation, partnership, government agency, incorporated association, or unincorporated association.

"*Plaintiff*" means the Plaintiff in this action.

"*Senior Management*" means and refers to all members of management which if looking at an organizational chart include all members or department heads for the first 4 tiers of any organizational structure.

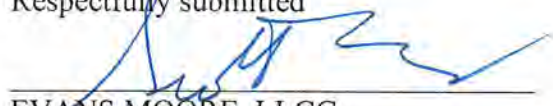
"*You*" and "*your*" mean and refer to the particular party to whom Plaintiff's Discovery Requests are specifically directed and who is undertaking to respond to them.

REQUESTS FOR PRODUCTION

1. All documents, reports, writings, correspondence, photographs, videos, films of whatever nature referred to in response to Plaintiffs' Interrogatories.
2. A certified copy of any liability insurance policies, including, but not limited to any excess or umbrella policies, covering the Defendant or the Plaintiffs on the date of the incident. This request is also meant to discover and shall include any information regarding any agreements to extend coverage beyond the original limits.
3. Any document, reports, correspondence, notes, diaries, calendars, videotapes, diagrams, charts, memos, and any other documents concerning any issues raised by this lawsuit produced by any witness, including any expert witness or any other person having or claiming to have knowledge of any matter relevant to the issues in this case.
4. Any and all statements, whether written, oral, or transcribed, of any individual that relate in any manner to the allegations of the Complaint or any defenses of the Defendant, whether the Defendant, investigators, adjusters have taken these statements, or individuals acting on behalf of the Plaintiffs.
5. All materials reflecting any investigation into the cause of the automobile collision and the cause of the Plaintiffs' alleged injuries.
6. A digital and physical color copy of any photographs taken by any insurance company related to this automobile collision.
7. Any and all documents related to property damage sustained by any and all vehicles to the collision.
8. Any and all documents from expert witnesses that may testify on behalf of Defendant at trial, including but not limited to written reports and resumes.

9. All documents reflecting any and all complaints, accidents, injuries, demands, claims, or lawsuits regarding the Defendants.
10. Please produce a complete copy of any file pertaining to any and all investigations and/or surveillance of the Plaintiffs, including but not limited to all photographs, videos, correspondence, receipts, invoices, and/or requests.
11. Any demonstrative evidence the Defendant may use at the trial of this case.
12. If an internal investigation or review was conducted of the incident or claim, provide any and all documentation relating to such investigations, including but not limited to:
 - a. All documents, reports, drawings, films, models or other items generated or obtained.
 - b. All statements obtained by or on behalf of the Defendant;
 - c. All physical and/or tangible items and/or potentially usable evidence obtained by or on behalf of the Defendant from the scene of the occurrence in question.
13. Any and all documents received via subpoena, the South Carolina Freedom of Information Act, or voluntarily from a third-party source for purposes of this matter.
14. Any and all claims reports or list of prior claims that Defendant may have filed against any insurance company related to a loss.
15. Any and all email messages, text messages, or messages of any kind the Defendant sent to or received from anyone regarding this motor vehicle collision.
16. Please provide the contract for the road maintenance project on US-17 Alternate wherein this collision occurred.
17. Please provide copies of all contracts for service and invoicing between this Defendant and Heritage Hauling, Inc. in connection with the road maintenance project on US-17 Alternate wherein this collision occurred.

Respectfully submitted



EVANS MOORE, LLCG

Scott C. Evans, SC Bar #77684

James B. Moore, III, SC Bar #74268

121 Screven Street

Georgetown, SC 29440

Office: (843) 995-5000

Fax: (843) 527-4128

Stephen E. Culbreth

CULBRETH LAW FIRM

P.O. Box 446

Wilmington, NC 28402

Office: (910) 763-3416

Fax: (910) 763-9975

(Pro Hac Vice)

Jerry L. Spivey

JERRY L. SPIVEY LAW OFFICE

206 N. 4th Street

Suite 2

Wilmington, NC 28401

Office: (910)-763-6585

Fax: (910) 763-6525

(Pro Hac Vice)

Attorneys for Plaintiffs

Georgetown, SC

December 15, 2022

STATE OF SOUTH CAROLINA

) COURT OF COMMON PLEAS
) CIVIL ACTION NO.: 2022-CP-22-00739
)

COUNTY OF GEORGETOWN

RYAN COBB, MALON COBB, COBB
TRUCKING, LLC, and BRANDY
COBB,

Plaintiffs,

vs.

CERTIFICATE OF MAILING

DAVID ALAN BIGELOW,
HERITAGE HAULING, INC., and
BOGGS CONTRACTING, INC.,

Defendants,

I hereby certify that the **Plaintiffs' First Set of Interrogatories and First Set of Requests for Production to Defendant Boggs Contracting, Inc.** was served upon Janet Brooks Holmes, Attorney for the Defendant Boggs Contracting, Inc., The McKay Firm, P.A., 3700 Forrest Drive, Suite 404, Columbia, SC 29204 on December 15, 2022.


 Tina L. Todd, Paralegal
 Evans Moore, LLC
 121 Screven Street
 Georgetown, SC 29440
 Telephone (843) 995-5000
 Facsimile (843) 527-4128

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB)
TRUCKING, LLC, and BRANDY COBB,)

Plaintiffs,)

v.)

DAVID ALAN BIGELOW, HERITAGE)
HAULING, INC., and BOGGS)
CONTRACTING, INC.,)

Defendants.)

MOTION TO COMPEL DISCOVERY
RESPONSES

PLEASE TAKE NOTICE that the undersigned, as attorneys for Plaintiffs will move before the Presiding Judge of the Circuit Court for the County of Georgetown, South Carolina, at such time and place as Your Honor may designate, pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, for an Order compelling Defendant Heritage Hauling, Inc. to fully respond to Plaintiffs' Fourth Request for Production to Defendant Heritage Hauling, Inc. served on September 1, 2023. Specifically, on November 2, 2023, Defendant Heritage Hauling, Inc. responded to the discovery request; however, it has asserted nonspecific, boilerplate objections to the discovery requests, including Request for Production Nos. 52, 53 and 55 that appear to be on the basis of relevance:

52. Please produce an unredacted copy of the Heritage Hauling, Inc. "Accident Log" covering the time period of January 1, 2019 through February 3, 2022. (A redacted copy of the "Accident Log" identifying the subject collision was previously produced as Heritage Hauling 01085).

RESPONSE: Defendant objects to this request insofar as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, evidence of other accidents involving drivers other than Defendant Bigelow is not an issue raised in Plaintiffs' lawsuit.

53. Please produce an unredacted copy of any documentation identifying Defendant Bigelow's job assignments and loads for the time period of January 1, 2021 through February 4, 2022. (See Heritage Hauling 01179 — 01199 and Heritage Hauling 01087 as an example).

RESPONSE: Defendant objects to this request insofar as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Heritage Hauling documents 1087, and 1179-1199 were redacted to remove information about job assignments and loads for drivers other than Defendant Bigelow. Plaintiffs have not requested information related to other drivers in discovery, and furthermore their lawsuit does not raise any such issues. Therefore, Defendant has fully responded to provide the information requested for Defendant Bigelow.

55. According to the January 2022 "Safety Minute" notes there were 13 wrecks involving Heritage Hauling, Inc. trucks during 2021. (See Heritage Hauling 01147). Please produce a copy of all accident reports, incident reports, employee discipline documentation, and dash camera recordings referencing the 13 accidents identified during the safety meeting.

RESPONSE: Defendant objects to this request insofar as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, evidence of other accidents involving drivers other than Defendant Bigelow is not an issue raised in Plaintiffs' lawsuit. Defendant further objects that it would be unduly burdensome to provide the requested information.

Defendant Heritage Hauling, Inc.'s response to Plaintiffs' Fourth Request for Production is attached as Exhibit 1.

As the Defendant is aware, Plaintiffs have asserted claims against Defendant Heritage Hauling, Inc. specifically for negligent supervision and training of its employees, including employee David Bigelow. (See Complaint, Paragraphs 21 – 23). Previous discovery produced

in this case has shown an inordinate number of accidents caused by Heritage Hauling, Inc. employees during the limited time frame leading to the catastrophic collision caused by its driver, David Bigelow, on February 3, 2022, including thirteen accidents in 2021 alone. Information surrounding these accidents, including the driving history of its employees and any training and/or disciplinary actions addressing the accidents is certainly relevant to Plaintiffs' claims. Plaintiffs' Requests for Production are narrowly tailored to lead to the discovery of relevant evidence based on the allegations made in the Complaint and based on discovery that has been produced to date.

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Plaintiffs' counsel affirms that he has communicated with opposing counsel prior to the filing of this motion and made a good faith attempt to resolve this matter. As such, Plaintiffs request this Court enter an Order directing Heritage Hauling Inc. to fully comply with Plaintiffs' Fourth Request for Production and produce the requested documents, as well as for costs and fees associated with having to file this motion.

Respectfully submitted,

s/ James B. Moore III

James B. Moore III, SC Bar #74268

Scott C. Evans, SC Bar #77684

George W. Bryan III, SC Bar #104088

Evans Moore, LLC

121 Screven Street

Georgetown, SC 29440

Telephone: 843-995-5000

Facsimile: 843-527-4128

james@evansmoorelaw.com

scott@evansmoorelaw.com

george@evansmoorelaw.com

Attorneys for the Plaintiffs

November 6, 2023
Georgetown, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB)
TRUCKING, LLC, and BRANDY COBB,)

Plaintiffs,)

v.)

DAVID ALAN BIGELOW, HERITAGE)
HAULING, INC., and BOGGS)
CONTRACTING, INC.,)

Defendants.)

MOTION TO COMPEL DISCOVERY
RESPONSES

PLEASE TAKE NOTICE that the undersigned, as attorneys for Plaintiffs will move before the Presiding Judge of the Circuit Court for the County of Georgetown, South Carolina, at such time and place as Your Honor may designate, pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, for an Order compelling Defendant Boggs Contracting, Inc. (“Boggs”) to fully respond to Plaintiffs’ Third Requests for Production to Defendant Boggs served on September 1, 2023. (Exhibit 1, Plaintiffs’ Third Requests for Production).

On November 6, 2023, Defendant Boggs responded to the discovery request; however, in response to Requests for Production Nos. 18, 22, 23, 25, 29, 30, 36, 37, 40, 41, 42, and 49 it has improperly asserted that either: (1) Plaintiff has equal access to the materials requested, (2) the information requested is privileged, or (3) that Boggs is no longer in possession of the requested materials. (Exhibit 2, Boggs’ Responses to Plaintiffs’ Third Requests for Production).

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Plaintiffs’ counsel affirms that he has communicated with opposing counsel prior to the filing of this motion and

made a good faith attempt to resolve this matter. (Exhibit 3, Rule 11 Letter). As such, Plaintiffs request this Court enter an Order directing Boggs Contracting, Inc. to fully comply with Plaintiffs' Third Requests for Production and produce the requested documents, as well as for costs and fees associated with having to file this motion.

As a basis for the requested relief, Plaintiffs show the following deficiencies in Defendant Boggs' discovery responses and objections.

A. REQUESTS FOR PRODUCTION NO. 18

In Requests for Production No. 18, Plaintiffs request that Boggs produce the Traffic Control Plan in place at the subject project site as approved by the South Carolina Department of Transportation. Boggs objects to providing a copy of the Traffic Control Plan specific to the contract awarded to Boggs. Boggs asserts that the document is equally accessible to Plaintiff. However, the terms of the contract itself dictate that this document is to be written by Boggs for the benefit of the South Carolina Department of Transportation and has not been produced via subpoena to the South Carolina Department of Transportation. Thus, this document, which was created by Boggs, is not equally accessible to the Plaintiffs. Plaintiffs ask that the Court order Boggs to withdraw its objection to Request for Production No. 18 and answer the request accordingly.

B. REQUESTS FOR PRODUCTION NOS. 22, 23, 25, 29, 30, 41, and 49

In Requests for Production Nos. 22, 23, 25, 29, 30, 41, and 49, Plaintiffs request a series of documents in the possession of Boggs. These documents include: correspondence between Defendants Boggs and Heritage Hauling, Inc. ("Heritage Hauling"); documents identifying Boggs' due diligence into the hiring of Heritage Hauling; proof of insurance documents; emails between Boggs and Heritage Hauling; documents detailing the load being hauled by Defendant Bigelow on the day of the subject incident; Boggs' internal

communications regarding the subject incident; and any communications with federal or state agencies regarding Boggs' compliance with applicable laws.

In response, Boggs objects on the grounds that it is no longer in possession of documents related to this request. Many, if not all, of these documents would have been created electronically. Even deleted and archived versions would be easily accessible by a technology expert. Plaintiff is willing to provide a technical expert to extract this information from Boggs' servers if necessary. Plaintiffs respectfully request that the Court issue an Order to allow the extraction of this information by an expert retained by the Plaintiff.

C. REQUEST FOR PRODUCTION NO. 36

In Request for Production No. 36, Plaintiffs request Copies of all documents reflecting all persons known to be present at the scene of the subject collision at any time in the 48 hours after the collision; their role; and what actions they took at the scene. Boggs objects on the grounds that these materials are privileged. Plaintiff disagrees with this response. Moreover, Boggs has not produced a privilege log delineating that any privileged materials exist. Plaintiff asks that the Court order Boggs to produce a privilege log identifying all privileged materials and that any non-privileged materials that are responsive this request be produced.

D. REQUEST FOR PRODUCTION NO. 37

In Request for Production No. 37, Plaintiffs request copies of all Boggs Contracting, Inc. policies, procedures, rules, guidelines, directives, manuals, handbooks, instructions that were in effect and applied to Heritage Hauling, Inc. at the time of the Subject Collision.

Boggs asserts that all internal policies, procedures, rules, guidelines, directives, manuals, handbooks, and instructions that were in effect and applicable to Heritage Hauling would be equally accessible to Plaintiff's counsel. Plaintiffs contend that Boggs' assertion is unfounded and inaccurate. These are internal documents created by Boggs. Plaintiff has no

access to them. Therefore, Plaintiffs request that the Court order Boggs to withdraw its objection and produce the documents requested in Request for Production No. 37.

E. REQUEST FOR PRODUCTION NO. 40

In Request for Production No. 40, Plaintiff requests all training manuals or other media that Boggs uses to train its employees. Boggs asserts that any training materials would be equally accessible to Plaintiff's counsel. As with Request for Production No. 37, this request seeks internal documents to which Plaintiff's counsel has no access and is solely in the control of Boggs. Accordingly, Plaintiffs ask that the Court order Boggs to fully respond to Request for Production No. 40.

F. REQUEST FOR PRODUCTION NO. 42

Request for Production No. 42 seeks all communication between Boggs and any third parties that relate to the subject incident. Boggs objects, claiming that the requested communications are privileged. Plaintiff is not requesting communications between Boggs and its attorneys. It is highly implausible that every communication Boggs had with third parties regarding the subject incident constitutes privileged communication. Moreover, no privilege log was provided in connection with this response. Therefore, Plaintiff requests that the Court order Boggs to identify any privileged communications on a privilege log and that any non-privileged materials that are responsive to this request be produced.

CONCLUSION

Therefore, for the reasons set forth above, Plaintiffs respectfully ask that this Court issue an Order requiring Defendant Boggs Contracting, Inc. to provide complete responses to Plaintiffs' Third Requests for Production Nos. 18, 22, 23, 25, 29, 30, 36, 37, 40, 41, 42, and 49.

Respectfully submitted,

EVANS MOORE, LLC

s/Scott C. Evans

Scott C. Evans, SC Bar #77684

James B. Moore, III, SC Bar #74268

121 Screven Street

Georgetown, SC 29440

Office: (843) 995-5000

Fax: (843) 527-4128

james@evansmoorelaw.com

scott@evansmoorelaw.com

CULBRETH LAW FIRM

Stephen E. Culbreth

Admitted Pro Hac Vice

P.O. Box 446

Wilmington, NC 28402

Office: (910) 763-3416

Fax: (910) 763-9975

JERRY L. SPIVEY LAW FIRM

Jerry L. Spivey

Admitted Pro Hac Vice

206 N. 4th Street, Suite 2

Wilmington, NC 28401

Office (910) 763-6585

Fax: (910) 763-6525

Georgetown, South Carolina
December 4, 2023

Exhibit 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB
 TRUCKING, LLC and BRANDY COBB,

Plaintiffs,

v.

DAVID ALAN BIGELOW, HERITAGE
 HAULING, INC. and BOGGS
 CONTRACTING, INC.,

Defendants.

PLAINTIFFS' THIRD SET OF
 REQUESTS FOR PRODUCTION TO
 THE DEFENDANT BOGGS
 CONTRACTING, INC.

**TO: JANET BROOKS HOLMES AND JOSEPH CATALANO, ATTORNEYS FOR
 THE DEFENDANTS BOGGS CONTRACTING, INC.**

The following requests for production are served on you pursuant to the provisions of South Carolina Rules of Civil Procedure 26 and 34. You are requested to produce each of the following described documents and things at the law offices of Evans Moore, LLC, located at 121 Screven Street, Georgetown, South Carolina on the 30th day following service of these discovery requests.

A. SPECIAL INSTRUCTIONS

In responding to the Plaintiffs' Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiffs believe are consistent with the Rules:

1. Unless otherwise requested, please produce all requested documents and things at the offices of your lead counsel at the time indicated in the Discovery Request.

2. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.

3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys, (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

4. Where documents and things exist which fall within the descriptive terms of one of the Plaintiff's Discovery Requests, and production of the same will be made by you, please produce such documents and things in a manner corresponding to the numbered request in which they are described, so that identification with the appropriate request can readily be made.

5. In addition to the original of any such requested documents, any request for a document also includes:

- a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
- b. any and all attachments to the original;
- c. any and all documents referred to in the original;
- d. any and all subsequent additions, deletions, substitutions, amendments, or modifications to the original of any sort.

6. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests without engaging in semantic arguments:

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary, by you through appropriate and necessary devices into reasonably usable and intelligible form.

"*Identify*", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for the document or thing if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing.

"*Identify*", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

"*Person*" includes any individual, public or private corporation, partnership, government agency, incorporated association, or unincorporated association.

"*Plaintiff*" means the Plaintiff in this action.

"*Senior Management*" means and refers to all members of management which if looking at an organizational chart include all members or department heads for the first 4 tiers of any organizational structure.

"*You*" and "*your*" mean and refer to the particular party to whom Plaintiff's Discovery Requests are specifically directed and who is undertaking to respond to them.

C. REQUEST FOR PRODUCTION

18. Please produce a copy of the Traffic Control Plan in place at the subject project site as approved by the South Carolina Department of Transportation.
19. Please produce a copy of any documentation, including the Traffic Control Plan, provided to Heritage Hauling, LLC concerning safety at the subject project site.
20. Please produce a copy of the Award of a Contract from the South Carolina Department of Transportation to Boggs Contracting, Inc. for the subject project site.
21. Please produce all documentation showing inspections to the traffic control devices at the subject project site.
22. Please produce any and all correspondence (email, text messages, or otherwise) between any employee of Boggs Contracting, Inc. and Heritage Hauling, Inc. referencing the February 3, 2022 crash.
23. Please produce a copy of any documentation identifying any due diligence of Boggs Contracting, Inc. and/or Boggs Transport, Inc. into Heritage Hauling, Inc. prior to entering into the Carrier-Broker Agreement on February 18, 2019.
24. Please provide a copy of all "delivery receipts" provided by Heritage Hauling to Boggs Contracting, Inc. during the time period of February 1, 2020 through February 4, 2022 as referenced in the Carrier-Broker agreement.
25. Please produce a copy of any and all documents establishing "proof of insurance" submitted to Boggs Contracting, Inc. by Heritage Hauling, Inc. as required pursuant to the Carrier-Broker agreement during the time period of Feb. 18, 2019 through December 31, 2022.
26. Please produce a copy of each document retention policy in effect for Boggs Contracting, Inc. at any time between the time of the Subject Collision and present.
27. Please produce copies of all reservation of rights letters and/or agreements regarding insurance coverage for the Subject Collision.
28. Please produce all documents setting forth the relationship between Boggs Contracting, Inc. and Heritage Hauling, Inc. This includes, but is not limited to all leases, employment contracts, and independent contractor agreements and other contracts, agreements, memorandum and the like.
29. Please produce copies of all e-mails between Boggs Contracting, Inc. and Heritage Hauling, Inc. for the time period beginning 30 days prior to the Subject Collision to the present.

30. Please produce all documents that identify any load being hauled by Bigelow (Heritage Truck No. 623) for Boggs Contracting, Inc during the time period of January 1, 2021 through February 3, 2022, including, by way of example and without limitation, all manifests, bills of lading, weight receipts, dispatch documents, content summaries, and documents that address the contents, ownership, pick-up, detainment, and delivery of the load.
31. Please produce a copy of every document related to any investigation done by or on behalf of Boggs Contracting, Inc. of the scene of the Subject Collision.
32. Please produce all documents authored by anyone working for or on behalf of Boggs Contracting, Inc. that set forth any facts relating to the Subject Collision (other than attorneys and/or consulting experts).
33. Please produce copies of all statements (written or recorded) of any person involved in the Subject Collision or of any witness with knowledge regarding the Subject Collision or the alleged damages.
34. Please produce color or digital file copies of all photographs, video, computer simulations, and any other documents depicting:
 - a. Any vehicle involved in the Subject Collision;
 - b. Any person involved in the Subject Collision;
 - c. The scene of the Subject Collision; and/or
 - d. Any evidence (roadway markings or other) relevant to the Subject Collision.
35. Copies of all reports relating to the Subject Collision including those prepared by Boggs Contracting, Inc. and those prepared by anyone working for or on behalf of Boggs Contracting, Inc. (except lawyers).
36. Copies of all documents reflecting all persons who to your knowledge were present at the scene of the Subject Collision at any time in the 48 hours after the collision; their role; and what actions they took at the scene.
37. Copies of all Boggs Contracting, Inc. policies, procedures, rules, guidelines, directives, manuals, handbooks, instructions that were in effect and applied to Heritage Hauling, Inc. at the time of the Subject Collision.
38. Copies of all diagrams, graphs, illustrations, photographs, charts, pictures, models, blow-ups, or any other document or thing, including electronically created charts, animations, or data that you intend to utilize as an exhibit, demonstrative exhibit, or aid in the trial of this case not previously supplied.
39. Copies of Bogg's policies, processes, and procedures for ongoing and periodic monitoring of a motor carrier's qualifications and compliance with FMCSA.

40. Copies of any training materials, PowerPoint slides, handouts, videos, or other materials Boggs uses in training its employees regarding the vetting, selection, monitoring, and hiring of—or brokering of goods to—motor carriers to haul freight on behalf of Boggs and/or its customers. *(This includes internal company training and external training by any third parties).*
41. All internal Boggs communications (regardless of electronic format, medium, or application) regarding the subject collision or the subject load.
42. All communications of any kind (regardless of electronic format, medium, or application) between Boggs and any third party relating to the subject collision or the subject load.
43. All documents that refer to, relate to, and/or reflect Boggs's agreement or undertaking to transport the subject load as a motor carrier.
44. All receipts, billing, accounts receivable, invoices, correspondence, or other documents which show or reflect the terms of payment and the amounts of money or other compensation Boggs received in conjunction with the subject load.
45. Boggs' motor carrier selection criteria that were in effect on February 3, 2022.
46. Boggs' motor carrier selection criteria that is currently in effect.
47. Copies of all documents sent or received from any governmental agency regarding the subject collision, the driver involved in the subject collision, or any other subject that is part of the basis of this lawsuit.
48. Any communications received by Boggs from the FMCSA or other governmental agencies in the past five years concerning the selection, hiring, vetting, or monitoring of unsafe, inexperienced, dangerous, or incompetent motor carriers.
49. Documents related to any kind of communication between any federal and/or state agency with Boggs that involved compliance (or noncompliance) with state and/or federal laws and/or regulations in the past five years. This would include, but is not limited to, all letters, interventions, complaints, warnings, citations, investigations, reports, and safety ratings.

EVANS MOORE, LLC



Scott C. Evans, SC Bar #77684
 James B. Moore III, SBar#74268
 George W. Bryan III, SC Bar #104088
 121 Screven Street

Georgetown, SC 29440
Office: (843) 995-5000
Facsimile: (843) 527-4128

CULBRETH LAW FIRM
Stephen E. Culbreth, *Admitted Pro Hac Vice*
P.O. Box 446
Wilmington, NC 28402
Office: (910) 763-3416
Facsimile: (910) 763-9975

JERRY L. SPIVEY LAW FIRM
Jerry L. Spivey, *Admitted Pro Hac Vice*
206 N. 4th Street, Suite 2
Wilmington, NC 28401
Office: (910) 763-6585
Facsimile: (910) 763-6525

Attorneys for the Plaintiff

Georgetown, SC
September 1, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB)
TRUCKING, LLC and BRANDY COBB,)
Plaintiffs,)

v.)

CERTIFICATE OF MAILING

DAVID ALAN BIGELOW, HERITAGE)
HAULING, INC. and BOGGS)
CONTRACTING, INC.,)
Defendants.)

I hereby certify that the **Plaintiff's Third Requests for Production to Defendant Boggs Contracting, Inc.** was served upon Janet Brooks Holmes and Joseph Catalano, Attorneys for the Defendant Boggs Contracting, Inc., The McKay Firm, P.A., P.O. Drawer 7217, Columbia, SC 29202, with a copy to Matthew Sanford, Gallivan White Boyd, Attorneys for Defendant David Alan Bigelow and Heritage Hauling, Inc, to Post Office Box 22768, Charleston, SC 29413, on September 1, 2023.

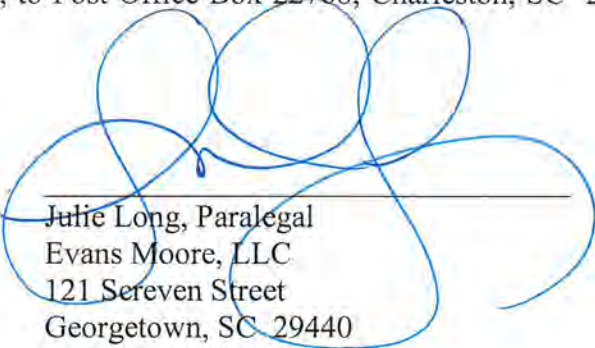

Julie Long, Paralegal
Evans Moore, LLC
121 Sereven Street
Georgetown, SC 29440
Telephone (843) 995-5000
Facsimile (843) 527-4128

Exhibit 2

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	
	)	
Ryan Cobb, Malon Cobb, Cobb	)	
Trucking, LLC and Brandy Cobb,	)	Civil Action No. 2022-CP-22-00739
	)	
Plaintiffs,	)	DEFENDANT BOGGS CONTRACTING,
	)	INC.'S RESPONSES TO PLAINTIFFS'
v.	)	THIRD REQUESTS FOR PRODUCTION
	)	
David Alan Bigelow, Heritage Hauling,	)	
Inc. and Boggs Contracting, Inc.,	)	
	)	
Defendants.	)	
_____	)	
	)	

TO: SCOTT C. EVANS, ESQUIRE AND JAMES B. MOORE, III, ESQUIRE, ATTORNEYS
FOR PLAINTIFFS:

Defendant Boggs Contracting, Inc. (hereinafter "Defendant" and/or "Boggs"), pursuant to Rule 34 of South Carolina Rules of Civil Procedure, by and through its undersigned counsel hereby responds to the Plaintiffs' Third Requests for Production as follows:

REQUESTS FOR PRODUCTION

18. Please produce a copy of the Traffic Control Plan in place at the subject project site as approved by the South Carolina Department of Transportation.

RESPONSE:

This Defendant objects to producing material equally accessible to Plaintiff's counsel.

Notwithstanding and subject to this objection, This Defendant would have been subject to the SCDOT's Standard Specifications for Highway Construction, and the SCDOT Construction Manual. The SCDOT's Standard Specifications are publicly available. Special Provisions regarding traffic control are contained in the SCDOT

Contract already in possession of Plaintiff's counsel via subpoena.

19. Please produce a copy of any documentation, including the Traffic Control Plan, provided to Heritage Hauling, LLC concerning safety at the subject project site.

RESPONSE:

See Response to Request for Production 18.

20. Please produce a copy of the Award of a Contract from the South Carolina Department of Transportation to Boggs Contracting, Inc. for the subject project site.

RESPONSE:

Responsive documents are already in the possession of Plaintiffs' counsel. Please refer to the SCDOT Contract.

21. Please produce all documentation showing inspections to the traffic control devices at the subject project site.

RESPONSE:

This Defendant objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, this Defendant is unsure what Plaintiff means by the terms "inspections" and "traffic control devices."

Further responding, this Defendant contracted with Stay Alert Safety Services regarding traffic control as defined in the SCDOT Contract. Stay Alert Safety Services handled traffic control at the jobsite and may have material responsive to this Request.

22. Please produce any and all correspondence (email, text messages, or otherwise) between any employee of Boggs Contracting, Inc. and Heritage Hauling, Inc. referencing the February 3, 2022 crash.

RESPONSE:

This Defendant objects to this Request on the grounds that it calls for material

protected by work product privilege, attorney client privilege, that it calls for material prepared in anticipation of litigation, that it is not reasonably calculated to lead to the discovery of admissible evidence, and that it calls for material not required for disclosure per Rule 26, SCRCP.

Subject to and notwithstanding these objections, this Defendant is not in possession of material responsive to this request.

23. Please produce a copy of any documentation identifying any due diligence of Boggs Contracting, Inc. and/or Boggs Transport, Inc. into Heritage Hauling, Inc. prior to entering into the Carrier-Broker Agreement on February 18, 2019.

RESPONSE:

This Defendant conducted searches relating to Defendant Heritage's licensing and safety records through the Department of Transportation and/or Federal Motor Carrier Safety Administration. These documents are publicly available and accessible to Plaintiff.

24. Please provide a copy of all "delivery receipts" provided by Heritage Hauling to Boggs Contracting, Inc. during the time period of February 1, 2020 through February 4, 2022 as referenced in the Carrier-Broker agreement.

RESPONSE:

This Defendant objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence.

This Defendant previously produced copies of the Mullins Asphalt Plant's job ticket relating to the subject load transported by Defendant Bigelow on February 3, 2022.

Delivery receipts for two years prior to the subject accident do not relate to the facts underlying this case and are not likely to lead to the discovery of admissible evidence.

This Defendant further objects to this request on the grounds that it is unduly burdensome to search for two years of job tickets or "delivery receipts". A ticket is generated for each load hauled. This Defendant estimates that thousands of these tickets exist within the timeframe specified by the Request, and these tickets are not kept for longer than required by the SCDOT.

25. Please produce a copy of any and all documents establishing "proof of insurance" submitted to Boggs Contracting, Inc. by Heritage Hauling, Inc. as required pursuant to the Carrier-Broker agreement during the time period of Feb. 18, 2019 through December 31, 2022.

RESPONSE:

This Defendant is not in possession of material responsive to this information.

26. Please produce a copy of each document retention policy in effect for Boggs Contracting, Inc. at any time between the time of the Subject Collision and present.

RESPONSE:

This Defendant adheres to the retention requirements of applicable federal and state law, but does not have a written policy regarding document retention.

27. Please produce copies of all reservation of rights letters and/or agreements regarding insurance coverage for the Subject Collision.

RESPONSE:

This Defendant objects to this Request on the grounds that it calls for material that constitutes work product, that is not reasonably calculated to lead to the discovery of admissible evidence, and that it calls for material not required for disclosure under Rule 26, SCRCP.

This Defendant has previously provided a copy of the Carrier-Broker Agreement that would be responsive to this Request. Please refer to BOGGS AGREEMENT 0001-0020.

28. Please produce all documents setting forth the relationship between Boggs Contracting, Inc. and Heritage Hauling, Inc. This includes, but is not limited to all leases, employment contracts, and independent contractor agreements and other contracts, agreements, memorandum and the like.

RESPONSE:

This Defendant objects to this Request on the grounds that it is vague and ambiguous. Further, this Defendant objects to this request on the grounds that it is not reasonably calculated to lead to the discovery admissible evidence, and that it calls for material not required for disclosure per Rule 26, SCRCP.

Notwithstanding and subject to these objections, this Defendant has previously

provided a copy of the Carrier-Broker Agreement that would be responsive to this Request. Please refer to BOGGS AGREEMENT 0001-0020.

29. Please produce copies of all e-mails between Boggs Contracting, Inc. and Heritage Hauling, Inc. for the time period beginning 30 days prior to the Subject Collision to the present.

RESPONSE:

This Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad and that it is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and notwithstanding these objections, this Defendant is not in possession of material related to this Request.

30. Please produce all documents that identify any load being hauled by Bigelow (Heritage Truck No. 623) for Boggs Contracting, Inc during the time period of January 1, 2021 through February 3, 2022, including, by way of example and without limitation, all manifests, bills of lading, weight receipts, dispatch documents, content summaries, and documents that address the contents, ownership, pick-up, detainment, and delivery of the load.

RESPONSE:

This Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad and that it is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and notwithstanding this Request, this Defendant has produced the job ticket related to truck 623 on the date of the subject accident, and does not have additional responsive records relating to Heritage's Truck 623. Please refer to "WEIGHT SHEET_001."

31. Please produce a copy of every document related to any investigation done by or on behalf of Boggs Contracting, Inc. of the scene of the Subject Collision.

RESPONSE:

This Defendant objects to this Request on the grounds that it calls for material that constitutes work product, that is not reasonably calculated to lead to the discovery of admissible evidence, material prepared in anticipation of litigation, and that it calls for material not required for disclosure under Rule 26, SCRCP.

Notwithstanding these objections, this Defendant previously provided a copy of Bogg's internal incident report prepared in the ordinary course of business.

32. Please produce all documents authored by anyone working for or on behalf of Boggs Contracting, Inc. that set forth any facts relating to the Subject Collision (other than attorneys and/or consulting experts).

RESPONSE:

This Defendant objects to this Request on the grounds that it calls for material that constitutes work product, that is not reasonably calculated to lead to the discovery of admissible evidence, material prepared in anticipation of litigation, and that it calls for material not required for disclosure under Rule 26, SCRCP.

Notwithstanding these objections, this Defendant previously provided a copy of Bogg's internal incident report prepared in the ordinary course of business. Please refer to "Incident Report Boggs 2-3-2022."

33. Please produce copies of all statements (written or recorded) of any person involved in the Subject Collision or of any witness with knowledge regarding the Subject Collision or the alleged damages.

RESPONSE:

None other than any statements previously produced.

34. Please produce color or digital file copies of all photographs, video, computer simulations, and any other documents depicting:
- a. Any vehicle involved in the Subject Collision;
 - b. Any person involved in the Subject Collision;
 - c. The scene of the Subject Collision; and/or
 - d. Any evidence (roadway markings or other) relevant to the Subject Collision.

RESPONSE:

None other than any photographs previously produced during the course of discovery. Please refer to "BOGGS PHOTOS_001-039"

35. Copies of all reports relating to the Subject Collision including those prepared by Boggs Contracting, Inc. and those prepared by anyone working for or on behalf of Boggs Contracting, Inc. (except lawyers).

RESPONSE:

This Defendant objects to this Request on the grounds that it calls for material that constitutes work product, that is not reasonably calculated to lead to the discovery of admissible evidence, material prepared in anticipation of litigation, and that it calls for material not required for disclosure under Rule 26, SCRCP.

Notwithstanding these objections, this Defendant previously provided a copy of Bogg's internal incident report prepared in the ordinary course of business. Please refer to "Incident Report Boggs 2-3-2022."

36. Copies of all documents reflecting all persons who to your knowledge were present at the scene of the Subject Collision at any time in the 48 hours after the collision; their role; and what actions they took at the scene.

RESPONSE:

This Defendant objects to this Request to the extent that it calls for material protected by work product privilege, that it calls for the production of material prepared in anticipation of litigation, that it calls for material not reasonably calculated to lead to the discovery of admissible evidence, and that it calls for material not required for disclosure per Rule 26, SCRCP.

37. Copies of all Boggs Contracting, Inc. policies, procedures, rules, guidelines, directives, manuals, handbooks, instructions that were in effect and applied to Heritage Hauling, Inc. at the time of the Subject Collision.

RESPONSE:

Please refer to Response to Request 18.

38. Copies of all diagrams, graphs, illustrations, photographs, charts, pictures, models, blow-ups, or any other document or thing, including electronically created charts, animations, or data that you intend to utilize as an exhibit, demonstrative exhibit, or aid in the trial of this case not previously supplied.

RESPONSE:

Defendant has not yet determined which exhibits it intends to introduce at trial. The Defendant will Supplement if additional information during the Course of Litigation.

39. Copies of Bogg's policies, processes, and procedures for ongoing and periodic monitoring of a motor carrier's qualifications and compliance with FMCSA.

RESPONSE:

This Defendant conducted searches relating to Defendant Heritage's licensing and safety records through the Department of Transportation and/or Federal Motor Carrier Safety Administration. These documents are publicly available and accessible to Plaintiff.

40. Copies of any training materials, PowerPoint slides, handouts, videos, or other materials Boggs uses in training its employees regarding the vetting, selection, monitoring, and hiring of-or brokering of goods to-motor carriers to haul freight on behalf of Boggs and/or its customers. *(This includes internal company training and external training by any third parties).*

RESPONSE:

Please refer to Response to Request 18.

41. All internal Boggs communications (regardless of electronic format, medium, or application) regarding the subject collision or the subject load.

RESPONSE:

Defendant objects to this Request on the grounds that it calls for material prepared in anticipation of litigation, work product or material protected by work product privilege, to the extent that it calls for material protected by attorney-client privilege and that it is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and notwithstanding these objections, this Defendant does not possess responsive documents maintained in the ordinary course of business.

42. All communications of any kind (regardless of electronic format, medium, or application) between Boggs and any third party relating to the subject collision or the subject load.

RESPONSE:

Defendant objects to this Request on the grounds that it calls for material prepared in anticipation of litigation, work product or material protected by work product privilege, to the extent that it calls for material protected by attorney-client privilege and that it is not reasonably calculated to lead to the discovery of admissible evidence.

43. All documents that refer to, relate to, and/or reflect Bogg's agreement or undertaking to transport the subject load as a motor carrier.

RESPONSE:

Not applicable to this Defendant.

44. All receipts, billing, accounts receivable, invoices, correspondence, or other documents which show or reflect the terms of payment and the amounts of money or other compensation Boggs received in conjunction with the subject load.

RESPONSE:

This Defendant objects to this Request on the grounds that it is vague, ambiguous, based on a false premise, and calls for information equally accessible to Plaintiff.

This Defendant is not paid by loads delivered to the project. This Defendant is paid per the terms of the SCDOT Contract, and never received any compensation related to the subject load. To the extent that this Request calls for money paid by this Defendant for the load, please refer to "WEIGHT SHEET_001."

45. Boggs' motor carrier selection criteria that were in effect on February 3, 2022.

RESPONSE:

This Defendant conducted searches relating to Defendant Heritage's licensing and safety records through the Department of Transportation and/or Federal Motor Carrier Safety Administration. These documents are publicly available and accessible to Plaintiff.

46. Boggs' motor carrier selection criteria that is currently in effect.

RESPONSE:

This Defendant objects to this Request on the grounds that it is not likely to lead to the discovery of admissible evidence and calls for inadmissible evidence per Rule 407, SCRE.

47. Copies of all documents sent or received from any governmental agency regarding the subject collision, the driver involved in the subject collision, or any other subject that is part of the basis of this lawsuit.

RESPONSE:

This Defendant has already produced all records responsive to this Request. See SCDPS_001-193.

48. Any communications received by Boggs from the FMCSA or other governmental agencies in the past five years concerning the selection, hiring, vetting, or monitoring of unsafe, inexperienced, dangerous, or incompetent motor carriers.

RESPONSE:

Defendant is not in information responsive to this Request.

49. Documents related to any kind of communication between any federal and/or state agency with Boggs that involved compliance (or noncompliance) with state and/or federal laws and/or regulations in the past five years. This would include, but is not limited to, all letters, interventions, complaints, warnings, citations, investigations, reports, and safety ratings.

RESPONSE:

This Defendant objects to this request on the grounds that it is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding and subject to his request, this Defendant is not in possession of material responsive to this Request.

This Defendant reserves the right to supplement this Response as additional information becomes available during the course of discovery.

[THIS AREA INTENTIONALLY LEFT BLANK]

Respectfully submitted,

Joseph A. Catalano

Janet Brooks Holmes; SC Bar No: 11826

Joseph A. Catalano; SC Bar No.: 102441

THE MCKAY FIRM, P.A.

3700 Forest Dr., Ste. 404 (29204)

P.O. Box 7217

Columbia, SC 29202

Tel: (803) 256-4645

Email: JanetHolmes1@mac.com

JHolmes@McKayFirm.com

Email: JCatalano@McKayFirm.com

Attorneys for Defendant Boggs Contracting, Inc.

Columbia, South Carolina
November 6, 2023

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 6th, 2023, a copy of the foregoing *Defendant Boggs Contracting, Inc.'s Responses to Plaintiffs' Third Requests for Production* was duly served on opposing counsel by depositing same in the United States Mail, first-class, postage prepaid, addressed as follows:

Scott C. Evans
James B. Moore, III
Evans Moore, LLC
121 Screven Street
Georgetown, SC 29440
scott@evansmoorelaw.com
james@evansmoorelaw.com

Stephen E. Culbreth
PO Box 446
514 Chestnut St.
Wilmington, NC 28402
culbrethlaw@juno.com

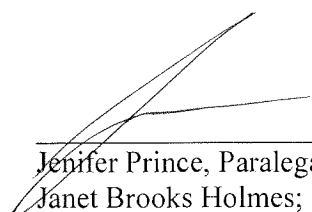
Jerry L. Spivey
820 Santa Maria Ave.
Wilmington, NC 28411
jspivey1@ec.rr.com

Attorneys for Plaintiffs

Kenneth Michael Barfield
Barnwell, Baley, Patterson & Helms, LLC
211 King St., Ste. 300 (29401)
PO Drawer H
Charleston, SC 29402
mbarfield@barnwell-whaley.com
Attorneys for Cincinnati Insurance Company

Curtis Ott
GALLIVAN, WHITE & BOYD, P.A.
40 Calhoun Street, Suite 315
Charleston, South Carolina 29401
cott@gwblawfirm.com

*Attorneys for Defendants Heritage Hauling,
Inc. and David Alan Bigelow*



Jennifer Prince, Paralegal to:
Janet Brooks Holmes; SC Bar No: 11826
Joseph A. Catalano; SC Bar No.: 102441
THE MCKAY FIRM, P.A.
3700 Forest Dr., Ste. 404 (29204)
P.O. Box 7217
Columbia, SC 29202
Tel: (803) 256-4645
Email: JanetHolmes1@mac.com
JHolmes@McKayFirm.com
Email: JCatalano@McKayFirm.com
Attorneys for Defendant Boggs Contracting, Inc.

Exhibit 3



November 27, 2023

VIA Electronic Mail

Janet Brooks Holmes
Joseph A. Catalano
The McKay Law Firm
P.O. Box 7217
Columbia, SC 29202

Re: Ryan Cobb, Malon Cobb, Cobb Trucking, LLC & Brandy
Cobb v. David Alan Bigelow, et al Case No.: 2022-CP-22-
00739

Dear Janet and Joseph,

We are in receipt of Defendant Boggs Contracting, Inc.'s ("Boggs") responses to Plaintiffs' Third Request for Production. I am writing this letter in hopes that we can avoid a motion to compel based on the objections asserted.

In response to Requests for Production Admission No. 18, Boggs objects to providing a copy of the Traffic Control Plan specific to the contract awarded to Boggs. Boggs asserts that the document is equally accessible to Plaintiff. However, the terms of the contract itself dictate that this document is to be produced by Boggs and has not been produced via subpoena to the South Carolina Department of Transportation. Thus, the document created by your client is not equally accessible to the Plaintiff and we would request that this objection be withdrawn and the request answered fully.

In response to Requests for Production Nos. 22, 23, 25, 29, 30, 41, and 49, Boggs has objected on the grounds that it is no longer in possession of documents related to this request. As many of these documents would have been created electronically, even deleted and archived versions will be easily accessible by a technology expert. Plaintiff would be happy to provide a technical expert to extract this information from the Boggs servers. Please advise whether Boggs will consent to this request, provide its own employee with the technical knowledge necessary to extract and produce this information, or whether a Court Order to allow the extraction of this information by an expert retained by the Plaintiff will be necessary.

In response to Request for Production No. 36, Boggs has objected on the grounds that these materials are privileged. Plaintiff must disagree with this response, and would also note that no privilege log was provided to the extent that any privileged materials exist. Plaintiff would ask that any privileged materials be identified on a privilege log and that any non-

privileged materials be produced.

In response to Request for Production No. 37, Boggs asserts that all internal policies, procedures, rules, guidelines, directive, manuals, handbooks, and instructions that were in effect and applicable to Heritage Hauling would be equally accessible to Plaintiff's counsel. As these are internal documents created by your client, this is not accurate. As such, we would ask that all objections be withdrawn and this request be answered fully.

In response to Request for Production No. 40, Boggs asserts that any training materials would be equally accessible to Plaintiff's counsel. Again, this request seeks internal documents to which Plaintiff's counsel has no access. For this reason, we would ask that all objections be withdrawn and this request be answered fully.

In response to Request for Production No. 42, Boggs objects in that the requested communications are privileged. No privilege log was provided in connection with this response. Plaintiff would ask that any privileged materials be identified on a privilege log and that any non-privileged materials be produced.

We would ask that these responses be supplemented by Friday, December 1, 2023. After that time, we will reserve the right to seek Court intervention. Should you need additional time to compile these responses, please do not hesitate to reach me directly and I would be happy to accommodate.

Very truly yours,

s/Scott C. Evans

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GEORGETOWN) CIVIL ACTION 2021-CP-45-00389

**RYAN COBB, MALON COBB, COBB)
TRUCKING, LLC, AND BRANDY COBB,)**

Plaintiffs,

V.

**DAVID ALAN BIGELOW, HERITAGE
HAULING, INC., AND BOGGS
CONTRACTING, INC.,**

Defendants.

**MOTION TO COMPEL DISCOVERY
FROM DEFENDANT BOGGS
CONTRACTING, INC.**

Come now the Plaintiffs who hereby move pursuant to Rules 11, 26, 34, and 37 of the South Carolina Rules of Civil Procedure, for an Order compelling Defendant Boggs Contracting, Inc. to provide verification of Defendant Boggs' Supplemental Answers to Plaintiff's Third Requests for Production and to fully respond to Plaintiff Second Request for Production. Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Plaintiffs' counsel affirms that he has made good faith attempts to communicate and resolve these issues with opposing counsel prior to the filing of this Motion.

At the outset, Plaintiffs apologize to the Court for filing yet another Motion to Compel in this matter. During the course of this litigation, Plaintiffs have diligently attempted to gather their evidence and respectfully requested relevant, discoverable materials from Defendants. Plaintiffs have attempted to correspond with Defendant Boggs in particular and made every concession in effort to resolve discovery matters without the Court's intervention. At every turn, Plaintiffs have been met with woeful opposition and an omnipresent pattern of non-responsiveness from

Defendant Boggs. These issues are not caused by counsel for Defendant Boggs, who are actively engaged in this case. These issues appear to stem from corporate Defendant Boggs directly. Plaintiffs have endured these issues since day one of this litigation and have been forced to file multiple motions to compel discovery, seeking discovery from Defendants, all of which have either been granted by the Court or resolved on the eve of the Court's intervention. Plaintiffs do not want to further burden the Court with these issues, but with this case barreling towards a trial roster later this year, we are left with no other alternative.

Legal Standard

Rule 26 of the South Carolina Rules of Civil Procedure provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 26(b)(1), SCRCP.

South Carolina Courts have long recognized that “dockets must be kept current largely by settlements, [and therefore] litigants and attorneys should be allowed liberal discovery.” S.C. State Highway Dep’t v. Booker, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973). “[T]he rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed.” Samples v. Mitchell, 329 S.C. 105, 113-114, 495 S.E.2d 213, 215 (Ct. App. 1997) (citing Downey v. Dixon, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987)). The heart of the discovery rules relies on the premise of “full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party.” Id. at 113, 495 S.E.2d at 217 (citing State Highway Dep’t, 260 S.C. at 252, 195 S.E.2d at 619).

Accordingly, litigants are entitled to “obtain discovery regarding any matter that is not privileged so long as it is relevant to the subject matter involved in the pending claim.” In re Mt. Hawley Ins. Co., 427 S.C. 159, 167, 829 S.E.2d 707, 712 (2019) (citing Rule 26(b)(1), SCRCP).

Pursuant to Rule 37, “[i]f a party fails to provide complete responses to interrogatories or requests for production, the discovering party may move for an order compelling an answer...” Rule 37(a)(2), SCRCP. Prior to moving to compel discovery, a party must make a good faith effort to confer with opposing counsel concerning the discovery disputes. Rule 11(a), SCRCP.

Argument

I. Verification of Defendant Boggs’ Supplemental Answers to Plaintiff’s Third Requests for Production.

The purpose of the signature-under-oath requirement in the Rules of Civil Procedure is simple: it ensures that some individual takes responsibility for the accuracy and truthfulness of the answers being produced, creating evidence which can be used for impeachment purposes. Rule 11(a) reiterates this specific requirement cannot be ignored: “**Except when otherwise specifically provided for by rule or statute**, pleadings need not be verified by or accompanied by affidavit.” Rule 11(a), SCRCP, emphasis added.

As noted by the Hon. Clifton B. Newman:

It is obvious that interrogatory answers are not pleadings, although Rule 11 would require an attorney to sign the responses of “another paper.” Moreover, even if interrogatory answers are deemed to be pleadings for the purpose of the issue at bar, Rule 33 would be a specific exception pointing to the requirement that “each interrogatory...be answered...under oath.” Furthermore, Rule 11(c) pertaining to *Affidavits and Verifications* provides that:

Affidavits or verifications permitted or authorized under these Rules shall be written declarations by a party or his attorney of record or of a witness, **sworn to or affirmed by an officer authorized to administer oaths**, that the affiant knows the facts to be true of his own knowledge, except those matters stated on information and belief and as to those matters that he believes them to be true.

Finally, Rule 33 provides that “the answers are to be signed by the person making them...” in this case it is the Defendant Stonehedge Construction Co., Inc. that is making the answers. Rule 33 further provides that “...any party may serve upon any other party written interrogatories to be **answered by the party served or if the party served is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party**. Clearly counsel for the defendant in this case is not the party and is not a competent person under the rules to answer interrogatories for the defendant. The federal rules also contain the oath requirement, which is not relaxed merely because of difficulties relating to the availability of the answering party. 10 Fed. Pro. L. Ed. *Discovery and Depositions*, §26:311. See also, *Brennan v. Glens Falls Nat. Bank & Trust Co.*, 19 Fed. Rules Serv. 2d 721 (N.D. N.Y. 1974) (stating that plaintiff’s answers to interrogatories did not comply with FRCP 33 in that they were signed by the plaintiff’s attorney rather than the plaintiff).

In short, the attorney for the defendant may not sign “as if” the party had given the answers under oath. The oath of the party or its agent, if the party is a corporation, is required.

Like v. Stonehedge Construction Co., Inc., et. al., 2002-CP-32-3562, *Order Compelling Discovery*, June 26, 2003, p. 3-4 (emphasis added).

Plaintiff’s Third Requests for Production to Defendant Boggs were served on September 1, 2023. (Exhibit 1, Plaintiffs’ Third Requests for Production). Defendant Boggs’ Responses to Plaintiffs’ Third Requests for Production contained several deficiencies. Those deficiencies, coupled with Defendant Boggs’ unwillingness to honor their obligations under the discovery rules or communicate in response to multiple correspondence regarding said deficiencies, forced Plaintiffs to file a Motion to Compel complete and appropriate responses on December 4, 2023. (Exhibit 2, “Motion to Compel”).

The Motion to Compel was scheduled for a hearing before Judge Seals on February 5, 2024. On January 31, 2024, counsel for both parties engaged in a conference call in an attempt to resolve the remaining discovery issues. On February 1, 2024, Defense counsel served Defendant Boggs Contracting, Inc.’s Supplemental Responses to Plaintiffs’ Third Requests for Production (Exhibit 3, “Supplemental Responses”). Upon review of Boggs’ Supplemental

Responses, Plaintiffs' counsel became concerned about the authenticity and veracity of Defendant Boggs' responses.

For example, in response to Plaintiffs Request for Production 22¹, Boggs Contracting, Inc.—a large multidistrict construction company accepting multimillion dollar government construction contracts—claims that there are no communications whatsoever between Boggs and its co-defendant Heritage Hauling, Inc. regarding the subject incident, which resulted in catastrophic injuries to multiple individuals. Plaintiffs' concerns prompted a conference call on February 1, 2024. During that conference call, Defense counsel agreed to provide written verification of Boggs' Supplemental Responses within fourteen (14) days and promptly confirmed the same via email. (Exhibit 4, Email Chain of February 1, 2024). Pursuant to Defense counsel's promise of providing written verifications, Plaintiffs agreed to withdraw their Motion to Compel against Boggs that was scheduled for a hearing later that day.

However, fourteen days came and went, and Plaintiffs did not receive the written verifications. With no verifications on February 15, 2024, and no communications from Boggs whatsoever, Plaintiffs' counsel emailed Defense counsel to inquire about their status and provide a extra time if necessary. (Exhibit 5, Email Chain of February 15, 2024). To date, representatives of Defendant Boggs have failed to provide the promised verifications.

Beyond the fact that Defense counsel agreed to provide written verifications and South Carolina's rules of civil procedure permit the same, there is an immediate and pressing need for Plaintiffs to receive these verifications. After multiple communications to Defense counsel requesting dates for a 30(b)(6) deposition of Boggs Contracting, Inc., Plaintiffs' counsel was forced to blind notice said deposition for March 14, 2024. The promised verifications will play

¹ 22. Please produce any and all correspondence (email, text messages, or otherwise) between any employee of Boggs Contracting, Inc. and Heritage Hauling, Inc. referencing the February 3, 2022 crash.

an integral role in the questioning of Boggs' 30(b)(6) designee and Plaintiffs' case will likely be prejudiced without the ability to question Boggs' 30(b)(6) deponent regarding these verified answers to discovery.

Therefore, Plaintiffs ask that the Court enter an Order compelling Defendant Boggs to provide verification of Defendant Boggs' Supplemental Answers within twenty-four (24) hours from the date that the Court rules on this Motion.

II. Responses to Plaintiffs' Second Requests for Production.

Plaintiffs served their Second Set of Requests for Production to Defendant Boggs' on July 21, 2023. (Exhibit 6, Plaintiffs' Second Request for Production.) The materials requested in Plaintiffs' Second Request For Production include requests for financial summary documents. Specifically, in Request for Production Nos. 18 and 19, Plaintiff requested copies of Boggs' filed tax returns, as well as accountant's statements (income statement, balance sheet, and statement of cash flows). Plaintiffs would like to clarify at this time that Plaintiffs seek filed tax returns and accounting statements for the previous three years, not the three years leading up to the accident. Plaintiffs note that Boggs' ability to pay at the time a verdict is rendered is most relevant to an award of punitive damages, rather than Boggs' financial situation at the time of the accident.

Plaintiffs Second Request for Production to Boggs went ignored and completely unanswered. Plaintiffs' counsel emailed one final time regarding these requests and gave Boggs until February 29, 2024, to provide the requested material. Like many other communications to Boggs, this to, garnered no response and Plaintiffs have yet to receive the requested materials.

The information requested in Plaintiffs' Second Request for Production to Defendant Boggs is identical to the information that Plaintiffs requested from Defendant Heritage Hauling in Plaintiffs' Second Request for Production to Defendant Heritage Hauling, Inc. After Hertiage

Hauling refused to furnish said documentation to Plaintiffs, this Court compelled Heritage to produce the same by Order dated February 20, 2024. (Exhibit 7, Order on Motion to Compel). The grounds on which Plaintiffs move for production of Boggs' financial information is likewise identical to the grounds on which the Court granted Plaintiffs' Motion to Compel Hertiage Hauling's financial information.

Plaintiffs' Complaint is replete with allegations that Defendants' conduct arises to the level of recklessness. Plaintiffs seek to recover damages for catastrophic injuries that Plaintiffs sustained as a direct and proximate result of the collision. Plaintiffs properly pleaded and currently seek punitive damages in this matter. Punitive damages are recoverable for "negligence so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness." Bell v Atl. Coast Line R. Co., 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943). A claim for punitive damages brings the defendant's ability to pay into the realm of relevant facts for the jury's consideration. Gamble v Stevenson, 305 S.C. 104, 111-12 406 S.E.2d 350, 354 (1991).

On July 21, 2023, Plaintiffs served supplemental discovery responses identifying Dr. Wood as an expert expected to testify at trial. Dr. Wood has been disclosed to offer expert testimony regarding Heritage Hauling's ability to pay a punitive damages verdict. As this Court sighted favorably in its February 20, 2024 Order, in Duncan v. Ford Motor Company, the South Carolina Court of Appeals held as follows:

[t]he trial court properly allowed Wood to testify about Ford's ability to respond to a punitive damages award. During his testimony, Wood testified beyond the mere net worth of Ford and informed the jury of Ford's assets, gross profits, and the amount of compensation it paid executives. Appellate courts in our state have allowed testimony beyond a defendant's mere net worth to establish its ability to pay a punitive damages award. *See Bryant v. Waste Mgmt., Inc.*, 342 S.C. 159, 170, 536 S.E.2d 380, 386 (Ct.App.2000) (allowing testimony of the defendant's assets, liabilities, net worth, shareholders' equity, operating revenue, and net income per day to establish whether the defendant could pay punitive damages). In addition, Wood's testimony concerning the state of Ford's economic affairs allowed the jury

to follow the instructions of the trial court and “punish the defendant but not [e]ffect economic bankruptcy.” Therefore, the trial court properly allowed Wood to testify about Ford's ability to pay punitive damages and such testimony did not offend the Due Process Clause.

Duncan v. Ford Motor Company, 385 S.C. 119, 141, 682 S.E.2d 877, 888 (Ct. App. 2009)(footnote omitted).

Plaintiffs have attached the affidavit of Dr. Wood indicating that he is unable to provide the expert analysis regarding the ability of Defendant Boggs’ ability to pay a punitive verdict without first reviewing the information requested in discovery. (Exhibit 8, Affidavit of Dr. Oliver Wood). This information is reasonably calculated to lead to the discovery of admissible evidence, and it will be necessary for the jury to fully and accurately assess the question of punitive damages at the trial in this case. This information will be directly admissible through the testimony of Dr. Wood and will be necessary for Dr. Wood’s expert opinions to be properly supported pursuant to Rule 26. The documents, several of which are required to be prepared and maintained by both state and federal law, are not requested in an attempt to annoy, embarrass, or oppress the corporate defendants, but to accurately inform the jury.

For these reasons, the Plaintiff respectfully requests that this Court grant Plaintiff’s Motion and compel Boggs to produce financial documents including filed tax returns as well as accountant’s statements (income statement, balance sheet, and statement of cash flows) for the previous three years.

III. Sanctions

Plaintiffs’ counsel is typically reluctant to seek sanctions against opposing parties. However, the egregiousness and pervasiveness of Defendant Boggs’ discovery gamesmanship throughout this litigation warrants sanctions from the Court. The sheer lack of responsiveness and

attentiveness to the discovery issues and apparently this case in general, is unlike anything Plaintiffs' counsel has seen in some time.

The discovery rules provide litigants with mechanisms for preparing their cases for trial. When the operational integrity of those mechanisms is repeatedly frustrated by opposing parties' actions or inactions, "prejudice must be presumed." *Samples*, 329 S.C. at 114, 495 S.E.2d at 217. Pursuant to Rule 37, if a party "fails to obey an order to provide or permit discovery," the court may issue an order "striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party." Rule 37(b)(2)(c), SCRCP.

Plaintiffs in no way mean or intend to disparage or direct its frustration towards Defense counsel with whom all parties have a solid working relationship, but Defendant Boggs needs to understand that this is a serious matter. Boggs' woeful disobedience and abuse of the discovery process is indefensible. Defendant Boggs has taken every opportunity to frustrate the wheels of civil justice and Plaintiffs' pursuit of accountability. Effectively all of Plaintiffs' discovery requests have elicited either late responses, boilerplate objections, unverified and questionable responses, or no responses at all from Defendant Boggs. Some, but not all, of Defendant Boggs' responses, or lack thereof, have been the subject of motions to compel discovery in this case.

Plaintiffs suffered catastrophic injuries including but not limited to a traumatic brain injury, the loss of a limb, the loss of a business and livelihood, and near loss of life. Plaintiffs sustained those injuries because a dump truck that was traveling sixty miles per hour, driven by an agent of Boggs, hauling 58,000 pounds of Boggs' owned material, to a Boggs' operated construction site, rearended Plaintiffs while they were stopped at Boggs direction. With respect to this litigation, Boggs needs to exhibit a momentous change in attitude and direction. At this

point, the harsh medicine of meaningful sanctions appears to be the only means of educating Boggs about its obligations under the rules of this Court.

Therefore, pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, Plaintiffs specifically request attorneys' fees and costs associated with the filing of this Motion. Prior to a hearing on this Motion, Plaintiffs will provide affidavits detailing the precise amount of attorneys' fees and costs associated with this Motion. Additionally, Plaintiffs pray that the Court enter an Order striking Defendant Boggs' Answer to Plaintiffs' Complaint and all other sanctions that the Court deems necessary and proper under the circumstances.

Respectfully submitted,

EVANS MOORE, LLC

s/James B. Moore III

James B. Moore III, SC Bar #74268

Scott C. Evans, SC Bar #77684

George W. Bryan III, SC Bar #104088

121 Screven Street

Georgetown, SC 29440

Telephone: 843-995-5000

Fax: 843-527-4128

james@evansmoorelaw.com

scott@evansmoorelaw.com

CULBRETH LAW FIRM

Stephen E. Culbreth

Admitted Pro Hac Vice

P.O. Box 446

Wilmington, NC 28402

Office: (910) 763-3416

Fax: (910) 763-9975

JERRY L. SPIVEY LAW FIRM

Jerry L. Spivey

Admitted Pro Hac Vice

206 N. 4th Street, Suite 2

Wilmington, NC 28401

Office (910) 763-6585
Fax: (910) 763-6525

Georgetown, South Carolina
March 7, 2024

Exhibit 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB
 TRUCKING, LLC and BRANDY COBB,

Plaintiffs,

v.

DAVID ALAN BIGELOW, HERITAGE
 HAULING, INC. and BOGGS
 CONTRACTING, INC.,

Defendants.

PLAINTIFFS' THIRD SET OF
 REQUESTS FOR PRODUCTION TO
 THE DEFENDANT BOGGS
 CONTRACTING, INC.

**TO: JANET BROOKS HOLMES AND JOSEPH CATALANO, ATTORNEYS FOR
 THE DEFENDANTS BOGGS CONTRACTING, INC.**

The following requests for production are served on you pursuant to the provisions of South Carolina Rules of Civil Procedure 26 and 34. You are requested to produce each of the following described documents and things at the law offices of Evans Moore, LLC, located at 121 Screven Street, Georgetown, South Carolina on the 30th day following service of these discovery requests.

A. SPECIAL INSTRUCTIONS

In responding to the Plaintiffs' Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiffs believe are consistent with the Rules:

1. Unless otherwise requested, please produce all requested documents and things at the offices of your lead counsel at the time indicated in the Discovery Request.

2. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.

3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys, (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

4. Where documents and things exist which fall within the descriptive terms of one of the Plaintiff's Discovery Requests, and production of the same will be made by you, please produce such documents and things in a manner corresponding to the numbered request in which they are described, so that identification with the appropriate request can readily be made.

5. In addition to the original of any such requested documents, any request for a document also includes:

- a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
- b. any and all attachments to the original;
- c. any and all documents referred to in the original;
- d. any and all subsequent additions, deletions, substitutions, amendments, or modifications to the original of any sort.

6. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests without engaging in semantic arguments:

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary, by you through appropriate and necessary devices into reasonably usable and intelligible form.

"*Identify*", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for the document or thing if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing.

"*Identify*", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

"*Person*" includes any individual, public or private corporation, partnership, government agency, incorporated association, or unincorporated association.

"*Plaintiff*" means the Plaintiff in this action.

"*Senior Management*" means and refers to all members of management which if looking at an organizational chart include all members or department heads for the first 4 tiers of any organizational structure.

"*You*" and "*your*" mean and refer to the particular party to whom Plaintiff's Discovery Requests are specifically directed and who is undertaking to respond to them.

C. REQUEST FOR PRODUCTION

18. Please produce a copy of the Traffic Control Plan in place at the subject project site as approved by the South Carolina Department of Transportation.
19. Please produce a copy of any documentation, including the Traffic Control Plan, provided to Heritage Hauling, LLC concerning safety at the subject project site.
20. Please produce a copy of the Award of a Contract from the South Carolina Department of Transportation to Boggs Contracting, Inc. for the subject project site.
21. Please produce all documentation showing inspections to the traffic control devices at the subject project site.
22. Please produce any and all correspondence (email, text messages, or otherwise) between any employee of Boggs Contracting, Inc. and Heritage Hauling, Inc. referencing the February 3, 2022 crash.
23. Please produce a copy of any documentation identifying any due diligence of Boggs Contracting, Inc. and/or Boggs Transport, Inc. into Heritage Hauling, Inc. prior to entering into the Carrier-Broker Agreement on February 18, 2019.
24. Please provide a copy of all "delivery receipts" provided by Heritage Hauling to Boggs Contracting, Inc. during the time period of February 1, 2020 through February 4, 2022 as referenced in the Carrier-Broker agreement.
25. Please produce a copy of any and all documents establishing "proof of insurance" submitted to Boggs Contracting, Inc. by Heritage Hauling, Inc. as required pursuant to the Carrier-Broker agreement during the time period of Feb. 18, 2019 through December 31, 2022.
26. Please produce a copy of each document retention policy in effect for Boggs Contracting, Inc. at any time between the time of the Subject Collision and present.
27. Please produce copies of all reservation of rights letters and/or agreements regarding insurance coverage for the Subject Collision.
28. Please produce all documents setting forth the relationship between Boggs Contracting, Inc. and Heritage Hauling, Inc. This includes, but is not limited to all leases, employment contracts, and independent contractor agreements and other contracts, agreements, memorandum and the like.
29. Please produce copies of all e-mails between Boggs Contracting, Inc. and Heritage Hauling, Inc. for the time period beginning 30 days prior to the Subject Collision to the present.

30. Please produce all documents that identify any load being hauled by Bigelow (Heritage Truck No. 623) for Boggs Contracting, Inc during the time period of January 1, 2021 through February 3, 2022, including, by way of example and without limitation, all manifests, bills of lading, weight receipts, dispatch documents, content summaries, and documents that address the contents, ownership, pick-up, detainment, and delivery of the load.
31. Please produce a copy of every document related to any investigation done by or on behalf of Boggs Contracting, Inc. of the scene of the Subject Collision.
32. Please produce all documents authored by anyone working for or on behalf of Boggs Contracting, Inc. that set forth any facts relating to the Subject Collision (other than attorneys and/or consulting experts).
33. Please produce copies of all statements (written or recorded) of any person involved in the Subject Collision or of any witness with knowledge regarding the Subject Collision or the alleged damages.
34. Please produce color or digital file copies of all photographs, video, computer simulations, and any other documents depicting:
 - a. Any vehicle involved in the Subject Collision;
 - b. Any person involved in the Subject Collision;
 - c. The scene of the Subject Collision; and/or
 - d. Any evidence (roadway markings or other) relevant to the Subject Collision.
35. Copies of all reports relating to the Subject Collision including those prepared by Boggs Contracting, Inc. and those prepared by anyone working for or on behalf of Boggs Contracting, Inc. (except lawyers).
36. Copies of all documents reflecting all persons who to your knowledge were present at the scene of the Subject Collision at any time in the 48 hours after the collision; their role; and what actions they took at the scene.
37. Copies of all Boggs Contracting, Inc. policies, procedures, rules, guidelines, directives, manuals, handbooks, instructions that were in effect and applied to Heritage Hauling, Inc. at the time of the Subject Collision.
38. Copies of all diagrams, graphs, illustrations, photographs, charts, pictures, models, blow-ups, or any other document or thing, including electronically created charts, animations, or data that you intend to utilize as an exhibit, demonstrative exhibit, or aid in the trial of this case not previously supplied.
39. Copies of Bogg's policies, processes, and procedures for ongoing and periodic monitoring of a motor carrier's qualifications and compliance with FMCSA.

40. Copies of any training materials, PowerPoint slides, handouts, videos, or other materials Boggs uses in training its employees regarding the vetting, selection, monitoring, and hiring of—or brokering of goods to—motor carriers to haul freight on behalf of Boggs and/or its customers. *(This includes internal company training and external training by any third parties).*
41. All internal Boggs communications (regardless of electronic format, medium, or application) regarding the subject collision or the subject load.
42. All communications of any kind (regardless of electronic format, medium, or application) between Boggs and any third party relating to the subject collision or the subject load.
43. All documents that refer to, relate to, and/or reflect Bogg's agreement or undertaking to transport the subject load as a motor carrier.
44. All receipts, billing, accounts receivable, invoices, correspondence, or other documents which show or reflect the terms of payment and the amounts of money or other compensation Boggs received in conjunction with the subject load.
45. Boggs' motor carrier selection criteria that were in effect on February 3, 2022.
46. Boggs' motor carrier selection criteria that is currently in effect.
47. Copies of all documents sent or received from any governmental agency regarding the subject collision, the driver involved in the subject collision, or any other subject that is part of the basis of this lawsuit.
48. Any communications received by Boggs from the FMCSA or other governmental agencies in the past five years concerning the selection, hiring, vetting, or monitoring of unsafe, inexperienced, dangerous, or incompetent motor carriers.
49. Documents related to any kind of communication between any federal and/or state agency with Boggs that involved compliance (or noncompliance) with state and/or federal laws and/or regulations in the past five years. This would include, but is not limited to, all letters, interventions, complaints, warnings, citations, investigations, reports, and safety ratings.

EVANS MOORE, LLC



 Scott C. Evans, SC Bar #77684
 James B. Moore III, SBar#74268
 George W. Bryan III, SC Bar #104088
 121 Screven Street

Georgetown, SC 29440
Office: (843) 995-5000
Facsimile: (843) 527-4128

CULBRETH LAW FIRM
Stephen E. Culbreth, *Admitted Pro Hac Vice*
P.O. Box 446
Wilmington, NC 28402
Office: (910) 763-3416
Facsimile: (910) 763-9975

JERRY L. SPIVEY LAW FIRM
Jerry L. Spivey, *Admitted Pro Hac Vice*
206 N. 4th Street, Suite 2
Wilmington, NC 28401
Office: (910) 763-6585
Facsimile: (910) 763-6525

Attorneys for the Plaintiff

Georgetown, SC
September 1, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

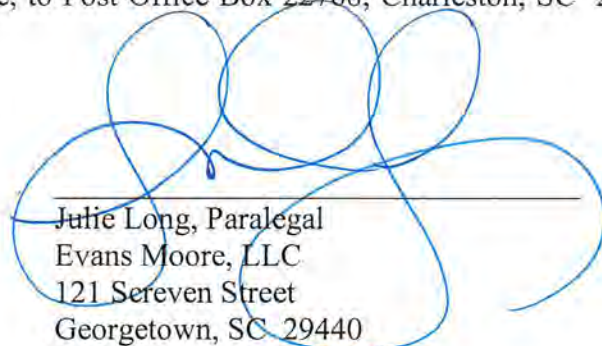
RYAN COBB, MALON COBB, COBB)
TRUCKING, LLC and BRANDY COBB,)
Plaintiffs,)

v.)

CERTIFICATE OF MAILING

DAVID ALAN BIGELOW, HERITAGE)
HAULING, INC. and BOGGS)
CONTRACTING, INC.,)
Defendants.)

I hereby certify that the **Plaintiff's Third Requests for Production to Defendant Boggs Contracting, Inc.** was served upon Janet Brooks Holmes and Joseph Catalano, Attorneys for the Defendant Boggs Contracting, Inc., The McKay Firm, P.A., P.O. Drawer 7217, Columbia, SC 29202, with a copy to Matthew Sanford, Gallivan White Boyd, Attorneys for Defendant David Alan Bigelow and Heritage Hauling, Inc, to Post Office Box 22768, Charleston, SC 29413, on September 1, 2023.



Julie Long, Paralegal
Evans Moore, LLC
121 Sereven Street
Georgetown, SC 29440
Telephone (843) 995-5000
Facsimile (843) 527-4128

Exhibit 2

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB)
TRUCKING, LLC, and BRANDY COBB,)

Plaintiffs,)

v.)

DAVID ALAN BIGELOW, HERITAGE)
HAULING, INC., and BOGGS)
CONTRACTING, INC.,)

Defendants.)

MOTION TO COMPEL DISCOVERY
RESPONSES

PLEASE TAKE NOTICE that the undersigned, as attorneys for Plaintiffs will move before the Presiding Judge of the Circuit Court for the County of Georgetown, South Carolina, at such time and place as Your Honor may designate, pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, for an Order compelling Defendant Boggs Contracting, Inc. (“Boggs”) to fully respond to Plaintiffs’ Third Requests for Production to Defendant Boggs served on September 1, 2023. (Exhibit 1, Plaintiffs’ Third Requests for Production).

On November 6, 2023, Defendant Boggs responded to the discovery request; however, in response to Requests for Production Nos. 18, 22, 23, 25, 29, 30, 36, 37, 40, 41, 42, and 49 it has improperly asserted that either: (1) Plaintiff has equal access to the materials requested, (2) the information requested is privileged, or (3) that Boggs is no longer in possession of the requested materials. (Exhibit 2, Boggs’ Responses to Plaintiffs’ Third Requests for Production).

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, Plaintiffs’ counsel affirms that he has communicated with opposing counsel prior to the filing of this motion and

made a good faith attempt to resolve this matter. (Exhibit 3, Rule 11 Letter). As such, Plaintiffs request this Court enter an Order directing Boggs Contracting, Inc. to fully comply with Plaintiffs' Third Requests for Production and produce the requested documents, as well as for costs and fees associated with having to file this motion.

As a basis for the requested relief, Plaintiffs show the following deficiencies in Defendant Boggs' discovery responses and objections.

A. REQUESTS FOR PRODUCTION NO. 18

In Requests for Production No. 18, Plaintiffs request that Boggs produce the Traffic Control Plan in place at the subject project site as approved by the South Carolina Department of Transportation. Boggs objects to providing a copy of the Traffic Control Plan specific to the contract awarded to Boggs. Boggs asserts that the document is equally accessible to Plaintiff. However, the terms of the contract itself dictate that this document is to be written by Boggs for the benefit of the South Carolina Department of Transportation and has not been produced via subpoena to the South Carolina Department of Transportation. Thus, this document, which was created by Boggs, is not equally accessible to the Plaintiffs. Plaintiffs ask that the Court order Boggs to withdraw its objection to Request for Production No. 18 and answer the request accordingly.

B. REQUESTS FOR PRODUCTION NOS. 22, 23, 25, 29, 30, 41, and 49

In Requests for Production Nos. 22, 23, 25, 29, 30, 41, and 49, Plaintiffs request a series of documents in the possession of Boggs. These documents include: correspondence between Defendants Boggs and Heritage Hauling, Inc. ("Heritage Hauling"); documents identifying Boggs' due diligence into the hiring of Heritage Hauling; proof of insurance documents; emails between Boggs and Heritage Hauling; documents detailing the load being hauled by Defendant Bigelow on the day of the subject incident; Boggs' internal

communications regarding the subject incident; and any communications with federal or state agencies regarding Boggs' compliance with applicable laws.

In response, Boggs objects on the grounds that it is no longer in possession of documents related to this request. Many, if not all, of these documents would have been created electronically. Even deleted and archived versions would be easily accessible by a technology expert. Plaintiff is willing to provide a technical expert to extract this information from Boggs' servers if necessary. Plaintiffs respectfully request that the Court issue an Order to allow the extraction of this information by an expert retained by the Plaintiff.

C. REQUEST FOR PRODUCTION NO. 36

In Request for Production No. 36, Plaintiffs request Copies of all documents reflecting all persons known to be present at the scene of the subject collision at any time in the 48 hours after the collision; their role; and what actions they took at the scene. Boggs objects on the grounds that these materials are privileged. Plaintiff disagrees with this response. Moreover, Boggs has not produced a privilege log delineating that any privileged materials exist. Plaintiff asks that the Court order Boggs to produce a privilege log identifying all privileged materials and that any non-privileged materials that are responsive this request be produced.

D. REQUEST FOR PRODUCTION NO. 37

In Request for Production No. 37, Plaintiffs request copies of all Boggs Contracting, Inc. policies, procedures, rules, guidelines, directives, manuals, handbooks, instructions that were in effect and applied to Heritage Hauling, Inc. at the time of the Subject Collision.

Boggs asserts that all internal policies, procedures, rules, guidelines, directives, manuals, handbooks, and instructions that were in effect and applicable to Heritage Hauling would be equally accessible to Plaintiff's counsel. Plaintiffs contend that Boggs' assertion is unfounded and inaccurate. These are internal documents created by Boggs. Plaintiff has no

access to them. Therefore, Plaintiffs request that the Court order Boggs to withdraw its objection and produce the documents requested in Request for Production No. 37.

E. REQUEST FOR PRODUCTION NO. 40

In Request for Production No. 40, Plaintiff requests all training manuals or other media that Boggs uses to train its employees. Boggs asserts that any training materials would be equally accessible to Plaintiff's counsel. As with Request for Production No. 37, this request seeks internal documents to which Plaintiff's counsel has no access and is solely in the control of Boggs. Accordingly, Plaintiffs ask that the Court order Boggs to fully respond to Request for Production No. 40.

F. REQUEST FOR PRODUCTION NO. 42

Request for Production No. 42 seeks all communication between Boggs and any third parties that relate to the subject incident. Boggs objects, claiming that the requested communications are privileged. Plaintiff is not requesting communications between Boggs and its attorneys. It is highly implausible that every communication Boggs had with third parties regarding the subject incident constitutes privileged communication. Moreover, no privilege log was provided in connection with this response. Therefore, Plaintiff requests that the Court order Boggs to identify any privileged communications on a privilege log and that any non-privileged materials that are responsive to this request be produced.

CONCLUSION

Therefore, for the reasons set forth above, Plaintiffs respectfully ask that this Court issue an Order requiring Defendant Boggs Contracting, Inc. to provide complete responses to Plaintiffs' Third Requests for Production Nos. 18, 22, 23, 25, 29, 30, 36, 37, 40, 41, 42, and 49.

Respectfully submitted,

EVANS MOORE, LLC

s/Scott C. Evans

Scott C. Evans, SC Bar #77684

James B. Moore, III, SC Bar #74268

121 Screven Street

Georgetown, SC 29440

Office: (843) 995-5000

Fax: (843) 527-4128

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Wilmington, NC 28401

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Georgetown, South Carolina
December 4, 2023

Exhibit 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB
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DAVID ALAN BIGELOW, HERITAGE
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PLAINTIFFS' THIRD SET OF
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**TO: JANET BROOKS HOLMES AND JOSEPH CATALANO, ATTORNEYS FOR
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2. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.

3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys, (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

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- a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
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"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

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- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
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35. Copies of all reports relating to the Subject Collision including those prepared by Boggs Contracting, Inc. and those prepared by anyone working for or on behalf of Boggs Contracting, Inc. (except lawyers).
36. Copies of all documents reflecting all persons who to your knowledge were present at the scene of the Subject Collision at any time in the 48 hours after the collision; their role; and what actions they took at the scene.
37. Copies of all Boggs Contracting, Inc. policies, procedures, rules, guidelines, directives, manuals, handbooks, instructions that were in effect and applied to Heritage Hauling, Inc. at the time of the Subject Collision.
38. Copies of all diagrams, graphs, illustrations, photographs, charts, pictures, models, blow-ups, or any other document or thing, including electronically created charts, animations, or data that you intend to utilize as an exhibit, demonstrative exhibit, or aid in the trial of this case not previously supplied.
39. Copies of Bogg's policies, processes, and procedures for ongoing and periodic monitoring of a motor carrier's qualifications and compliance with FMCSA.

40. Copies of any training materials, PowerPoint slides, handouts, videos, or other materials Boggs uses in training its employees regarding the vetting, selection, monitoring, and hiring of—or brokering of goods to—motor carriers to haul freight on behalf of Boggs and/or its customers. *(This includes internal company training and external training by any third parties).*
41. All internal Boggs communications (regardless of electronic format, medium, or application) regarding the subject collision or the subject load.
42. All communications of any kind (regardless of electronic format, medium, or application) between Boggs and any third party relating to the subject collision or the subject load.
43. All documents that refer to, relate to, and/or reflect Boggs's agreement or undertaking to transport the subject load as a motor carrier.
44. All receipts, billing, accounts receivable, invoices, correspondence, or other documents which show or reflect the terms of payment and the amounts of money or other compensation Boggs received in conjunction with the subject load.
45. Boggs' motor carrier selection criteria that were in effect on February 3, 2022.
46. Boggs' motor carrier selection criteria that is currently in effect.
47. Copies of all documents sent or received from any governmental agency regarding the subject collision, the driver involved in the subject collision, or any other subject that is part of the basis of this lawsuit.
48. Any communications received by Boggs from the FMCSA or other governmental agencies in the past five years concerning the selection, hiring, vetting, or monitoring of unsafe, inexperienced, dangerous, or incompetent motor carriers.
49. Documents related to any kind of communication between any federal and/or state agency with Boggs that involved compliance (or noncompliance) with state and/or federal laws and/or regulations in the past five years. This would include, but is not limited to, all letters, interventions, complaints, warnings, citations, investigations, reports, and safety ratings.

EVANS MOORE, LLC



 Scott C. Evans, SC Bar #77684
 James B. Moore III, SBar#74268
 George W. Bryan III, SC Bar #104088
 121 Screven Street

Georgetown, SC 29440
Office: (843) 995-5000
Facsimile: (843) 527-4128

CULBRETH LAW FIRM
Stephen E. Culbreth, *Admitted Pro Hac Vice*
P.O. Box 446
Wilmington, NC 28402
Office: (910) 763-3416
Facsimile: (910) 763-9975

JERRY L. SPIVEY LAW FIRM
Jerry L. Spivey, *Admitted Pro Hac Vice*
206 N. 4th Street, Suite 2
Wilmington, NC 28401
Office: (910) 763-6585
Facsimile: (910) 763-6525

Attorneys for the Plaintiff

Georgetown, SC
September 1, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB)
TRUCKING, LLC and BRANDY COBB,)
Plaintiffs,)

v.)

CERTIFICATE OF MAILING

DAVID ALAN BIGELOW, HERITAGE)
HAULING, INC. and BOGGS)
CONTRACTING, INC.,)
Defendants.)

I hereby certify that the **Plaintiff's Third Requests for Production to Defendant Boggs Contracting, Inc.** was served upon Janet Brooks Holmes and Joseph Catalano, Attorneys for the Defendant Boggs Contracting, Inc., The McKay Firm, P.A., P.O. Drawer 7217, Columbia, SC 29202, with a copy to Matthew Sanford, Gallivan White Boyd, Attorneys for Defendant David Alan Bigelow and Heritage Hauling, Inc, to Post Office Box 22768, Charleston, SC 29413, on September 1, 2023.

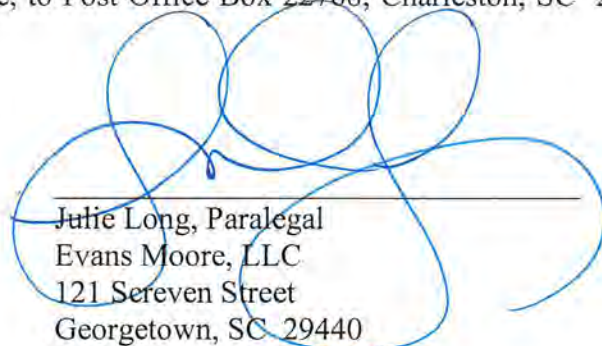

Julie Long, Paralegal
Evans Moore, LLC
121 Sereven Street
Georgetown, SC 29440
Telephone (843) 995-5000
Facsimile (843) 527-4128

Exhibit 2

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	
	)	
Ryan Cobb, Malon Cobb, Cobb	)	
Trucking, LLC and Brandy Cobb,	)	Civil Action No. 2022-CP-22-00739
	)	
Plaintiffs,	)	DEFENDANT BOGGS CONTRACTING,
	)	INC.'S RESPONSES TO PLAINTIFFS'
v.	)	THIRD REQUESTS FOR PRODUCTION
	)	
David Alan Bigelow, Heritage Hauling,	)	
Inc. and Boggs Contracting, Inc.,	)	
	)	
Defendants.	)	
_____	)	
	)	

TO: SCOTT C. EVANS, ESQUIRE AND JAMES B. MOORE, III, ESQUIRE, ATTORNEYS
FOR PLAINTIFFS:

Defendant Boggs Contracting, Inc. (hereinafter "Defendant" and/or "Boggs"), pursuant to
Rule 34 of South Carolina Rules of Civil Procedure, by and through its undersigned counsel hereby
responds to the Plaintiffs' Third Requests for Production as follows:

REQUESTS FOR PRODUCTION

18. Please produce a copy of the Traffic Control Plan in place at the subject project site
as approved by the South Carolina Department of Transportation.

RESPONSE:

This Defendant objects to producing material equally accessible to Plaintiff's
counsel.

Notwithstanding and subject to this objection, This Defendant would have been
subject to the SCDOT's Standard Specifications for Highway Construction, and the
SCDOT Construction Manual. The SCDOT's Standard Specifications are publicly
available. Special Provisions regarding traffic control are contained in the SCDOT

Contract already in possession of Plaintiff's counsel via subpoena.

19. Please produce a copy of any documentation, including the Traffic Control Plan, provided to Heritage Hauling, LLC concerning safety at the subject project site.

RESPONSE:

See Response to Request for Production 18.

20. Please produce a copy of the Award of a Contract from the South Carolina Department of Transportation to Boggs Contracting, Inc. for the subject project site.

RESPONSE:

Responsive documents are already in the possession of Plaintiffs' counsel. Please refer to the SCDOT Contract.

21. Please produce all documentation showing inspections to the traffic control devices at the subject project site.

RESPONSE:

This Defendant objects to this Request on the grounds that it is vague, ambiguous, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, this Defendant is unsure what Plaintiff means by the terms "inspections" and "traffic control devices."

Further responding, this Defendant contracted with Stay Alert Safety Services regarding traffic control as defined in the SCDOT Contract. Stay Alert Safety Services handled traffic control at the jobsite and may have material responsive to this Request.

22. Please produce any and all correspondence (email, text messages, or otherwise) between any employee of Boggs Contracting, Inc. and Heritage Hauling, Inc. referencing the February 3, 2022 crash.

RESPONSE:

This Defendant objects to this Request on the grounds that it calls for material

protected by work product privilege, attorney client privilege, that it calls for material prepared in anticipation of litigation, that it is not reasonably calculated to lead to the discovery of admissible evidence, and that it calls for material not required for disclosure per Rule 26, SCRCP.

Subject to and notwithstanding these objections, this Defendant is not in possession of material responsive to this request.

23. Please produce a copy of any documentation identifying any due diligence of Boggs Contracting, Inc. and/or Boggs Transport, Inc. into Heritage Hauling, Inc. prior to entering into the Carrier-Broker Agreement on February 18, 2019.

RESPONSE:

This Defendant conducted searches relating to Defendant Heritage's licensing and safety records through the Department of Transportation and/or Federal Motor Carrier Safety Administration. These documents are publicly available and accessible to Plaintiff.

24. Please provide a copy of all "delivery receipts" provided by Heritage Hauling to Boggs Contracting, Inc. during the time period of February 1, 2020 through February 4, 2022 as referenced in the Carrier-Broker agreement.

RESPONSE:

This Defendant objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence.

This Defendant previously produced copies of the Mullins Asphalt Plant's job ticket relating to the subject load transported by Defendant Bigelow on February 3, 2022.

Delivery receipts for two years prior to the subject accident do not relate to the facts underlying this case and are not likely to lead to the discovery of admissible evidence.

This Defendant further objects to this request on the grounds that it is unduly burdensome to search for two years of job tickets or "delivery receipts". A ticket is generated for each load hauled. This Defendant estimates that thousands of these tickets exist within the timeframe specified by the Request, and these tickets are not kept for longer than required by the SCDOT.

25. Please produce a copy of any and all documents establishing "proof of insurance" submitted to Boggs Contracting, Inc. by Heritage Hauling, Inc. as required pursuant to the Carrier-Broker agreement during the time period of Feb. 18, 2019 through December 31, 2022.

RESPONSE:

This Defendant is not in possession of material responsive to this information.

26. Please produce a copy of each document retention policy in effect for Boggs Contracting, Inc. at any time between the time of the Subject Collision and present.

RESPONSE:

This Defendant adheres to the retention requirements of applicable federal and state law, but does not have a written policy regarding document retention.

27. Please produce copies of all reservation of rights letters and/or agreements regarding insurance coverage for the Subject Collision.

RESPONSE:

This Defendant objects to this Request on the grounds that it calls for material that constitutes work product, that is not reasonably calculated to lead to the discovery of admissible evidence, and that it calls for material not required for disclosure under Rule 26, SCRCP.

This Defendant has previously provided a copy of the Carrier-Broker Agreement that would be responsive to this Request. Please refer to BOGGS AGREEMENT 0001-0020.

28. Please produce all documents setting forth the relationship between Boggs Contracting, Inc. and Heritage Hauling, Inc. This includes, but is not limited to all leases, employment contracts, and independent contractor agreements and other contracts, agreements, memorandum and the like.

RESPONSE:

This Defendant objects to this Request on the grounds that it is vague and ambiguous. Further, this Defendant objects to this request on the grounds that it is not reasonably calculated to lead to the discovery admissible evidence, and that it calls for material not required for disclosure per Rule 26, SCRCP.

Notwithstanding and subject to these objections, this Defendant has previously

provided a copy of the Carrier-Broker Agreement that would be responsive to this Request. Please refer to BOGGS AGREEMENT 0001-0020.

29. Please produce copies of all e-mails between Boggs Contracting, Inc. and Heritage Hauling, Inc. for the time period beginning 30 days prior to the Subject Collision to the present.

RESPONSE:

This Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad and that it is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and notwithstanding these objections, this Defendant is not in possession of material related to this Request.

30. Please produce all documents that identify any load being hauled by Bigelow (Heritage Truck No. 623) for Boggs Contracting, Inc during the time period of January 1, 2021 through February 3, 2022, including, by way of example and without limitation, all manifests, bills of lading, weight receipts, dispatch documents, content summaries, and documents that address the contents, ownership, pick-up, detainment, and delivery of the load.

RESPONSE:

This Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad and that it is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and notwithstanding this Request, this Defendant has produced the job ticket related to truck 623 on the date of the subject accident, and does not have additional responsive records relating to Heritage's Truck 623. Please refer to "WEIGHT SHEET_001."

31. Please produce a copy of every document related to any investigation done by or on behalf of Boggs Contracting, Inc. of the scene of the Subject Collision.

RESPONSE:

This Defendant objects to this Request on the grounds that it calls for material that constitutes work product, that is not reasonably calculated to lead to the discovery of admissible evidence, material prepared in anticipation of litigation, and that it calls for material not required for disclosure under Rule 26, SCRCP.

Notwithstanding these objections, this Defendant previously provided a copy of Bogg's internal incident report prepared in the ordinary course of business.

32. Please produce all documents authored by anyone working for or on behalf of Boggs Contracting, Inc. that set forth any facts relating to the Subject Collision (other than attorneys and/or consulting experts).

RESPONSE:

This Defendant objects to this Request on the grounds that it calls for material that constitutes work product, that is not reasonably calculated to lead to the discovery of admissible evidence, material prepared in anticipation of litigation, and that it calls for material not required for disclosure under Rule 26, SCRCP.

Notwithstanding these objections, this Defendant previously provided a copy of Bogg's internal incident report prepared in the ordinary course of business. Please refer to "Incident Report Boggs 2-3-2022."

33. Please produce copies of all statements (written or recorded) of any person involved in the Subject Collision or of any witness with knowledge regarding the Subject Collision or the alleged damages.

RESPONSE:

None other than any statements previously produced.

34. Please produce color or digital file copies of all photographs, video, computer simulations, and any other documents depicting:
- a. Any vehicle involved in the Subject Collision;
 - b. Any person involved in the Subject Collision;
 - c. The scene of the Subject Collision; and/or
 - d. Any evidence (roadway markings or other) relevant to the Subject Collision.

RESPONSE:

None other than any photographs previously produced during the course of discovery. Please refer to "BOGGS PHOTOS_001-039"

35. Copies of all reports relating to the Subject Collision including those prepared by Boggs Contracting, Inc. and those prepared by anyone working for or on behalf of Boggs Contracting, Inc. (except lawyers).

RESPONSE:

This Defendant objects to this Request on the grounds that it calls for material that constitutes work product, that is not reasonably calculated to lead to the discovery of admissible evidence, material prepared in anticipation of litigation, and that it calls for material not required for disclosure under Rule 26, SCRCP.

Notwithstanding these objections, this Defendant previously provided a copy of Bogg's internal incident report prepared in the ordinary course of business. Please refer to "Incident Report Boggs 2-3-2022."

36. Copies of all documents reflecting all persons who to your knowledge were present at the scene of the Subject Collision at any time in the 48 hours after the collision; their role; and what actions they took at the scene.

RESPONSE:

This Defendant objects to this Request to the extent that it calls for material protected by work product privilege, that it calls for the production of material prepared in anticipation of litigation, that it calls for material not reasonably calculated to lead to the discovery of admissible evidence, and that it calls for material not required for disclosure per Rule 26, SCRCP.

37. Copies of all Boggs Contracting, Inc. policies, procedures, rules, guidelines, directives, manuals, handbooks, instructions that were in effect and applied to Heritage Hauling, Inc. at the time of the Subject Collision.

RESPONSE:

Please refer to Response to Request 18.

38. Copies of all diagrams, graphs, illustrations, photographs, charts, pictures, models, blow-ups, or any other document or thing, including electronically created charts, animations, or data that you intend to utilize as an exhibit, demonstrative exhibit, or aid in the trial of this case not previously supplied.

RESPONSE:

Defendant has not yet determined which exhibits it intends to introduce at trial. The Defendant will Supplement if additional information during the Course of Litigation.

39. Copies of Bogg's policies, processes, and procedures for ongoing and periodic monitoring of a motor carrier's qualifications and compliance with FMCSA.

RESPONSE:

This Defendant conducted searches relating to Defendant Heritage's licensing and safety records through the Department of Transportation and/or Federal Motor Carrier Safety Administration. These documents are publicly available and accessible to Plaintiff.

40. Copies of any training materials, PowerPoint slides, handouts, videos, or other materials Boggs uses in training its employees regarding the vetting, selection, monitoring, and hiring of-or brokering of goods to-motor carriers to haul freight on behalf of Boggs and/or its customers. *(This includes internal company training and external training by any third parties).*

RESPONSE:

Please refer to Response to Request 18.

41. All internal Boggs communications (regardless of electronic format, medium, or application) regarding the subject collision or the subject load.

RESPONSE:

Defendant objects to this Request on the grounds that it calls for material prepared in anticipation of litigation, work product or material protected by work product privilege, to the extent that it calls for material protected by attorney-client privilege and that it is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and notwithstanding these objections, this Defendant does not possess responsive documents maintained in the ordinary course of business.

42. All communications of any kind (regardless of electronic format, medium, or application) between Boggs and any third party relating to the subject collision or the subject load.

RESPONSE:

Defendant objects to this Request on the grounds that it calls for material prepared in anticipation of litigation, work product or material protected by work product privilege, to the extent that it calls for material protected by attorney-client privilege and that it is not reasonably calculated to lead to the discovery of admissible evidence.

43. All documents that refer to, relate to, and/or reflect Bogg's agreement or undertaking to transport the subject load as a motor carrier.

RESPONSE:

Not applicable to this Defendant.

44. All receipts, billing, accounts receivable, invoices, correspondence, or other documents which show or reflect the terms of payment and the amounts of money or other compensation Boggs received in conjunction with the subject load.

RESPONSE:

This Defendant objects to this Request on the grounds that it is vague, ambiguous, based on a false premise, and calls for information equally accessible to Plaintiff.

This Defendant is not paid by loads delivered to the project. This Defendant is paid per the terms of the SCDOT Contract, and never received any compensation related to the subject load. To the extent that this Request calls for money paid by this Defendant for the load, please refer to "WEIGHT SHEET_001."

45. Boggs' motor carrier selection criteria that were in effect on February 3, 2022.

RESPONSE:

This Defendant conducted searches relating to Defendant Heritage's licensing and safety records through the Department of Transportation and/or Federal Motor Carrier Safety Administration. These documents are publicly available and accessible to Plaintiff.

46. Boggs' motor carrier selection criteria that is currently in effect.

RESPONSE:

This Defendant objects to this Request on the grounds that it is not likely to lead to the discovery of admissible evidence and calls for inadmissible evidence per Rule 407, SCRE.

47. Copies of all documents sent or received from any governmental agency regarding the subject collision, the driver involved in the subject collision, or any other subject that is part of the basis of this lawsuit.

RESPONSE:

This Defendant has already produced all records responsive to this Request. See SCDPS_001-193.

48. Any communications received by Boggs from the FMCSA or other governmental agencies in the past five years concerning the selection, hiring, vetting, or monitoring of unsafe, inexperienced, dangerous, or incompetent motor carriers.

RESPONSE:

Defendant is not in information responsive to this Request.

49. Documents related to any kind of communication between any federal and/or state agency with Boggs that involved compliance (or noncompliance) with state and/or federal laws and/or regulations in the past five years. This would include, but is not limited to, all letters, interventions, complaints, warnings, citations, investigations, reports, and safety ratings.

RESPONSE:

This Defendant objects to this request on the grounds that it is vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding and subject to his request, this Defendant is not in possession of material responsive to this Request.

This Defendant reserves the right to supplement this Response as additional information becomes available during the course of discovery.

[THIS AREA INTENTIONALLY LEFT BLANK]

Respectfully submitted,

Joseph A. Catalano

Janet Brooks Holmes; SC Bar No: 11826

Joseph A. Catalano; SC Bar No.: 102441

THE MCKAY FIRM, P.A.

3700 Forest Dr., Ste. 404 (29204)

P.O. Box 7217

Columbia, SC 29202

Tel: (803) 256-4645

Email: JanetHolmes1@mac.com

JHolmes@McKayFirm.com

Email: JCatalano@McKayFirm.com

Attorneys for Defendant Boggs Contracting, Inc.

Columbia, South Carolina
November 6, 2023

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 6th, 2023, a copy of the foregoing *Defendant Boggs Contracting, Inc.'s Responses to Plaintiffs' Third Requests for Production* was duly served on opposing counsel by depositing same in the United States Mail, first-class, postage prepaid, addressed as follows:

Scott C. Evans
James B. Moore, III
Evans Moore, LLC
121 Screven Street
Georgetown, SC 29440
scott@evansmoorelaw.com
james@evansmoorelaw.com

Stephen E. Culbreth
PO Box 446
514 Chestnut St.
Wilmington, NC 28402
culbrethlaw@juno.com

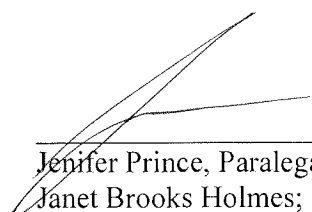
Jerry L. Spivey
820 Santa Maria Ave.
Wilmington, NC 28411
jspivey1@ec.rr.com

Attorneys for Plaintiffs

Kenneth Michael Barfield
Barnwell, Baley, Patterson & Helms, LLC
211 King St., Ste. 300 (29401)
PO Drawer H
Charleston, SC 29402
mbarfield@barnwell-whaley.com
Attorneys for Cincinnati Insurance Company

Curtis Ott
GALLIVAN, WHITE & BOYD, P.A.
40 Calhoun Street, Suite 315
Charleston, South Carolina 29401
cott@gwblawfirm.com

*Attorneys for Defendants Heritage Hauling,
Inc. and David Alan Bigelow*



Jennifer Prince, Paralegal to:
Janet Brooks Holmes; SC Bar No: 11826
Joseph A. Catalano; SC Bar No.: 102441
THE MCKAY FIRM, P.A.
3700 Forest Dr., Ste. 404 (29204)
P.O. Box 7217
Columbia, SC 29202
Tel: (803) 256-4645
Email: JanetHolmes1@mac.com
JHolmes@McKayFirm.com
Email: JCatalano@McKayFirm.com
Attorneys for Defendant Boggs Contracting, Inc.

Exhibit 3



November 27, 2023

VIA Electronic Mail

Janet Brooks Holmes
Joseph A. Catalano
The McKay Law Firm
P.O. Box 7217
Columbia, SC 29202

Re: Ryan Cobb, Malon Cobb, Cobb Trucking, LLC & Brandy
Cobb v. David Alan Bigelow, et al Case No.: 2022-CP-22-
00739

Dear Janet and Joseph,

We are in receipt of Defendant Boggs Contracting, Inc.'s ("Boggs") responses to Plaintiffs' Third Request for Production. I am writing this letter in hopes that we can avoid a motion to compel based on the objections asserted.

In response to Requests for Production Admission No. 18, Boggs objects to providing a copy of the Traffic Control Plan specific to the contract awarded to Boggs. Boggs asserts that the document is equally accessible to Plaintiff. However, the terms of the contract itself dictate that this document is to be produced by Boggs and has not been produced via subpoena to the South Carolina Department of Transportation. Thus, the document created by your client is not equally accessible to the Plaintiff and we would request that this objection be withdrawn and the request answered fully.

In response to Requests for Production Nos. 22, 23, 25, 29, 30, 41, and 49, Boggs has objected on the grounds that it is no longer in possession of documents related to this request. As many of these documents would have been created electronically, even deleted and archived versions will be easily accessible by a technology expert. Plaintiff would be happy to provide a technical expert to extract this information from the Boggs servers. Please advise whether Boggs will consent to this request, provide its own employee with the technical knowledge necessary to extract and produce this information, or whether a Court Order to allow the extraction of this information by an expert retained by the Plaintiff will be necessary.

In response to Request for Production No. 36, Boggs has objected on the grounds that these materials are privileged. Plaintiff must disagree with this response, and would also note that no privilege log was provided to the extent that any privileged materials exist. Plaintiff would ask that any privileged materials be identified on a privilege log and that any non-

privileged materials be produced.

In response to Request for Production No. 37, Boggs asserts that all internal policies, procedures, rules, guidelines, directive, manuals, handbooks, and instructions that were in effect and applicable to Heritage Hauling would be equally accessible to Plaintiff's counsel. As these are internal documents created by your client, this is not accurate. As such, we would ask that all objections be withdrawn and this request be answered fully.

In response to Request for Production No. 40, Boggs asserts that any training materials would be equally accessible to Plaintiff's counsel. Again, this request seeks internal documents to which Plaintiff's counsel has no access. For this reason, we would ask that all objections be withdrawn and this request be answered fully.

In response to Request for Production No. 42, Boggs objects in that the requested communications are privileged. No privilege log was provided in connection with this response. Plaintiff would ask that any privileged materials be identified on a privilege log and that any non-privileged materials be produced.

We would ask that these responses be supplemented by Friday, December 1, 2023. After that time, we will reserve the right to seek Court intervention. Should you need additional time to compile these responses, please do not hesitate to reach me directly and I would be happy to accommodate.

Very truly yours,

s/Scott C. Evans

Exhibit 3

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Civil Action No. 2022-CP-22-00739

Ryan Cobb, Malon Cobb, Cobb
Trucking, LLC and Brandy Cobb,

Plaintiffs,

v.

David Alan Bigelow, Heritage Hauling,
Inc. and Boggs Contracting, Inc.,

Defendants.

**DEFENDANT BOGGS CONTRACTING,
INC.'S SUPPLEMENTAL RESPONSES TO
PLAINTIFFS' THIRD REQUESTS FOR
PRODUCTION**

TO: SCOTT C. EVANS, ESQUIRE AND JAMES B. MOORE, III, ESQUIRE, ATTORNEYS
FOR PLAINTIFFS:

Defendant Boggs Contracting, Inc. (hereinafter "Defendant" and/or "Boggs"), pursuant to
Rule 34 of South Carolina Rules of Civil Procedure, by and through its undersigned counsel hereby
responds to the Plaintiffs' Third Requests for Production as follows:

REQUESTS FOR PRODUCTION

18. Please produce a copy of the Traffic Control Plan in place at the subject project site
as approved by the South Carolina Department of Transportation.

RESPONSE: This Defendant objects to producing material equally accessible to Plaintiff's
counsel.

Notwithstanding and subject to this objection, This Defendant would have been subject to
the SCDOT's Standard Specifications for Highway Construction, and the SCDOT Construction
Manual. The SCDOT's Standard Specifications are publicly available. Special Provisions
regarding traffic control are contained in the SCDOT Contract already in possession of Plaintiff's
counsel via subpoena.

**SUPPLEMENTAL RESPONSE: Subject to and notwithstanding these objections,
Defendants additionally crave reference to pages 24 through 37 and 81 of the SCDOT
Proposal Contract and Bond for Highway Construction.**

22. Please produce any and all correspondence (email, text messages, or otherwise) between any employee of Boggs Contracting, Inc. and Heritage Hauling, Inc. referencing the February 3, 2022 crash.

RESPONSE: This Defendant objects to this Request on the grounds that it calls for material protected by work product privilege, attorney client privilege, that it calls for material prepared in anticipation of litigation, that it is not reasonably calculated to lead to the discovery of admissible evidence, and that it calls for material not required for disclosure per Rule 26, SCRCP.

Subject to and notwithstanding these objections, this Defendant is not in possession of material responsive to this request.

SUPPLEMENTAL RESPONSE: Based on Defendants' attorneys' conference with Plaintiffs' attorneys on January 31, 2024, Defendants understand that Plaintiffs are not seeking any material protected by the privileges outlined above. Additionally, Defendants agree to withdraw their objection that Request No.: 22 is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and notwithstanding the remaining objections asserted herein, no materials responsive to this Request exist.

29. Please produce copies of all e-mails between Boggs Contracting, Inc. and Heritage Hauling, Inc. for the time period beginning 30 days prior to the Subject Collision to the present.

RESPONSE: This Defendant objects to this Request on the grounds that it is unduly burdensome, overly broad and that it is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and notwithstanding these objections, this Defendant is not in possession of material related to this Request.

SUPPLEMENTED RESPONSE: Subject to and notwithstanding these objections, Defendant is not in possession of documents related to this Request. Defendants withdraw the objections based on the parties' conference on January 31, 2024.

36. Copies of all documents reflecting all persons who to your knowledge were present at the scene of the Subject Collision at any time in the 48 hours after the collision; their role; and what actions they took at the scene.

RESPONSE: This Defendant objects to this Request to the extent that it calls for material protected by work product privilege, that it calls for the production of material prepared in anticipation of litigation, that it calls for material not reasonably calculated to lead to the discovery

of admissible evidence, and that it calls for material not required for disclosure per Rule 26, SCRCP.

SUPPLEMENTAL RESPONSE: Based on Defendants' attorneys' conference with Plaintiffs' attorneys on January 31, 2024, Defendants understand that Plaintiffs are not seeking any material protected by the privileges outlined above. Additionally, Defendants agree to withdraw their objection that this Request is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and notwithstanding the remaining objections asserted herein, no materials responsive to this Request exist other than Boggs's Internal Incident Report and the TR-310 Traffic Collision Report previously produced.

37. Copies of all Boggs Contracting, Inc. policies, procedures, rules, guidelines, directives, manuals, handbooks, instructions that were in effect and applied to Heritage Hauling, Inc. at the time of the Subject Collision.

RESPONSE: Please refer to Response to Request 18.

SUPPLEMENTAL RESPONSE: Please refer to BOGGS AGREEMENT 007-020 previously produced. To the extent that the SCDOT Proposal Contract and Bond for Highway Construction is applicable to Defendant Heritage Hauling, Defendants crave reference to this document in the possession of Plaintiffs.

40. Copies of any training materials, PowerPoint slides, handouts, videos, or other materials Boggs uses in training its employees regarding the vetting, selection, monitoring, and hiring of-or brokering of goods to-motor carriers to haul freight on behalf of Boggs and/or its customers. *(This includes internal company training and external training by any third parties).*

RESPONSE: Please refer to Response to Request 18.

SUPPLEMENTAL RESPONSE: None.

41. All internal Boggs communications (regardless of electronic format, medium, or application) regarding the subject collision or the subject load.

RESPONSE: Defendant objects to this Request on the grounds that it calls for material prepared in anticipation of litigation, work product or material protected by work product privilege, to the extent that it calls for material protected by attorney-client privilege and that it is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and notwithstanding these objections, this Defendant does not possess responsive documents maintained in the ordinary course of business.

SUPPLEMENTAL RESPONSE: Based on Defendants' attorneys' conference with Plaintiffs' attorneys on January 31, 2024, Defendants understand that Plaintiffs are not seeking any material protected by the privileges outlined above. Additionally, Defendants agree to withdraw their objection that Request No.: 22 is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding the remaining objections asserted herein, no materials responsive to this Request exist.

42. All communications of any kind (regardless of electronic format, medium, or application) between Boggs and any third party relating to the subject collision or the subject load.

RESPONSE: Defendant objects to this Request on the grounds that it calls for material prepared in anticipation of litigation, work product or material protected by work product privilege, to the extent that it calls for material protected by attorney-client privilege and that it is not reasonably calculated to lead to the discovery of admissible evidence.

SUPPLEMENTAL RESPONSE: Based on Defendants' attorneys' conference with Plaintiffs' attorneys on January 31, 2024, Defendants understand that Plaintiffs are not seeking any material protected by the privileges outlined above. Additionally, Defendants agree to withdraw their objection that Request No.: 22 is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and notwithstanding the remaining objections asserted herein, no materials responsive to this Request exist.

This Defendant reserves the right to supplement this Response as additional information becomes available during the course of discovery.

[THIS AREA INTENTIONALLY LEFT BLANK]

Respectfully submitted,

/s/ Joseph A. Catalano

Janet Brooks Holmes; SC Bar No: 11826

Joseph A. Catalano; SC Bar No.: 102441

THE MCKAY FIRM, P.A.

3700 Forest Dr., Ste. 404 (29204)

P.O. Box 7217

Columbia, SC 29202

Tel: (803) 256-4645

Email: JanetHolmes1@mac.com

JHolmes@McKayFirm.com

Email: JCatalano@McKayFirm.com

Attorneys for Defendant Boggs Contracting, Inc.

Columbia, South Carolina

February 1, 2024

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 1, 2024, a copy of the foregoing ***Defendant Boggs Contracting, Inc.'s Supplemental Responses to Plaintiffs' Third Requests for Production*** was duly served on all counsel of record **via email only** addressed as follows:

Scott C. Evans
James B. Moore, III
Evans Moore, LLC
121 Screven Street
Georgetown, SC 29440
scott@evansmoorelaw.com
james@evansmoorelaw.com

Stephen E. Culbreth
PO Box 446
514 Chestnut St.
Wilmington, NC 28402
culbrethlaw@juno.com

Jerry L. Spivey
820 Santa Maria Ave.
Wilmington, NC 28411
Jspivey1@ec.rr.com

Attorneys for Plaintiffs

Kenneth Michael Barfield
Barnwell, Baley, Patterson & Helms, LLC
211 King St., Ste. 300 (29401)
PO Drawer H
Charleston, SC 29402
mbarfield@barnwell-whaley.com
Attorneys for Cincinnati Insurance Company

Curtis Ott
GALLIVAN, WHITE & BOYD, P.A.
40 Calhoun Street, Suite 315
Charleston, South Carolina 29401
cott@gwblawfirm.com

Attorneys for Defendants Heritage Hauling, Inc. and David Alan Bigelow

/s/Fernando S. Diaz

Fernando S. Diaz, Paralegal to:
Janet Brooks Holmes; SC Bar No: 11826
Joseph A. Catalano; SC Bar No.: 102441
THE MCKAY FIRM, P.A.
3700 Forest Dr., Ste. 404 (29204)
P.O. Box 7217
Columbia, SC 29202
Tel: (803) 256-4645
Email: JanetHolmes1@mac.com
JHolmes@McKayFirm.com
Email: JCatalano@McKayFirm.com
Attorneys for Defendant Boggs Contracting, Inc.

Exhibit 4

From: Joseph Catalano <jcatalano@mckayfirm.com>
Sent: Thursday, February 1, 2024 1:06 PM
To: Fernando Diaz <fdiaz@McKayFirm.com>; Scott Evans <scott@evansmoorelaw.com>; James B. Moore III <james@evansmoorelaw.com>
Cc: Janet Brooks Holmes <jholmes@mckayfirm.com>; Jenifer Prince <jprince@mckayfirm.com>; Courtney Vettorel <CVettorel@mckayfirm.com>; culbrethlaw@juno.com; Jspivey1@ec.rr.com; mbarfield@barnwell-whaley.com; cott@gwblawfirm.com
Subject: RE: Cobb Trucking, LLC et al v. Boggs Contracting, Inc. et al (No. 2022-CP-22-00739) [File No. 98-241]

Boo,

In response to our conference, we will provide a verification to these responses signed by a representative of Boggs. Thanks, Joe

Joseph A. Catalano

Partner

The McKay Firm, P.A.

Direct: 803.705.2155

Address: 3700 Forest Drive, Ste. 404, Columbia, SC 29204

Mailing Address: P.O. Box 7217, Columbia, SC 29202

www.mckayfirm.com

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From: Fernando Diaz <fdiaz@McKayFirm.com>
Sent: Thursday, February 1, 2024 1:00 PM
To: scott@evansmoorelaw.com; james@evansmoorelaw.com
Cc: Joseph Catalano <jcatalano@mckayfirm.com>; Janet Brooks Holmes <jholmes@mckayfirm.com>; Jenifer Prince <jprince@mckayfirm.com>; Courtney Vettorel <CVettorel@mckayfirm.com>; culbrethlaw@juno.com; Jspivey1@ec.rr.com; mbarfield@barnwell-whaley.com; cott@gwblawfirm.com
Subject: Cobb Trucking, LLC et al v. Boggs Contracting, Inc. et al (No. 2022-CP-22-00739) [File No. 98-241]
Importance: High

Dear Counsel:

Enclosed please find the attached correspondence from Joseph Catalano regarding the above-referenced matter along with ***Defendant Boggs Contracting, Inc.'s Supplemental Responses to Plaintiffs' Third Requests for Production***. Please note that we are only serving by email only.

If you have any further questions or concerns, please feel free to contact us.

Best,

Fernando S. Diaz | Paralegal

The McKay Firm, P.A.

Office: (803) 256-4645

Direct Dial: (803) 354-5998

Address: P.O. Box 7217, Columbia, SC 29202

www.mckayfirm.com

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Exhibit 5

From: Janet Holmes <janetholmes1@icloud.com>

Sent: Friday, February 16, 2024 3:08 PM

To: James B. Moore III <james@evansmoorelaw.com>

Cc: Joe Catalano <jcatalano@mckayfirm.com>; Fernando Diaz <fdiaz@McKayFirm.com>; Scott Evans <scott@evansmoorelaw.com>; Janet Brooks Holmes <jholmes@mckayfirm.com>; Jenifer Prince <jprince@mckayfirm.com>; Courtney Vettorel <CVettorel@mckayfirm.com>; Steven Culbreth <culbrethlaw@juno.com>; Jerry Spivey <jspivey1@ec.rr.com>; mbarfield@barnwell-whaley.com; Curtis Ott <cott@gwblawfirm.com>; George Bryan <george@evansmoorelaw.com>

Subject: Re: Cobb Trucking, LLC et al v. Boggs Contracting, Inc. et al (No. 2022-CP-22-00739) [File No. 98-241]

Hi Boo,

Thanks for your email. Our apologies that we do not have the verification yet, when we spoke on 2/1 we got a little ambitious. Joe and I are picking a jury and in trial starting 2/26. We will get the verification to you and are trying for next week.

Thanks,
Janet

Janet Brooks Holmes

Partner

The McKay Firm, P.A.

Direct: 803.705.2162

Cell: 803.397.2610

jholmes@mckayfirm.com

janetholmes1@icloud.com

janetholmes1@mac.com

Address: 3700 Forest Drive, Ste. 404, Columbia, SC 29204

Mailing Address: P.O. Box 7217, Columbia, SC 29202

www.mckayfirm.com

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On Feb 15, 2024, at 9:09 AM, James B. Moore III <james@evansmoorelaw.com> wrote:

Good morning Joe,

During our conference call on February 1, you agreed to produce the verification to the discovery responses within 14 days. We have not received the verification yet, although it may have been mailed to us. Pursuant to Rule 11, I would ask that you please provide the verification to us by Monday, Feb. 19.

Thanks,

James

<image001.jpg>

James B. Moore III
Attorney at Law

EVANS MOORE, LLC
Georgetown Office
121 Screven Street | Georgetown, SC 29440
P: **843.995.5000**
F: **843.527.4128**

Charleston Office
635 East Bay Street, Suite F | Charleston, SC 29403
P: **843.995.5000**
F: **843.527.4128**

Mailing Address
121 Screven Street | Georgetown, SC 29440

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From: Joseph Catalano <jcatalano@mckayfirm.com>

Sent: Thursday, February 1, 2024 1:06 PM

To: Fernando Diaz <fdiaz@McKayFirm.com>; Scott Evans <scott@evansmoorelaw.com>; James B. Moore III <james@evansmoorelaw.com>

Cc: Janet Brooks Holmes <jholmes@mckayfirm.com>; Jenifer Prince <jprince@mckayfirm.com>; Courtney Vettorel <CVettorel@mckayfirm.com>; culbrethlaw@juno.com; Jspivey1@ec.rr.com; mbarfield@barnwell-whaley.com; cott@gwblawfirm.com

Subject: RE: Cobb Trucking, LLC et al v. Boggs Contracting, Inc. et al (No. 2022-CP-22-00739) [File No. 98-241]

Boo,

In response to our conference, we will provide a verification to these responses signed by a representative of Boggs. Thanks, Joe

Joseph A. Catalano

Partner

The McKay Firm, P.A.

Direct: 803.705.2155

Address: 3700 Forest Drive, Ste. 404, Columbia, SC 29204

Mailing Address: P.O. Box 7217, Columbia, SC 29202

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From: Fernando Diaz <fdiaz@McKayFirm.com>

Sent: Thursday, February 1, 2024 1:00 PM

To: scott@evansmoorelaw.com; james@evansmoorelaw.com

Cc: Joseph Catalano <jcatalano@mckayfirm.com>; Janet Brooks Holmes <jholmes@mckayfirm.com>;

Jenifer Prince <jprince@mckayfirm.com>; Courtney Vettorel

<CVettorel@mckayfirm.com>; culbrethlaw@juno.com; Jspivey1@ec.rr.com; mbarfield@barnwell-whaley.com; cott@gwblawfirm.com

Subject: Cobb Trucking, LLC et al v. Boggs Contracting, Inc. et al (No. 2022-CP-22-00739) [File No. 98-241]

Importance: High

Dear Counsel:

Enclosed please find the attached correspondence from Joseph Catalano regarding the above-referenced matter along with ***Defendant Boggs Contracting, Inc.'s Supplemental Responses to Plaintiffs' Third Requests for Production***. Please note that we are only serving by email only.

If you have any further questions or concerns, please feel free to contact us.

Best,

Fernando S. Diaz | Paralegal

The McKay Firm, P.A.

Office: (803) 256-4645

Direct Dial: (803) 354-5998

Address: P.O. Box 7217, Columbia, SC 29202

www.mckayfirm.com

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attorney-client and/or work product privileges. If you are not the intended recipient of this message or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and its attachments.

Exhibit 6

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB
TRUCKING, LLC and BRANDY COBB,

Plaintiffs,

v.

DAVID ALAN BIGELOW, HERITAGE
HAULING, INC. and BOGGS
CONTRACTING, INC.,

Defendants.

PLAINTIFFS' SECOND SET OF
REQUESTS FOR PRODUCTION TO
THE DEFENDANT BOGGS
CONTRACTING, INC.

**TO: JANET BROOKS HOLMES AND JOSEPH CATALANO, ATTORNEYS FOR
THE DEFENDANTS BOGGS CONTRACTING, INC.**

The following requests for production are served on you pursuant to the provisions of South Carolina Rules of Civil Procedure 26 and 34. You are requested to produce each of the following described documents and things at the law offices of Evans Moore, LLC, located at 121 Screven Street, Georgetown, South Carolina on the 30th day following service of these discovery requests.

A. SPECIAL INSTRUCTIONS

In responding to the Plaintiffs' Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiffs believe are consistent with the Rules:

1. Unless otherwise requested, please produce all requested documents and things at the offices of your lead counsel at the time indicated in the Discovery Request.
2. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.
3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys, (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

4. Where documents and things exist which fall within the descriptive terms of one of the Plaintiff's Discovery Requests, and production of the same will be made by you, please produce such documents and things in a manner corresponding to the numbered request in which they are described, so that identification with the appropriate request can readily be made.

5. In addition to the original of any such requested documents, any request for a document also includes:

- a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
- b. any and all attachments to the original;
- c. any and all documents referred to in the original;
- d. any and all subsequent additions, deletions, substitutions, amendments, or modifications to the original of any sort.

6. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests without engaging in semantic arguments:

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary, by you through appropriate and necessary devices into reasonably usable and intelligible form.

"*Identify*", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for the document or thing if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing.

"*Identify*", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

"*Person*" includes any individual, public or private corporation, partnership, government agency, incorporated association, or unincorporated association.

"*Plaintiff*" means the Plaintiff in this action.

"*Senior Management*" means and refers to all members of management which if looking at an organizational chart include all members or department heads for the first 4 tiers of any organizational structure.

"*You*" and "*your*" mean and refer to the particular party to whom Plaintiff's Discovery Requests are specifically directed and who is undertaking to respond to them.

C. REQUEST FOR PRODUCTION

18. Please provide the tax returns for Boggs Contracting, Inc. for the years 2019, 2020 and 2021.
19. Please provide the accountant's/accounting statements, to include income statement, balance sheet, and statement of cash flows, for Boggs Contracting, Inc. for the years 2019, 2020, and 2021.

EVANS MOORE, LLC



Scott C. Evans, SC Bar #77684
 James B. Moore III, SBar#74268
 George W. Bryan III, SC Bar #104088
 121 Screven Street
 Georgetown, SC 29440
 Office: (843) 995-5000
 Facsimile: (843) 527-4128

CULBRETH LAW FIRM
 Stephen E. Culbreth, *Admitted Pro Hac Vice*
 P.O. Box 446
 Wilmington, NC 28402
 Office: (910) 763-3416
 Facsimile: (910) 763-9975

JERRY L. SPIVEY LAW FIRM
 Jerry L. Spivey, *Admitted Pro Hac Vice*
 206 N. 4th Street, Suite 2
 Wilmington, NC 28401
 Office: (910) 763-6585
 Facsimile: (910) 763-6525

Attorneys for the Plaintiff

Georgetown, SC
 July 21, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB
TRUCKING, LLC and BRANDY COBB,

Plaintiffs,

v.

DAVID ALAN BIGELOW, HERITAGE
HAULING, INC. and BOGGS
CONTRACTING, INC.,

Defendants.

CERTIFICATE OF MAILING

I hereby certify that the **Plaintiff's First Supplemental Answer to Defendant Boggs' First Interrogatories and Plaintiff's Second Set of Requests for Production to Defendant Boggs Contracting, Inc.** was served upon Janet Brooks Holmes and Joseph Catalano, Attorneys for the Defendant Boggs Contracting, Inc., The McKay Firm, P.A., P.O. Drawer 7217, Columbia, SC 29202, with a copy to Matthew Sanford, Gallivan White Boyd, Attorneys for Defendant David Alan Bigelow and Heritage Hauling, Inc, to Post Office Box 22768, Charleston, SC 29413, on July 21, 2023.

Julie Long, Paralegal
Evans Moore, LLC
121 Screven Street
Georgetown, SC 29440
Telephone (843) 995-5000
Facsimile (843) 527-4128

Exhibit 7

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CIVIL ACTION 2022-CP-22-00739

RYAN COBB, MALON COBB, COBB
TRUCKING, LLC, and BRANDY COBB,

Plaintiffs,

v.

DAVID ALAN BIGELOW, HERITAGE
HAULING, INC. and BOGGS
CONTRACTING, INC.,

Defendants.

ORDER ON PLAINTIFFS' MOTIONS
TO COMPEL RESPONSES BY
HERITAGE HAULING, INC.

THIS MATTER came before the Court for consideration of the Plaintiffs' Motion to Compel filed on November 6, 2023 (hereinafter, "Motion to Compel Prior Accident Documentation") and Plaintiffs' Motion to Compel filed on December 4, 2023 (hereinafter, "Motion to Compel Financial Information"), from Defendant Heritage Hauling, Inc. ("Heritage").

THE COURT, having considered the Motions, the briefs, arguments of counsel, the applicable law, and other appropriate matters of record, finds the Motions should be GRANTED for the reasons and in the manner set forth below.

In Plaintiffs' Motion to Compel Prior Accident Documentation, Plaintiffs seek an Order compelling Defendant Heritage to respond to Plaintiffs' Request for Production Nos. 52 and 55. Specifically, this Motion seeks an Order requiring Defendant Heritage to produce an unredacted Accident Log covering the period between January 1, 2019 and February 3, 2022, along with copies of accident reports, incident reports, employee discipline documentation, and relevant dash camera recordings of 13 prior accidents involving Heritage trucks that occurred in 2021.

Plaintiffs assert claims against Defendant Heritage for negligent supervision and training

of its employees, including Defendant Bigelow. The Court finds that Plaintiffs' Requests for Production Nos. 52 and 55 are narrowly tailored to lead to the discovery of relevant evidence based on the allegations made in the Complaint and based on discovery that has been produced to date. Therefore, the Court finds that Plaintiffs' Motion to Compel Prior Accident Documentation from Defendant Heritage should be GRANTED.

In Plaintiffs' Motion to Compel Financial Information, Plaintiffs seek an Order compelling Defendant Heritage to respond to Plaintiffs' Request for Production Nos. 18 and 19. Specifically, Plaintiffs seek an Order compelling Defendant Heritage to produce copies of three years of Heritage's filed tax returns, as well as three years of corresponding annual accountant's financial statements (income statement, balance sheet, and statement of cash flows). At the hearing, Plaintiff's Counsel indicated that the last three years of filed taxed returns and annual accountant's financial statements is what is necessary to determine net worth.

The financial information that Plaintiffs move to compel is relevant to the relief Plaintiffs seek and it is discoverable. This case arises out of a trucking accident resulting in alleged catastrophic injuries to the Plaintiffs. In their complaint, Plaintiffs allege that the Defendants' conduct arises to the level of recklessness and assert a claim for punitive damages. Punitive damages are recoverable for "negligence so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness." Bell v Atl. Coast Line R. Co., 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943). When punitive damages are at issue, defendant's ability to pay is a relevant factor for the jury to consider. Gamble v Stevenson, 305 S.C. 104, 111-12 406 S.E.2d 350, 354 (1991).

Plaintiffs retained economist Oliver Wood, Ph.D. to offer expert testimony regarding Defendant Heritage's ability to pay a punitive damages award. Along with the Motion to Compel

Financial Information, Plaintiffs submitted an affidavit from Dr. Wood indicating that he is unable to provide his expert analysis regarding the ability of Defendant Heritage to pay a punitive verdict without first reviewing the requested financial information.

The Court is further persuaded by the South Carolina Court of Appeals' approval of Dr. Wood's methodology regarding testimony on the financial condition of a defendant in connection with a punitive damages analysis. See Duncan v. Ford Motor Company, 385 S.C. 119, 141, 682 S.E.2d 877, 888 (Ct. App.2009), overruled, in part, on other grounds by State v. Wallace, 440 S.C. 537, 892 S.E.2d 310 (2023). With respect to expert testimony on punitive damages, in Duncan, the Court of Appeals concluded as follows:

[t]he trial court properly allowed Wood to testify about Ford's ability to respond to a punitive damages award. During his testimony, Wood testified beyond the mere net worth of Ford and informed the jury of Ford's assets, gross profits, and the amount of compensation it paid executives. Appellate courts in our state have allowed testimony beyond a defendant's mere net worth to establish its ability to pay a punitive damages award. See Bryant v. Waste Mgmt., Inc., 342 S.C. 159, 170 536 S.E.2d 380, 386 (Ct.App.2000) (allowing testimony of the defendant's assets, liabilities, net worth, shareholders' equity, operating revenue, and net income per day to establish whether the defendant could pay punitive damages). In addition, Wood's testimony concerning the state of Ford's economic affairs allowed the jury to follow the instructions of the trial court and "punish the defendant but not [e]ffect economic bankruptcy." Therefore, the trial court properly allowed Wood to testify about Ford's ability to pay punitive damages and such testimony did not offend the Due Process Clause.

Id.

Having considered the facts, arguments of counsel, and applicable law, the Court finds that Defendant Heritage should be required to produce copies of Heritage's filed tax returns for the last three years, as well as accountant's financial statements (income statement, balance sheet, and statement of cash flows) for the last three years. Therefore, the Motion to Compel Financial

Documentation Information should be GRANTED.

WHEREFORE, Plaintiffs' Motion to Compel Prior Accident Documentation with respect to Requests for Production Nos. 52 and 55 is GRANTED, and Plaintiffs' Motion to Compel Financial Information is GRANTED. Defendants are to fully respond and provide the information and documentation sought. Responses must be provided no later than fourteen (14) days from the date that this Order is entered on the Court's docket.

AND IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
South Carolina Circuit Court Judge

Georgetown, South Carolina
February __, 2024



Georgetown Common Pleas

Case Caption: Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

Case Number: 2022CP2200739

Type: Order/Compel

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2024-02-20 16:20:12 page 5 of 5

Exhibit 8

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) IN THE CIRCUIT COURT
) C/A NO. 2022-CP-22-00739

Ryan Cobb, Malon Cobb, Cobb Trucking LLC,)

and Brandy Cobb,)

)

)

Plaintiffs,)

AFFIDAVIT OF

v.)

DR. OLIVER G. WOOD, JR.

)

David Alan Bigelow, Heritage Hauling, Inc., and)

Boggs Contracting, Inc.)

Defendants.)

PERSONALLY appeared before me, Dr. Oliver G. Wood, Jr., who being first duly sworn, deposes and states as follows:

1. I have been retained by plaintiff's counsel to render an opinion regarding the ability of the defendant to pay a potential punitive damages award. In order to accomplish this, with respect to Boggs Contracting, Inc. I need the following financial documents from Boggs Contracting, Inc.:

A. 3 years of Annual Accountant's Financial Statements.

These statements should include the following:

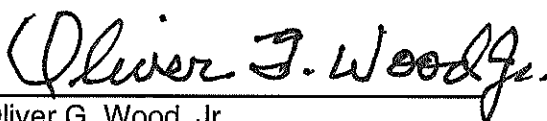
1. Statements of condition.

2. Income statements.

3. Cash flow statements.

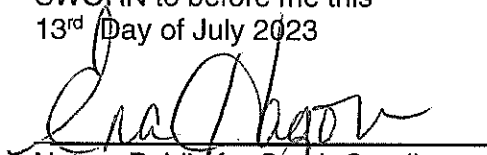
B. 3 years of Federal Tax returns.

2. Complete statements of condition reveal the composition of assets and liabilities as well as shareholders' equity or net worth. Net worth is owners' bookkeeping claim on assets. It is not cash. Net worth may or may not be an appropriate measure of a company's ability to pay a punitive damages award.
3. Income statements reveal how well a company is earning gross revenue, gross profit, operating income, and pretax and after-tax income. These are important measures of a company's well-being and ability to pay a potential punitive damages award.
4. Cash flow statements reveal how much cash the company is realizing from its operations, how much cash it had to raise to finance itself, and how much cash the company invested in assets. These financial measures can assist in determining a company's ability to pay punitive damages.



Oliver G. Wood, Jr.

SWORN to before me this
13th Day of July 2023



Notary Public for South Carolina
My Commission Expires: December 29, 2026



Christopher J. Daniels
T 803.255.9457 F 803.255.9106
chris.daniels@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

1320 Main Street | 17th Floor
Columbia, SC 29201
T 803.799.2000 F 803.256.7500
nelsonmullins.com

April 4, 2024

Via Electronic Mail

The Honorable Alma Y. White
ATTN: April – acarlson@gtcounty.org
Clerk of Court
Georgetown County Courthouse
Post Office Box 479
Georgetown, SC 29442

RE: Ryan Cobb, Malon Cobb, Cobb Trucking, LLC and Brandy Cobb v. David Alan Bigelow, Heritage Hauling, Inc. and Boggs Contracting, Inc.
Civil Action No. 2022-CP-22-00739
Our File No. 001557/03221

Dear April:

The above referenced matter was mediated on March 26, 2024. The parties and counsel attended via zoom. This matter did not settle. However, the parties agreed that an additional mediation would be helpful once a couple more depositions are taken. As such, we have tentatively scheduled the second mediation in June.

Please feel free to contact me if you need additional information.

Very truly yours,

Christopher J. Daniels

CJD:ljs

cc: Scott C. Evans, Esquire (via email)
James B. Moore, III, Esquire (via email)
George W. Bryan, III, Esquire (via email)
Curtis Ott, Esquire (via email)

April 4, 2024
Page 2

Janet Brooks Holmes, Esquire (via email)
Joseph A. Catalano, Esquire (via email)
Mary Ashley Martin, Esquire (via email)
Michael Barfield, Esquire (via email)

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Ryan Cobb, Malon Cobb, Cobb
Trucking, LLC and Brandy Cobb,

Plaintiffs,

v.

David Alan Bigelow, Heritage Hauling,
Inc. and Boggs Contracting, Inc.,

Defendants.

Civil Action No. 2022-CP-22-00739

**AFFIRMATION
PER RULE 33, SCRPC**

Pursuant to Rule 33, South Carolina Rules of Civil Procedure, I, Kerin J. Hayes, Jr., officer of Boggs Contracting, Inc. affirm that the Responses, First Supplemental Responses and Second Supplemental Responses to Plaintiffs' Third Requests for Production provided are true and accurate to the best of my knowledge and reserve the right to further supplement the Responses if new information is discovered or becomes available.

KJH

SWORN TO AND SUBSCRIBED BEFORE ME

This 17th day of April, 2024

Dakota Lewis

NOTARY PUBLIC FOR Union County, NC
MY COMMISSION EXPIRES: 02/13/27

