

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 3

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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.

**DEFENDANT BOGGS
CONTRACTING, INC.'S
MOTION FOR
RECONSIDERATION**

Defendant Boggs Contracting respectfully submits this Motion for Reconsideration pursuant to Rules 59(e) and 60, SCRCP, asking the Court to reconsider the April 22, 2025 Order granting Plaintiffs' Motion for Sanctions and striking Boggs Contracting's Answer.¹ The Court adopted a proposed order submitted by Plaintiffs' counsel. However, with all due respect to the Court, it is apparent from the face of the Order itself that Plaintiffs based their arguments and proposed order on an incorrect application of the law and on facts not accurately represented in the record. Boggs Contracting acknowledges it made unintentional mistakes during the discovery process. However, the Order severely punishes Boggs Contracting for things it did not do and for the actions of others outside Boggs Contracting's control, many of which Boggs Contracting did not even know about, even though Boggs Contracting has gone to great lengths to correct the prior shortcomings.

¹ Boggs Contracting is mindful that this motion is lengthy. However, Boggs Contracting asks the Court to recognize that the length is necessary because there many significant problems with the proposed order drafted by Plaintiffs' counsel and adopted by the Court, making it legally unsupportable and inconsistent with the facts established in the record.

Boggs Contracting respectfully asks the Court to alter or amend the sanctions order and issue an alternative sanction tailored to remedying the prior discovery shortcomings. Boggs Contracting asks the court to consider the following as proposed, alternative sanctions:

1. Allow Plaintiffs to re-depose any Boggs Contracting witnesses who have been previously deposed regarding information or documents not previously disclosed, at Boggs Contracting's expense;
2. Award Plaintiffs attorneys' fees and costs for preparing and arguing their Motion for Sanctions; and/or
3. Require a scheduling order to ensure Plaintiffs are not impacted by further delays in preparing the case for trial.

In drafting the Order, Plaintiffs' counsel misstated the information in the record, failed to consider multiple arguments and issues, and based the Order, at least in part, on information not previously presented to the Court. The Order imposes the nuclear sanction of striking a defendant's answer relying on the Court's "inherent power" and without relying on any statute, case law, or rule. Accordingly, Boggs Contracting respectfully requests that the Court alter or amend the Order for all of the following separate and independent reasons:

1. Striking Boggs Contracting's Answer is unduly harsh, and the Court should consider the sufficiency of alternative sanctions and sanctions that are tailored to the discovery abuses Plaintiffs allege, as suggested below.
2. No statute or case law supports striking a party's answer as a discovery sanction absent the violation of a court order, and doing so undermines South Carolina's strong public policy in favor of litigation being decided on the actual merits of a case. Whereas Plaintiffs' request to strike Boggs Contracting's Answer was specifically made pursuant to Rule 37 and only Rule 37, Plaintiffs expressly declined to rely upon Rule 37 in the Order because that Rule requires a violation of a court order, which did not occur in this case. Rather, Plaintiffs injected and relied only upon the Court's "inherent power," which was never mentioned before in this case, even though there is no precedent for striking a defendant's answer based on the Court's inherent power.
3. The Court did not consider relevant facts, law, and arguments, and the Order omits crucial facts and relies on incorrect characterizations and assumptions that are not supported by the record.

4. Neither the Order, nor the record, identify any actual prejudice to Plaintiffs.
5. The Court did not address whether the Order also strikes Boggs Contracting's crossclaim against Heritage Hauling and David Bigelow.
6. The Court did not rule upon arguments that were raised in opposition to Plaintiffs' motion.

FACTUAL SUMMARY AND PROCEDURAL HISTORY

I. Nature of the Case As Previously Presented in the Record

This is a personal injury lawsuit arising from a February 2022 motor vehicle accident in a road construction zone on a rural, two-lane road in Georgetown County. Defendant Boggs Contracting was the paving contractor for the road resurfacing project. Defendant Boggs Contracting subcontracted out a portion of the work to Defendant Heritage Hauling. The collision occurred while Defendant David Bigelow, an employee of Defendant subcontractor Heritage Hauling, was driving a Heritage Hauling dump truck to deliver a load of hot mix asphalt to the paving site. Mr. Bigelow rear-ended a box truck occupied by Plaintiffs Ryan Cobb, Malon Cobb, and La'Jai Webster.²

Boggs Contracting had no role or responsibility for operating the Heritage Hauling truck that solely caused the collision. Plaintiffs contend Boggs Contracting is vicariously liable for Mr. Bigelow's actions and directly liable for alleged issues with traffic control in the construction zone. Although the Order states a finding of fact that Bigelow was "working for" Boggs Contracting at the time of the incident, this is a **highly disputed** issue that was not before the Court for determination and is not supported by the record. Boggs Contracting vehemently denies that Bigelow was its employee or that Bigelow was working for Boggs Contracting at the time of the

² La'Jai Webster filed a separate lawsuit arising out of the same incident, C/A No. 2023-CP-22-00435.

incident. Boggs Contracting also denies it can be vicariously liable for the negligence of a subcontractor and denies that any alleged issues with traffic control contributed to this collision, if they even existed at all.

Plaintiffs filed this lawsuit on August 30, 2022. Plaintiffs amended their Complaint as recently as May 3, 2024, to add Safe Shield, LLC as a new defendant, and to raise, for the first time, allegations pertaining to traffic control and signage in the construction zone. The parties have exchanged multiple written discovery responses and document productions over the course of almost three (3) years of litigation.

II. Plaintiffs' Misrepresentations of Discovery Dispute Adopted into Court's Order

The discovery dispute underlying the April 22, 2025 Order involves written discovery responses and documents that Boggs Contracting did not produce in a timely manner. There is nothing in the record to refute the objective facts, which cannot be disputed, that the prior discovery shortcomings were not limited to Boggs Contracting itself and that Boggs Contracting did not even know about many of them until the Motion for Sanctions was filed. The indisputable record shows there were shortcomings in prior discovery involving: (1) documents overlooked by the insurance carrier; (2) delays by prior defense counsel with written discovery responses; and (3) documents and emails previously searched and collected by Boggs Contracting. However, Plaintiffs' arguments to the Court grossly misrepresented the documented facts as they exist in the record. Unfortunately, when Plaintiffs' counsel drafted a proposed order as requested by the Court, those misrepresentations unsupported by the record carried forward into the proposed order.

The misrepresentations begin with the April 17, 2024, Verification signed by Kevin J. Hayes, Jr. as an officer of Boggs Contracting. The verification stated:

Pursuant to Rule 33, South Carolina Rules of Civil Procedure, I, Kevin 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.**

(Plf. Mtn. for Sanctions, Ex. 16.) (emphasis added)

Plaintiffs have repeatedly taken this Verification out of context and misrepresented its content and plain meaning in their motion, in oral argument, and in the proposed order. By its plain language, the Verification affirmed that the referenced discovery responses were true and accurate **to the best of Mr. Hayes' knowledge**, which was completely true. Mr. Hayes signed the Verification after he directed a second search for responsive documents, and the Verification was served alongside the responsive documents Mr. Hayes located in this search. (Feb. 12, 2025 Aff. ¶ 10.) The Verification affirmed that Boggs Contracting reserved the right to further supplement the Responses if new information was discovered or became available, which was only necessary because Mr. Hayes was not able to affirm things outside of his knowledge. That statement would not have been necessary or included if Boggs Contracting had been able to say with certainty that no additional documents would be discovered to trigger its ongoing responsibility to supplement its discovery responses.

In a later affidavit dated February 12, 2025 (after the Motion for Sanctions was filed), Mr. Hayes attested that he did not know the April 2024 Verification was overdue or was the subject of a Motion to Compel. (Feb. 12, 2025 Aff. ¶ 11.) Boggs Contracting's prior counsel never provided that information to Boggs Contracting. As with many of the prior discovery shortcomings recited in the Court's April 22, 2025 Order, the failure to provide that information in a timely manner was solely attributable to Boggs Contracting's prior counsel and in no way reflects the actual

knowledge or intent of Boggs Contracting, and it should not be the basis for a finding of intentional or bad faith conduct by Boggs Contracting.

Mr. Hayes subsequently testified in his deposition consistently with the plain meaning of his Verification. Again, however, Plaintiffs have repeatedly taken his testimony out of context and misrepresented its content and plain meaning in their motion, in oral argument, and in the proposed order adopted by the Court. In the relevant portion of Mr. Hayes' testimony, he testified that **to his knowledge**, there were no responsive emails other than the ones that had been produced. (Hayes dep. 98:4-6.) He went on to state that "Related to that incident, **that is all that I'm aware of.**" (Hayes dep. 99:17-20) (emphasis added).) He further explained the steps he had taken to search for responsive emails. (Hayes dep. 98:7 – 99:20.) Just like his Verification, Mr. Hayes' deposition testimony was expressly limited to his own personal knowledge, and he plainly and truthfully stated that, **to his knowledge**, all responsive emails had been located and produced. Contrary to Plaintiffs' repeated misrepresentations to this Court, Mr. Hayes never once stated that "no other emails exist" without limitation. Rather, he specifically testified regarding his own personal knowledge, stating he was not aware of any responsive emails that were not produced. Nothing in the record demonstrates this to be untrue.

III. Stated Basis for Plaintiffs' Motion for Sanctions—Which Plaintiffs Completely Abandoned in the Proposed Order

Plaintiffs filed their Motion for Sanctions on January 2, 2025³—almost six (6) months before this case is scheduled for trial on June 16, 2025. The Motion requested sanctions "pursuant to Rules 11, 26, 34, and 37 of the South Carolina Rules of Civil Procedure." (Mtn. p 1.)⁴ Plaintiffs'

³ The undersigned counsel first appeared as counsel for Boggs Contracting on December 4, 2024.

⁴ Of course, Rules 26 and 34 do not include any provisions for discovery sanctions. The only authority under which Plaintiffs requested sanctions was Rules 11 and 37.

request to strike Boggs Contracting's Answer was specifically made pursuant to Rule 37 and only Rule 37 (Mtn p. 17), because that is the only legal authority that could allow such an extraordinary, nuclear-level discovery sanction. The Motion did not request or even mention any sanctions or relief pursuant to the "inherent power" of the Court, presumably because Plaintiffs' counsel was aware that there is no precedent for striking a defendant's answer pursuant only to the court's inherent power and there is no legal precedent for issuing such a sanction absent an express finding that a party violated a court order.

IV. Affidavit in the Record Reaffirming Plaintiffs' Misrepresentations of Discovery Dispute Adopted into Court's Order

On February 13, 2025, Boggs Contracting submitted an Affidavit of Kevin J. Hayes, Jr., the same corporate officer who submitted the earlier Verification regarding prior discovery responses. The February 2025 affidavit attested to all of the following, and there is **nothing** in the record that contradicts or questions any of these sworn statements:

- In September 2022, an employee of a Boggs Contracting affiliate provided documents related to the subject incident to Boggs Contracting's insurance carrier within a week after Boggs Contracting was served with the Summons and Complaint. That employee then left the company approximately three (3) weeks later. (Feb. 12, 2025 Aff. ¶¶ 4-5.)
- To the best of his knowledge, Mr. Hayes did not believe anyone at Boggs Contracting was aware of the materials provided to the insurance carrier in September 2022, other than that employee who left the company in October 2022. (Feb. 12, 2025 Aff. ¶ 6.)
- Mr. Hayes was unaware that the information sent to the insurance carrier in September 2022 had not been produced in discovery, and he did not believe anyone affiliated with Boggs Contracting was aware of this. (Feb. 12, 2025 Aff. ¶ 7.)

- Mr. Hayes was not aware that his April 2024 Verification was overdue or was the subject of a Motion to Compel until Plaintiffs' Motion for Sanctions was filed in January 2025, because prior defense counsel never told him this. (Feb. 12, 2025 Aff. ¶ 11.)
- Mr. Hayes did not know until February 2025 that prior defense counsel had delayed providing many of Plaintiffs' written discovery requests to Boggs Contracting. (Prior defense counsel never told Boggs Contracting about the delays, even after motions to compel were filed.) (Feb. 12, 2025 Aff. ¶ 12.)

V. Discovery Remedied Since Substitute Defense Counsel Retained

The record before the court shows that, since Boggs Contracting obtained substitute counsel in December 2024, the undersigned counsel initiated a comprehensive review of the discovery process to date and determined additional action was needed to ensure full compliance with the Rules of Civil Procedure. Since substitute counsel was retained, Boggs Contracting's efforts to ensure compliance with its discovery obligations included the following:

- Retained an outside vendor to collect 648,787 documents from 34 email accounts of Boggs Contracting employees and officers;
- Manually reviewed 37,097 documents for responsive information;
- Produced 133 responsive documents from the electronic discovery vendor's collection. (Only approximately 27 unique documents pertain to the collision incident itself; the low number confirms that very little was missed earlier in the discovery process);
- Numerous Boggs Contracting employees participated in more than 20 hours of in-person and virtual meetings with counsel, plus countless hours communicating with counsel by email to provide information;
- Made all employees and executives – from dispatchers to pavers – available for meetings with counsel and to assist with collecting responsive information;

- Obtained and produced photographs and video taken by DELTA |v| Forensic Engineering the day after the collision incident, and met with DELTA |v| regarding those materials;
- A Boggs Contracting officer and employees have reviewed every prior written discovery response with counsel to ensure any incomplete information is supplemented; and
- Worked directly with third-party software company XBE to obtain information from that system in a producible format, and produced 714 pages of screenshots from the XBE system and spreadsheets generated from data in the XBE software.

VI. Motion Hearing and Occurrences After the Hearing

On February 20, 2025, after Boggs Contracting supplemented its document production, Plaintiffs' Motion for Sanctions came before the Honorable David P. Caraker, Jr. for a hearing. In the hearing, Plaintiffs again requested sanctions only pursuant to Rule 37, SCRCp, and did not request or even mention any sanctions or relief pursuant to the "inherent power" of the Court. Plaintiffs did not contend there was ever any violation of a court order by Boggs Contracting. Although the Order found that Boggs Contracting's alleged "bad faith conduct was aimed at avoiding entry of a court order," (Order p. 13), Plaintiffs never made any such argument. This idea was never argued, or even mentioned, until it appeared in Plaintiffs' proposed order.

After the February 20, 2025 hearing, all parties proceeded forward in discovery, including exchange of interrogatories, requests for production, requests for admission, producing documents, and scheduling nine (9) depositions. There was no further mention by the parties of the possibility of striking Boggs Contracting's Answer, and all parties proceeded with additional discovery as if Boggs Contracting would be a party when the case goes to trial. Plaintiffs have never raised any issues with Boggs Contracting's supplemental document production and have acknowledged the prior deficiencies in producing documents have been corrected.

On March 18, 2025, Judge Caraker emailed Plaintiffs' counsel and the undersigned counsel for Boggs Contracting, stating his intention to grant Plaintiffs' Motion and strike Boggs

Contracting's Answer. (Ex. A – 3/18/2025 Email). The email asked Plaintiffs' counsel to prepare the order, specifically instructing Plaintiffs' counsel to “touch on the law regarding sanctions, with particular attention to striking an answer.” (*Id.*)

VII. Extensive and Egregious Problems with Plaintiffs' Proposed Order

On March 31, 2025, Plaintiffs' counsel emailed a proposed order to the Court. The Court notified Plaintiffs' counsel and the undersigned counsel for Boggs Contracting on April 4, 2025 that the Order had been signed and was being sent to the Clerk of Court for filing. The Order was entered with the Court on April 22, 2025.

Whereas Plaintiffs' only request to strike Boggs Contracting's Answer was made specifically pursuant to Rule 37 and only Rule 37, Plaintiffs' counsel apparently recognized in drafting the proposed order that there is no valid basis to strike Boggs Contracting's Answer under Rule 37 or any other precedent of South Carolina law. Therefore, Plaintiffs completely and expressly abandoned their argument that sanctions should be issued under Rule 37 and instead drafted the proposed order to issue the sanction of striking Boggs Contracting's Answer solely pursuant to the “inherent power” of the Court, which was never mentioned before it suddenly appeared in the proposed order. However, as set forth below, this is not a valid basis for striking a defendant's Answer.

The Order relied on incorrect statements of fact not supported by the record, incorrect characterizations and assumptions not supported by the record, and incorrect applications of law. As a partial list (illustrative only, not exhaustive), examples of inaccuracies and unsupported statements include all of the following:⁵

⁵ The undersigned counsel is mindful that this list consumes over four full pages and may be so long that the reader loses interest. However, the length alone reflects the egregious nature of the inaccuracies and unsupported statements, which should not escape the Court's attention.

- The Order spent more than two (2) pages reciting Boggs Contracting’s responses to written discovery produced either late or not at all, each of which were produced on the day before a hearing was scheduled on multiple motions to compel discovery filed by Plaintiffs. Every one of those written discovery responses was signed and produced by Boggs Contracting’s prior defense counsel, and nothing in the record indicates that the failure to respond in a timely manner or at all was attributable to anyone **other** than prior defense counsel. However, with no basis, the Order disregards the shortcomings by prior defense counsel, attributes all shortcomings to Boggs Contracting itself, and states twice that “the Court’s ruling in no way touches upon the actions of any of the lawyers involved” (Order p. 8) and that it “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.” (Order p. 13.)
- The Order states that “[t]he present dispute before the Court arises out of emails (related to the warning signs) that Boggs [Contracting] did not produce and stated under oath did not exist.” (Order p. 2.) However, as explained above and further below, the accusation that Boggs Contracting stated under oath that the emails “did not exist” is false. This statement is based solely on Plaintiffs’ misrepresentation of Mr. Hayes’ statements **that he personally was not aware of** any further emails, while reserving the right to supplement and produce more documents if they were discovered. The record shows that prior defense counsel did not conduct their own search of Boggs Contracting’s documents or email system for responsive information and did not retain a discovery vendor to manage the documents. Contrary to Plaintiffs’ unsupported argument that Boggs Contracting said no other documents existed, Mr. Hayes expressly

stated that he was not aware of any other documents but that additional documents would be produced if they were located.

- The Order states that Mr. Hayes “testified that two emails produced by Boggs [Contracting] were the only responsive documents.” (Order p. 5.) However, this is also inaccurate, as it is also based solely on Plaintiffs’ misrepresentation of Mr. Hayes’ statements **that he personally was not aware of** any other responsive emails. This is an important distinction not recognized in the Order.
- The Order states that Boggs Contracting produced “at least 133 responsive documents,” (Order p. 5), but it does not acknowledge that of this number, only approximately twenty-seven (27) unique documents pertain to the collision incident itself. This was after the electronic discovery vendor collected and processed approximately 650,000 documents, and Boggs Contracting’s counsel manually reviewed over 37,000 of those documents. The low number confirms that despite Plaintiffs’ complaints, very little was missed earlier in the discovery process.
- The Order states that “[t]he production included an investigative report of a forensic engineering company.” (Order p. 5.) However, this is once again misrepresented by Plaintiffs, as all the engineering company did was take photographs and a video; they did **not** issue a report. Further—and tellingly—since the photographs and video from the engineering company were produced on February 6, 2025, Plaintiffs never raised any issue about those photographs and video, expressed any concern about it, or even mentioned it except in the proposed Order. There is nothing in the record indicating that Plaintiffs have any issue with the production of those photographs and video.

- The Order states that “[in the February 2025] affidavit, Mr. Hayes changes his testimony about the existing responsive discovery and blames Boggs [Contracting’s] prior defense counsel.” (Order p. 6.) However, there is nothing in the record supporting the assertion that Mr. Hayes ever changed any of his testimony. The only reason he raised questions for the first time in February 2025 about prior defense counsel is he learned for the first time in January and February 2025 that prior defense counsel was responsible for numerous delays and failures to produce discovery responses, which was never disclosed to Boggs Contracting itself before the Motion for Sanctions was filed.
- The Order incorrectly states in numerous places that Boggs Contracting knowingly gave false assurances that all documents had been produced while under oath and “assurances that Plaintiffs had all discoverable, existing information.” (Order pp. 6-7, 10.) However, as explained above, these statements are not correct; they actually directly contradict Mr. Hayes’ Verification and deposition testimony. Once again, Mr. Hayes stated in his Verification and his deposition **that he personally was not aware of** any further emails.
- The Order states that “it was seemingly simple for [Mr. Hayes] to find the documents after Plaintiffs filed the motion for sanctions.” (Order p. 7.) This statement pertains to the photographs and video taken by an engineering firm the day after the subject incident. However, there is no basis for the assertion that Mr. Hayes was the one that found the documents at all, which is simply untrue and not based on anything in the record. Boggs Contracting’s new defense counsel actually had to go to great lengths to obtain the documents directly from DELTA |v| after learning of their existence in

conjunction with the electronic discovery vendor that conducted a comprehensive collection and processing of approximately 650,000 documents from more than thirty (30) current and former employees. Mr. Hayes had nothing to do with it. If counsel and the vendor had not located a reference to the documents in an old email from the former employee who left Boggs Contracting's affiliate in October 2022, it is possible they never would have been located because no one from Boggs Contracting was aware of the documents. This incorrect statement in the Order, with no basis in the record or any other source, has the effect of punishing Boggs Contracting for extra effort taken by counsel to locate and produce documents from a third-party source.

- The Order states that Mr. Hayes' "affidavit states that no one affiliated with Boggs [Contracting] had knowledge of the information sent to the insurance carrier." (Order p. 8.) However, this is simply untrue; the affidavit did not say this at all. Rather, it stated that Mr. Hayes did not "believe anyone affiliated with Boggs Contracting was aware that the information sent to the insurance carrier in September 2022 was not provided to Boggs Contracting's prior defense counsel and had not been produced in discovery." This was a completely true statement, and there is nothing in the record to refute it. There is no reason to believe or assert that anyone affiliated with Boggs Contracting was aware that information sent to the insurance carrier was not provided to prior defense counsel and had not been produced in discovery.
- The Order states that "Mr. Guillot certainly had knowledge of his own email and that it was not produced." (Order p. 8.) However, there is no basis whatsoever for the assertion that Mr. Guillot had any knowledge of what documents were or were not

produced in discovery in this case. Discovery responses and document productions were produced by prior defense counsel, not by Mr. Guillot.

- The Order states that “Plaintiffs suffered prejudice because of Boggs [Contracting]’s conduct.” (Order p. 9.) However, it does not identify any prejudice, and the record does not reflect this finding. As explained below, the fact that Boggs Contracting did not produce some documents in a timely manner does not constitute prejudice to Plaintiffs, especially when Boggs Contracting voluntarily undertook extraordinary efforts to locate and produce the documents months before the scheduled trial.

VIII. Prior Shortcomings in Discovery

Boggs Contracting acknowledges that documents were unintentionally not previously produced and that some written discovery responses were not provided in a timely manner by prior defense counsel. Boggs Contracting acknowledges that its own searches for responsive documents did not locate all responsive documents. However, the finding that documents or information were intentionally withheld ignores the facts of the record. Examples of the prior shortcomings, which have been remedied where possible:

(1) Documents inadvertently overlooked by the insurance carrier

The record reflects that Boggs Contracting employees provided multiple relevant and responsive documents to its insurance carrier within the first week after being served with the Summons and Complaint in September 2022. Boggs Contracting was under the impression anything it had sent to its insurance carrier had been provided to defense counsel and produced in discovery, even though those documents unknowingly never made it to prior defense counsel. (Feb. 12, 2025 Aff. ¶¶ 4-7.) Boggs Contracting did not withhold these documents from production, and this finding cannot be supported by the record. The Court should consider that no one at Boggs

Contracting realized the documents were not provided to prior defense counsel or produced in discovery until after the Motion for Sanctions was filed.

The overlooked documents include the February 4, 2022 email exchange between Matthew Guillot and Christopher Bourque referenced in Plaintiffs' Motion and the Order. Tellingly, Plaintiffs never requested to depose Mr. Guillot regarding the email. The documents also include photographs and videos of the collision scene taken by DELTA |v| Forensic Engineering one day after the collision incident. The Boggs Contracting employee who arranged the DELTA |v| inspection left the company shortly after providing the insurance carrier a link to download the photographs and video on September 30, 2022, and no one from Boggs Contracting realized those photographs and video were not downloaded by the insurance carrier or produced.

The undersigned counsel learned of the DELTA |v| inspection on Saturday, February 1, 2025. Counsel had to obtain the DELTA |v| photographs and video directly from DELTA |v| on February 5, 2025 (because neither Boggs Contracting nor the carrier still had the DELTA |v| files) and produced them to counsel for all parties the very next day, on February 6, 2025. Importantly, those photographs and video do not provide any new or different information that was not previously known in this case, and there is no prejudice to any party by the delay in their production. There is nothing in the record indicating that Plaintiffs ever had any issue with the production of those photographs and video.

(2) Delays by prior defense counsel with written discovery responses

The record also reflects that Boggs Contracting's prior defense counsel caused delays with several sets of written discovery requests. This led to multiple motions to compel by Plaintiffs, which were each resolved shortly before the respective motion hearings. These issues were resolved in 2023 and 2024, but Boggs Contracting itself did not even know about the prior discovery issues until the Motion for Sanctions was filed because prior defense counsel did not tell

Boggs Contracting about them. (Feb. 12, 2025 Aff. ¶ 12.) Boggs Contracting was also unaware that some of these delays were the subject of motions to compel. (Feb. 12, 2025 Aff. ¶ 11.)

Boggs Contracting was not made aware of Plaintiffs' request for a verification of its Responses to their Third Requests for Production until April 3, 2024, over a month after Plaintiffs filed their March 7, 2024 Motion to Compel, and Boggs Contracting did not know the verification was the subject of a Motion to Compel until Plaintiffs' Motion for Sanctions. (Feb. 12, 2025 Aff. ¶ 11.)

(3) Documents and emails previously searched and collected by Boggs Contracting

The record also reflects that Boggs Contracting's failure to produce some documents was not intentional and was the result of poor communications between prior defense counsel and Boggs Contracting. Prior defense counsel did not conduct their own search of Boggs Contracting's documents or email system for responsive information and did not retain a discovery vendor to manage the documents. Rather, prior counsel largely left Boggs Contracting's non-lawyers to locate responsive documents on their own. Importantly, as reflected in the record, Boggs Contracting acted at the instruction of prior defense counsel, who only instructed Boggs Contracting to locate and provide documents related to the subject incident and emails between Boggs Contracting and Heritage Hauling related to the subject incident. (Feb. 12, 2025 Aff. ¶ 8.)

As the record reflects, Mr. Hayes testified that he searched his own emails as instructed by prior counsel and directed Boggs Contracting's employees to search their email accounts two (2) different times, and he provided the results to prior counsel. Mr. Hayes signed an affirmation in April 2024 verifying Boggs Contracting's discovery responses, but only after he identified employees likely to have information about the collision and directed them to perform a second search. The two (2) responsive emails he found were produced alongside the signed affidavit.

While it is now known that some documents were missed, the number of documents was small, and they do not have a material effect on any party's claims or defenses.

The record also shows that, since the undersigned counsel was retained, an outside vendor collected 648,787 documents from thirty-four (34) email accounts of Boggs Contracting employees and officers, manually reviewed 37,097 of those documents for responsive information, and produced approximately 133 responsive documents. Of that number, only approximately 27 unique documents were previously missed that pertain to the collision incident itself.

LEGAL STANDARD

A motion made pursuant to Rule 59(e), SCRCP, is an appropriate “vehicle to request the trial court ‘alter or amend the judgment.’” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). Such a motion is appropriate where a party “believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* at 24, 602 S.E.2d at 780. A motion for reconsideration is appropriate to “correct a clear error of law or prevent manifest injustice” and permit a “court to correct its own errors, ‘sparing the parties and the appellate courts the burden of unnecessary appellate proceedings.’” *Pacific Ins. Co. v. Am. Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998).

ARGUMENT

Boggs Contracting respectfully requests the Court reconsider and reverse its holding in the April 22, 2025 Order that granted Plaintiffs’ Motion for Sanctions and struck Boggs Contracting’s Answer. Discovery sanctions must be supported by law and narrowly aimed at the specific misconduct of the party sanctioned – striking Boggs Contracting’s answer is neither. To the extent the Court finds that a discovery sanction is warranted, the Court should issue a sanction that is

appropriately targeted to remedy the issue before the Court. However, there is no legal precedent to strike Boggs Contracting's Answer, and such a sanction goes far "beyond the necessities of the situation to foreclose a decision on the merits of a case." *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990) (holding it was "unduly harsh under the circumstances" to place the defendants in default and strike their counterclaim); *cf. Patton v. Miller*, 420 S.C. 471, 493, 804 S.E.2d 252, 263 (2017) ("It is [] entirely contrary to the spirit of the . . . Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities.") (quoting *Foman v. Davis*, 371 U.S. 178, 181 (1962)).

Boggs Contracting already took full ownership of the previous gaps in its discovery responses, even those that occurred outside of its control, by taking extraordinary measures to supplement its document production before the hearing on Plaintiffs' Motion. Importantly, Plaintiffs have not alleged any deficiencies with the supplemental production because Boggs Contracting has completely cured the gaps Plaintiffs alleged. The only issues before the Court are Plaintiffs' alleged prejudice – that they did not have the opportunity to depose Boggs Contracting's 30(b)(6) witnesses about the supplemented documents – and the appropriate remedy for that prejudice. This purported prejudice could easily, and fully, be cured by sanctioning Boggs Contracting by reopening the 30(b)(6) deposition at Boggs Contracting's expense.

I. Striking Boggs Contracting's Answer is unduly harsh, and the Court should consider the sufficiency of alternative sanctions and/or sanctions that are tailored to the discovery abuses Plaintiffs allege.

Boggs Contracting respectfully asks the Court to reconsider the Order because the sanction of striking Boggs Contracting's Answer is unreasonably harsh and punitive, rather than targeted and corrective as required by South Carolina law. A circuit court errs when it imposes an unreasonable sanction and goes "beyond the necessities of the situation to foreclose a decision on

the merits of a case.” *Balloon Plantation*, 303 S.C. at 154, 399 S.E.2d at 440. Sanctions should not be unduly harsh, but rather, they should be limited in scope to address the party’s violation of the court order. *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 543, 489 S.E.2d 679, 682 (Ct. App. 1997).

The Court relied on an incorrect application of case law interpreting Rule 37 to inform its decision to strike Boggs Contracting’s Answer. The Court erred by: (1) failing to assess alternative sanctions that could have addressed the alleged misconduct without resorting to such an extreme measure; (2) not narrowly tailoring its sanction to the minimal shortcomings within Boggs Contracting’s control; (3) not analyzing the impact on the other defendants; and (4) ignoring the risk of inconsistent results. The purpose of sanctions is to ensure compliance and fairness, not to punish a party unduly. The Court’s decision to strike Boggs Contracting’s Answer does not align with the principles of reasonableness and proportionality in the administration of sanctions.

A. The Court should have considered alternative sanctions to address the alleged misconduct without foreclosing a decision on the merits of the case.

The Court should reconsider its sanction and assess the adequacy of less severe sanctions to remedy the prejudice Plaintiffs allege. South Carolina’s appellate courts have repeatedly recognized that “South Carolina’s policy favor[s] the disposition of issues *on their merits* rather than on technicalities.” *Micronics, Inc. v. S.C. Dep’t of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (emphasis added). Importantly, “[i]t is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.” *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981); *see also CEL Prods., LLC v. Rozelle*, 357 S.C. 125, 130, 591 S.E.2d 643, 645 (Ct. App. 2004) (“When a trial judge is vested with discretion but his ruling reveals no discretion was in fact exercised, an error of law has occurred.”). Mere recitation that a Court has exercised its discretion is insufficient to determine

that discretion was exercised, and the Court must state “on what basis the discretion was exercised.” *Smith*, 276 S.C. at 498, 280 S.E.2d at 202.

In *Karppi*, the Court of Appeals reversed a circuit court’s sanction order that struck a party’s pleadings in their entirety because the sanction was “unduly harsh under the circumstances,” was not limited to the scope of the violation of the court’s order, and because alternative sanctions would have been sufficient. *Karppi*, 327 S.C. at 543, 545, 489 S.E.2d at 682-83. The court reasoned that striking the party’s pleadings was an abuse of the court’s discretion that “ran afoul of the requirement that the sanction imposed be reasonable – comprehensive, yet not overly broad,” and stressed that any number of alternative and more narrowly tailored sanctions would have been sufficient to protect discovery rights and punish wrongdoing. *Id.* at 544-45, 489 S.E.2d at 682-83.

Like in *Karppi*, alternative sanctions in this case exist that would be more appropriately tailored to remedy the prior discovery shortcomings, protect Plaintiffs’ rights, and address the unintentional mistakes attributable to Boggs Contracting. Boggs Contracting already supplemented its document production, and the only prejudice Plaintiffs could articulate – that they could not question Boggs Contracting’s 30(b)(6) representatives about the supplemented documents – is easily avoided by re-opening the 30(b)(6) deposition at Boggs Contracting’s expense.⁶ Striking Boggs Contracting’s Answer is the kind of sanction the court described as a “hydrogen bomb” in *Balloon Plantation*. It is neither reasonable, comprehensive, nor narrowly tailored, and as the court highlighted in *Karppi*, alternative sanctions are sufficient to remedy the prejudice Plaintiffs allege.

⁶ Boggs Contracting does not concede that Plaintiffs suffered any actual prejudice because the supplemental document production has little to no impact on Plaintiffs’ case and Plaintiffs could have deposed the authors of the supplemented emails in their individual capacity, but they have not done since in the months since Boggs Contracting produced the emails.

Boggs Contracting respectfully asks the Court to reconsider its Order striking its Answer and consider issuing an alternative sanction, such as reopening its 30(b)(6) deposition at Boggs Contracting's expense, because this would fully cure the only finding of prejudice articulated in the Order without denying Boggs Contracting a defense on the merits of the case.

B. The Court should narrowly tailor its sanction to the scope of the violation of a discovery order or the minor shortcomings in Boggs Contracting's document production that were corrected before the hearing.

Boggs Contracting did not violate a court order, and striking Boggs Contracting's Answer is not narrowly tailored to address the violation of a court order. The sanction also is not tailored to the now-corrected gaps in Boggs Contracting's discovery. Boggs Contracting is not solely responsible for the gaps in its document production, and striking Boggs Contracting's Answer has far-reaching implications for the other defendants and for the separate lawsuit, C/A No. 2023-CP-22-00435 (the "Webster Lawsuit"), that arose out of the same incident.

1. Striking Boggs Contracting's Answer is not narrowly tailored to Boggs Contracting's actions and punishes Boggs Contracting for unintentional shortcomings by its former attorneys and insurance carrier that Boggs Contracting did not even know about.

Boggs Contracting admits some responsive documents were overlooked in its search, and Boggs Contracting takes responsibility for this mistake, but the errors in its document production cannot be entirely attributed to Boggs Contracting, and it is unjust to sanction Boggs Contracting so severely for mistakes that took place outside of its control. *See Karppi*, 327 S.C. at 545 n.6, 489 S.E.2d at 683 n.6 ("[U]nder these circumstances it seems from the record as though the attorney [] was at least as much to blame as the party itself, for its indiscretions. To penalize [the party] so severely for apparently relying on the advice of its attorney, under these circumstances, is clearly unjust, and would not properly serve the purposes for sanctions.").

The Court should not ignore the actions (and inactions) of Boggs Contracting's former defense counsel because these facts are highly relevant to the allegation presented for the first time in the Order that Boggs Contracting intentionally drug its feet in discovery to avoid the issuance of any court orders compelling its document production. (Order p. 12.) Until Mr. Hayes reviewed Plaintiffs' Motion for Sanctions, he was not aware the discovery verification he signed was overdue when the former attorneys provided it to him, or that the verification was the subject of a motion to compel. (Feb. 12, 2025 Aff. ¶¶ 11-12.) Mr. Hayes was also not aware and does not believe anyone at Boggs Contracting was aware that the information sent to the insurance carrier in September 2022 was not provided to Boggs Contracting's prior defense counsel and had not been produced in discovery. (Feb. 12, 2025 Aff. ¶ 7.)

Boggs Contracting conducted a good faith search for responsive documents, but a relatively minimal number of documents were inadvertently missed. Boggs Contracting does not deny that this mistake played a role in the discovery issues Plaintiffs allege, but striking Boggs Contracting's Answer punishes the company as if it were the sole cause of these issues, even though the record clearly shows this is not the case. Importantly, when substitute counsel appeared, Boggs Contracting took swift ownership over correcting these issues by going to great lengths to collect and produce the overlooked documents. While Boggs Contracting did initially miss some documents in discovery, this error was largely the byproduct of miscommunications with the carrier and former defense counsel. The Court should consider that this is a correctable error (that has already been corrected), not an intentional attempt to prejudice Plaintiffs by delaying discovery.

2. The Court should analyze the impact of striking Boggs Contracting's Answer on Defendants Heritage Hauling, David Bigelow, and Safe Shield.

Striking Boggs Contracting's Answer and placing it in default will have a significant impact on the other defendants because the allegations against the defendants are inextricably tied to one another. "The need for the trial court to narrowly tailor its sanction to the offense committed by a party is never more evident than in cases involving multiple parties," and "the trial court must closely scrutinize the dynamics of the litigation and be extremely cautious before striking the pleadings of a transgressing party because of the effects such action is likely to have on the other parties." *Karppi*, 327 S.C. at 544, 489 S.E.2d at 682.

In *Karppi*, the Court of Appeals held that the circuit court erred by striking a defendant floor manufacturer's ("Manufacturer") answer and crossclaim against a co-defendant floor seller ("Seller") because doing so was unduly harsh under the circumstances and was not limited in scope to the violation of the court's discovery order. *Id.* at 543, 489 S.E.2d at 682. Importantly, there was no evidence in the record that the Seller's rights in discovery had been violated, and it had not moved for any relief due to any alleged misconduct. *Id.* at 543-44, 489 S.E.2d at 682. Thus, striking the crossclaim was not aimed at the Manufacturer's specific misconduct, and it simultaneously unduly prejudiced and benefited the Seller. *Id.* at 544, 489 S.E.2d at 682-83. While the Seller received a windfall when the crossclaim was struck, it was also prejudiced because striking the answer meant the Manufacturer's liability for selling a defective product was presumed, thus stripping the Seller of its ability to defend on the grounds that it had not sold defective materials. *Id.* The Court of Appeals held that striking the Manufacturer's answer had the "practical effect of . . . unnecessarily foreclosing a decision on the merits of the case" against the Seller. *Id.* at 544, 489 S.E.2d at 683.

The April 22 Order did not address the impact striking Boggs Contracting's Answer has on the remaining defendants, especially Heritage Hauling. (Order p. 12.) It is unclear whether the Order also strikes Boggs Contracting's crossclaim against Heritage Hauling and David Bigelow. If the crossclaim is also stricken, then the Order gives Heritage Hauling a windfall by dismissing Boggs Contracting's crossclaim against Heritage Hauling. As in *Karppi*, the Court should reconsider aiming its sanction at the specific misconduct Plaintiffs allege to avoid issuing an overly broad sanction to the benefit of Heritage Hauling, a party unrelated to this discovery dispute.

The Order also leaves the remaining defendants, and Boggs Contracting, on uncertain procedural grounds. It is unclear what impact the Order will have on the jury verdict form, the allocation of fault among the remaining defendants, and the other defendants' rights to a setoff.

3. The Court should evaluate the risk of inconsistent results.

The Court should reconsider its ruling to evaluate the risk of inconsistent results both in the claims against the other defendants and in the *Webster* case. Boggs Contracting has identical meritorious defenses against Webster's claim as it does against the Cobb Plaintiffs' claim. Striking Boggs Contracting's Answer in this case does not preclude it from litigating the *Webster* case on the merits. *See In re Est. of Brown*, 430 S.C. 474, 488, 846 S.E.2d 342, 349 (2020) ("Collateral estoppel does not apply to default judgments because the factual issues were never actually litigated."). Thus, a verdict for Boggs Contracting in the *Webster* case would create a highly inconsistent situation where Boggs Contracting is found not liable for the negligence alleged but treated as if it were liable contrary to the actual merits of the case.

II. No statute or case law supports striking a party's answer as a discovery sanction absent the violation of a court order, and doing so undermines South Carolina's strong public policy in favor of litigation being decided on the actual merits of a case.

The decision to bypass Rule 37 and rely only on the Court's inherent powers disregards the framework for addressing discovery violations established by the legislature through the South Carolina Rules of Civil Procedure and undermines South Carolina's strong public policy in favor of litigation being decided on the actual merits of the case. Plaintiffs' Motion sought sanctions under Rule 37, and the parties' briefings and oral arguments discussed Rule 37, not the Court's inherent powers. It was not until after the Court informally granted Plaintiffs' Motion for Sanctions and requested a proposed Order that Plaintiffs presented the Court's inherent powers as authority for striking Boggs Contracting's Answer. The problems with this approach are that: (1) ignoring Rule 37 and relying on the Court's inherent powers to issue an unprecedented sanction is not supported by any statute or case law, and (2) Rule 37(b) is the only appropriate authority for the discovery abuses Plaintiffs allege, but it does not allow for the sanction issued by the Court.

A. Ignoring Rule 37 and relying on the Court's inherent powers to issue an unprecedented sanction is not supported by any statute or case law.

Boggs Contracting respectfully urges the Court to reconsider its ruling because Plaintiffs' counsel explicitly rejected the authorities in their Motion for Sanctions and instead relied solely on an unprecedented application of the Court's inherent powers. There is no precedent for relying upon the Court's inherent power to strike Boggs Contracting's Answer as a discovery sanction, especially when the Order's findings of fact are not supported by the record. *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 458-59, 814 S.E.2d 643, 657-58 (Ct. App. 2018) (holding the circuit court did not have authority to strike defendants' answers as a sanction for deceitful

conduct absent the violation of a court order). Absent the violation of a court order, no legal grounds exist to strike Boggs Contracting's Answer as a sanction for discovery abuse.

In *Skywaves*, the Court of Appeals affirmed the circuit court's denial of the plaintiff's motion to strike the defendants' answers as a sanction for alleged deceitful conduct that arose, in part, out of the defendants' denial that a certain document existed. *Id.* at 458, 814 S.E.2d at 657. The Court of Appeals rejected the plaintiff's reliance on cases that struck a defendant's answer as a sanction for violating a court order. *Id.* Because the court found the defendants' conduct was not deceitful and the defendants never violated a court order, the Court of Appeals affirmed that the circuit court correctly denied the motion to strike because it had no legal grounds to strike the defendants' answers. *Id.* at 459, 814 S.E.2d at 658-59. Likewise, Boggs Contracting has never violated a Court order, and the Court should not strike Boggs Contracting's Answer under these circumstances.

The only three (3) cases the Order relies on to support its inherent power to issue this extreme and unprecedented sanction do not apply at all to the facts of this case, which emphasizes that the Court should not rely on its inherent power to issue an unprecedented sanction not supported by the facts of the case.

i. *Ex parte Dibble* does not apply.

The Order first cites *Dibble* for the proposition that courts have 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, 565, 310 S.E.2d 440, 442 (Ct. App. 1983). *Dibble* did not involve discovery sanctions at all. Rather, the case simply involved the court's use of its inherent power to appoint lawyers to represent clients on a pro bono basis (without getting paid). However, the Supreme Court later held the inherent power referenced in *Dibble* was limited, as it was subject to

the Takings Clause of the Constitution because lawyers are entitled to just compensation for their work. *Ex parte Brown*, 393 S.C. 214, 223, 711 S.E.2d 899, 904 (2011). The inherent power the court relied upon in *Dibble* has no application to the facts of this case, and the Supreme Court's holding in *Brown* emphasizes that courts should exercise caution when relying upon inherent powers, especially when there is no precedential authority.

Just as the Supreme Court held in *Brown* that a court's inherent power to appoint a lawyer is subject to the lawyer's entitlement to just compensation, this Court's inherent power to issue sanctions is subject to the South Carolina Rules of Civil Procedure. When the South Carolina Rules of Civil Procedure establish the procedure for sanctions, it is an error of law to issue sanctions inconsistent with those permitted by the Rules. *See also Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 600, 713 S.E.2d 624, 629 (2011) (holding the circuit court erred in issuing sanctions in excess of those permitted by Rule 11).

ii. *Brandt v. Gooding* does not apply.

The Court also cites *Brandt v. Gooding*, 368 S.C. 618, 630 S.E.2d 259 (2006), another wholly inapplicable case that did not involve discovery sanctions. Rather, it involved a *pro se* plaintiff who was imprisoned for criminal contempt after forging a document in a legal malpractice action and attempting to perpetrate fraud upon the court by having his expert witness rely upon that forged, fraudulent document, using it in a deposition, and submitting it to the court in support of a motion. Contrary to the implication of this Court's Order, the *Brandt* court did not rely upon the court's "inherent power" in dismissing the plaintiff's complaint. Rather, the dismissal in *Brandt* was made under Rule 41(b), which is not referenced in this Court's Order at all because it does not apply. The singular, passing reference in *Brandt* to the court's "inherent power" was in an entirely different context involving imprisonment for criminal contempt. It had nothing to do with striking

a complaint as a discovery sanction. *Brandt* was also subsequently disapproved by the Fourth Circuit Court of Appeals.

The fraudulent document in *Brandt* was not analogous to Plaintiffs' unsupported argument in this case that Boggs Contracting submitted a false affidavit for numerous reasons. Most importantly, the document was a falsified letter from an attorney that Brandt created to misrepresent the attorney's actions, not merely an affidavit attesting to his own actions. Additionally, the affidavit in this case merely truthfully stated that Mr. Hayes was not aware of additional documents that had not been produced. Unlike *Brandt*, there is no issue in this case of a fraudulently created document that resulted in imprisonment for criminal contempt.

Relying on *Brandt* in this case is wholly inappropriate; the Supreme Court only upheld the circuit court's dismissal of Brandt's complaint because the circuit court found Brandt in contempt of court for introducing a fraudulent document, dismissed the complaint per Rule 41(b) as a sanction for perpetrating a fraud upon the court, and sentenced Brandt to prison. *Id.* at 627, 630 S.E.2d at 263-64. It was only under those extreme circumstances that the Supreme Court held it was appropriate for the circuit court to dismiss Brandt's complaint as a sanction for contempt of court. *Id.* at 627, 630 S.E.2d at 264. None of those factors apply here.

iii. *Gathers v. S.C. Elec. & Gas Co.* does not apply.

Finally, the Order cites *Gathers* as specific support for the Court's inherent power to issue sanctions for discovery violations outside of Rule 37 and states this case "discuss[es] an adverse jury charge as a sanction for destruction or loss of evidence." (Order p. 13.); *Gathers By & Through Hutchinson v. S.C. Elec. & Gas Co.*, 311 S.C. 81, 83, 427 S.E.2d 687, 689 (Ct. App. 1993). Unlike this case, *Gathers* involved sanctions for spoliation of evidence, which do not exist here at all. *Gathers*' estate brought a wrongful death action against SCE&G (the "Utility Company") after

Gathers was electrocuted by a water pipe. *Id.* at 82, 427 S.E.2d at 688. The Utility Company inspected the water pipe the day Gathers died and found 120 volts of electricity running through it. *Id.* at 83, 427 S.E.2d at 689. The Utility Company disconnected the line and meter as a safety precaution and discarded them. *Id.* The water pipe was no longer electrified when the service was reconnected. *Id.*

Because the line and meter were discarded, they could not be examined by Gather's expert, and the circuit court let the expert infer the discarded evidence would have been adverse to the Utility Company. *Id.* The Utility Company moved to strike the expert's testimony and argued the expert's opinion assumed, without evidentiary support, that a defect in the service line electrified the water pipe. *Id.* The issue was a spoliation issue, not an allegation that a party failed to produce documents.

The circuit court denied the Utility Company's motion and allowed the expert's testimony. *Id.* The Court of Appeals found the expert's opinion was proper because the circumstances suggested a defect in the service line and noted that when evidence is lost or destroyed, an inference may be drawn that the evidence would have been adverse to that party. *Id.* Thus, the Court of Appeals held the circuit court did not err in denying the Utility Company's motion to strike the expert's testimony and in allowing the jury to determine what caused Gathers' electrocution. *Id.*

Gathers does not address discovery abuse, sanctions, or adverse jury charges, and its holding does not support the proposition that "[s]anctions are permissible for discovery violations outside of Rule 37." (Order p. 12.) The circuit court did not issue a sanction for a discovery violation; it allowed the expert to draw an adverse inference about lost evidence. *Gathers* also does not mention an adverse jury charge and simply held the circuit court did not err in allowing the jury to determine what caused Gather's electrocution. Reliance on *Gathers* to issue discovery

sanctions outside of Rule 37 is a clear error of law because the case has no application to discovery abuses or discovery sanctions.

B. Rule 37(b) is the only appropriate authority for the discovery abuses Plaintiffs allege, but it does not allow for the sanction issued by the Court.

Rule 37 governs discovery, and it establishes the proper procedure for alleged discovery abuses. However, Plaintiffs' counsel abandoned Rule 37 as the basis for sanctioning Boggs Contracting, apparently because it is clear that Rule 37 does not allow for the sanction issued by this Court. The Rule states in pertinent part:

(b) Failure to Comply With Order.

(2) *Sanctions by Court in Which Action Is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to **obey an order to provide or permit discovery**, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending **may make such orders in regard to the failure** as are just, and among others the following:

(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 by default against the disobedient party;

Rule 37(b), SCRCF (emphasis added). Thus, the plain language of Rule 37(b) only permits striking a party's answer when the party fails to comply with a court order. Numerous courts have confirmed the failure to comply with a court order is a **fundamental requirement** of Rule 37(b). *See also Downey v. Dixon*, 294 S.C. 42, 44 n.1, 362 S.E.2d 317, 318 n.1 (Ct. App. 1987) (noting that while Rule 37(d) sanctions may be imposed without obtaining an order compelling discovery, "[t]here **must** be an order of the Court before sanctions are imposed under [Rule 37(b)].") (emphasis added); *Charleston Carriage Works, LLC v. Charleston Animal Soc.*, No. 2018-CP-10-

04083, 2022 WL 20838965, at *3 (S.C. Com. Pl. May 05, 2022) (Scarborough, J.) (citing *Richardson on Behalf of 15th Cir. Drug Enft Unit v. Twenty-One Thousand & no/100 Dollars (\$21,000.00) U.S. Currency & Various Jewelry*, 430 S.C. 594, 598-99, 846 S.E.2d 14, 16 (Ct. App. 2020) to hold Rule 37(b) sanctions could not be awarded absent violation of a court order).

The Court of Appeals held in 2018 that even if a defendant's conduct was deemed "deceitful," there are no grounds to strike the defendant's answer "as a sanction for their deceitful conduct" if the defendant never violated a court order. *Skywaves*, 423 S.C. at 456-459, 814 S.E.2d at 656-57. The Court of Appeals emphasized that all cases the plaintiff cited in support of striking the defendants' answers involved violations of court orders, which the defendants in that case had not done. Like the defendant in *Skywaves*, Boggs Contracting has not violated a court order, so Rule 37 sanctions are not warranted.

Neither the South Carolina Rules of Civil Procedure, nor the cases cited in the Order support striking Boggs Contracting's Answer in this case, and doing so is a clear error of law.

C. Striking Boggs Contracting's Answer undermines South Carolina's strong public policy in favor of litigation being decided on the actual merits of the case especially where all of Plaintiffs' claims against Boggs Contracting are precluded by South Carolina law and/or are preempted by federal law.

Striking Boggs Contracting's Answer has the effect of placing Boggs Contracting in default in this case. However, South Carolina public policy always favors deciding litigation on the merits of a case, especially when there is evidence that a party is likely to prevail on the merits. *Melton v. Olenik*, 379 S.C. 45, 55, 664 S.E.2d 487, 493 (Ct. App. 2008) (holding the court should consider whether the defendant has a meritorious defense when deciding whether to set aside an entry of default). Striking Boggs Contracting's Answer ignores the well-established precedent that sanctions "should not go beyond the necessities of the situation to foreclose a decision on the merits of a case," *Karppi*, 327 S.C. at 543, 489 S.E.2d at 682, and fails to consider that South

Carolina law favors setting aside entries of default when the defendant has a meritorious defense. *Melton*, 379 S.C. at 54, 664 S.E.2d at 492 (holding a default may be set aside for good cause shown to promote justice and the disposition of cases on the merits).

Factors that must be considered to assess whether an entry of default can stand include whether the defendant has a meritorious defense and the degree of prejudice to the plaintiff if relief is granted. *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct. App. 1989)). In this instance, neither factor supports an order that places Boggs Contracting in default.

First, Boggs Contracting has a strong meritorious defense against Plaintiffs’ claims for multiple reasons. As just one example, Plaintiffs’ claims against Boggs Contracting for Heritage Hauling and David Bigelow’s actions are preempted under the Federal Aviation Administration Authorization Act (“FAAAA”). The FAAAA expressly preempts state laws that regulate the price, route, or service of any motor carrier with respect to the transportation of property in interstate or intrastate commerce. 49 U.S.C. § 14501(c). Plaintiffs’ claims against Boggs Contracting arise from the actions of its independent contractor motor carrier, Heritage Hauling, and are preempted. *Eggleston v. United Parcel Serv., Inc.*, 428 S.C. 373, 378, 834 S.E.2d 713, 715 (Ct. App. 2019).⁷

⁷ See also, e.g., *HMD Am. f/u/b/o Certain Far E. Underwriters with Fubon Ins. Co., Ltd. v. Q1, LLC*, No. 23-21865-CIV, 2024 WL 167374 (S.D. Fla. Jan. 16, 2024), *appeal dismissed sub nom. HMD Am., Inc. v. Q1, LLC*, No. 24-10487-AA, 2024 WL 3765070 (11th Cir. July 26, 2024) (applying FAAAA preemption to negligence claims against a shipper because the claim related to the shipper’s alleged negligence “in arranging for the transportation of cargo and [] alleged negligent selection of a motor carrier.”); *Lee v. Werner Enterprises, Inc.*, No. 3:22 CV 91, 2022 WL 16695207 (N.D. Ohio Nov. 3, 2022) (“[T]he FAAAA’s preemption provision protects precisely parties such as the shipper and broker, who did not have direct involvement in the accident that injured Plaintiffs.”).

As another example showing Boggs Contracting's meritorious defense, Boggs Contracting cannot be held liable for the actions of an independent contractor. Principals such as Boggs Contracting are generally not vicariously liable for the negligent acts of an independent contractor. *Rock Hill Tel. Co. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005). Heritage Hauling and Safe Shield were independent contractors, and Boggs Contracting cannot be held liable for their negligence. In addition, there is no prejudice to Plaintiffs if the Order striking Boggs Contracting's Answer is set aside for the reasons further explained below. *See* Section IV, *infra* p. 41.

South Carolina public policy strongly favors the disposition of cases on their merits, and it is incorrect not to consider the merits of a case before taking away a party's right to a defense. The merits of Boggs Contracting's defense are highly relevant to the forthcoming motion to set aside the entry of default, and Boggs Contracting respectfully asks the Court to reconsider its ruling in light of the merits of the case because striking Boggs Contracting's Answer has the effect of placing Boggs Contracting in default.

III. The Court did not consider relevant facts, law, and arguments, and the Order omits crucial facts and relies on incorrect characterizations and assumptions that are not supported by the record.

The Order relied on an incorrect application of the mandatory factors required by *Samples v. Mitchell* and incorrect characterizations and assumptions that are not supported by the record. "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) (emphasis added). However, the Order applied these factors incorrectly and relied on incorrect facts to support its ruling.

A. The Court relied on the incorrect and factually disputed claim that David Bigelow worked for Boggs Contracting.

It is undisputed that Boggs Contracting did not employ David Bigelow, the truck driver whose actions are the sole cause of the accident. Boggs Contracting's connection to the accident is tenuous, at best, because Boggs Contracting did not employ the driver of the truck or the employees responsible for managing traffic control in the construction zone. Boggs Contracting hired Heritage Hauling as an independent contractor to deliver asphalt to the paving work site, and it hired Safe Shield to perform traffic control during the construction work. It is clear error to rely on the incorrect and factually disputed claim that Bigelow worked for Boggs Contracting when it is undisputed that Bigelow was not employed by Boggs Contracting, especially because this finding of fact is not supported by the parties' discovery and was not before the Court on Plaintiffs' Motion for Sanctions.

B. The Court ignored important facts about the discovery posture of the case, including the abundant time left before trial, Plaintiffs' right to schedule additional depositions, and that Boggs Contracting was not previously warned that failure to supplement its document production would lead to such harsh sanctions.

Unlike almost every other case that applied the *Samples* factors, Boggs Contracting corrected the issues with its document production months before trial and before the Court's hearing on Plaintiffs' Motion for Sanctions. There is no prejudice to Plaintiffs because no responsive documents have been withheld from Plaintiffs in discovery, and the Court erred in hinging its finding of so-called prejudice on Boggs Contracting's purported intentional conduct, which is not supported by the record. (Order p. 10.).

i. Plaintiffs' alleged prejudice is not determined by Boggs Contracting's conduct, but by the impact on Plaintiffs' ability to prepare for trial.

It is an error of law to find Plaintiffs were prejudiced merely because the Court found Boggs Contracting's conduct was intentional. (Order pp. 9-10.) Even if there were evidence in the record to support the finding of intentionality, which there is not, this finding alone cannot support the finding that Plaintiffs were prejudiced. Prejudice occurs when a party cannot adequately prepare for trial, and it most often happens when a party is surprised with new information on the eve of trial. *See e.g., Samples*, 329 S.C. at 113-14, 495 S.E.2d at 217 (“[T]he rights of discovery . . . give the trial lawyer the means to prepare for trial. . . .”). Boggs Contracting produced the supplemental documents soon after they were located, and Plaintiffs had months before trial to review and investigate these documents. The Court erred by predicated its finding of prejudice on Boggs Contracting's disputed conduct absent the lack of any actual prejudice to Plaintiffs.

ii. The Court ignored that Boggs Contracting corrected the deficiencies by supplementing its document production.

The Court explicitly did not consider that Boggs Contracting has never violated a discovery order in this case (Order, p. 12) and relied on the incorrect statement that Boggs Contracting only produced two (2) responsive emails. (Order, p. 7). Striking a party's answer is a drastic sanction in any situation, but it is even more drastic in this case where Boggs Contracting corrected the shortcomings in its discovery without the need for any court involvement. As explained above, since the undersigned counsel was retained, counsel hired an outside vendor to collect 648,787 documents from 34 email accounts of Boggs Contracting employees and officers, manually reviewed 37,097 of those documents for responsive information, and produced approximately 133 responsive documents. Of that number, only approximately 27 unique documents were previously missed that pertain to the collision incident itself. These documents were produced before the

hearing on Plaintiffs' Motion for Sanctions, and Plaintiffs have not raised any issues with the supplemental production.

No statute or case law supports striking a party's answer as a sanction for discovery abuse after the party has corrected the discovery issues alleged. The Order bases its ruling on the assumption that Boggs Contracting has not fully supplemented its document production, but Plaintiffs have never challenged the sufficiency of the supplemental document production, and there is no evidence in the record that the supplemental production is deficient. The Order also relies on the incorrect claim that Boggs Contracting only produced two responsive emails.

The law overwhelmingly favors sanctions that encourage compliance with discovery so cases can be tried on their merits. Severe sanctions such as striking a party's answer are reserved for parties who doggedly refuse to cooperate with court orders compelling discovery, as evidenced by the long line of cases that only struck a party's answer after giving it ample warning and opportunities to correct the discovery issues alleged, including the following:

- *Davis v. Parkview Apartments*, 409 S.C. 266, 283, 762 S.E.2d 535, 544 (2014) – finding the circuit court appropriately struck a party's answer after it gave the party “ample opportunity to amend their discovery responses both before and after he issued the Discovery Order.”
- *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 196, 511 S.E.2d 716, 718 (Ct. App. 1999) – striking a party's answer only after it violated multiple discovery orders, including one which cautioned the court would consider striking the party's answer if it failed to comply with the order.
- *McNair v. Fairfield Cnty.*, 379 S.C. 462, 465, 665 S.E.2d 830, 831 (Ct. App. 2008) – upholding the circuit court's sanction striking a party's answer after the circuit court “warned it was inclined to strike the answer” if the party did not resolve the discovery issues in 45 days.

Unlike in the cases above, Boggs Contracting supplemented its discovery of its own accord, without any court order or sanctions to compel it to do so. Boggs Contracting urges the Court to reconsider striking Boggs Contracting's Answer under these circumstances, after it corrected the

discovery issues months before trial, because the sanction is not supported by any statute or case law.

C. The record shows Boggs Contracting has not acted in bad faith, willfully, or with gross indifference to Plaintiffs' rights, but rather, provided a good faith explanation for the delayed production of some relevant, but not case-altering, documents.

The evidence does not support the finding that Boggs Contracting engaged in intentional and bad faith conduct. The delay in Boggs Contracting's document production was not a deliberate attempt to obstruct the discovery process, but rather, a result of miscommunication and oversight heavily influenced by the actions (and inactions) of its former counsel and the insurance carrier. The affidavit of Kevin J. Hayes, Jr. indicates that some documents were inadvertently not disclosed due to a lack of awareness, as they were initially handled by a former employee who left the company shortly after the collision. Mr. Hayes did not find them when he searched his email inbox for responsive documents or when he instructed others to perform similar searches. Boggs Contracting relied on its prior defense counsel for guidance on how to search for responsive documents. This oversight should not be construed as intentional misconduct, especially where Boggs Contracting took extraordinary measures to correct the gaps in its document production and the documents produced do not have a significant impact on Plaintiffs' case.

i. Boggs Contracting's delay in producing certain documents was not a deliberate attempt to obstruct the discovery process, but rather, the result of oversights and miscommunications by Boggs Contracting and others.

The Court should consider Boggs Contracting's explanation for the delayed document production and its attempts to locate documents for production. First, Boggs Contracting did not intentionally withhold the documents, and there is no allegation that its insurance carrier or former counsel intended for these documents to be withheld either. While the carrier and counsel's actions are imputed to Boggs Contracting, they are not evidence of Boggs Contracting's intent. Second,

the Order summarily characterizes Mr. Hayes' verification of Boggs Contracting's discovery responses as false without weighing Mr. Hayes' actions to verify the responses. The Order further wrongly assumes, contrary to the evidence in the record, that it was "simple" for Mr. Hayes to locate the documents after Plaintiffs' Motion for Sanctions. (Order p. 7.) As explained above, there is no basis for the assertion that Mr. Hayes was the one that found the documents, which is simply untrue and not based on anything in the record. Boggs Contracting's new defense counsel actually had to go to great lengths to obtain the documents directly from DELTA |v| after learning of their existence in conjunction with the electronic discovery vendor that conducted a comprehensive collection and processing of approximately 650,000 documents from more than 30 current and former employees.

Sanctions tantamount to judgment by default require the moving party to show bad faith, willful disobedience, or gross indifference to its rights. *Skywaves*, 423 S.C. at 457, 814 S.E.2d at 657; *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198-99, 511 S.E.2d 716, 719 (Ct. App. 1999). This showing is not optional. *Rickerson v. Karl*, 412 S.C. 215, 221, 770 S.E.2d 767, 770 (Ct. App. 2015); Rule 37(b)(2), SCRC. "A sanction of dismissal is too severe if there is no evidence of any intentional misconduct." *Orlando v. Boyd*, 320 S.C. 509, 511, 466 S.E.2d 353, 355 (1996); *see also Kershaw Co. Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990) (affirming the trial court's denial of discovery sanctions that would have amounted to default judgment because "there was no evidence of any intentional misconduct on the part of [the party] or its counsel). In *Skywaves*, the defendants initially denied there was a written agreement modifying a contract with the plaintiff, but after one of their employees admitted during his deposition that he agreed to modify the contract without his supervisor's approval, both defendants amended their answers to reflect this newly discovered

information about an oral modification to the contract. *Id.* The court held their answer denying the existence of a written modification was not bad faith. *Id.* at 458, 814 S.E.2d at 657.

In *Balloon Plantation*, the Court of Appeals reversed a circuit court's sanction order that entered default judgment against the defendant and struck the defendant's counterclaim because the defendant's response to the plaintiff's interrogatories did not arrive by express mail until a few hours after the time ordered by the court in a previous motion to compel. *Balloon Plantation*, 303 S.C. at 153, 399 S.E.2d at 440. The court reasoned the defendants were not given an opportunity to present a defense, had not acted in bad faith, willfully, or with callous disregard for the rights of the other parties, and made a sincere effort to comply by using express mail to send their responses *Id.* at 154, 399 S.E.2d at 441. The court recognized the sanction was "unduly harsh" given the situation and compared it to using a "hydrogen bomb" where only a "rifle shot" was appropriate. *Id.*

(1) The Court should consider Boggs Contracting's explanations about the role of its former counsel, the now-departed employee, and its insurance carrier.

The Court should consider Boggs Contracting's explanations about the role of prior counsel, the now-departed employee, and its insurance carrier in the document production issues and consider that the fact Boggs Contracting provided the documents to its insurance carrier is evidence that it never intended these documents to be concealed. Boggs Contracting did not intentionally withhold the documents, and there is no allegation that its insurance carrier or former counsel intended for these documents to be withheld either. There is a very important distinction between counsel not doing a good job in discovery and intentional obstruction by the named party. The Order drafted by Plaintiffs' counsel simply assumes, contrary to the evidence, that the discovery shortcomings in this case were intentional.

The Order alleges for the first time that Boggs Contracting intentionally avoided orders on Plaintiffs' Motions to Compel as a bad faith attempt to keep Plaintiffs from obtaining orders on their Motions to Compel. Plaintiffs did not raise this argument in their Motion, and the finding is not supported by the record. While counsels' actions are imputed to Boggs Contracting, their actions are not evidence that Boggs Contracting intended to withhold documents in discovery. *See Karppi*, 327 S.C. at 545 n.6, 489 S.E.2d at 683 n.6 (“[U]nder these circumstances it seems from the record as though the attorney [] was at least as much to blame as the party itself, for its indiscretions. To penalize [the party] so severely for apparently relying on the advice of its attorney, under these circumstances, is clearly unjust, and would not properly serve the purposes for sanctions.”). Boggs Contracting did not know there were gaps in the time between Plaintiffs' requests and when those requests were provided to Boggs Contracting. There is no evidence in the record to support the Court's finding that Boggs Contracting acted in bad faith to avoid a court order on Plaintiffs' Motions to Compel, and the Court should consider Mr. Hayes' testimony that Boggs Contracting did not know the April 2024 verification was overdue when it was provided for his signature or that the verification was the subject of Motion to Compel. (Feb. 12, 2025 Aff. ¶ 11.)

(2) The Court should consider Boggs Contracting's searches for responsive documents and the extraordinary actions that were needed to locate the supplemented document production.

Mr. Hayes took action to verify Boggs Contracting's discovery responses before he signed the Verification, and it was not “simple” for Mr. Hayes to locate the supplemented documents after Plaintiffs' Motion for Sanctions. (Order p. 7.) The Court should reconsider the sanction because Boggs Contracting did exactly what it was supposed to do when “Plaintiffs' counsel focused in on the absence of responsive documents” by requesting a signed verification. (Order p. 12.) Mr. Hayes

performed his own search and directed others to do the same. (Feb. 12, 2025 Aff. ¶ 10.) It is undisputed that the two responsive emails located in this search were produced alongside Mr. Hayes' verification. (*Id.*) Mr. Hayes did not find any additional responsive communications; these were located by a highly specialized electronic discovery vendor who collected and searched hundreds of thousands of emails from multiple corporate inboxes. Contrary to the Order's assertion, striking Boggs Contracting's Answer because its employees did not find emails that were only later found by a highly specialized electronic discovery vendor is the definition of a nuclear-level sanction.

The Court should consider that counsel had to retain a specialized vendor to locate the documents, and it is not bad faith for a party not to retain an electronic discovery vendor. *Cf.* Rule 26(b)(6)(A), SCRCRCP ("A party need not provide discovery of electronically stored information from sources that the party identifies to the requesting party as not reasonably accessible because of undue burden or cost."); *Cross by & Through Steele v. XPO Express, Inc.*, No. 4:15-CV-2481-BHH, 2016 WL 11519221 (D.S.C. May 3, 2016) (describing the forensic examination of a computer as a "drastic discovery measure"). Mr. Hayes explained how he conducted this search and the emails he located. Aided by hindsight, Boggs Contracting recognizes that it would have benefited from retaining an electronic discovery vendor earlier in discovery,⁸ but this is an oversight, not fraud or an intentional attempt to hide documents or evidence of bad faith.

⁸ The decision about how to conduct discovery is usually made by counsel, not the party itself. While Boggs Contracting is bound by its former attorney's actions (and inactions), counsel's decision not to retain a third-party electronic discovery vendor early in the case cannot be imputed to Boggs Contracting as evidence of an intent to abuse the discovery process.

ii. The Court should consider that the extraordinary measures Boggs Contracting took to supplement its document production demonstrate Boggs Contracting did not intend for the documents to be withheld.

Boggs Contracting took extraordinary measures to supplement its document production. Even before Plaintiffs' Motion for Sanctions, Boggs Contracting was working with its new attorneys to identify potential gaps in its document production. As soon as Boggs Contracting learned a single email had been overlooked in its search for documents, it retained a specialized electronic discovery vendor to collect and search 648,787 documents from thirty-four email accounts of Boggs Contracting employees and officers to leave no stone unturned to ensure no other documents had been missed. The specialized electronic discovery vendor, not Mr. Hayes or anyone else at Boggs Contracting, located the supplemented emails. The Court should consider the extraordinary actions Boggs Contracting took of its own accord to correct the issues Plaintiffs allege, including:

- Retained an outside vendor to collect 648,787 documents from thirty-four email accounts of Boggs Contracting employees and officers;
- Manually reviewed 37,097 documents for responsive information;
- Produced 133 responsive documents from the electronic discovery vendor's collection. (Only approximately twenty-seven unique documents pertain to the collision incident itself; the low number confirms that very little was missed earlier in the discovery process);
- Numerous Boggs Contracting employees participated in more than twenty hours of in-person and virtual meetings with counsel, plus countless hours communicating with counsel by email to provide information;
- Made all employees and executives – from dispatchers to pavers – available for meetings with counsel and to assist with collecting responsive information;
- Retained five consultants with different subject matter specialties;
- Obtained and produced photos and video taken by DELTA |v| Forensic Engineering the day after the collision incident, and met with DELTA |v| regarding those materials; and

- A Boggs Contracting officer and employees have reviewed every prior written discovery response with counsel to ensure any incomplete information is supplemented.

These extraordinary actions show beyond any question that Boggs Contracting never intended to withhold documents from production. To ensure the issues were corrected as soon as possible and to minimize any additional oversights, Boggs Contracting retained a third-party vendor, gave that vendor unfettered access to its entire email server, and allowed the vendor to collect thousands of emails from employee inboxes and search them for responsive documents. Boggs Contracting admits these documents should have been produced sooner, but the fault for this oversight does not lie exclusively with Boggs Contracting. More importantly, after learning about these issues, Boggs Contracting went above and beyond to supplement its document production to bring it back into full compliance with the Rules of Civil Procedure.

iii. The supplemental document production has a low impact on the merits of the case, and the delayed production did not benefit Boggs Contracting.

Boggs Contracting did not benefit from the delayed production of some responsive documents, and there is no evidence that Boggs Contracting had any reason to intentionally delay the production of these documents. The supplemental document production included a relatively low number of responsive emails and documents about the subject collision, and the record shows that none of these documents had any significant impact on Plaintiffs' case. The Order references a February 4, 2022 email between Matt Guillot and Christopher Bourque of SCDOT and photographs and videos taken by DELTA |v| the day after the collision, but it ignores that neither impacts Plaintiffs' claims against Boggs Contracting.⁹ The Court should reconsider its sanction

⁹ The Court should also consider that the February 4, 2022 email exchange supports Boggs Contracting's position that there were no problems with traffic control at the collision site at the time of SCDOT's inspection. The positive impact this email has on Boggs Contracting's defense

because Boggs Contracting had no reason to intentionally delay the production of these documents because their delayed production do not have a negative effect on Boggs Contracting's defense.

IV. Neither the Order nor the record identify any actual prejudice to Plaintiffs.

A party must be prejudiced by actual discovery failures for sanctions to be appropriate, *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 83, 716 S.E.2d 877, 886 (2011), and sanctions must protect the rights of discovery provided by the Rules of Civil Procedure. *Barnette v. Adams Bros. Logging*, 355 S.C. 588, 592, 586 S.E.2d 572, 574 (2003). There is no actual prejudice to Plaintiffs because Boggs Contracting supplemented its document production months before trial. The only prejudice identified in the Order is that Plaintiffs did not have all of Boggs Contracting's document production before its 30(b)(6) deposition, but there is no evidence that the supplemented documents would have had any effect on the deposition or that Plaintiffs do not have time to investigate the documents before trial. Moreover, this could be remedied by allowing an additional deposition to address information that was not produced in a timely manner. Importantly, prejudice cannot be presumed because there is no negative impact on Plaintiffs' ability to prepare for trial. *Samples*, 329 S.C. at 113-14, 495 S.E.2d at 217.

Neither the Order nor Plaintiffs articulate any prejudice to Plaintiffs' ability to prepare for trial. After receiving Boggs Contracting's supplemental document production, Plaintiffs did not seek any additional depositions, even of the authors of the supplemented emails, nor did they subpoena DELTA |v| for its file.¹⁰ Plaintiffs made no attempts to investigate Boggs Contracting's

is additional evidence that Boggs Contracting did not intend for the email not to be produced sooner.

¹⁰ With no basis in the record, the Order incorrectly characterizes the photographs taken by DELTA |v| as an "engineering investigation." (Order p. 9.) While Boggs Contracting concedes the photographs should have been produced earlier, they do not contain any new information that was not already available to Plaintiffs, and Plaintiffs have never contended to Boggs Contracting, to the undersigned counsel, or to the Court that Plaintiffs have any problem whatsoever with those

supplemental document production before filing their Motion for Sanctions, nor did they meet with counsel per Rule 11(a) to resolve the matter contained in the motion. The Court failed to rule on Plaintiffs' failure to consult and should consider that Plaintiffs' decision to ignore Boggs Contracting's supplemental document production is the sole source of the prejudice they allege and further evidence the supplemental documents have no effect on Plaintiffs' case or ability to prepare for trial.

Trial in this case is not imminent, and there is no reason Plaintiffs cannot conduct additional depositions and written discovery to investigate Boggs Contracting's supplemental document production, especially since other parties are still issuing discovery requests and multiple depositions have been noticed. Importantly, the only prejudice the Order finds is easily remedied by reopening Boggs Contracting's 30(b)(6) deposition, and Boggs Contracting respectfully requests the Court consider this alternative sanction.

V. The Court did not address whether the Order also strikes Boggs Contracting's crossclaim against Heritage Hauling and David Bigelow.

It is unclear whether the April 22, 2025 Order struck Boggs Contracting's crossclaim for equitable indemnity against Heritage Hauling and David Bigelow. The Order does not reference Boggs Contracting's crossclaim at all, and it is ambiguous whether Boggs Contracting remains a party in the lawsuit. As explained on pages 24-25, striking the crossclaim as a sanction is improper because it gives a windfall to Heritage Hauling, a party not involved in the discovery dispute between Plaintiffs and Boggs Contracting.

photos not being produced earlier. There is no basis in the record for the Court's statement the late production of these photos affected questions asked at depositions as well as trial preparation, as Plaintiffs have never made any such contention. Nor did DELTA |v| perform any "engineering investigation" or analysis of the photographs and videos.

VI. The Court did not rule upon arguments that were raised in opposition to Plaintiffs' motion.

The Court did not rule upon numerous arguments raised in opposition to Plaintiffs' Motion for Sanctions. In addition to everything stated above, the Court should reconsider its ruling for all the following reasons:

- The Order should address Boggs Contracting's argument that Rules 37(b) and 37(d) and the case law applying these rules expressly prohibits striking Boggs Contracting's Answer because Boggs Contracting did not violate any court order for discovery.
- The Court should consider that the discovery shortcomings Plaintiffs allege are not solely attributable to Boggs Contracting and were fully resolved before the hearing on Plaintiffs' Motion for Sanctions.
- The Order ignored Plaintiffs' gross misrepresentation of the February 4, 2022, email and should consider that the email has no impact on Plaintiffs' claims.
- The Court should address Plaintiffs' failure to consult Boggs Contracting before filing their Motion for Sanctions.
- The Court should address Plaintiffs' page-long, shameless, and improper smear tactic attempting to throw shade upon Boggs Contracting by dredging up old felony convictions of Carl Andrew ("Drew") Boggs and a previous entity known as Boggs Paving, Inc.

CONCLUSION

There is no question that striking a party's answer is an extreme sanction only appropriate in the most severe situations, but Boggs Contracting's conduct does not warrant this punishment under the circumstances because Boggs Contracting already resolved the shortcomings with its supplemental document production, and there is nothing left to correct. Importantly, the Order prepared by Plaintiffs does not cite to any legal authority to support striking Boggs Contracting's Answer because there is none. The only support cited is misapplied and misinterpreted cases that are inapplicable to the circumstances of this case and ignores the Rules of Civil Procedure and the long line of cases that emphasize remedying discovery issues so cases can be decided on the merits.

Therefore, Boggs Contracting respectfully asks the Court to reconsider the finding of prejudice to Plaintiffs, consider the sufficiency of alternative sanctions to remedy the minimal prejudice the Court found, and to reconsider the Order granting Plaintiffs' Motion for Sanctions and striking Boggs Contracting's Answer.

MURPHY & GRANTLAND, P.A.

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Columbia, South Carolina
April 23, 2025

Jay Thompson

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Sent: Tuesday, March 18, 2025 1:38 PM
To: Jay Thompson; scott@evansmoorelaw.com
Cc: Caraker, David P., Jr Law Clerk (Maxwell Roberts)
Subject: Ryan Cobb, et al v. David Alan Bigelow, et al

Counsel,

I appreciate your patience in allowing me to give this matter the thought and attention that it deserves. I have given these issues much deliberation, and have consulted several other trusted, more experienced judges. After careful consideration, I am granting the Plaintiff's Motion for Sanctions, striking Defendant Boggs' answer. This is an action that I do not take lightly, as I fully understand the ramifications, and the law regarding such a drastic measure. I believe, however, that it is warranted in this case. I want to stress that this in no way is a comment on the merits of the case, nor upon the actions of any of the lawyers that were, or are, involved in this case. This decision was based upon the egregious actions, or inactions, of the corporate defendant, Boggs Contracting.

In 2022, the Plaintiff asked for information that he was certainly entitled to. He should have received that information shortly thereafter. After several motions to compel, and an apparently worthless affirmation from Boggs, an email that cuts to the very heart of some of the issues in this case somehow surfaced. This is something that the 30(b)(6) deponent could have addressed in his deposition. After this inaction by Boggs, and given the severity of this accident, it is almost inconceivable that there are only two corporate emails that discuss this event. Compounding the problem is the fact that Boggs cannot be believed when it says that everything has been turned over.

Mr. Evans, will you please prepare the order in this case? Please outline all of the steps that you have taken in attempting to get discovery in this case, along with the results of those actions. Also, please detail the actions or inactions of Boggs in response to your inquiries. Lastly, please touch on the law regarding sanctions, with particular attention to striking an answer.

Thank you again.

Respectfully, I am,

David P. Caraker, Jr.
 Resident Circuit Court Judge
 15th Judicial Circuit
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|                                        |   |                                           |
|----------------------------------------|---|-------------------------------------------|
| <b>STATE OF SOUTH CAROLINA</b>         | ) | <b>IN THE COURT OF COMMON PLEAS</b>       |
|                                        | ) |                                           |
| <b>COUNTY OF GEORGETOWN</b>            | ) | <b>CIVIL ACTION NO.: 2022-CP-22-00739</b> |
| <b>RYAN COBB, MALON COBB, COBB</b>     | ) |                                           |
| <b>TRUCKING, LLC, and BRANDY COBB,</b> | ) |                                           |
|                                        | ) |                                           |
| <b>PLAINTIFFS,</b>                     | ) |                                           |
|                                        | ) | <b>PLAINTIFFS' MEMORANDUM IN</b>          |
| <b>vs.</b>                             | ) | <b>OPPOSITION TO DEFENDANT BOGGS</b>      |
|                                        | ) | <b>CONTRACTING'S MOTION FOR</b>           |
| <b>DAVID ALAN BIGELOW, HERITAGE</b>    | ) | <b>RECONSIDERATION</b>                    |
| <b>HAULING, INC.; BOGGS</b>            | ) |                                           |
| <b>CONTRACTING, INC.; and SAFE</b>     | ) |                                           |
| <b>SHIELD, LLC,</b>                    | ) |                                           |
|                                        | ) |                                           |
| <b>DEFENDANTS.</b>                     | ) |                                           |

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Plaintiffs Ryan Cobb, Malon Cobb, Cobb Trucking, LLC, and Brandy Cobb (collectively "Plaintiffs") submit this memorandum in opposition to Defendant Boggs Contracting, Inc.'s ("Boggs") motion for reconsideration of the Court's Order granting sanctions and striking Boggs' answer. The Court's discretionary decision is fully supported by the law and evidence.

Boggs' motion is, at its most basic level, an avoidance tactic. Boggs blames others and refuses to take responsibility for its agents and officers. Boggs tries to legally separate and distinguish Boggs from Mr. Hayes' representations made as an officer of Boggs on its behalf. The motion tries to legally separate Boggs from actions of its prior counsel taken on behalf of Boggs. There is no distinction between Mr. Hayes and Boggs or between prior counsel and Boggs. The bottom line is that Boggs admits to abusing the discovery process, but blames Boggs's discovery abuses on everyone but itself. Boggs blames its insurance carrier, its counsel, and a former employee for Boggs's concealment of electronically stored, pertinent documents for two years. Boggs ignores that the very communication which was the impetus for Plaintiffs' motion for sanctions was authored by a current employee, Matt Guillot, whose involvement with the defective construction site at which the subject collision occurred and whose role in the current litigation is

so extensive that he was designated by Boggs as the person within the corporation with the most knowledgeable of several relevant subject areas pursuant to S.C. Rule Civ. P. 30(b)(6), including the safety requirements set forth by Boggs pursuant to any Traffic Control plan and the inspection of traffic control devices at the subject construction site.

Boggs' positions are contrary to law and belied by the plain record of what Mr. Hayes and prior counsel did and said on behalf of Boggs. That Boggs argues Mr. Hayes and prior counsel may have misspoken or acted carelessly to bring about the sanctions is a matter between Boggs, Mr. Hayes, and prior counsel. Plaintiffs had no knowledge or control over these actions and were left in the position of relying on statements made on behalf of Boggs. The buck stops with Boggs, and it must accept responsibility for the conduct of its agents as it relates to Plaintiffs' case.<sup>1</sup>

For the reasons stated below, and those in Plaintiffs' prior filings and arguments, and in the Court's sanctions Order, the Court should deny Boggs' motion to reconsider.

### **FACTUAL AND PROCEDURAL BACKGROUND**

For brevity, Plaintiffs incorporate the factual and procedural background in their prior filings and in the Court's Order.

Boggs' section entitled "Factual Summary and Procedural History" (Mot. to Recon. p. 3), is not a summary or history but, instead, an argument that the Court's Order is incorrect. Plaintiffs respond below to some of Boggs' specific arguments about the facts stated in the Order and more fully below in the Argument section as to the more legal challenges.

Boggs complains that the Order states Defendant David Bigelow was "working for Boggs to deliver materials to the paving project" at the time of the collision. (Order p. 2; Mot. to Recon.

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<sup>1</sup> For example, Boggs argues that its "failure to produce some documents was not intentional and was the result of poor communications between prior defense counsel and Boggs Contracting." (Mot. p. 17).

p. 3). That statement is not a legal finding that Bigelow was an employee of Boggs. It is a statement that the load in the dump truck was being moved for Boggs. Plaintiffs are not aware that this fact is in dispute or aware of a contention that the load was moved for any other entity. Regardless, whether Bigelow was “working for” Boggs is not a material fact to Court’s decision to sanction Boggs by striking its answer.

Boggs complains that the Order misrepresents Mr. Hayes’ verification. (Mot. for Recon. pp. 4-5). At the outset, Plaintiffs note that this is a completely new argument that was not made by Boggs in response to the Plaintiffs’ motion for sanctions. Nonetheless, this new assertion that Mr. Hayes made representations “to the best of his knowledge” cannot be used to avoid what he attested to in the verification or under oath in his 30(b)(6) deposition. It further ignores that Boggs knew Plaintiffs wanted the verification because they found it unbelievable that a corporation such as Boggs could have such minimal communications about or pertaining to a major accident on its job site. “To the best of my knowledge” is not a qualification that excuses repeated failures to do the required thorough and complete investigation required in responding to discovery. Boggs also ignores that Mr. Hayes is speaking as Boggs in the verification. “[C]orporations act through individuals.” *State v. Solomon*, 245 S.C. 550, 573, 141 S.E.2d 818, 830 (1965). In his 30(b)(6) deposition, Mr. Hayes was speaking about Boggs’ knowledge and at the beginning of his deposition, the following exchange occurred between Plaintiffs’ counsel and Mr. Hayes:

Q: Do you understand that you’re here today on behalf of Boggs Contracting, Incorporated, and not in your individual capacity?

A: Yes, sir.

Q: And do you understand that your answers will be binding upon Boggs Contracting?

A: Yes, sir.

(Exhibit 1, Deposition of Kevin Hayes 12:9-14)

Accordingly, Boggs' suggestion that Mr. Hayes was speaking in his individual capacity when he gave false testimony is legally and factually unfounded.

Boggs complains that the Order does not recognize that the discovery issues are the fault of prior counsel. (Mot. for Recon. pp. 5-6). Regardless of whether or not this is accurate, Boggs is still the ultimate responsible party in this litigation. As the Court correctly held, "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). Boggs does not and cannot refute this. In this litigation, Boggs is responsible for the acts of its agents.

Boggs complains that Plaintiffs did not request sanctions under the Court's inherent powers. (Mot. for Recon. pp. 6-7). This is, again, misguided. Plaintiffs cited to Rules 11, 26, 34, and 37 as applicable to the circumstances and violated by Boggs. That those rules do not specifically provide for the sanction of striking an answer based on discovery abuse, false testimony, and false verifications/affidavits absent the violation of a discovery order does not preclude the Court from exercising its inherent power to grant a sanction under these circumstances. The Court found that Boggs abused the discovery process by avoiding entry of discovery orders, submitting a false verification, and offering false testimony. This conduct violates the Rules of Civil Procedure and the integrity of the judicial system. The Court may, in its inherent powers, sanction such conduct as explained in the Court's Order and in further detail below and as recently reaffirmed by the South Carolina Supreme Court in April of 2025. Boggs cites to nothing to prohibit the Court from doing so or to limit the Court's inherent power to certain sanctions.

While Plaintiffs believe their motion encompassed the Court's inherent powers, the Court was not limited to a party's stated bases for granting relief. *See, e.g., Bartles v. Livingston*, 282 S.C. 448, 465, 319 S.E.2d 707, 717 (Ct. App. 1984) ("To confine ourselves solely to the reasoning of the parties would be an abdication of our duty as judges to decide cases independently and impartially in accordance with the law."). Plaintiffs asked the Court to sanction Boggs and to strike its answer. That is what the Court did after significant deliberation, research, and analysis. The basis upon which the Court chose to do so is well within its discretion and power.

Boggs argues that it presented Mr. Hayes' affidavit stating that Boggs was not aware of the discovery problems and that the record shows the "prior shortcomings" were unintentional. (Mot. for Recon. pp. 7-8, 15-18). Assuming solely for the sake of argument that is true (and ignoring that the knowledge of Boggs' employees (including Matt Guillot), counsel, and insurers is its knowledge under South Carolina law), it does not prevent the Court from finding that Boggs should have known about the discovery problems. Boggs is the party to the lawsuit with the ultimate responsibility to diligently search for and produce all responsive discovery. It is the party with the ultimate responsibility to give truthful sworn statements and testimony. It was well within Boggs' control and knowledge that more responsive documents existed.

For example, Boggs argues that only one employee knew about the engineering inspection that it ordered and had performed one day after the accident. (Mot. to Recon. p. 16). It argues that employee left the company and no one from Boggs realized that the photos and video "were not downloaded by the insurance carrier or produced." *Id.* at p. 16. The record easily supports the Court's finding to the contrary. Mr. Hayes, as an officer of Boggs, attested to and verified under oath that Boggs' supplemental responses to discovery were "true and accurate." (Exh. 16 to Pl. Memo.). One such supplemental response was to a question asking for documents of all persons

present at the collision scene “in the 48 hours after the collision; their role; and what actions they took at the scene.” (Exh. 12 to Pl. Memo. p. 2). Boggs represented that the only responsive documents were its “Internal Incident Report and the TR-310 Traffic Collision Report.” *Id.* at p. 3). This is inaccurate because it omits the engineering inspection materials. Boggs cannot and does not deny its knowledge that the inspection occurred—and this answer which Hayes represented on behalf of Boggs that he reviewed and found true calls for those inspection materials and obviously omits them. This is but one additional example of untruthful responses given under oath when Boggs cannot deny that it knew the truth and the truth was within its control.

Boggs argues that its new counsel has now “remedied” the prior discovery problems. (Mot. for Recon. pp. 8-9). That responsive documents have now been produced does not erase the prior conduct and false statements. Boggs cites to no authority that says a party is exempt from sanctions for discovery abuse simply because it ultimately produced some responsive materials. A ruling to the contrary would encourage discovery abuse because there would be no consequence to withholding responsive materials. *See Downey v. Dixon*, 294 S.C. 42, 45, 46 n.2, 362 S.E.2d 317, 318 n.2 (Ct. App. 1987) (stating that “whatever 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”). Proper conduct of new counsel does not eliminate Boggs’ responsibility for conduct of its prior counsel.

Boggs complains that Plaintiffs did not argue that their conduct was aimed at avoiding entry of a court order, as found by the Court in the sanctions Order. (Order p. 13; Mot. for Recon. p. 9). Plaintiffs disagree. The motion for sanctions expressly lays out Boggs’ repeated conduct of not responding to discovery, Rule 11 Correspondence, or motions to compel and then, on “the eve of” every hearing on the motions, producing a response. (Mot. pp. 5-8). Further, the Court’s

finding—fully supported by the record—is in direct response to Boggs’ argument that it is immune from sanctions because there was no court order requiring it to respond to discovery.

Boggs argues the parties proceeded with trial preparation after the hearing on Plaintiffs’ motion for sanctions. (Mot. to Recon. pp. 9-10). This is irrelevant to the Court’s decision. Regardless, Boggs knew that a motion to strike its answer was pending.

Boggs complains about alleged “problems with Plaintiffs’ proposed order.” (Mot. to Recon. pp. 10-15). Boggs’ repeated characterization of the Order as Plaintiffs’ proposed order should be disregarded. The Court requested a proposed order from Plaintiffs, which they submitted for the Court’s review on Monday, March 31, 2025. On Friday, April 4, 2025, the Court signed its Order. At no time between March 31, 2025 and April 4, 2025 did Boggs send the Court an objection to the proposed Order. Once the Court reviewed the Order and signed it, it became the Order of the Court. The Court plainly exercised its due diligence and discretion in reviewing the proposed order and authorities cited therein, and in then agreeing that much of the proposed reasoning was in line with the Court’s emailed instructions to Plaintiffs. That Boggs disagrees with the decision does not justify it characterizing the Court’s Order as containing misrepresentations or insinuating that the Court did not adequately analyze the proposed order before adopting portions of the proposed order and ultimately signing a final Order. Boggs’ specific arguments about the Order are addressed below.

### **ARGUMENT**

Boggs does not state a legal or factual basis for the Court to alter or reverse its Order granting sanctions and striking Boggs’ answer. Boggs’ complaints mainly boil down to its opposing view of the facts and its insistence that it is not responsible for the knowledge and conduct of its agents. Boggs also believes that, because it has now produced supplemental

responsive discovery, it is immune from being sanctioned for its prior conduct in withholding the discovery and misrepresenting under oath that it did not exist. This is not a situation where the parties disagreed about whether something is discoverable. Boggs falsely stated numerous times under oath that discovery did not exist when the discovery did exist and was within its agents' knowledge and control. Under these circumstances, the law supports the Court's finding of the facts and the legal implications of those facts.

Boggs argues that the sanction of striking its answer is "unreasonably harsh and punitive, rather than targeted and corrective." (Mot. to Recon. p. 19). Each of its allegations of error are without merit. The Court correctly considered the applicable law and applied it to the evidence in this case. The Court should deny Boggs' motion to reconsider in its entirety.

**I. The Court carefully considered whether to grant a lesser sanction and adequately explained its decision to strike Boggs' answer as supported by the law and evidence.**

Boggs argues that the Court should have considered alternative sanctions that did not foreclose a decision on the merits. (Mot. to Recon. pp. 20-22). Boggs cites to *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997), as support for its position that the Court should have considered a lesser sanction. (Mot. to Recon. p. 21). *Karppi* is distinguishable from this case and is discussed in detail below. As to the argument that the Court did not even consider a lesser sanction, the plain language of the Order refutes that accusation.

The Court did, in fact, consider alternative sanctions but decided, in its discretion, that Boggs' conduct warranted a decision to strike its answer.

The Court explained "[i]t would be overly lenient to impose no sanction, as Boggs asks the Court to do" and that, "[a]fter considering numerous sanctions," the Court decided to strike Boggs' answer. (Order p. 11). The Court explained in detail that it "is fully aware of the severity and effect of the sanctions but believes that anything less would" encourage noncompliance with the Rules

and the oath to testify truthfully. (Order p. 12). The Court specifically addressed Boggs' argument that striking its answer is a "nuclear-level" sanction and explained why the Court disagreed. (Order p. 12). In short, the Court directly addressed the same arguments Boggs makes now about the severity of the sanction and, taking into account the law and evidence, it explained the basis for its ruling. Boggs gives no reason why the decision is a legal error or unsupported by the law. Boggs argues the Court merely recited an exercise of discretion but did not actually exercise it. (Mot. to Recon. pp. 20-21). That is a patent misstatement of the Order. Pages 8-13 of the Order detail the Court's exercise of discretion, including analyzing the law on sanctions and weighing what sanction is appropriate and why. Boggs' attack of the Court's reasoning is unfounded.

Unfortunately, the type of discovery gamesmanship that occurred in this case is all too common. Boggs suggests the Court should simply re-open the 30(b)(6) deposition as the sanction (Mot. to Recon. pp. 21-22). This could not even be called a sanction and would encourage, rather than discourage, misconduct. Many litigants will continue to engage in deceptive and dishonest discovery practices and try to get away with withholding discovery and giving false testimony if the only consequence of getting caught doing so is simply repeating a deposition. A sanction should protect the violated party's rights "while adequately punishing the wrongdoing." *Karppi*, 327 S.C. at 545, 489 S.E.2d at 683. The Court's chosen sanction to strike Boggs' answer accomplishes both of those directives. As this Court properly exercised its discretion, the Court should not reconsider its ruling.

Finally, and perhaps most significantly, Boggs fails to acknowledge the Court's finding that it gave false sworn testimony twice in this case. Boggs continues to characterize its actions solely as discovery failures that are now remedied. Its conduct is not limited to the failure to timely respond to discovery requests—it includes serious instances of false sworn testimony. The Court

did not take that lightly and explained that conduct formed a basis of its ruling. Boggs does not directly address that in its motion.

**II. A sanction to strike Boggs' answer is narrowly tailored to Boggs' specific conduct and supported by the law and evidence.**

Boggs argues the sanction is too harsh and not narrowly tailored. Its argument is based on its misstatement of the sanctionable conduct. Boggs describes the sanctionable conduct as unintentionally not producing discovery documents due to the fault of its prior counsel. That is not what happened or what the Court found. Boggs is responsible for the actions of all of its agents—including its prior counsel, Mr. Hayes, and the purported sole Boggs employee with knowledge of the engineering inspection that left. Boggs' agents repeatedly failed to respond to discovery until a pending hearing on a motion to compel. Most importantly, Boggs represented to Plaintiffs numerous times under oath that it had produced all responsive discovery. That was false. Boggs knew that Plaintiffs wanted assurances that it had actually produced everything responsive. That was the entire purpose of the verification Boggs promised in exchange for Plaintiffs withdrawing a pending motion for sanctions. Boggs' conduct was intentional and included numerous false representations under oath. When the conduct is correctly framed, the sanction is not harsh.

Boggs argues that the sanction to strike its answer is not narrowly tailored to the situation because it corrected the missing discovery, its prior counsel is to blame, and there are co-defendants and a related lawsuit. (Mot. to Recon. 22-25). These arguments are without merit.

Boggs' alleged correction of its previous discovery violations is not grounds to reverse the Court's Order. Plaintiffs' discovery of Boggs' misconduct forced it to produce responsive documents. Boggs' supplemental production does not erase its flagrant misconduct throughout this litigation. Boggs cites to no authority stating it is an abuse of discretion to sanction party for

discovery abuse and false testimony under oath simply because the party has now turned over the discovery and been forced to admit the truth.

As to prior counsel, the Court already directly addressed this in its decision and Order. It explained that “Boggs is the one who provided the verification and Rule 30(b)(6) testimony.” (Order p. 8). Boggs does not dispute this or argue that prior counsel caused these false testimonies. Nor could it plausibly make that argument because Boggs is the one with knowledge of its own documents, not prior counsel. Further, and more importantly, the Court noted the law that the acts of an attorney are attributable to the client. (Order p. 8) (citing *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 200, 511 S.E.2d 716, 719 (Ct. App. 1999)). Boggs does not refute this law and, indeed, does not even address this finding in its motion for reconsideration.

Finally, as to co-defendants and other litigation, the Court properly took that into account. Boggs relies on *Karppi*, but it actually supports the Court’s analysis and exercise of discretion in this case.

In *Karppi*, the plaintiff brought suit against a manufacturing defendant and a seller defendant for allegedly defective flooring material. The manufacturing defendant filed a cross-claim against the seller defendant. *Id.* at 540, 489 S.E.2d at 680. The manufacturing defendant violated a court order to make its employee appear at a deposition. As a sanction, the lower court struck the manufacturing defendant’s answer, as well as its cross-claim against the seller defendant and its counterclaim against the plaintiff. *Id.* at 542, 489 S.E.2d at 681.

On appeal, the Court of Appeals “reluctantly” reversed the sanction because it went beyond what was necessary and tailored to the manufacturing defendant’s conduct by also striking the cross-claim against the seller defendant. *Id.* at 543, 489 S.E.2d at 682. This resulted, on one hand, in a “windfall” for the seller defendant when its rights were not violated, and on the other hand, in

“prejudice” to the seller because the presumption of liability of the manufacturing defendant “stripped” the seller “of its ability to defend on the ground that the materials sold were not, in fact, defective.” *Id.* at 544, 489 S.E.2d at 682-83.

The circumstances of this case are wholly different for several reasons. First, Plaintiffs do not believe that the Court struck Boggs’ cross-claim. The Order states only that it is striking Boggs’ answer, which is tailored to the specific misconduct at issue. Second, the Court specifically considered the effect of the sanction “on Boggs’ co-defendants and f[ound] that, under the allegations in the Complaint, striking Boggs’ answer will have no prejudicial effect on the remaining defendants’ ability to defend themselves.” (Order p. 12). Therefore, unlike the trial court in *Karppi*, this Court did consider that this case involves multiple parties and made sure the sanction neither created a windfall for nor prejudiced the remaining co-defendants.

As to the contention that the Order leaves “uncertain procedural grounds” for trial issues such as the verdict form (Mot. to Recon. p. 25), those are matters outside of the scope of the motion for sanctions that are left for the trial judge.

As to the argument that the Court should consider a risk of inconsistent results between this case and the *Webster* case, Plaintiffs do not believe that striking Boggs’ answer in this case is binding in a separate case. Boggs does not cite to any law that a default of a defendant in one case and a finding of liability on the merits in another case is an inconsistent result or that any such alleged inconsistency prohibits a sanction striking an answer. Therefore, it is not a valid basis to reconsider the Court’s decision.

### **III. The Court correctly exercised and relied upon its inherent power to sanction.**

The Court correctly cited to and exercised its inherent power to sanction Boggs in this case. As explained in the order and discussed below, the Court has the inherent power to sanction a

party's discovery misconduct. At the heart of Boggs' argument is its reliance on the absence of a court order that it violated. The Court already addressed this by holding that part of Boggs' misconduct was to avoid entry of a court order. (Order pp. 12-13). Further, the law supports the Court's inherent power to sanction.

Plaintiffs moved under Rules 11, 26, 34, and 37, SCRCP. The Plaintiffs' motion for sanctions also noted that the issuance of discovery sanctions is within the Court's discretion. (Mot. for Sanc. p. 13). Rule 37(b), SCRCP, is not prescriptive, meaning it does not limit the Court's inherent authority to issue sanctions in appropriate circumstances. The imposition of sanctions for discovery-related misconduct is entrusted to the "sound discretion of the trial judge, [and] whatever sanction the judge imposes should serve to protect the rights of discovery provided by the Rules. 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) (internal citations and quotations omitted); *see also Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-45 (1991) ("Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates. These powers are 'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.' . . . Outright dismissal of a lawsuit . . . is a particularly severe sanction, yet is within the court's discretion.").

The Court emailed instructions to Plaintiffs to draft an order and did not mention Rule 37. Therefore, Plaintiffs did not prepare an order based on that rule and, instead, drafted the order pursuant to the Court's inherent power, as Plaintiffs believed that is what the Court requested (and the law supports).

Boggs' attack of the cases cited in the Court's Order is, in large part, based on its repeated mischaracterization of this as solely a discovery sanction for failure to timely respond to discovery requests. It is true that Boggs engaged in persistent discovery gamesmanship, failed to respond to discovery timely, provided boilerplate objections to requests for relevant material, and nearly avoided multiple discovery and sanctions orders with eleventh hour productions of dishonest supplemental responses. However, the egregious misconduct at issue that further seals the crux of the Court's reasoning for the harsh sanction in the Order is Boggs' violation of the discovery Rules of Civil Procedure, giving a false verification under oath, and giving false testimony under oath. The argument that a Court does not have inherent powers to harshly sanction conduct that violates rules and violates an oath to testify to the truth is ridiculous.

The Court's inherent powers are well-established and long-standing, as the Court noted in citing to *Ex Parte Dibble*. (Order p. 7). Boggs argues *Dibble* does not apply because it did not involve discovery sanctions and the inherent power was later found subject to the constitution. The error of Boggs' argument is evident in this argument it makes: "When the South Carolina Rules of Civil Procedure establish the procedure for sanctions, it is an error of law to issue sanctions inconsistent with those permitted by the Rules." (Mot. to Recon. p. 28). The Court expressly found that the Rules did not fully establish the procedure for sanctions in this case—where a party's discovery practices were aimed at avoiding entry of a court order and included two instances of false testimony under oath. Having determined that the Rules did not have an applicable procedure for sanctions, the Court properly relied upon its inherent powers guided by caselaw on proper considerations for issuing a sanction. Neither *Dibble* nor any case applying a Court's inherent power to sanction limits its use to only certain circumstances.

Boggs also attacks the citation to *Brandt v. Gooding*, 368 S.C. 618, 630 S.E.2d 259 (2006). (Mot. to Recon. pp. 28-29). *Brandt* is factually similar to this case in that both involve false statements made by a party and, in both situations, the courts struck a pleading. The “inherent power” quote in *Brandt* is found in the criminal contempt analysis section. However, that does not make it inapplicable. Boggs does not argue that a Court’s inherent power is limited to contempt situations. Further, the dismissal of the complaint in *Brandt* by the trial court was “as a sanction for contempt.” *Id.* at 627, 630 S.E.2d at 263. The Court’s citation to *Brandt* as support for exercising inherent power to sanction is valid.

Finally, *Boggs* attacks the Court’s citation to *Gathers v. S.C. Elec. & Gas Co.*, 311 S.C. 81, 427 S.E.2d 687 (Ct. App. 1993). (Mot. to Recon. pp. 29-30). *Boggs* argues that *Gathers* addressed evidence spoliation and not failure to produce documents, and that the case does not involve the court issuing a sanction for a discovery violation. (Mot. to Recon. p. 30). Again, the case at bar does not involve only “a discovery violation,” it also involves two instances of false statements under oath. Further, the Court cited *Gathers* in response to *Boggs*’ argument that because Rule 37 did not apply in the absence of a court order that it violated, it could not be sanctioned. (Order p. 12). *Gathers* stated a situation in which a court could issue a sanction for discovery-related misconduct—specifically losing or destroying evidence—that did not have to rely on Rule 37. The Court’s point is that Rule 37 is not the exclusive source of power to sanction all conduct in any way related to discovery. *Gathers* supports that point, and the Court’s citation to it is proper.

As explained herein, and in the Court’s Order, the misconduct involves so much more than simply failing to produce all responsive documents in discovery. The misconduct includes false statements under oath that the discovery did not exist, upon which the Plaintiffs relied upon when deciding to withdraw motions for court orders. The Court correctly stated that Rule 37 is not the

sole source of its ruling. It also correctly noted the hypocrisy of Boggs avoiding a court order with its false testimony and then attempting to use the absence of an order as a shield to avoid sanctions. This conduct is against the purpose and spirit of the Rules of Civil Procedure and the law. S.C. Code Ann. § 16-9-10.

Contrary to Boggs' argument (Mot. to Recon. pp. 31-32), the Court is not limited to Rule 37 as the sole source of authority to strike an answer, especially where the conduct includes false testimony. Boggs' citation to *Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 814 S.E.2d 643 (Ct. App. 2018), does not establish that the only circumstance for striking an answer is under Rule 37 for violation of a court order. (Mot. to Recon. p. 32). First, in *Skywaves*, the Court specifically found the defendant's actions did "not constitute deceitful conduct," *Id.* at 457, 814 S.E.2d at 657, which is different from this case. Second, the Court simply distinguished *Skywaves* from situations in which parties had violated court order to find that the lower court had not abused its discretion in denying a motion to strike an answer. *Id.* at 458-59, 814 S.E.2d at 657-58. It did not hold that violation of a court order is the only situation in which an answer may be stricken.

Finally, since the Court signed the Order in this case, the South Carolina Supreme Court issued the opinion in *Bauknight v. Pope*, Op. No. 28273, 2025 S.C. LEXIS 47 (S.C. Sup. Ct. April 16 2025). In *Bauknight*, the Supreme Court affirmed an order striking the defendant's answer but did not once cite to Rule 37, SCRC. Further, the Supreme Court cited to Rule 11, SCRC, but Rule 11 does not mention a sanction to strike an answer. This further supports the Court's use of its inherent powers to strike Boggs' answer in this case. It cannot be disputed that the Court may strike an answer outside of Rule 37.

**IV. The Court's Order took all relevant facts, law, arguments and public policy considerations into account and ultimately concluded that Plaintiffs were prejudiced by Boggs's willful abuse of the discovery rules.**

The Court clearly gave all relevant facts, legal authorities, and arguments of all counsel due weight and consideration prior to ruling on Plaintiffs' motion for sanctions. The motion for sanctions was fully briefed and came before the Court for a hearing on February 20, 2025. The Court took the matter under consideration. Given the severe nature of the requested sanction, the Court clearly did not take its duties or deliberations lightly. After deliberation and conducting its own research, the Court informed the parties on March 18, 2025 that the Court had concluded that in this case, under these facts, striking Boggs' answer was warranted. Boggs's suggestion that the Court did not consider the excuses that Boggs levied—including that the prior deficiencies and false verification was everyone else's fault and Boggs' efforts to correct the deficiencies—in response to Plaintiffs' motion for sanctions is baseless.

Plaintiffs must briefly recount the discovery of the subject communication because the circumstances and manner in which it was discovered provides the necessary foundation several of Plaintiffs' responses to Boggs' remaining arguments and further supports the Court's Order. Boggs's substitute counsel was brought into this case in December of 2024 to, in his words at the hearing on Plaintiffs' Motion Sanctions, "clean house." Shortly thereafter, on December 13, 2024 substitute counsel attended the deposition of an SCDOT representative, Mr. Chris Borque. After asking Mr. Borque questions for a few minutes, substitute counsel unveiled the smoking gun communication that was the impetus for Plaintiffs' motion for sanctions.

The subject communication had never been produced prior to substitute counsel pulling it out at the deposition. Boggs' substitute counsel represents that he received the subject communication sometime after 11:00 p.m. the night before the deposition from an unnamed individual. (Resp. in Opp. p. 8). Substitute counsel further represents that "[h]ours after Boggs Contracting's substituted counsel received an email that was not produced earlier in discovery, the

document was provided to counsel for all parties, and all parties had an opportunity to question the email's author during his deposition.” (Resp. in Opp. p. 22). This is a distorted representation of how the subject email came to be a part of the record. After substitute counsel unveiled the smoking gun communication and briefly questioned Mr. Borque about its contents, substitute counsel placed it back in his file. (Exhibit 2, Deposition of Chris Borque 75:7-77:17). Plaintiffs’ counsel, realizing that the communication had not been produced and went to the heart of many issues in the case, requested that the communication be marked as an exhibit to the deposition. (Exhibit 2, Borque Depo. 78:1-21).

By the time that Mr. Borque’s deposition occurred, substitute counsel had full access to all discovery that had been exchanged by the parties. Counsel had full access to the type and manner of Bates stamps used by all parties. Based on substitute counsel’s access to the exchanged discovery, he apparently had actual or constructive knowledge that the subject communication had not been produced. The non-bates stamped communication was clearly not part of the exchanged discovery, and substitute counsel appears in Boggs’ response in opposition to the motion for sanctions to now take the position that he knew the communication was not produced at the time he received it. (Resp. in Opp. p. 22).

Despite its repetitive claim, (Motion to Reconsider pp. 37, 38), Boggs did not supplement its discovery responses of its own accord. After the conclusion of Mr. Borque’s deposition, substitute counsel, who apparently knew by that point that the subject communication, and potentially thousands of other documents were missing from Boggs’s production, made no attempt to reach out to Plaintiffs’ counsel to inform Plaintiffs that the “house cleaning” measures were yielding substantial documents that needed to be supplemented, let alone supplement its discovery responses.

It was not until weeks after Plaintiffs' motion for sanctions was filed, and over a month after Mr. Borque's deposition, that Boggs went into damage control and notified the parties that additional information was being uncovered. It was over a month after the filing of Plaintiffs' motion for sanctions, and just a few days before the hearing on the motion for sanctions, that Boggs began to supplement the record with thousands of documents, including the subject communication—which was produced in a completely different format than was unveiled at the deposition. Boggs' most recent flurry of production in response to the Plaintiffs' motion for sanctions is another example in a long line of Boggs' disregard for the Rules and disrespect of the Plaintiffs' discovery rights. Plaintiffs have been repeatedly prejudiced by this same behavior throughout this litigation. The Court, recognizing Boggs' unambiguous pattern of behavior and Boggs' willful procurement of a dishonest verification and testimony, justly and appropriately exercised its discretion and struck Boggs' Answer.

The Court did not ignore Boggs' purported correction of the concealed discovery. During its month of deliberation on the matter, the Court clearly took Boggs' recent efforts into account but found that it was too little, too late and was yet another representation of Boggs attempting to avoid another discovery or sanction order with an eleventh-hour production. Further, the Court correctly found that due to Boggs' false representations and false testimony, Boggs cannot be trusted when it says everything has been turned over.

Boggs' argument that the record does not reflect its discovery abuse was willful is likewise meritless. There is a litany of evidence in the record, including but not limited to multiple instances of false testimony, concealment of pertinent documents, eleventh hour productions of incomplete and dishonest discovery responses, to support the Court's finding that Boggs' discovery abuse was beyond mere accident, it was intentional. Moreover, Boggs's prior defense attorneys are well-

seasoned, well-respected members of the South Carolina Defense Bar who clearly were dealing with an unruly client that did not take this case, the Plaintiffs' injuries and claims, or its obligations in this case seriously. Plaintiffs' counsel takes high offense to the lengths that Boggs goes in its arguments to place all of the blame for its egregious conduct on its prior defense counsel. Moreover, in addition to its prior South Carolina Counsel, throughout this litigation, Boggs has engaged the services of its personal outside counsel in North Carolina, Elizabeth Overmann. (Exhibit 1, Hayes Depo. 2, 6:2-3).

It is inconceivable that Boggs did not have ample counseling from prior defense counsel and its personal North Carolina attorney on the ramifications of concealing documents, abusing the discovery process, signing false verifications, and lying under oath. It is likewise highly suspect that Boggs's insurance carrier forgot about a forensic Delta V investigation, the subject communications, and a host of other documents that were withheld and could not associate those materials with a need to produce them in response to Plaintiffs' discovery requests. Yet, Boggs would have the Plaintiffs, and the Court, believe that all of its egregious discovery abuses were unintentional, and the fault of Boggs prior defense counsel and a departing Boggs employee.

As the Court found, Boggs' conduct was willful, intentional, and in disregard of the Plaintiffs' discovery rights because "Boggs signed a verification and then gave testimony under oath about a particular fact within its knowledge and gave false information." (Order p. 9). There is nothing unintentional about signing false verifications. There is nothing unintentional about providing false testimony under oath.

Additionally, the Court took all policy considerations into account. Boggs' reliance on *Melton v. Olenik*, 379 S.C. 45, 54, 664 S.E.2d 487, 492 (Ct. App. 2008) for the proposition that the Court should reverse its ruling based on the public policy that favors litigation on the merits,

is completely misplaced. In *Melton*, the Court considered whether it was an abuse of discretion for the trial judge to refuse to set aside a default judgment of a defendant who failed to answer the complaint. *Id.* at 54-55, 664 S.E.2d at 492. This case is a completely different scenario, wherein Boggs is now held in default due to its repeated abuse of the discovery process and providing false testimony. Boggs is held in default not because it failed to answer the complaint, but because it grossly and repeatedly frustrated Plaintiffs' ability to prepare to litigate this matter on its merits.

Boggs' attempt to set forth its purported "meritorious defenses" is likewise improper at this juncture. The defenses that Boggs presents to the Court amount to nothing more than colorable arguments and fall drastically short of "strong meritorious defenses" against Plaintiffs' claims. While Plaintiffs do not believe this is the time or place to further discuss the merits of this case, it should be noted that Boggs appears to ignore the contents of the email which is at the heart of this dispute.

It is undisputed that Boggs was paid over \$7 million dollars in exchange for a contract with the South Carolina Department of Transportation that involved Boggs accepting various duties which included, among others, maintaining a safe work zone which complied with the standards set forth by the United States Department of Transportation. Boggs failed to maintain the work zone by allowing the required warning signs to lay face down on the shoulder of the roadway. Instead of disclosing this failure to law enforcement who was en route to investigate the collision, Boggs recognized its failure and rushed to correct the signage before law enforcement arrived. At no point in its response in opposition to the motion for sanctions or in its motion for reconsideration has Boggs attempted to address or dispute the fact that the subject signs were lying face down at the time of the collision and they were picked up prior to law enforcement arriving. Boggs' failure

to do so is not surprising. This series of events is indisputable due to it being captured by dash cam footage as discussed thoroughly in Plaintiffs' motion for sanctions.

The subject communication demonstrates that after correcting the signage defects, Boggs then doubled down on its misconduct by attempting to obtain a knowingly false, backdated SCDOT inspection report indicating that Boggs was in compliance with the Traffic Control Plan when it knew that it was not in compliance with the Traffic Control Plan. When the SCDOT properly refused to generate such a report, a Boggs employee apparently provided the evidence of Boggs' improper attempt to secure a false inspection report to Amerisure Insurance Corporation which buried the communication for over two years until it suddenly appeared in the middle of a key deposition in December of 2024. While Boggs claims that the employee who gathered and provided the communication to the insurance carrier left the company shortly after the documents were gathered, it fails to note that the employee who authored the communication remained employed by Boggs and was so involved in the litigation that he was designated as the person most-knowledgeable within the company to speak on three subjects directly related to the construction site pursuant to S.C. Rule Civ. P. 30(b)(6). Moreover, Boggs is dismissive of the inescapable fact that when Mr. Hayes was questioned about his due diligence in searching for responsive emails, the only Boggs employee that Mr. Hayes specifically recalled asking was the author of the subject email himself. (Exhibit 1, Hayes Depo. 98:4-25).

Amerisure Insurance Company, the liability carrier which purportedly had the communication in its file for over two years before providing it to trial counsel, is the entity responsible for valuing the claim, negotiating any potential settlement, managing the litigation, overseeing and directing trial counsel, and advising its insured. Though it is currently unclear, Amerisure Insurance Company is likely the party which undertook the considerable expense

associated with engaging Delta V to perform the inspection which was improperly kept secret for a period of over two years. Amerisure Insurance Company also apparently engaged its own outside trial counsel to monitor the litigation and advise Amerisure Insurance Company. The affidavit of Kevin Hayes clarifies that prior and current South Carolina trial counsel (who have been retained by Canal Insurance Company, the insurance company for Heritage Hauling, Inc., pursuant to a demand that Canal tender a defense to Boggs) never had access to the email communication until December of 2024, but makes no mention of when counsel retained by Amerisure Insurance Company to represent Boggs obtained the subject email. Given Boggs' explanation, it may have legitimate recourse against Amerisure Insurance Company. However, that recourse is collateral to this case.

While Boggs' fails to discuss it, the Court properly weighed the policy considerations relevant to the discovery process. The litigation arena depends on honesty, integrity, full and fair disclosure of all relevant facts in a timely manner. "The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed." *In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001). "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.'" *Id.* At every turn in this litigation, Boggs and its agents did everything under the sun to frustrate the public policy regarding fair, honest, and full disclosure of information until Court intervention was imminent. As a consequence, the Court exercised its discretion and struck Boggs' Answer. The Court's Order should not be disturbed.

**V. The Court's Order identifies actual prejudice to the Plaintiffs**

Boggs' claim that the Order does not identify any prejudice to the Plaintiffs is aggressively incorrect. Boggs' assertion that "[t]here is no actual prejudice to the Plaintiffs because Boggs Contracting supplemented its document production months before trial" disregards the Court's finding that Plaintiffs were denied discoverable information for two years and provided false testimony on multiple occasions. For Boggs' claim of no prejudice to Plaintiffs in this case to have any merit, it would effectively mean that there is no prejudice to any party in any case where false testimony is provided about highly pertinent facts and documents are concealed for years, so long as they are handed over if a sanctions order is likely to be issued. This is contrary to South Carolina law and a gross abrogation of the Rules of Civil Procedure.

Boggs further does not address the most significant prejudice that the Plaintiffs and all parties face in this case as a result of Boggs' conduct. The Court reasoned, based on all the facts and arguments presented, that Boggs cannot be trusted. (Order p. 10). There is no greater prejudice to a litigant than the confirmation that his adversary will knowingly, confidently, and without hesitation, provide false testimony, conceal documents, and disregard the Rules. As stated in the motion for sanctions, there is no way to know the true extent of Boggs' concealment. Similarly, there is no way to confirm that Boggs' latest flurry of production is truly complete because Boggs' word is, at this point, worthless. No amount of additional deposition testimony, written discovery, document production, affirmations from Boggs or its counsel can ever remedy the Plaintiffs' or the Court's inability to trust Boggs. The effects of Boggs' lack of candor before this tribunal is insurmountable. As a consequence, there is simply no way for Plaintiffs to fully prepare for trial.

As a practical matter, Plaintiff Malon Cobb lost his livelihood and suffered a debilitating brain injury as a result of the collision. Plaintiff Cobb Trucking, Inc. was forced to shutter as a

result of the collision. Plaintiff Ryan Cobb lost his livelihood, his business, and his leg as a result of the collision. Now, over two years into the litigation, a document appears suddenly in the middle of a deposition which shows the lengths to which Boggs was willing to go to defraud the South Carolina Department of Transportation, Boggs' co-defendants, and the Plaintiffs to conceal its improper handling of the construction site. This communication dramatically alters the landscape of litigation with only weeks left until a date-certain trial. This conduct is highly relevant to punitive damages and provides a basis for Plaintiffs and Boggs' co-defendants to bring claims for fraud against both Boggs and Amerisure Insurance Company. The addition of a new necessary party will automatically add a minimum of 180 days to the litigation by operation of the South Carolina Rules of Civil Procedure, but could logically add one or more years to the litigation had Boggs' answer not been properly struck by this Court.

**VI. The Court's Order did not strike Boggs' Cross Claim and the Court has no obligation to include specific arguments from Boggs in its Order**

As stated above, Plaintiffs do not believe that the Order struck Boggs' Cross Claim against Heritage Hauling. Rather, the Order clearly only struck Boggs' Answer to Plaintiffs' Amended Complaint. Plaintiffs do not believe any further modification to the Order is necessary. Finally, the Court was not tasked with ruling on Boggs' arguments in its Response in Opposition to the motion for sanctions. Boggs was not the moving party. Rather, the Court was moved by the Plaintiffs to deliberate and consider the arguments of the parties and rule on Plaintiffs' motion for sanctions. The Court did so.

Boggs, who had ample opportunity to object to any language in the proposed order or request inclusion of rulings on any of its arguments, chose not to do so. Clearly, Boggs' choice to sit idly by and not raise any issues with the proposed order was a strategic one. Boggs' remained silent so that it could add the lack of rulings on its prior arguments to the kitchen sink, along with

all its other baseless grounds, for reversal in its motion to reconsider. However, Boggs has no legal basis to now claim that the Court erred in issuing the Order as written based on its adherence to the concept of brevity and addressing only those arguments that the Court deemed necessary to inform its decision.

As the Court noted, its decision to impose the harshest of sanctions on Boggs' was not taken lightly. (Order pp. 6, 13). Courts must always deliberate cautiously, and craft sanctions based on the unique facts of every case. *See generally Samples*, 329 S.C. 105, 495 S.E.2d 213; *Griffin Grading & Clearing, Inc.*, 334 S.C. 193, 511 S.E.2d 716. The Order demonstrates the Court's thoughtful, careful, and thorough consideration of all relevant facts and the law as applied to the facts. The Order is well-reasoned, firmly supported by the facts and the law, and serves as a cautionary tale to all litigants who repeatedly disregard the Rules of Civil Procedure, flagrantly abuse the discovery process, offer false testimony about the existence of discoverable material, conceal pertinent documents, and avoid discovery orders with last minute service of dishonest discovery responses without fear or concern of harsh sanctions from the Courts in our State. Therefore, Court's should not be altered, disturbed, or reversed.

### CONCLUSION

For the reasons set forth herein, the Plaintiffs respectfully request that Boggs' Rule 59(e) motion for reconsideration of this Court's Order granting sanctions and striking Boggs' Answer to Plaintiffs' Amended Complaint be DENIED.

Respectfully submitted,

s/Scott C. Evans

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May 4, 2025  
Georgetown, South Carolina

# Exhibit 1

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

RYAN COBB, MALON COBB, COBB )  
TRUCKING, LLC, and BRANDY COBB,) )  
 )  
Plaintiffs, )  
 ) Case No.:  
-versus- ) 2022-CP-22-00739  
 )  
DAVID ALAN BIGELOW, HERITAGE )  
HAULING, INC., and BOGGS )  
CONTRACTING, )  
 )  
Defendants. )

THE VIDEOTAPED ZOOM DEPOSITION OF 30(b)(6)  
BOGGS CONTRACTING, INC., KEVIN HAYES, JR., was taken  
as a witness on behalf of the Plaintiffs, pursuant  
to South Carolina Rules of Civil Procedure, at 10:00  
a.m. on Wednesday, the 24th day of April, 2024,  
before Janice O. Darby, Registered Professional  
Reporter and Notary Public in and for the State of  
South Carolina.

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A P P E A R A N C E S (cont.)

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I N D E X

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1 KEVIN HAYES, JR.  
2 having been first duly sworn, was called as a  
3 witness herein and was examined and testified as  
4 follows:

5  
6 THE VIDEOGRAPHER: We are on the  
7 record in the video deposition of 30(b)(6) Boggs  
8 Contracting, Inc., with Kevin Hayes, Jr., in the  
9 matter of Ryan Cobb, et al., versus David Alan  
10 Bigelow, et al. The case number is  
11 2022-CP-22-00739.

12 Today's date is April 24, 2024.

13 The court reporter is Janice Darby. My  
14 name is Matthew Starling.

15 The time is now 10:05. Would counsel  
16 please identify themselves for the record.

17 MR. BRYAN: George Bryan on behalf  
18 of the plaintiff Ryan Cobb and Cobb Trucking.

19 MR. MOORE: James Moore on behalf of  
20 the plaintiffs.

21 MR. EVANS: Scott Evans on behalf of  
22 the plaintiffs.

23 MS. HOLMES: Janet Brooks Holmes on  
24 behalf of the defendant Boggs Contracting, Inc.

25 MR. CATALANO: I'm Joe Catalano on

1      behalf of Boggs Contracting.

2                   MS. OVERMANN:   Elizabeth Overmann  
3      here on behalf of the deponent.

4                   MR. OTT:   Curtis Ott here -- Go  
5      ahead.

6                   MR. BARFIELD:   This is Michael  
7      Barfield on behalf of UIM carrier.

8                   MR. OTT:   And this is Curtis Ott  
9      here for Heritage Hauling and Mr. Bigelow.

10                  THE VIDEOGRAPHER:   Thank you.   And,  
11      Ms. Janice, could you please swear in the witness.

12                                   (Witness sworn.)

13  
14                                   E X A M I N A T I O N

15      BY MR. BRYAN:

16           Q       Good morning.   My name is George Bryan.  
17      I'm an attorney down in Georgetown, South Carolina.  
18      I'm representing the Cobbs and Cobb Trucking in a  
19      lawsuit that's been filed against Boggs Contracting,  
20      Inc., amongst others that arises out of a vehicle  
21      accident that occurred here in Georgetown County  
22      near Andrews back in February of 2022.

23                   I'm here to take your deposition today.  
24      Can you please state your name again for the record.

25           A       Kevin J. Hayes, Jr.

11

1           And then I have one more point I'll go  
2 ahead and say. We've got one designee that is for  
3 three of the topics. So Mr. Hayes here is for all  
4 but three of the topics based upon the most recent  
5 deposition notice.

6           MR. OTT: Do you want to just go  
7 ahead and tell us what those are?

8           MS. HOLMES: I sure will. Thanks,  
9 Curtis. Joe, please correct me if I'm mistaken.  
10 The other designee will be on topics 8, 9, and 10.  
11 So Mr. Hayes is on 1, 2, 3, 4, 5, 6, 7, 11 and 12.

12           MR. BRYAN: Okay. So I'll mark this  
13 as Plaintiff's Exhibit No. 1.

14 BY MR. BRYAN:

15           Q       So, Mr. Hayes, pursuant to what your  
16 attorney just indicated, you are the Boggs  
17 Contracting employee with the most knowledge -- the  
18 most knowledge about these nine subject matters, and  
19 then there is another designee for 10, 11, and 12.  
20 Is that correct?

21           A       I believe the numbers are off just a  
22 hair.

23           MS. HOLMES: Also, I object to the  
24 term "most knowledge."

25           A       I believe I am doing all except 8, 9 and

12

1 10.

2 BY MR. BRYAN:

3 Q So anything to do with traffic control  
4 devices, that's not you, essentially?

5 A Relatively, yes, sir.

6 Q Mr. Hayes, have you brought any  
7 additional documents with you here today?

8 A I have not.

9 Q Do you understand that you're here today  
10 on behalf of Boggs Contracting, Incorporated, and  
11 not in your individual capacity?

12 A Yes, sir.

13 Q And do you understand that your answers  
14 will be binding upon Boggs Contracting?

15 A Yes, sir.

16 Q Has Boggs Contracting rebranded itself,  
17 or is Boggs Contracting still a viable entity?

18 A Boggs Contracting, Inc., is still a  
19 viable entity. However, the ownership has recently  
20 changed and there has been a rebranding.

21 Q We'll talk about that a little bit later.  
22 So do you still work for Boggs  
23 Contracting, or do you work for the rebranded  
24 entity?

25 A I work for an entity called Contractors

13

1 Management Services, which is part of the now parent  
2 company.

3 Q And what is the parent company?

4 A True Rock Holdings, Inc.

5 Q What is your job description?

6 A I am the CFO for True Rock Holdings, Inc.  
7 So my description would be to oversee and maintain  
8 financial stability of that company and its  
9 subsidiaries.

10 Q How long have you been with -- how long  
11 were you with Boggs Contracting?

12 A I worked directly for Boggs Contracting,  
13 Inc., for approximately two years.

14 Q And what did you do before that?

15 A I worked for Buckhorn Materials prior to  
16 that.

17 Q And what was your job title at Boggs  
18 Contracting?

19 A I was in the finance department. We  
20 didn't really have a specific title, but I worked  
21 with the finance department.

22 Q You said Buckhorn Materials?

23 A Yes, sir.

24 Q What is that? Is that another  
25 Boggs-related entity, or is that a totally separate

1 company?

2 A It was an affiliate to Boggs at one point  
3 in time while I worked there. It was sold. So it's  
4 no longer an affiliate.

5 Q And how long did you work there?

6 A I worked there from 2010 until 2017. Not  
7 all on a full-time capacity.

8 Q And were you working in the finance  
9 department for Buckhorn as well?

10 A Not for the entirety. There was more  
11 operational things with Buckhorn.

12 Q Such as?

13 A I mean, so Buckhorn was a rock quarry.  
14 So just kind of plant manager duties, just  
15 operations of crushing stone.

16 Q Like management -- Tell me about that.

17 A Managing people and ensuring that we meet  
18 productions and have the correct stones on the  
19 ground and the right quantities, et cetera.

20 Q So you were more of, like, boots on the  
21 ground?

22 A More of an operations manager type deal.

23 Q So you started working at Buckhorn in  
24 2010. What did you do before that?

25 A I was in high school.

15

1 Q Where did you go to high school?

2 A Anson High School.

3 Q And where is that located?

4 A That is located in Anson County.

5 Q Is that near Monroe?

6 A Yes, sir. One county over from the  
7 county Monroe is in.

8 Q So altogether how long have you been  
9 employed with these Boggs entities? Since 2010?

10 A Yes, sir.

11 Q And when did Boggs rebrand itself into  
12 True Rock -- Did you say holdings?

13 A Yes, sir. In June of 2023.

14 Q And so since June of 2023 you've been the  
15 CFO?

16 A Of that particular entity, I would say  
17 yes.

18 Q So who at Boggs designated you to speak  
19 about the topics that you're assigned to today?

20 MS. HOLMES: Objection to the extent  
21 that it calls for attorney-client privilege. But  
22 you can answer other than privilege.

23 A We discussed it with our attorneys. And  
24 between them and myself, we decided I was the best  
25 person.

1 BY MR. BRYAN:

2 Q Other than your lawyer, who did you speak  
3 with today about -- or about today's deposition?

4 A I spoke with multiple people just to  
5 confirm some things that may or may not come up.  
6 Some of our safety people, some of our project  
7 managers, things like that.

8 Q What are their names?

9 A I spoke to an individual in safety named  
10 Charles Barrino. I spoke to a project manager, who  
11 you will hear from later, Matt Guillot,  
12 G-u-i-l-l-o-t-t.

13 Q You say Charles Barrino is in the safety  
14 department?

15 A Barrino, B-a-r-r-i-n-o. And, yes, he is  
16 in the safety department.

17 Q And what's his title?

18 A I believe his title is safety director or  
19 maybe safety coordinator. I apologize. I'm not  
20 super keen on their titles.

21 Q Do you have a general idea of what his  
22 day to day looks like?

23 A Charles? Yes, I do.

24 Q What exactly does he do?

25 A He visits job sites and he handles a lot

1 of our DOT compliance aspects.

2 Q And then Matt -- Pronounce that last name  
3 one more time.

4 A Guillot.

5 Q Guillot. What exactly does he do?

6 A He is a project manager on the day to  
7 day.

8 Q And by project manager, you mean like  
9 road construction sites around various counties and  
10 states?

11 A I believe he does a lot of those, but, I  
12 mean, it wouldn't be limited to that. He can do  
13 any -- just whatever project, construction project  
14 he's assigned to.

15 Q Anybody else?

16 A Other than our attorneys, I guess I did  
17 talk to one of the insurance agents just to confirm  
18 some dates on things.

19 Q Do you remember which company that  
20 insurance agent worked for?

21 A He works for Scott Insurance.

22 Q Do you remember his name?

23 A Brendan Mahoney.

24 Q How many hours do you reckon you spent  
25 preparing for today's deposition?

1           A       A fair amount. Ten plus.

2           Q       Did you review any documents while you  
3 were preparing?

4           A       Yes, sir.

5           Q       What did you review?

6           A       You know, I don't remember every single  
7 one. Some that I can remember specifically. I  
8 perused through a prior deposition of -- I believe  
9 the truck driver and Heritage's safety person.  
10 Obviously, all of the document -- request documents.  
11 And then whatever came up with discovery that was  
12 submitted.

13          Q       Are there any documents that pertain to  
14 these subject areas that are listed in the Notice of  
15 Deposition that you do not have access to?

16          A       No, I don't remember specifically -- I  
17 don't recall every line item that was requested. If  
18 we went through them, I could point them out maybe.

19          Q       Is there anything else you feel like you  
20 could have done to prepare for today's deposition?

21          A       I think I gave it a very good try. I  
22 don't believe I could have done much more.

23          Q       That's all we can ask of you.

24                 All right. So what type of work does  
25 Boggs Contracting actually perform?

1 MS. HOLMES: Objection to the form.

2 A I mean, I can read it and see it, but I  
3 don't -- I'm not an insurance expert. I never  
4 really know what they will or will not cover until  
5 we go through the process of each individual claim.  
6 BY MR. BRYAN:

7 Q How long did Boggs Contracting own or  
8 carry policies of insurance with these companies,  
9 with Great American and Amerisure?

10 A We've been with them for a number of  
11 years at this point. Prior to 2020, 2019, I'm not  
12 really sure. We've been back and forth, I know,  
13 with Amerisure. There's a relationship there. It's  
14 been a number of years.

15 Q Are the Boggs entities still insured with  
16 Amerisure and Great American?

17 MS. HOLMES: Objection.

18 A As we sit here today, yes, sir.

19 MR. BRYAN: Give me just a minute.  
20 If we can go off the record for about five minutes,  
21 I'm going to run through my notes. I might have a  
22 couple more questions to wrap up and get you out of  
23 here.

24 MS. HOLMES: George, this is  
25 Elizabeth Overmann. On behalf of Boggs Materials,

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1 we went ahead and got that ticket and I sent it over  
2 to Joe, and I think he emailed it to you. It's real  
3 short and simple. I just wanted you to see it  
4 before you let J.R. loose.

5 THE VIDEOGRAPHER: We are going off  
6 the record. The time is now 12:53.

7 (Recess taken.)

8 THE VIDEOGRAPHER: We are going back  
9 on the record. The time is now 1:19.

10 BY MR. BRYAN:

11 Q Mr. Hayes, I have just a few more  
12 questions for you.

13 Do you know who the supervisor was on the  
14 subject construction site where this collision  
15 occurred?

16 A No, sir, not specifically.

17 Q Do you know who the project manager was?

18 A Yes, sir, I do.

19 Q Who was that?

20 A Matt Guillot.

21 Q And would Matt Guillot be the project  
22 manager for this whole DOT contract?

23 A Yes, sir.

24 Q We spoke about email correspondence  
25 earlier, and you referenced -- and I believe you-all

1 have produced two emails that pertain to Heritage  
2 Hauling and Boggs Contracting. Is that correct?

3 A That sounds accurate, yes, sir.

4 Q And you've provided a verification to us  
5 that no other emails exist?

6 A To my knowledge, yes, sir.

7 Q We do appreciate you providing that. Can  
8 you tell me what due diligence you did to confirm  
9 that there are no other communications or  
10 correspondence?

11 A So, obviously, I perused and searched my  
12 emails very thoroughly. And I asked other employees  
13 involved to do the same.

14 Q What other employees did you ask?

15 A I can't remember offhand. I mean, I  
16 could go back and look at the emails potentially.

17 Matt was one of those. Just other folks  
18 that were potentially involved with that project.

19 Q Do you remember which search terms you  
20 used to try to find responsive emails?

21 A Not all of them, no. I'm certain that I  
22 searched "Heritage," and I likely searched the job  
23 number.

24 Q Aside from Matt Guillot, did you speak  
25 with any other employees that were on the

1 construction site that day?

2 A No, sir.

3 Q So you didn't speak to Macio Cooper?

4 A No, sir.

5 Q Did you talk to anybody about text  
6 messages?

7 A I believe my emails referenced  
8 correspondence. I may not have specifically  
9 outlined text messages, but it's presumed.

10 Q I mean, this is a pretty serious  
11 accident. In my experience, I would expect for  
12 there to be a lot more than two emails. We just  
13 want to make sure that we've got everything that's  
14 out there.

15 MS. HOLMES: Objection to the form.

16 BY MR. BRYAN:

17 Q You're saying that those two emails are  
18 it?

19 A Related to that incident, that is all  
20 that I'm aware of, yes, sir.

21 Q You said earlier that you had seen the  
22 dash-cam footage. Have you seen the onboard-camera  
23 footage as well?

24 A Meaning the front-facing camera?

25 Q Yeah, the one that faced the driver.

# Exhibit 2

1

STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
 )  
COUNTY OF GEORGETOWN ) CASE NO. 2022-CP-22-00739  
RYAN COBB, MALON COBB, COBB )  
TRUCKING, LLC, and BRANDY )  
COBB, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
DAVID ALAN BIGELOW, HERITAGE )  
HAULING, INC.; BOGGS )  
CONTRACTING, INC.; and SAFE )  
SHIELD, LLC, )  
 )  
Defendants. )

STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
 )  
COUNTY OF GEORGETOWN ) CASE NO. 2023-CP-22-00435  
LA'JAI WEBSTER, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DAVID ALAN BIGELOW, HERITAGE )  
HAULING, INC.; BOGGS )  
CONTRACTING, INC.; and THE )  
SOUTH CAROLINA DEPARTMENT OF )  
TRANSPORTATION (SCDOT), )  
 )  
Defendants. )

\* \* \* \* \*  
VIDEOTAPED  
DEPOSITION OF: CHRISTOPHER BOURQUE  
DATE TAKEN: Friday, December 13, 2024  
TIME: 9:07 a.m.  
PLACE: Evans Moore  
121 Screven Street  
Georgetown, South Carolina

REPORTED BY: EVE WILBANKS  
Registered Professional  
Reporter, Certified LiveNote  
Reporter and Notary Public

\* \* \* \* \*

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ALSO PRESENT: MATTHEW STARLING, LEGAL VIDEOGRAPHER  
 TRAVIS TRUETT (via Zoom)

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25

13    \*\* (This transcript may contain quoted material.  
14    Such material is reproduced as read or quoted by  
15    the speaker.)

1 pre-construction conference?

2 A. Yes.

3 Q. Do you recall if a pre-construction  
4 conference occurred for the project that we're  
5 talking about here today?

6 A. It would have to, but I don't recall the  
7 date or any of the details of it.

8 Q. No specific memory of it?

9 A. Yes.

10 Q. Do you know who would have been there?

11 A. I don't recall who was there.

12 Q. Who would normally be there?

13 A. I'm sure a contractor representative,  
14 the project manager in general; subs are usually  
15 invited, depending on the contractor, but not  
16 necessarily; my inspector would be there; my  
17 administrative assistant; the local government or  
18 utilities, anybody who has a stake in the project  
19 as well.

20 Q. Okay. Would Heritage Hauling be there  
21 for a project like this one?

22 A. I don't think I've had Heritage at a  
23 pre-construction conference.

24 Q. Is there anything wrong with that?

25 A. No.

1 Q. Would Safe Shield normally be at the  
2 pre-construction conference for a project like  
3 this?

4 A. Normally I would say not.

5 Q. Anything wrong with that?

6 A. No.

7 Q. On -- let's see. This incident occurred  
8 on February 3rd of 2022. On February 4th of 2022,  
9 which was the next day, do you recall sending an  
10 e-mail to Matt Guillot about the incident?

11 A. I don't recall sending the e-mail, no.

12 Q. I have a copy of an e-mail from you --  
13 actually, Matt Guillot e-mailed you and then you  
14 replied.

15 A. Okay.

16 Q. And your reply says, "Matt, I had  
17 visited this site yesterday before noon. And from  
18 what I saw, the traffic control appeared to be in  
19 order as well once the signs that were laying down  
20 were picked back up (signs reset prior to the  
21 accident). Unfortunately, we are unable to  
22 retroactively do a traffic control inspection  
23 report. Let me know if you need anything else."  
24 Do you remember that?

25 A. I don't recall that, no.

1 Q. Okay. What does that mean to you?

2 A. Um, it sounds like the signs had blown  
3 over the day prior to the accident, and the  
4 contractor stood them back up. And at the time of  
5 -- since they were stood up, according to the  
6 e-mail, it sounds like traffic control was in  
7 order.

8 Q. Have you seen weekly inspection reports  
9 done around the time of this collision incident?

10 A. Have I seen them? Not to my  
11 recollection.

12 Q. Would you normally have any role in  
13 writing or reviewing a weekly inspection report  
14 for this project?

15 A. Um, no. I have access to the files, but  
16 I don't sign off on them or anything.

17 Q. Okay. If a -- if there were a safety  
18 issue that contributed to a collision incident  
19 like the one that is involved in this lawsuit,  
20 would that normally be written down on a weekly  
21 inspection report or noted in some way on that  
22 report?

23 A. If it was on the date of the inspection,  
24 yes.

25 Q. You mean if the report was on the date

1 of the inspection or -- I want to make sure I  
2 understood your answer correctly. You mean if the  
3 safety issue was on the day --

4 A. If the safety issue was present on the  
5 day the inspection was taking place, it would go  
6 on the work zone report.

7 Q. Go on the weekly report?

8 A. Yes.

9 Q. All right. If there is nothing on the  
10 weekly inspection report from the week of this  
11 incident indicating any safety issue, does that  
12 indicate to you that no one observed any safety  
13 issues that contributed to this incident?

14 A. I don't know if nobody observed it. But  
15 whoever wrote the report didn't observe any  
16 deficiency.

17 Q. Okay. Can I show you a report?

18 A. You may.

19 Q. Take as much time as you need to look at  
20 that. And then let me know when you're ready,  
21 please.

22 MR. THOMPSON: And, Eve, we'll make this  
23 Defendant's 2.

24 (Defendant's Exhibit No. 2, County Line  
25 Road Accident - 2/3/22 e-mail, was marked for

1 identification.)

2 MR. EVANS: Are you going to mark that  
3 e-mail as 1 that you referenced?

4 MR. THOMPSON: I can.

5 MR. EVANS: If you don't mind, yeah.

6 THE VIDEOGRAPHER: Off the record.  
7 We're going off the record. The time is now  
8 10:45.

9 (The deposition went off the record.)

10 THE VIDEOGRAPHER: We're going back on  
11 the record. The time is now 10:47.

12 (Defendant's Exhibit No. 3, Work Zone  
13 Traffic Control Review Weekly Inspection Report,  
14 was marked for identification.)

15 MR. THOMPSON: Just to clean up the  
16 record a little bit, the e-mail that I asked  
17 Mr. Bourque some questions about earlier,  
18 we're marking as Defendant's Exhibit 2. And  
19 the SCDOT weekly inspection report that has a  
20 date on it of February 4th, 2022, we're  
21 marking as Defendant's Exhibit 3.

22 BY MR. THOMPSON:

23 Q. Mr. Bourque, have you had time to look  
24 through this weekly inspection report?

25 A. Yes.

1 Q. In the upper left corner on the first  
2 page, it has the date February 4th, 2022.

3 A. Correct.

4 Q. You understand that to be the date after  
5 the collision incident in this lawsuit happened?

6 A. Yes.

7 Q. All right. Is this form that we're  
8 looking at a normal form that SCDOT would use for  
9 a weekly inspection report?

10 A. Yes.

11 Q. Is it correct that this is the weekly  
12 inspection report completed the day after the  
13 collision incident occurred?

14 A. It appears to be.

15 Q. On the last page, there's a line that  
16 says "SCDOT Inspector's Signature." Do you see  
17 that?

18 A. Yes.

19 Q. And the signature that's on this line  
20 appears to be Stephen Howard?

21 A. Correct.

22 Q. Do you know who Stephen Howard is?

23 A. I do.

24 Q. Who is Stephen Howard?

25 A. He's another contract inspector with

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**Jun 02 2025**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

---

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

David P. Caraker, Circuit Court Judge

---

Case No. 2022-CP-22-00739

---

Boggs Contracting, Inc., .....Appellant,

v.

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

---

**NOTICE OF APPEAL**

---

Appellant Boggs Contracting, Inc., appeals both the April 22, 2025 Order granting Respondents' Motion for Sanctions, which struck Boggs Contracting, Inc.'s Answer to Respondents' Amended Complaint, and the May 20, 2025 Order denying Boggs Contracting, Inc.'s Motion for Reconsideration of the April 22, 2025 Order. Appellant received written notice of entry of the May 20, 2025 Order on May 20, 2025.

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Jun 02 2025

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

David P. Caraker, Circuit Court Judge

Case No. 2022-CP-22-00739

Boggs Contracting, Inc., .....Appellant,

v.

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

**PROOF OF SERVICE**

I certify that I have served Appellant Boggs Contracting, Inc.'s Notice of Appeal via email and by U.S. Mail to counsel for the Respondents on June 2, 2025.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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June 2, 2025

**SENT VIA EMAIL - ctappfilings@sccourts.org**

Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

**RECEIVED**  
**Jun 02 2025**  
**SC Court of Appeals**

Re: Cobb v. Boggs Contracting, Inc., et al.; Webster v. Boggs  
Civil Action No.: 2022CP2200739  
Our File No.: 1900-0229

Dear Ms. Kitchings:

Attached for filing is a Notice of Appeal, Proof of Service, and the two (2) Orders from the lower court that are the subject of the Appeal. Please note that the \$250.00 filing fee for the Notice of Appeal is being sent via U.S. Mail today.

Thank you for your attention to this matter.

Yours truly,

*s/Jay Thompson*

Jay Thompson

JTT/tmb

Enclosure

Cc: All Counsel of Record (via email only)

|                                 |   |                                    |
|---------------------------------|---|------------------------------------|
| 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.                     | ) |                                    |

**RECEIVED**  
**Jun 02 2025**  
**SC Court of Appeals**

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.: 22<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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).<sup>3</sup> 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.

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<sup>3</sup> “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.

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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

**RECEIVED**  
**Jun 02 2025**  
**SC Court of Appeals**

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.

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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 2025-05-20 10:41:59 page 3 of 3

IN THE COURT OF COMMON PLEAS

1 we went ahead and got that ticket and I sent it over  
2 to Joe, and I think he emailed it to you. It's real  
3 short and simple. I just wanted you to see it  
4 before you let J.R. loose.

5 THE VIDEOGRAPHER: We are going off  
6 the record. The time is now 12:53.

7 (Recess taken.)

8 THE VIDEOGRAPHER: We are going back  
9 on the record. The time is now 1:19.

10 BY MR. BRYAN:

11 Q Mr. Hayes, I have just a few more  
12 questions for you.

13 Do you know who the supervisor was on the  
14 subject construction site where this collision  
15 occurred?

16 A No, sir, not specifically.

17 Q Do you know who the project manager was?

18 A Yes, sir, I do.

19 Q Who was that?

20 A Matt Guillot.

21 Q And would Matt Guillot be the project  
22 manager for this whole DOT contract?

23 A Yes, sir.

24 Q We spoke about email correspondence  
25 earlier, and you referenced -- and I believe you-all

1 have produced two emails that pertain to Heritage  
2 Hauling and Boggs Contracting. Is that correct?

3 A That sounds accurate, yes, sir.

4 Q And you've provided a verification to us  
5 that no other emails exist?

6 A To my knowledge, yes, sir.

7 Q We do appreciate you providing that. Can  
8 you tell me what due diligence you did to confirm  
9 that there are no other communications or  
10 correspondence?

11 A So, obviously, I perused and searched my  
12 emails very thoroughly. And I asked other employees  
13 involved to do the same.

14 Q What other employees did you ask?

15 A I can't remember offhand. I mean, I  
16 could go back and look at the emails potentially.

17 Matt was one of those. Just other folks  
18 that were potentially involved with that project.

19 Q Do you remember which search terms you  
20 used to try to find responsive emails?

21 A Not all of them, no. I'm certain that I  
22 searched "Heritage," and I likely searched the job  
23 number.

24 Q Aside from Matt Guillot, did you speak  
25 with any other employees that were on the

1 construction site that day?

2 A No, sir.

3 Q So you didn't speak to Macio Cooper?

4 A No, sir.

5 Q Did you talk to anybody about text  
6 messages?

7 A I believe my emails referenced  
8 correspondence. I may not have specifically  
9 outlined text messages, but it's presumed.

10 Q I mean, this is a pretty serious  
11 accident. In my experience, I would expect for  
12 there to be a lot more than two emails. We just  
13 want to make sure that we've got everything that's  
14 out there.

15 MS. HOLMES: Objection to the form.

16 BY MR. BRYAN:

17 Q You're saying that those two emails are  
18 it?

19 A Related to that incident, that is all  
20 that I'm aware of, yes, sir.

21 Q You said earlier that you had seen the  
22 dash-cam footage. Have you seen the onboard-camera  
23 footage as well?

24 A Meaning the front-facing camera?

25 Q Yeah, the one that faced the driver.

STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
 )  
COUNTY OF GEORGETOWN ) CASE NO. 2022-CP-22-00739  
RYAN COBB, MALON COBB, COBB )  
TRUCKING, LLC, and BRANDY )  
COBB, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
DAVID ALAN BIGELOW, HERITAGE )  
HAULING, INC.; BOGGS )  
CONTRACTING, INC.; and SAFE )  
SHIELD, LLC, )  
 )  
Defendants. )

STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
 )  
COUNTY OF GEORGETOWN ) CASE NO. 2023-CP-22-00435  
LA'JAI WEBSTER, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DAVID ALAN BIGELOW, HERITAGE )  
HAULING, INC.; BOGGS )  
CONTRACTING, INC.; and THE )  
SOUTH CAROLINA DEPARTMENT OF )  
TRANSPORTATION (SCDOT), )  
 )  
Defendants. )

\* \* \* \* \*  
VIDEOTAPED  
DEPOSITION OF: CHRISTOPHER BOURQUE  
DATE TAKEN: Friday, December 13, 2024  
TIME: 9:07 a.m.  
PLACE: Evans Moore  
121 Screven Street  
Georgetown, South Carolina

1 Q. Would Safe Shield normally be at the  
2 pre-construction conference for a project like  
3 this?

4 A. Normally I would say not.

5 Q. Anything wrong with that?

6 A. No.

7 Q. On -- let's see. This incident occurred  
8 on February 3rd of 2022. On February 4th of 2022,  
9 which was the next day, do you recall sending an  
10 e-mail to Matt Guillot about the incident?

11 A. I don't recall sending the e-mail, no.

12 Q. I have a copy of an e-mail from you --  
13 actually, Matt Guillot e-mailed you and then you  
14 replied.

15 A. Okay.

16 Q. And your reply says, "Matt, I had  
17 visited this site yesterday before noon. And from  
18 what I saw, the traffic control appeared to be in  
19 order as well once the signs that were laying down  
20 were picked back up (signs reset prior to the  
21 accident). Unfortunately, we are unable to  
22 retroactively do a traffic control inspection  
23 report. Let me know if you need anything else."  
24 Do you remember that?

25 A. I don't recall that, no.

1 Q. Okay. What does that mean to you?

2 A. Um, it sounds like the signs had blown  
3 over the day prior to the accident, and the  
4 contractor stood them back up. And at the time of  
5 -- since they were stood up, according to the  
6 e-mail, it sounds like traffic control was in  
7 order.

8 Q. Have you seen weekly inspection reports  
9 done around the time of this collision incident?

10 A. Have I seen them? Not to my  
11 recollection.

12 Q. Would you normally have any role in  
13 writing or reviewing a weekly inspection report  
14 for this project?

15 A. Um, no. I have access to the files, but  
16 I don't sign off on them or anything.

17 Q. Okay. If a -- if there were a safety  
18 issue that contributed to a collision incident  
19 like the one that is involved in this lawsuit,  
20 would that normally be written down on a weekly  
21 inspection report or noted in some way on that  
22 report?

23 A. If it was on the date of the inspection,  
24 yes.

25 Q. You mean if the report was on the date

1 of the inspection or -- I want to make sure I  
2 understood your answer correctly. You mean if the  
3 safety issue was on the day --

4 A. If the safety issue was present on the  
5 day the inspection was taking place, it would go  
6 on the work zone report.

7 Q. Go on the weekly report?

8 A. Yes.

9 Q. All right. If there is nothing on the  
10 weekly inspection report from the week of this  
11 incident indicating any safety issue, does that  
12 indicate to you that no one observed any safety  
13 issues that contributed to this incident?

14 A. I don't know if nobody observed it. But  
15 whoever wrote the report didn't observe any  
16 deficiency.

17 Q. Okay. Can I show you a report?

18 A. You may.

19 Q. Take as much time as you need to look at  
20 that. And then let me know when you're ready,  
21 please.

22 MR. THOMPSON: And, Eve, we'll make this  
23 Defendant's 2.

24 (Defendant's Exhibit No. 2, County Line  
25 Road Accident - 2/3/22 e-mail, was marked for

1 Q. Are you aware that the phrase  
2 "inherently dangerous" is sometimes used as a  
3 legal term of art by lawyers and people within the  
4 legal profession?

5 MR. EVANS: Object to the form.

6 A. I'm not aware of that.

7 Q. When you were answering those questions  
8 about whether something is inherently dangerous,  
9 were you intending to speak in legal terms?

10 A. No.

11 Q. You're not offering legal opinions or  
12 interpretations, correct?

13 A. No.

14 MR. THOMPSON: Okay. I don't have any  
15 further questions for you at this time, sir.  
16 There may be some others who may have some  
17 questions for you.

18 RE-EXAMINATION

19 BY MR. EVANS:

20 Q. Mr. Bourque, I do have just a few  
21 follow-up questions. If we could go back to the  
22 e-mail, this Defendant's Exhibit 2. This may have  
23 come in some Subpoena responses or something, but  
24 I have not personally seen this before today.

25 A. Okay.

1 Q. Do you recall having seen this e-mail  
2 since the time that you sent it?

3 A. No. I don't recall seeing this.

4 Q. Do you recall having seen this e-mail at  
5 any point in the last 60 days?

6 A. No.

7 Q. The top of this e-mail, it indicates  
8 that Chris -- or excuse me -- that Matt Guillot  
9 says to you, "Chris, I spoke with Web Richardson"  
10 tonight -- "last night to verify our traffic  
11 control was set up properly prior to the accident,  
12 which he confirmed it was." And then the last  
13 sentence says "For doc," D-O-C?

14 A. Yes.

15 Q. What does "For doc" mean; would that for  
16 a document?

17 A. I don't know what that means. He may  
18 not have finished his thought.

19 Q. It sounds like this is following up on a  
20 verbal conversation that you had with Mr. Guillot.  
21 Do you recall any verbal conversation about that?

22 A. I don't.

23 Q. And then down here you note in your  
24 response, "Traffic control appeared to be in order  
25 as well once the signs that were laying down were

1 picked back up (signs reset prior to accident)."

2 What did you mean by that?

3 A. Um, it's been so long ago I can't  
4 recall. But reading the language, it sounds like  
5 the signs were laying down similar to how they  
6 were in the video and then reset standing back up.

7 Q. And if it said "Signs reset prior to  
8 accident," that would not be accurate if in fact  
9 the dash cam showed they were still laying down?

10 MR. HOLT: Object to the form.

11 A. I would say, yeah, that's correct.

12 Q. Do you know where you got the  
13 information that there were signs that were reset  
14 prior to the accident?

15 A. Um, no. This may not have been just  
16 prior to the accident. It may have been the day  
17 before. I can't really see a date on that e-mail,  
18 when it was sent.

19 Q. And then -- we talked about that the  
20 Work Zone Traffic Control Weekly Inspection  
21 Report -- it's dated February 4th, 2022 -- is  
22 intended to be a contemporaneous report. In other  
23 words, this report is what the conditions were  
24 when the inspection was actually done at 3 p.m. on  
25 February 4th of 2022, correct?



County Line Road Accident - 2/3/22 External 1/10 x 1



Matt Guillot

Chr B, I spoke with Web Richardson on site last night to verify our traffic control was set up properly prior to the accident, which he confirmed it was. For doc

8:24 AM (5 hours ago)



Bourque, Christopher D.

To me, Ken

Matt,

I had visited the site yesterday before noon and from what I saw, the traffic control appeared to be in order as well once the signs that were laying down were picked back up (signs reset prior to the accident). Unfortunately, we are unable to retroactively do a traffic control inspection report. Let me know if you need anything else.

Thanks,

Chris

From: Matt Guillot <[mguillot@bourqueconstructioninc.com](mailto:mguillot@bourqueconstructioninc.com)>

Sent: Friday, February 4, 2022 8:24 AM

To: Bourque, Christopher D. <[BourqueCD@ndot.org](mailto:BourqueCD@ndot.org)>

Cc: Ken Barber <[kbarber@bourqueconstructioninc.com](mailto:kbarber@bourqueconstructioninc.com)>

Subject: County Line Road Accident - 2/3/22

\*\*\* This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. \*\*\*

Thank you. Ok, thank you. Thanks!

Reply Reply all Forward

1 STATE OF SOUTH CAROLINA \* COURT OF COMMON PLEAS  
 2 COUNTY OF GEORGETOWN \* TRANSCRIPT OF RECORD  
 3 -----X  
 4 RYAN COBB, MARLON COBB, COBB \*  
 5 TRUCKING, LLC, and BRANDY \*  
 6 COBB, \*  
 7 Plaintiffs, \*  
 8 vs. \* Case No. 2022-CP-22-00739  
 9 DAVID ALAN BIGELOW; HERITAGE \*  
 10 HAULING, INC.; BOGGS \*  
 11 CONTRACTING, INC.; and SAFE \*  
 12 SHIELD, LLC, \*  
 13 Defendants. \*  
 14 -----X

**RECEIVED**  
**Jun 09 2025**  
**SC Court of Appeals**

February 20, 2025

B E F O R E:

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

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

James B. Moore, III, Esq.  
 Steve Culbreth, Esq.  
 Scott C. Evans, Esq.  
 George W. Bryan, III, Esq.  
 Jerry L. Spivey, Esq.  
 Attorneys for the Plaintiffs

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

Jay Thompson, Esq.  
 Diana August, Esq.  
 Attorneys for the Defendant

Ryan C. Holt, Esq.  
 Attorney for Defendant Safe Shield, LLC  
 Kenneth Michael Barfield, Esq.  
 Attorney for Cincinnati Insurance Company

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

## I N D E X

| DESCRIPTION | PAGE |
|-------------|------|
| Proceedings | 3    |

## E X H I B I T S

(None.)

COURT REPORTER LEGEND

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

## P R O C E E D I N G S

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

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

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

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

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

MR. MOORE: Doing well.

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

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

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

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

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

MR. BARFIELD: I am.

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

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

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

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

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

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

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

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

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

1 That matter is completely resolved; is that correct?

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

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

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

10 THE COURT: Yes, sir.

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

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

18 THE COURT: Yes, sir.

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

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

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

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

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

9 (Video plays.)

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

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

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

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

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

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

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

1 then the flagger (indiscernible).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 before the Court at this time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 THE COURT: Yes, sir.

22 MR. THOMPSON: Thank you.

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

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

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

14 That's all. Thank you.

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

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

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

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

22 (The above hearing concluded.)  
23  
24  
25

# Certificate of Transcriber

CASE NAME: Cobb v. Bigelow, et al.

DATE OF HEARING: 2/20/25

RECORDING METHOD: WebEx Recording

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.



/s/ Bobbi Fisher\_\_\_\_\_

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 6/8/25

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**2007**

**STANDARD**

**SPECIFICATIONS**

**FOR**

**HIGHWAY**

**CONSTRUCTION**

#### 601.1.4 Contractor's Responsibility

- 1 These specifications set forth specific procedures and requirements and do not relieve the Contractor of any responsibilities incurred by the Plans, the *SCDOT Standard Drawings*, the Specifications, the manufacturer's specifications, the *MUTCD*, and the RCE.
- 2 The Contractor is responsible for maintaining the *Traffic Control Plan* as required by the Plans, the Specifications, the *MUTCD*, and the RCE. Observe all requirements of the *Traffic Control Plan*, and ensure that all subcontractors working on the project site observe all requirements of the *Traffic Control Plan*. Before beginning any work, submit a plan for constructing the project and maintaining traffic to the RCE and obtain the RCE's written approval for the submitted plan before beginning the work.
- 3 Schedule and arrange all work, equipment, and materials to ensure the least inconvenience and the utmost in safety to the traveling public and to the Contractor's and the Department's forces. In observance of all safety regula-

- 7      The Contractor is responsible for maintenance of the traffic from time the Contractor installs the permanent or initial temporary construction signs until the project reaches substantial completion of work. Conduct weekly daytime inspections of the project traffic control devices and configuration to determine the adequacy, effectiveness, and maintenance requirements of the *Traffic Control Plan*. Conduct a monthly nighttime inspection and an inspection whenever the traffic pattern is changed. Due to conditions uncharacteristic to a roadway without construction, prudent revisions may be necessary to provide for the protection of the traveling public and the safety of all personnel working on the project site.
- 8      The Contractor is responsible for installation, maintenance, and performance of all traffic control devices. Install, maintain, and ensure the performance of these traffic control devices as required by the Plans, the Specifications, and the device manufacturer's specifications.

#### 602.4 Construction

- 1 Install, remove, relocate as necessary, and maintain traffic control devices provided in conformance with **Subsection 602.2** throughout the duration of the project. Maintenance of traffic control devices includes, but not limited to, replacement of damaged traffic control devices and those that have completed their functional service life. When not in use, remove unnecessary traffic control devices in conflict with the roadway conditions to prevent confusion of the traveling public.
- 2 Maintain the performance level of work zone traffic control devices as required by the Specifications, the manufacturer's requirements and specifications, and the *MUTCD*. Do not allow a reduction of the performance level of a traffic control device in order to meet the requirements of the *NCHRP Report*

# TRAFFIC CONTROL PLAN

Form 600.01

Rev. 06/2016

Date:

5-4-2021

Contract #:

5556750

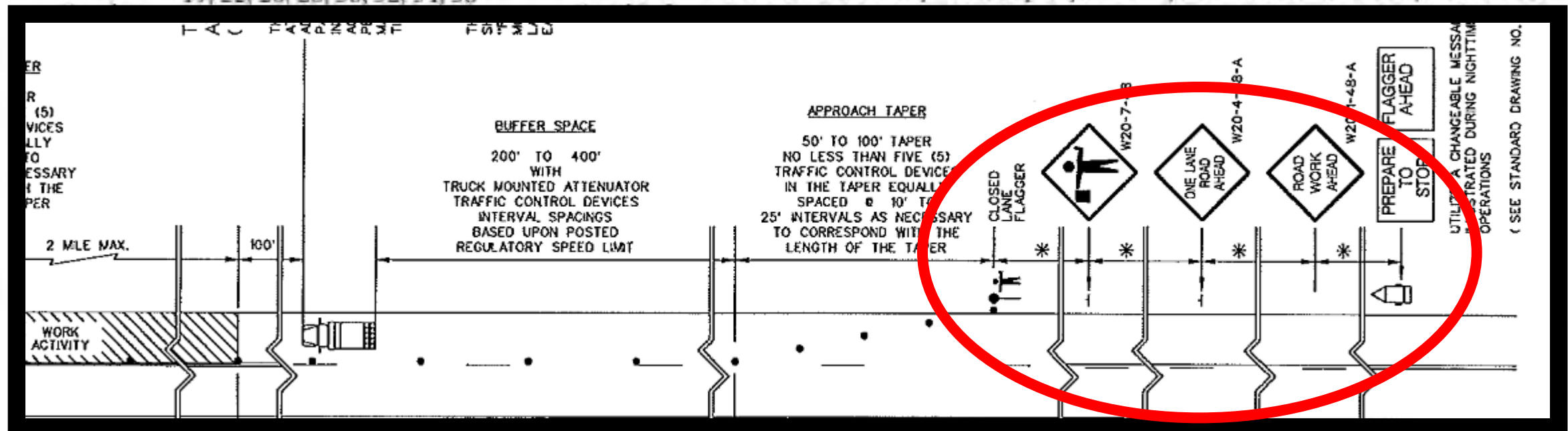
Project #:

P039549, P039551, P039532

P039554, P039999, P040001

19, 22, 26, 28, 30, 32, 34, 38

Pleasant Hill, County Line, Gapway, Waverly, E Ashland, Little Tony, Basswood,



N/A

24 Q So is a downed sign in compliance with  
25 the traffic control plan?

Live Oak Reporting  
843.437.9697 www.liveoakreporting.com

igned by Janice Darby (501-053-347-5716)

4b547bf7-bc97-4a17-b0a7-f48

Matthew Guillot, 30(b)(6) Boggs Contracting - April 24, 2024

1 MS. HOLMES: Objection. Objection  
2 to the form.

3 A It is not.

48

**-20.000**

Heritage Hauling 00468

11 A If that's the third sign, that would be  
12 the flagger symbol.

13 Q And is that in compliance with the  
14 traffic control plan?

15 MS. HOLMES: Objection to the form.

16 A It is not.

Heritage Hauling 00468

-6.000

# FLEET VIDEO



# FLEET VIDEO



# Caught Red-Handed Tampering with Scene

Matt,

I had visited the site yesterday before noon and from what I saw, the traffic control appeared to be in order as well once the signs that were laying down were picked back up (signs reset prior to the accident). Unfortunately, we are unable to retroactively do a traffic control inspection report. Let me know if you need anything else.

Thanks,  
Chris

---

**From:** Matt Guillot <mguillot@boggscontractinginc.com>  
**Sent:** Friday, February 4, 2022 8:24 AM  
**To:** Bourque, Christopher D. <BourqueCD@scdot.org>  
**Cc:** Ken Barber <kbarber@boggscontractinginc.com>  
**Subject:** County Line Road Accident - 2/3/22

\*\*\* This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. \*\*\*

Chris,

I spoke with Web Richardson onsite last night to verify our traffic control was set up properly prior to the accident, which he confirmed it was. For documentation purposes, could you provide me with a traffic control report for County Line Road to verify we were in compliance when this incident occurred?

Please let me know.

Attempting to Convince  
SCDOT to Backdate Report  
Showing Scene was in  
Compliance

County Line Road Accident - 2/3/22 External 1/2/24 X



Matt Guillot

Chris, I spoke with Web Richardson on-site last night to verify our traffic control was set up properly prior to the accident, which he confirmed it was. For doc

8:24 AM (5 hours ago)



Bourque, Christopher D.  
to me, Ken

- SC DOT Statement

10:04 AM (2 hours ago)

Matt,

I had visited the site yesterday before noon and from what I saw, the traffic control appeared to be in order as well once the signs that were laying down were picked back up (signs reset prior to the accident). Unfortunately, we are unable to retroactively do a traffic control inspection report. Let me know if you need anything else.

Thanks,  
Chris

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Sent: Friday, February 4, 2022 8:24 AM  
To: Bourque, Christopher D. <[bourqueCD@scdot.org](mailto:bourqueCD@scdot.org)>  
Cc: Ken Barber <[kbarber@bopperscontractinginc.com](mailto:kbarber@bopperscontractinginc.com)>  
Subject: County Line Road Accident - 2/3/22

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Thank you.    Ok, thank you.    Thanks!

Reply    Reply all    Forward

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- Handwriting

Compose

Mail

Inbox

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Snoozed

Sent

Drafts

Notes

More

Chat

No conversations

Start a chat

Spaces

No spaces yet

Create or find a space

Meet

New meeting

My meetings

Search all conversations

Active

6 of 11,716

## County Line Road Accident - 2/3/22 External Inbox



Matt Guillot

Chris, I spoke with Will Richardson on the last night to verify our traffic control was set up properly prior to the accident, which he confirmed it was. For the

6:24 AM (5 hours ago)



Bourque, Christopher B.

to: me, Ken

Matt,

to: me (3 hours ago)

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Thanks,

Chris

From: Matt Guillot <[mguillot@theconnectorsolutions.com](mailto:mguillot@theconnectorsolutions.com)>

Sent: Friday, February 4, 2022 8:24 AM

To: Bourque, Christopher B. <[cbourque@connectors.com](mailto:cbourque@connectors.com)>

cc: Ken Barber <[kbarber@theconnectorsolutions.com](mailto:kbarber@theconnectorsolutions.com)>

Subject: County Line Road Accident - 2/3/22

\*\*\* This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. \*\*\*

Thank you.

OK, thank you.

Thanks!

Reply

Reply all

Forward

Message

**From:** Bourque, Christopher D. [BourqueCD@scdot.org]  
**on behalf of:** Bourque, Christopher D. <BourqueCD@scdot.org> [BourqueCD@scdot.org]  
**Sent:** 2/4/2022 10:04:35 AM  
**To:** Matt Guillot [mguillot@boggcontractinginc.com]  
**CC:** Ken Barber [kbarber@boggcontractinginc.com]  
**Subject:** RE: County Line Road Accident - 2/3/22

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**Cc:** Ken Barber <kbarber@boggcontractinginc.com>  
**Subject:** County Line Road Accident - 2/3/22

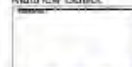
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Please let me know.

—  
Thanks,  
Matthew Guillot



Email: [mguillot@boggcontractinginc.com](mailto:mguillot@boggcontractinginc.com)  
Office: (704) 289-8482, Fax: (704) 283-0977, Cell: (704) 242-3215  
Mailing Address: PO Box 1609 Monroe, NC 28111  
Physical Address: 1613 W. Roosevelt Blvd. Monroe, NC 28110

County Line Road Accident - 2/3/22 External 1/2/24 X



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Sent: Friday, February 4, 2022 8:24 AM  
To: Bourque, Christopher D. <[bourqueCD@scdot.org](mailto:bourqueCD@scdot.org)>  
Cc: Ken Barber <[kbarber@hopperscontractinginc.com](mailto:kbarber@hopperscontractinginc.com)>  
Subject: County Line Road Accident - 2/3/22

\*\*\* This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. \*\*\*

Thank you.    Ok, thank you.    Thanks!

Reply    Reply all    Forward

- No Source Information (Outlook/G-Mail, etc.)
- Handwriting

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, SCRCP**

Pursuant to Rule 33, South Carolina Rules of Civil Procedure, I, Karin J. Hughes, 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

4. Since Plaintiffs' Motion for Sanctions was filed in January 2025, I have confirmed that an employee of a Boggs Contracting affiliate, Contractor Management Services (a company that provided management services to Boggs Contracting at the time of the incidents alleged in this lawsuit), provided multiple documents related to the February 2022 collision incident to Boggs Contracting's insurance carrier in September 2022, within a week after Boggs

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Affidavit of Kevin J. Hayes, Jr.

Page 1 of 2

Contracting was served with the Summons and Complaint in this lawsuit. Those documents included an investigative report containing a February 4, 2022 email exchange between Matt Guillot and Christopher Bourque. It also included a collection of photos and video taken by DELTA [v] Forensic Engineering on February 4, 2022.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Alan Sanner, )  
 )  
Plaintiff, )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2018-CP-10-5406

ORDER COMPELLING

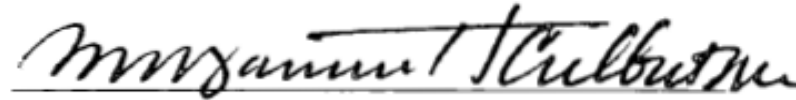
STATE FARM'S CLAIM FILE

FILED  
JUL 16  
2019 JUN

**IT IS ORDERED** that State Farm shall produce to the Plaintiff any and all documents or materials included in State Farm's claim file that were generated between May 12, 2017 and June 25, 2018, and that such documents and materials shall be produced on or before Friday, July 5, 2019 at 5:00 p.m.

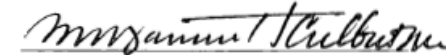
**IT IS SO ORDERED.**

×

  
Benjamin H. Culbertson  
Presiding Judge of the Ninth Judicial Circuit

June 21, 2019  
Charleston, South Carolina

**IT IS SO ORDERED.**

  
Benjamin H. Culbertson  
Presiding Judge of the Ninth Judicial Circuit

June 21, 2019  
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

LAURA PETERSON AND STEVEN  
PETERSON,

Plaintiffs,

v.

insurer referred this matter to a defense lawyer.

South Carolina courts have found that the work product privilege generally does not apply to the adjuster's pre-suit insurance file. The claim adjuster is not an attorney nor are they a client and they cannot claim privilege. *Marshall v. Marshall*, 320 S.E.2d 44, 47 (S.C. App. 1984). Documents prepared by an adjuster in the ordinary course of business are not protected by the

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*v. Blue Cross & Blue Shield of Kansas City*, 166 F.R.D. 496, 498 (D. Kan. 1996). When determining the date that any claim of privilege may begin, South Carolina courts have used the date the insurance adjuster assigned the file to an attorney. (See Exhibit 4.) Another important factor to consider in determining when a claim of work product may begin is the date that meaningful settlement discussions ended. *Langdon v. Champion*, 752 P.2d 999, 1005-06 (Alaska 1988).

accident or the Defendants' investigation of the Plaintiff's accident. Defendants provided the adjuster's presuit claims file. Defendants provided sixty seven (67) pages of responsive documents for the Plaintiff's review. The privilege log refers to documents and communications dated September 12, 2018. The privilege log does not include documents prepared by an attorney. Instead the privilege log includes documents prepared by witnesses and other third party investigators. All of

determining the date that any claim of privilege may begin, South Carolina courts have used the date the insurance adjuster assigned the file to an attorney. (See Exhibit 4.) Another important factor to consider in determining when a claim of work product may begin is the date that meaningful settlement discussions ended. *Langdon v. Champion*, 752 P.2d 999, 1005-06 (Alaska 1988).

This Court has heard the parties' arguments and reviewed documents provided in support of the motion and has determined that Defendants have not met their burden of establishing that the adjusters' pre-suit investigative claims file was prepared in anticipation of litigation or privileged.

employee who collected those materials, and she left the company in October 2022.

7. I was unaware until February 2025 that the information sent to the insurance carrier in September 2022 was not provided to Boggs Contracting's prior defense counsel and had not been produced in discovery. I do not believe anyone affiliated with Boggs Contracting was aware that the information sent to the insurance carrier in September 2022 was not provided to Boggs Contracting's prior defense counsel and had not been produced in discovery.

8. Prior defense counsel instructed me to search for information related to the

4 - COMMON PLEAS - CASE#21

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

The Honorable David P. Caraker, Circuit Court Judge  
Civil Action No.

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Appellate Case No. 2025-001074

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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.

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**VIDEO: HERITAGE HAULING 00468**

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**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  
Fax: (803) 782-4140  
jrmurphy@murphygrantland.com  
jay.thompson@murphygrantland.com  
dmaugust@murphygrantland.com

*Counsel for Appellant*



# Georgetown County Fifteenth Judicial Circuit Public Index



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Switch View

## Ryan Cobb , plaintiff, et al VS David Alan Bigelow , defendant, et al

|                             |               |                          |                                           |                           |            |
|-----------------------------|---------------|--------------------------|-------------------------------------------|---------------------------|------------|
| <b>Case Number:</b>         | 2022CP2200739 | <b>Court Agency:</b>     | Common Pleas                              | <b>Filed Date:</b>        | 08/30/2022 |
| <b>Case Type:</b>           | Common Pleas  | <b>Case Sub Type:</b>    | Motor Veh Accid 320                       | <b>File Type:</b>         | Jury       |
| <b>Status:</b>              | Appeal        | <b>Assigned Judge:</b>   | Clerk Of Court C P, G S, And Family Court |                           |            |
| <b>Disposition:</b>         |               | <b>Disposition Date:</b> |                                           | <b>Disposition Judge:</b> |            |
| <b>Original Source Doc:</b> |               | <b>Original Case #:</b>  |                                           |                           |            |
| <b>Judgment Number:</b>     |               | <b>Court Roster:</b>     |                                           |                           |            |

**Case Parties** Judgments Tax Map Information Associated Cases Actions Financials

| Name                         | Description                                                     | Type   | Motion Roster | Begin Date           | Completion Date | Documents |
|------------------------------|-----------------------------------------------------------------|--------|---------------|----------------------|-----------------|-----------|
| Boggs Contracting Inc        | NEF(06-02-2025 03:19:24 PM)<br>Appeal/Notice of Appeal to C...  | Filing |               | 06/02/2025-<br>15:30 |                 |           |
| Boggs Contracting Inc        | Appeal/Notice of Appeal to Court of<br>Appeals/Proof of Service | Filing |               | 06/02/2025-<br>15:19 |                 |           |
| Evans, Scott Christopher     | 6/16/2025_JT_Roster/Notice of Case<br>Roster Publication Sent   | Action |               | 05/27/2025-<br>14:42 |                 |           |
| Moore, James Bernice<br>III  | 6/16/2025_JT_Roster/Notice of Case<br>Roster Publication Sent   | Action |               | 05/27/2025-<br>14:42 |                 |           |
| Culbreth, Stephen E          | 6/16/2025_JT_Roster/Notice of Case<br>Roster Publication Sent   | Action |               | 05/27/2025-<br>14:42 |                 |           |
| Spivey, Jerry L              | 6/16/2025_JT_Roster/Notice of Case<br>Roster Publication Sent   | Action |               | 05/27/2025-<br>14:42 |                 |           |
| Barfield, Kenneth<br>Michael | 6/16/2025_JT_Roster/Notice of Case<br>Roster Publication Sent   | Action |               | 05/27/2025-<br>14:42 |                 |           |
| Martin, L. Morgan            | 6/16/2025_JT_Roster/Notice of Case<br>Roster Publication Sent   | Action |               | 05/27/2025-<br>14:42 |                 |           |
| Martin, Mary Ashley          | 6/16/2025_JT_Roster/Notice of Case<br>Roster Publication Sent   | Action |               | 05/27/2025-<br>14:42 |                 |           |
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| Holt, Ryan C.            | 6/16/2025_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 05/27/2025-14:42 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| August, Diana Marie      | 6/16/2025_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 05/27/2025-14:42 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Thompson, Jay            | 6/16/2025_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 05/27/2025-14:42 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Cobb, Ryan               | NEF(05-20-2025 10:51:26 AM) Order/Electronic Form 4          | Filing |  | 05/20/2025-10:51 |                  |                                                                                                                                                                                                                                                                      |
| Cobb, Ryan               | Order/Electronic Form 4/Motion to Reconsider Denied          | Order  |  | 05/20/2025-10:51 |                  |                                                                                                                                                                                                                                                                      |
| Cobb, Ryan               | NEF(05-04-2025 08:30:59 PM) Memo/Memo                        | Filing |  | 05/05/2025-08:45 |                  |                                                                                                                                                                                                                                                                      |
| Cobb, Ryan               | Memo/Memo in Opp to Mot for Reconsideration                  | Filing |  | 05/04/2025-20:30 |                  |                                                                                                |
| Boggs Contracting Inc    | NEF(04-23-2025 11:24:05 AM) Motion/Reconsider                | Filing |  | 04/23/2025-11:38 |                  |                                                                                                                                                                                                                                                                      |
| Boggs Contracting Inc    | Motion/Reconsider/Thompson                                   | Motion |  | 04/23/2025-11:24 | 05/20/2025-11:24 |                                                                                                                                                                                   |
| Cobb, Ryan               | NEF(04-22-2025 11:22:32 AM) Order/Other                      | Filing |  | 04/22/2025-11:22 |                  |                                                                                                                                                                                                                                                                      |
| Cobb, Ryan               | Order                                                        | Order  |  | 04/22/2025-11:22 |                  |                                                                                                                                                                                                                                                                      |
| Cobb, Ryan               | Decline to Sign:Order/Other                                  | Filing |  | 04/07/2025-15:26 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Cobb, Ryan               | NEF(04-04-2025 01:18:11 PM) Offer Of Judgment                | Filing |  | 04/04/2025-13:25 |                  |                                                                                                                                                                                                                                                                      |
| Cobb, Ryan               | Offer Of Judgment as to Defendant Safe Shield LLC Only       | Filing |  | 04/04/2025-13:18 |                  |                                                                                                                                                                                                                                                                      |
| Cobb, Ryan               | NEF(03-31-2025 05:24:14 PM) Order/Order Cover Sheet \$25.... | Filing |  | 04/01/2025-08:48 |                  |                                                                                                                                                                                                                                                                      |
| Cobb, Ryan               | Order/Order Cover Sheet \$25.00                              | Filing |  | 03/31/2025-17:24 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Cobb, Ryan               | NEF(02-25-2025 02:18:21 PM) Order/Electronic Form 4          | Filing |  | 02/25/2025-14:18 |                  |                                                                                                                                                                                                                                                                     |
| Cobb, Ryan               | Order/Form 4/See Form 4 for Rulings on Motions               | Order  |  | 02/25/2025-14:18 |                  |                                                                                                                                                                                                                                                                    |
| Boggs Contracting Inc    | NEF(02-13-2025 04:53:15 PM) Affidavit/Affidavit of           | Filing |  | 02/13/2025-16:59 |                  |                                                                                                                                                                                                                                                                    |
| Boggs Contracting Inc    | Affidavit/Affidavit of Kevin J Hayes Jr                      | Filing |  | 02/13/2025-16:53 |                  |                                                                                                                                                                                                                                                                    |
| Boggs Contracting Inc    | NEF(02-11-2025 10:03:45 AM) Response                         | Filing |  | 02/11/2025-10:07 |                  |                                                                                                                                                                                                                                                                    |
| Boggs Contracting Inc    | Response/Opposition to Plt Motion for Sanctions              | Filing |  | 02/11/2025-10:03 |                  |     |
| Evans, Scott Christopher | 2/20/2025_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 02/10/2025-13:23 |                  |                                                                                                                                                                                                                                                                                                                                                         |
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| Culbreth, Stephen E      | 2/20/2025_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 02/10/2025-13:23 |                  |                                                                                                                                                                                                                                                                                                                                                         |

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| Evans, Scott Christopher  | 2/20/2025_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 01/30/2025-14:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| Cobb, Ryan                | NEF(01-02-2025 03:31:24 PM) Motion/Sanctions                 | Filing |  | 01/02/2025-15:46 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Cobb, Ryan                | Motion/Sanctions for Abuse of Discovery/ Evans               | Motion |  | 01/02/2025-15:31 | 02/25/2025-15:31 |                         |
| Boggs Contracting Inc     | NEF(12-05-2024 01:07:49 PM) Order/Substitution Of Counse...  | Filing |  | 12/05/2024-13:08 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Boggs Contracting Inc     | Order/Substitution Of Counsel                                | Order  |  | 12/05/2024-13:07 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Boggs Contracting Inc     | NEF(12-04-2024 11:44:30 AM) Motion/Substitution of Couns...  | Filing |  | 12/04/2024-11:50 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Boggs Contracting Inc     | Motion/Substitution of Counsel/Thompson                      | Motion |  | 12/04/2024-11:44 | 12/05/2024-11:44 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Boggs Contracting Inc     | NEF(12-04-2024 09:54:02 AM) Notice/Notice of Appearance      | Filing |  | 12/04/2024-09:54 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Boggs Contracting Inc     | Notice/Notice of Appearance                                  | Filing |  | 12/04/2024-09:54 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Cobb, Ryan                | NEF(11-27-2024 09:04:17 AM) Order/Electronic Form 4          | Filing |  | 11/27/2024-09:04 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Cobb, Ryan                | Order/Electronic Form 4/Number 3 Date Certain 6-16-25        | Order  |  | 11/27/2024-09:04 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Evans, Scott Christopher  | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent  | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Culbreth, Stephen E       | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent  | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Moore, James Bernice III  | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent  | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Ott, Curtis Lyman         | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent  | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Sanford, Matthew Richard  | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent  | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Martin, Mary Ashley       | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent  | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Martin, L. Morgan         | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent  | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Barfield, Kenneth Michael | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent  | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Spivey, Jerry L           | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent  | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Catalano, Joseph Andrew   | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent  | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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|------------------------------|-------------------------------------------------------------|--------|--|------------------|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Holmes, Janet Brooks         | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                         |
| Holt, Ryan C.                | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                         |
| Bryant, Rachel Augusta       | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                         |
| Bryan, George Waller III     | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/12/2024-08:58 |                  |                                                                                                                                                                         |
| Cobb, Ryan                   | NEF(11-11-2024 12:36:02 PM) Motion/Compel                   | Filing |  | 11/12/2024-08:48 |                  |                                                                                      |
| Cobb, Ryan                   | Motion/Compel/Moore                                         | Motion |  | 11/11/2024-12:36 | 02/25/2025-12:36 |   |
| Moore, James Bernice III     | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Culbreth, Stephen E          | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Evans, Scott Christopher     | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Holmes, Janet Brooks         | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Catalano, Joseph Andrew      | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Spivey, Jerry L              | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Barfield, Kenneth Michael    | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Martin, L. Morgan            | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Martin, Mary Ashley          | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Sanford, Matthew Richard     | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Ott, Curtis Lyman            | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Bryan, George Waller III     | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Bryant, Rachel Augusta       | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Holt, Ryan C.                | 11/22/2024_JT_Roster/Notice of Case Roster Publication Sent | Action |  | 11/04/2024-10:30 |                  |                                                                                                                                                                         |
| Cobb, Ryan                   | NEF(09-23-2024 02:50:31 PM) ADR/Proof of ADR                | Filing |  | 09/23/2024-14:50 |                  |                                                                                    |
| Cobb, Ryan                   | ADR/Proof of ADR/At an Impasse                              | Action |  | 09/23/2024-14:50 | 09/16/2024-14:50 |                                                                                    |
| Cincinnati Insurance Company | NEF(08-13-2024 01:34:36 PM) Order/Protection from Court ... | Filing |  | 08/13/2024-13:34 |                  |                                                                                    |
| Cincinnati Insurance Company | Order/Protection from Court Appearance                      | Order  |  | 08/13/2024-13:34 |                  |                                                                                    |
| Cincinnati Insurance Company | NEF(08-13-2024 09:22:53 AM) Proposed Order/Protection fr... | Filing |  | 08/13/2024-09:33 |                  |                                                                                    |

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|------------------------------|--------------------------------------------------------------|--------|--|------------------|--|--------------------------------------------------------------------------------------|
| Cincinnati Insurance Company | Order/Order Cover Sheet \$25.00                              | Filing |  | 08/13/2024-09:22 |  |                                                                                      |
| Bigelow, David Alan          | NEF(07-18-2024 09:47:31 AM) Answer/Answer to Crossclaim      | Filing |  | 07/18/2024-09:50 |  |   |
| Bigelow, David Alan          | Answer/Answer to Amended Crossclaim                          | Filing |  | 07/18/2024-09:47 |  |   |
| Boggs Contracting Inc        | NEF(06-12-2024 04:23:03 PM) Answer/Amended Answer            | Filing |  | 06/12/2024-16:31 |  |   |
| Boggs Contracting Inc        | Answer/Amended Crossclaim                                    | Filing |  | 06/12/2024-16:23 |  |   |
| Bigelow, David Alan          | NEF(05-31-2024 11:54:46 AM) Answer/Answer To Amended Com...  | Filing |  | 05/31/2024-11:58 |  |   |
| Bigelow, David Alan          | Answer/Answer To Amended Complaint/Jury Trial Demanded       | Filing |  | 05/31/2024-11:54 |  |   |
| Boggs Contracting Inc        | NEF(05-28-2024 04:32:52 PM) Answer/Answer & Crossclaim       | Filing |  | 05/28/2024-16:51 |  |   |
| Boggs Contracting Inc        | Answer/Answer & Crossclaim                                   | Filing |  | 05/28/2024-16:32 |  |   |
| Safe Shield Llc              | NEF(05-28-2024 01:15:18 PM) Answer/Answer To Amended Com...  | Filing |  | 05/28/2024-13:17 |  |   |
| Safe Shield Llc              | Answer/Answer To Amended Complaint                           | Filing |  | 05/28/2024-13:15 |  |   |
| Safe Shield Llc              | Notice/Notice of Appearance                                  | Filing |  | 05/28/2024-13:15 |  |                                                                                      |
| Cobb, Ryan                   | NEF(05-28-2024 10:52:24 AM) Service/Affidavit Of Service     | Filing |  | 05/28/2024-12:42 |  |   |
| Cobb, Ryan                   | Service/Affidavit Of Service on Safe Shield Llc              | Filing |  | 05/28/2024-10:52 |  |   |
| Cobb, Ryan                   | NEF(05-07-2024 03:36:55 PM) Letter/Letter                    | Filing |  | 05/07/2024-15:43 |  |   |
| Cobb, Ryan                   | Letter/Letter/Motion to Compel Resolved                      | Filing |  | 05/07/2024-15:36 |  |  |
| Evans, Scott Christopher     | 5/23/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/07/2024-08:16 |  |                                                                                      |
| Culbreth, Stephen E          | 5/23/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/07/2024-08:16 |  |                                                                                      |
| Moore, James Bernice III     | 5/23/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/07/2024-08:16 |  |                                                                                      |
| Barfield, Kenneth Michael    | 5/23/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/07/2024-08:16 |  |                                                                                      |
| Spivey, Jerry L              | 5/23/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/07/2024-08:16 |  |                                                                                      |
| Catalano, Joseph Andrew      | 5/23/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/07/2024-08:16 |  |                                                                                      |
| Holmes, Janet Brooks         | 5/23/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/07/2024-08:16 |  |                                                                                      |
| Bryan, George Waller III     | 5/23/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/07/2024-08:16 |  |                                                                                      |
| Ott, Curtis Lyman            | 5/23/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/07/2024-08:16 |  |                                                                                      |

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|---------------------------|--------------------------------------------------------------|--------|--|------------------|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sanford, Matthew Richard  | 5/23/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/07/2024-08:16 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Martin, Mary Ashley       | 5/23/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/07/2024-08:16 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Martin, L. Morgan         | 5/23/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/07/2024-08:16 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Cobb, Ryan                | NEF(05-03-2024 03:39:43 PM) Amended/Amended Summons And ...  | Filing |  | 05/03/2024-15:53 |                  |                                                                                                                                                                                                                                                                      |
| Cobb, Ryan                | Amended/Amended Summons And Complaint                        | Filing |  | 05/03/2024-15:39 |                  |                                                                                                                                                                                                                                                                      |
| Cobb, Ryan                | NEF(04-26-2024 12:37:17 PM) Order/Electronic Form 4          | Filing |  | 04/26/2024-12:37 |                  |                                                                                                                                                                                                                                                                      |
| Cobb, Ryan                | Order/Electronic Form 4/Mot to Compel Resolved               | Order  |  | 04/26/2024-12:37 |                  |                                                                                                                                                                                                                                                                      |
| Moore, James Bernice III  | 5/17/2024_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 04/22/2024-12:20 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Culbreth, Stephen E       | 5/17/2024_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 04/22/2024-12:20 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Evans, Scott Christopher  | 5/17/2024_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 04/22/2024-12:20 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Martin, L. Morgan         | 5/17/2024_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 04/22/2024-12:20 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Martin, Mary Ashley       | 5/17/2024_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 04/22/2024-12:20 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Sanford, Matthew Richard  | 5/17/2024_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 04/22/2024-12:20 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Ott, Curtis Lyman         | 5/17/2024_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 04/22/2024-12:20 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Bryan, George Waller III  | 5/17/2024_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 04/22/2024-12:20 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Holmes, Janet Brooks      | 5/17/2024_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 04/22/2024-12:20 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Catalano, Joseph Andrew   | 5/17/2024_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 04/22/2024-12:20 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Spivey, Jerry L           | 5/17/2024_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 04/22/2024-12:20 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Barfield, Kenneth Michael | 5/17/2024_JT_Roster/Notice of Case Roster Publication Sent   | Action |  | 04/22/2024-12:20 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Cobb, Ryan                | NEF(04-09-2024 01:48:55 PM) Motion/Compel                    | Filing |  | 04/09/2024-14:06 |                  |                                                                                                                                                                                                                                                                    |
| Cobb, Ryan                | Motion/Compel Subpoena Response from Boggs Transport/Bryan   | Motion |  | 04/09/2024-13:48 | 05/07/2024-13:48 |     |
| Evans, Scott Christopher  | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/08/2024-09:02 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Culbreth, Stephen E       | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/08/2024-09:02 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Moore, James Bernice III  | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/08/2024-09:02 |                  |                                                                                                                                                                                                                                                                                                                                                         |
| Barfield, Kenneth Michael | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/08/2024-09:02 |                  |                                                                                                                                                                                                                                                                                                                                                         |

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|---------------------------|--------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Spivey, Jerry L           | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/08/2024-09:02 |  |                                                                                       |
| Catalano, Joseph Andrew   | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/08/2024-09:02 |  |                                                                                       |
| Holmes, Janet Brooks      | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/08/2024-09:02 |  |                                                                                       |
| Bryan, George Waller III  | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/08/2024-09:02 |  |                                                                                       |
| Ott, Curtis Lyman         | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/08/2024-09:02 |  |                                                                                       |
| Sanford, Matthew Richard  | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/08/2024-09:02 |  |                                                                                       |
| Martin, Mary Ashley       | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/08/2024-09:02 |  |                                                                                       |
| Martin, L. Morgan         | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/08/2024-09:02 |  |                                                                                       |
| Cobb, Ryan                | NEF(04-05-2024 09:18:43 AM) Letter/Letter                    | Filing |  | 04/05/2024-09:18 |  |    |
| Cobb, Ryan                | Letter/Prtl Med on 3-26-24/Addl Med Schd in June/MDR Daniels | Filing |  | 04/05/2024-09:18 |  |    |
| Moore, James Bernice III  | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/27/2024-09:51 |  |                                                                                       |
| Culbreth, Stephen E       | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/27/2024-09:51 |  |                                                                                       |
| Evans, Scott Christopher  | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/27/2024-09:51 |  |                                                                                       |
| Martin, L. Morgan         | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/27/2024-09:51 |  |                                                                                       |
| Martin, Mary Ashley       | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/27/2024-09:51 |  |                                                                                       |
| Sanford, Matthew Richard  | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/27/2024-09:51 |  |                                                                                       |
| Ott, Curtis Lyman         | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/27/2024-09:51 |  |                                                                                       |
| Bryan, George Waller III  | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/27/2024-09:51 |  |                                                                                       |
| Holmes, Janet Brooks      | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/27/2024-09:51 |  |                                                                                       |
| Catalano, Joseph Andrew   | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/27/2024-09:51 |  |                                                                                       |
| Spivey, Jerry L           | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/27/2024-09:51 |  |                                                                                       |
| Barfield, Kenneth Michael | 4/18/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/27/2024-09:51 |  |                                                                                       |
| Cobb, Ryan                | NEF(03-19-2024 12:10:50 PM) Order/Electronic Form 4          | Filing |  | 03/19/2024-12:11 |  |  |
| Cobb, Ryan                | Order/Electronic Form 4/Motion Continued                     | Order  |  | 03/19/2024-12:10 |  |  |
| Evans, Scott Christopher  | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/18/2024-09:48 |  |                                                                                       |

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| Culbreth, Stephen E       | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/18/2024-09:48 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Moore, James Bernice III  | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/18/2024-09:48 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Barfield, Kenneth Michael | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/18/2024-09:48 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Spivey, Jerry L           | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/18/2024-09:48 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Catalano, Joseph Andrew   | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/18/2024-09:48 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Holmes, Janet Brooks      | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/18/2024-09:48 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Martin, L. Morgan         | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/18/2024-09:48 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Bryan, George Waller III  | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/18/2024-09:48 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Ott, Curtis Lyman         | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/18/2024-09:48 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Sanford, Matthew Richard  | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/18/2024-09:48 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Martin, Mary Ashley       | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/18/2024-09:48 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Martin, Mary Ashley       | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/07/2024-15:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Sanford, Matthew Richard  | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/07/2024-15:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Ott, Curtis Lyman         | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/07/2024-15:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Bryan, George Waller III  | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/07/2024-15:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Martin, L. Morgan         | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/07/2024-15:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Holmes, Janet Brooks      | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/07/2024-15:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Catalano, Joseph Andrew   | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/07/2024-15:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Spivey, Jerry L           | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/07/2024-15:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Barfield, Kenneth Michael | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/07/2024-15:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Moore, James Bernice III  | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/07/2024-15:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Culbreth, Stephen E       | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/07/2024-15:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Evans, Scott Christopher  | 3/28/2024_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 03/07/2024-15:23 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Cobb, Ryan                | NEF(03-07-2024 09:57:34 AM) Motion/Compel                    | Filing |  | 03/07/2024-10:12 |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Cobb, Ryan                | Motion/Compel Discovery/Moore                                | Motion |  | 03/07/2024-09:57 | 04/26/2024-09:57 |         |

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| Cobb, Ryan                   | NEF(02-20-2024 04:28:04 PM)<br>Order/Compel                     | Filing |  | 02/20/2024-16:28 |  |                                                                                                                                                                                                                                                              |
| Cobb, Ryan                   | Order/Compel Reponses Hertiage<br>Hauling Inc                   | Order  |  | 02/20/2024-16:28 |  |                                                                                                                                                                                                                                                              |
| Cobb, Ryan                   | NEF(02-20-2024 04:24:06 PM)<br>Order/Electronic Form 4          | Filing |  | 02/20/2024-16:24 |  |                                                                                                                                                                                                                                                              |
| Cobb, Ryan                   | Order/Form 4/Mediation Deferred<br>Until 3-26-24                | Order  |  | 02/20/2024-16:24 |  |                                                                                                                                                                                                                                                              |
| Bigelow, David Alan          | NEF(02-14-2024 11:35:38 AM)<br>Order/Consent Order              | Filing |  | 02/14/2024-11:35 |  |                                                                                                                                                                                                                                                              |
| Bigelow, David Alan          | Order/Consent Order/Confidentiality<br>and Protective           | Order  |  | 02/14/2024-11:35 |  |     |
| Cobb, Ryan                   | NEF(02-12-2024 09:57:56 AM)<br>Order/Defer Mediation            | Filing |  | 02/12/2024-09:58 |  |                                                                                                                                                                                                                                                              |
| Cobb, Ryan                   | Order/Defer Mediation Until 3-26-24                             | Order  |  | 02/12/2024-09:57 |  |                                                                                                                                                                                                                                                              |
| Bigelow, David Alan          | NEF(02-09-2024 09:30:19 AM)<br>Order/Order Cover Sheet \$25.... | Filing |  | 02/09/2024-09:32 |  |                                                                                                                                                                                                                                                              |
| Heritage Hauling Inc         | Order/Order Cover Sheet \$25.00                                 | Filing |  | 02/09/2024-09:30 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Cobb, Ryan                   | NEF(02-08-2024 03:53:33 PM)<br>Order/Order Cover Sheet \$25.... | Filing |  | 02/08/2024-16:00 |  |                                                                                                                                                                                                                                                              |
| Cobb, Ryan                   | Order/Order Cover Sheet \$25.00                                 | Filing |  | 02/08/2024-15:53 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Evans, Scott Christopher     | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 02/08/2024-10:17 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Culbreth, Stephen E          | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 02/08/2024-10:17 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Moore, James Bernice<br>III  | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 02/08/2024-10:17 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Barfield, Kenneth<br>Michael | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 02/08/2024-10:17 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Spivey, Jerry L              | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 02/08/2024-10:17 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Catalano, Joseph<br>Andrew   | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 02/08/2024-10:17 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Holmes, Janet Brooks         | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 02/08/2024-10:17 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Martin, L. Morgan            | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 02/08/2024-10:17 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Bryan, George Waller<br>III  | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 02/08/2024-10:17 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Ott, Curtis Lyman            | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 02/08/2024-10:17 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Sanford, Matthew<br>Richard  | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 02/08/2024-10:17 |  |                                                                                                                                                                                                                                                                                                                                                 |
| Martin, Mary Ashley          | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 02/08/2024-10:17 |  |                                                                                                                                                                                                                                                                                                                                                 |

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| Cobb, Ryan                | NEF(02-06-2024 09:17:19 AM)<br>Order/Order Cover Sheet \$25.... | Filing |  | 02/06/2024-09:28 |  |                                                                                       |
| Cobb, Ryan                | Order/Order Cover Sheet \$25.00                                 | Filing |  | 02/06/2024-09:17 |  |                                                                                                                                                                         |
| Cobb, Ryan                | NEF(02-05-2024 01:29:28 PM)<br>Order/Electronic Form 4          | Filing |  | 02/05/2024-13:29 |  |                                                                                      |
| Cobb, Ryan                | Order/Electronic Form 4/See Form 4<br>for Rulings               | Order  |  | 02/05/2024-13:29 |  |                                                                                      |
| Bigelow, David Alan       | NEF(01-31-2024 04:04:20 PM)<br>Memo/Memo in Opposition          | Filing |  | 01/31/2024-16:15 |  |                                                                                      |
| Bigelow, David Alan       | Memo/Memo in Opposition to Compel<br>Financial Docs             | Filing |  | 01/31/2024-16:04 |  |   |
| Moore, James Bernice III  | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 01/30/2024-15:43 |  |                                                                                                                                                                         |
| Culbreth, Stephen E       | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 01/30/2024-15:43 |  |                                                                                                                                                                         |
| Evans, Scott Christopher  | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 01/30/2024-15:43 |  |                                                                                                                                                                         |
| Martin, Mary Ashley       | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 01/30/2024-15:43 |  |                                                                                                                                                                         |
| Sanford, Matthew Richard  | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 01/30/2024-15:43 |  |                                                                                                                                                                         |
| Ott, Curtis Lyman         | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 01/30/2024-15:43 |  |                                                                                                                                                                         |
| Bryan, George Waller III  | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 01/30/2024-15:43 |  |                                                                                                                                                                         |
| Martin, L. Morgan         | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 01/30/2024-15:43 |  |                                                                                                                                                                         |
| Holmes, Janet Brooks      | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 01/30/2024-15:43 |  |                                                                                                                                                                         |
| Catalano, Joseph Andrew   | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 01/30/2024-15:43 |  |                                                                                                                                                                         |
| Spivey, Jerry L           | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 01/30/2024-15:43 |  |                                                                                                                                                                         |
| Barfield, Kenneth Michael | 2/20/2024_ADRSANC_Roster/Notice<br>of Motions Roster Publicatio | Action |  | 01/30/2024-15:43 |  |                                                                                                                                                                         |
| Barfield, Kenneth Michael | 2/1/2024_MOTION_Roster/Notice of<br>Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |                                                                                                                                                                         |
| Barfield, Kenneth Michael | 2/1/2024_MOTION_Roster/Notice of<br>Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |                                                                                                                                                                         |
| Barfield, Kenneth Michael | 2/1/2024_MOTION_Roster/Notice of<br>Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |                                                                                                                                                                         |
| Catalano, Joseph Andrew   | 2/1/2024_MOTION_Roster/Notice of<br>Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |                                                                                                                                                                         |
| Catalano, Joseph Andrew   | 2/1/2024_MOTION_Roster/Notice of<br>Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |                                                                                                                                                                         |
| Catalano, Joseph Andrew   | 2/1/2024_MOTION_Roster/Notice of<br>Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |                                                                                                                                                                         |
| Holmes, Janet Brooks      | 2/1/2024_MOTION_Roster/Notice of<br>Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |                                                                                                                                                                         |

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| Holmes, Janet Brooks     | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Holmes, Janet Brooks     | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Martin, L. Morgan        | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Martin, L. Morgan        | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Martin, L. Morgan        | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Bryan, George Waller III | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Bryan, George Waller III | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Bryan, George Waller III | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Ott, Curtis Lyman        | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Ott, Curtis Lyman        | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Ott, Curtis Lyman        | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Sanford, Matthew Richard | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Sanford, Matthew Richard | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Sanford, Matthew Richard | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Martin, Mary Ashley      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Martin, Mary Ashley      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Martin, Mary Ashley      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Evans, Scott Christopher | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Evans, Scott Christopher | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Evans, Scott Christopher | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Moore, James Bernice III | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Moore, James Bernice III | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Moore, James Bernice III | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Spivey, Jerry L          | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Spivey, Jerry L          | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |

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| Spivey, Jerry L          | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Culbreth, Stephen E      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Culbreth, Stephen E      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Culbreth, Stephen E      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/22/2024-11:29 |  |  |
| Culbreth, Stephen E      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Culbreth, Stephen E      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Culbreth, Stephen E      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Spivey, Jerry L          | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Spivey, Jerry L          | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Spivey, Jerry L          | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Moore, James Bernice III | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Moore, James Bernice III | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Moore, James Bernice III | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Evans, Scott Christopher | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
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| Evans, Scott Christopher | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Martin, Mary Ashley      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Martin, Mary Ashley      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Martin, Mary Ashley      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Sanford, Matthew Richard | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Sanford, Matthew Richard | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Sanford, Matthew Richard | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Ott, Curtis Lyman        | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Ott, Curtis Lyman        | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Ott, Curtis Lyman        | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |

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| Bryan, George Waller III  | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Bryan, George Waller III  | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Bryan, George Waller III  | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Martin, L. Morgan         | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Martin, L. Morgan         | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Martin, L. Morgan         | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Holmes, Janet Brooks      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Holmes, Janet Brooks      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Holmes, Janet Brooks      | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Catalano, Joseph Andrew   | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Catalano, Joseph Andrew   | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Catalano, Joseph Andrew   | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Barfield, Kenneth Michael | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Barfield, Kenneth Michael | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Barfield, Kenneth Michael | 2/1/2024_MOTION_Roster/Notice of Case Roster Publication Sen | Action |  | 01/04/2024-10:52 |  |  |
| Barfield, Kenneth Michael | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/06/2023-08:57 |  |  |
| Catalano, Joseph Andrew   | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/06/2023-08:57 |  |  |
| Martin, L. Morgan         | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/06/2023-08:57 |  |  |
| Holmes, Janet Brooks      | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/06/2023-08:57 |  |  |
| Bryan, George Waller III  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/06/2023-08:57 |  |  |
| Ott, Curtis Lyman         | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/06/2023-08:57 |  |  |
| Sanford, Matthew Richard  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/06/2023-08:57 |  |  |
| Martin, Mary Ashley       | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/06/2023-08:57 |  |  |
| Evans, Scott Christopher  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/06/2023-08:57 |  |  |
| Moore, James Bernice III  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/06/2023-08:57 |  |  |

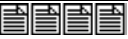
|                           |                                                              |        |  |                  |                  |                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------|--------------------------------------------------------------|--------|--|------------------|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Spivey, Jerry L           | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/06/2023-08:57 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Culbreth, Stephen E       | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/06/2023-08:57 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Cobb, Ryan                | NEF(12-04-2023 03:06:24 PM) Motion/Compel                    | Filing |  | 12/04/2023-15:12 |                  |                                                                                                                                                                                                                                                              |
| Cobb, Ryan                | Motion/Compel Discovery Responses/Evans                      | Motion |  | 12/04/2023-15:06 | 02/05/2024-15:06 |     |
| Cobb, Ryan                | NEF(12-04-2023 11:11:28 AM) Motion/Compel                    | Filing |  | 12/04/2023-11:14 |                  |                                                                                                                                                                                                                                                              |
| Cobb, Ryan                | Motion/Compel/Memo in Support/Evans                          | Motion |  | 12/04/2023-11:11 | 02/05/2024-11:11 |     |
| Culbreth, Stephen E       | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/04/2023-08:41 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Spivey, Jerry L           | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/04/2023-08:41 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Moore, James Bernice III  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/04/2023-08:41 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Evans, Scott Christopher  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/04/2023-08:41 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Martin, Mary Ashley       | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/04/2023-08:41 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Sanford, Matthew Richard  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/04/2023-08:41 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Ott, Curtis Lyman         | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/04/2023-08:41 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Bryan, George Waller III  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/04/2023-08:41 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Martin, L. Morgan         | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/04/2023-08:41 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Catalano, Joseph Andrew   | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/04/2023-08:41 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Holmes, Janet Brooks      | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/04/2023-08:41 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Barfield, Kenneth Michael | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 12/04/2023-08:41 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Barfield, Kenneth Michael | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Catalano, Joseph Andrew   | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Holmes, Janet Brooks      | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Martin, L. Morgan         | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Bryan, George Waller III  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Ott, Curtis Lyman         | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                 |
| Sanford, Matthew Richard  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:58 |                  |                                                                                                                                                                                                                                                                                                                                                 |

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|---------------------------|--------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Martin, Mary Ashley       | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:58 |  |                                                                                       |
| Evans, Scott Christopher  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:58 |  |                                                                                       |
| Moore, James Bernice III  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:58 |  |                                                                                       |
| Spivey, Jerry L           | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:58 |  |                                                                                       |
| Culbreth, Stephen E       | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:58 |  |                                                                                       |
| Culbreth, Stephen E       | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:52 |  |                                                                                       |
| Spivey, Jerry L           | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:52 |  |                                                                                       |
| Moore, James Bernice III  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:52 |  |                                                                                       |
| Evans, Scott Christopher  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:52 |  |                                                                                       |
| Martin, Mary Ashley       | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:52 |  |                                                                                       |
| Sanford, Matthew Richard  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:52 |  |                                                                                       |
| Ott, Curtis Lyman         | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:52 |  |                                                                                       |
| Bryan, George Waller III  | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:52 |  |                                                                                       |
| Martin, L. Morgan         | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:52 |  |                                                                                       |
| Holmes, Janet Brooks      | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:52 |  |                                                                                       |
| Catalano, Joseph Andrew   | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:52 |  |                                                                                       |
| Barfield, Kenneth Michael | 12/14/2023_MOTION_Roster/Notice of Case Roster Publication S | Action |  | 11/17/2023-08:52 |  |                                                                                       |
| Cobb, Ryan                | NEF(11-14-2023 01:15:01 PM) Order/Other                      | Filing |  | 11/14/2023-13:15 |  |  |
| Cobb, Ryan                | Order/Consent Order for Date Certain Trial                   | Order  |  | 11/14/2023-13:15 |  |  |
| Cobb, Ryan                | NEF(11-13-2023 03:22:43 PM) Order/Other                      | Filing |  | 11/13/2023-15:22 |  |  |
| Cobb, Ryan                | Consent Ord/Motion to Compel Responses Agreement             | Order  |  | 11/13/2023-15:22 |  |  |
| Cobb, Ryan                | NEF(11-09-2023 10:42:09 AM) Order/Order Cover Sheet \$25.... | Filing |  | 11/09/2023-11:31 |  |  |
| Cobb, Ryan                | NEF(11-09-2023 09:18:53 AM) Order/Order Cover Sheet \$25.... | Filing |  | 11/09/2023-11:27 |  |  |
| Cobb, Ryan                | Order/Order Cover Sheet \$25.00                              | Filing |  | 11/09/2023-10:42 |  |                                                                                       |
| Cobb, Ryan                | Order/Order Cover Sheet \$25.00                              | Filing |  | 11/09/2023-09:18 |  |                                                                                       |

|                              |                                                                 |        |  |                  |                  |                                                                                                                                                                         |
|------------------------------|-----------------------------------------------------------------|--------|--|------------------|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cobb, Ryan                   | NEF(11-08-2023 09:48:54 AM)<br>Notice/Notice of Appearance      | Filing |  | 11/08/2023-09:49 |                  |                                                                                       |
| Cobb, Ryan                   | Notice/Notice of Appearance                                     | Filing |  | 11/08/2023-09:48 |                  |                                                                                                                                                                         |
| Cobb, Ryan                   | NEF(11-06-2023 12:13:03 PM)<br>Motion/Compel                    | Filing |  | 11/06/2023-12:37 |                  |                                                                                      |
| Cobb, Ryan                   | Motion/Compel/Moore                                             | Motion |  | 11/06/2023-12:13 | 02/05/2024-12:13 |   |
| Evans, Scott Christopher     | 11/13/2023_ADRSANC_Roster/Notice<br>of Motions Roster Publicati | Action |  | 11/01/2023-09:13 |                  |                                                                                                                                                                         |
| Moore, James Bernice<br>III  | 11/13/2023_ADRSANC_Roster/Notice<br>of Motions Roster Publicati | Action |  | 11/01/2023-09:13 |                  |                                                                                                                                                                         |
| Spivey, Jerry L              | 11/13/2023_ADRSANC_Roster/Notice<br>of Motions Roster Publicati | Action |  | 11/01/2023-09:13 |                  |                                                                                                                                                                         |
| Culbreth, Stephen E          | 11/13/2023_ADRSANC_Roster/Notice<br>of Motions Roster Publicati | Action |  | 11/01/2023-09:13 |                  |                                                                                                                                                                         |
| Barfield, Kenneth<br>Michael | 11/13/2023_ADRSANC_Roster/Notice<br>of Motions Roster Publicati | Action |  | 11/01/2023-09:13 |                  |                                                                                                                                                                         |
| Catalano, Joseph<br>Andrew   | 11/13/2023_ADRSANC_Roster/Notice<br>of Motions Roster Publicati | Action |  | 11/01/2023-09:13 |                  |                                                                                                                                                                         |
| Holmes, Janet Brooks         | 11/13/2023_ADRSANC_Roster/Notice<br>of Motions Roster Publicati | Action |  | 11/01/2023-09:13 |                  |                                                                                                                                                                         |
| Martin, L. Morgan            | 11/13/2023_ADRSANC_Roster/Notice<br>of Motions Roster Publicati | Action |  | 11/01/2023-09:13 |                  |                                                                                                                                                                         |
| Ott, Curtis Lyman            | 11/13/2023_ADRSANC_Roster/Notice<br>of Motions Roster Publicati | Action |  | 11/01/2023-09:13 |                  |                                                                                                                                                                         |
| Sanford, Matthew<br>Richard  | 11/13/2023_ADRSANC_Roster/Notice<br>of Motions Roster Publicati | Action |  | 11/01/2023-09:13 |                  |                                                                                                                                                                         |
| Martin, Mary Ashley          | 11/13/2023_ADRSANC_Roster/Notice<br>of Motions Roster Publicati | Action |  | 11/01/2023-09:13 |                  |                                                                                                                                                                         |
| Martin, Mary Ashley          | 11/9/2023_MOTION_Roster/Notice<br>of Case Roster Publication Se | Action |  | 10/30/2023-09:00 |                  |                                                                                                                                                                         |
| Sanford, Matthew<br>Richard  | 11/9/2023_MOTION_Roster/Notice<br>of Case Roster Publication Se | Action |  | 10/30/2023-09:00 |                  |                                                                                                                                                                         |
| Ott, Curtis Lyman            | 11/9/2023_MOTION_Roster/Notice<br>of Case Roster Publication Se | Action |  | 10/30/2023-09:00 |                  |                                                                                                                                                                         |
| Martin, L. Morgan            | 11/9/2023_MOTION_Roster/Notice<br>of Case Roster Publication Se | Action |  | 10/30/2023-09:00 |                  |                                                                                                                                                                         |
| Holmes, Janet Brooks         | 11/9/2023_MOTION_Roster/Notice<br>of Case Roster Publication Se | Action |  | 10/30/2023-09:00 |                  |                                                                                                                                                                         |
| Catalano, Joseph<br>Andrew   | 11/9/2023_MOTION_Roster/Notice<br>of Case Roster Publication Se | Action |  | 10/30/2023-09:00 |                  |                                                                                                                                                                         |
| Barfield, Kenneth<br>Michael | 11/9/2023_MOTION_Roster/Notice<br>of Case Roster Publication Se | Action |  | 10/30/2023-09:00 |                  |                                                                                                                                                                         |
| Culbreth, Stephen E          | 11/9/2023_MOTION_Roster/Notice<br>of Case Roster Publication Se | Action |  | 10/30/2023-09:00 |                  |                                                                                                                                                                         |
| Spivey, Jerry L              | 11/9/2023_MOTION_Roster/Notice<br>of Case Roster Publication Se | Action |  | 10/30/2023-09:00 |                  |                                                                                                                                                                         |
| Moore, James Bernice<br>III  | 11/9/2023_MOTION_Roster/Notice<br>of Case Roster Publication Se | Action |  | 10/30/2023-09:00 |                  |                                                                                                                                                                         |

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|---------------------------|--------------------------------------------------------------|--------|--|------------------|--|---------------------------------------------------------------------------------------|
| Evans, Scott Christopher  | 11/9/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 10/30/2023-09:00 |  |                                                                                       |
| Moore, James Bernice III  | 11/13/2023_ADRSANC_Roster/Notice of Motions Roster Publicati | Action |  | 10/18/2023-08:40 |  |                                                                                       |
| Spivey, Jerry L           | 11/13/2023_ADRSANC_Roster/Notice of Motions Roster Publicati | Action |  | 10/18/2023-08:40 |  |                                                                                       |
| Culbreth, Stephen E       | 11/13/2023_ADRSANC_Roster/Notice of Motions Roster Publicati | Action |  | 10/18/2023-08:40 |  |                                                                                       |
| Evans, Scott Christopher  | 11/13/2023_ADRSANC_Roster/Notice of Motions Roster Publicati | Action |  | 10/18/2023-08:40 |  |                                                                                       |
| Barfield, Kenneth Michael | 11/13/2023_ADRSANC_Roster/Notice of Motions Roster Publicati | Action |  | 10/18/2023-08:40 |  |                                                                                       |
| Catalano, Joseph Andrew   | 11/13/2023_ADRSANC_Roster/Notice of Motions Roster Publicati | Action |  | 10/18/2023-08:40 |  |                                                                                       |
| Holmes, Janet Brooks      | 11/13/2023_ADRSANC_Roster/Notice of Motions Roster Publicati | Action |  | 10/18/2023-08:40 |  |                                                                                       |
| Martin, L. Morgan         | 11/13/2023_ADRSANC_Roster/Notice of Motions Roster Publicati | Action |  | 10/18/2023-08:40 |  |                                                                                       |
| Ott, Curtis Lyman         | 11/13/2023_ADRSANC_Roster/Notice of Motions Roster Publicati | Action |  | 10/18/2023-08:40 |  |                                                                                       |
| Sanford, Matthew Richard  | 11/13/2023_ADRSANC_Roster/Notice of Motions Roster Publicati | Action |  | 10/18/2023-08:40 |  |                                                                                       |
| Martin, Mary Ashley       | 11/13/2023_ADRSANC_Roster/Notice of Motions Roster Publicati | Action |  | 10/18/2023-08:40 |  |                                                                                       |
| Martin, Mary Ashley       | 11/9/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 10/17/2023-08:53 |  |                                                                                       |
| Sanford, Matthew Richard  | 11/9/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 10/17/2023-08:53 |  |                                                                                       |
| Ott, Curtis Lyman         | 11/9/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 10/17/2023-08:53 |  |                                                                                       |
| Martin, L. Morgan         | 11/9/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 10/17/2023-08:53 |  |                                                                                       |
| Holmes, Janet Brooks      | 11/9/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 10/17/2023-08:53 |  |                                                                                       |
| Catalano, Joseph Andrew   | 11/9/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 10/17/2023-08:53 |  |                                                                                       |
| Barfield, Kenneth Michael | 11/9/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 10/17/2023-08:53 |  |                                                                                       |
| Evans, Scott Christopher  | 11/9/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 10/17/2023-08:53 |  |                                                                                       |
| Culbreth, Stephen E       | 11/9/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 10/17/2023-08:53 |  |                                                                                       |
| Spivey, Jerry L           | 11/9/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 10/17/2023-08:53 |  |                                                                                       |
| Moore, James Bernice III  | 11/9/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 10/17/2023-08:53 |  |                                                                                       |
| Bigelow, David Alan       | NEF(08-17-2023 03:05:38 PM) Order/Continuance                | Filing |  | 08/17/2023-15:05 |  |  |
| Bigelow, David Alan       | Order/Continuance Until Next Term in October 2023            | Order  |  | 08/17/2023-15:05 |  |  |

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|---------------------------|--------------------------------------------------------------|--------|--|------------------|------------------|---------------------------------------------------------------------------------------|
| Bigelow, David Alan       | NEF(08-16-2023 04:14:32 PM)<br>Motion/Continuance            | Filing |  | 08/16/2023-16:31 |                  |     |
| Heritage Hauling Inc      | Motion/Continuance/Ott                                       | Motion |  | 08/16/2023-16:14 | 08/17/2023-16:14 |    |
| Moore, James Bernice III  | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 08/07/2023-09:00 |                  |                                                                                       |
| Spivey, Jerry L           | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 08/07/2023-09:00 |                  |                                                                                       |
| Culbreth, Stephen E       | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 08/07/2023-09:00 |                  |                                                                                       |
| Evans, Scott Christopher  | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 08/07/2023-09:00 |                  |                                                                                       |
| Barfield, Kenneth Michael | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 08/07/2023-09:00 |                  |                                                                                       |
| Catalano, Joseph Andrew   | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 08/07/2023-09:00 |                  |                                                                                       |
| Holmes, Janet Brooks      | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 08/07/2023-09:00 |                  |                                                                                       |
| Martin, L. Morgan         | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 08/07/2023-09:00 |                  |                                                                                       |
| Ott, Curtis Lyman         | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 08/07/2023-09:00 |                  |                                                                                       |
| Sanford, Matthew Richard  | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 08/07/2023-09:00 |                  |                                                                                       |
| Martin, Mary Ashley       | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 08/07/2023-09:00 |                  |                                                                                       |
| Martin, Mary Ashley       | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 07/24/2023-15:44 |                  |                                                                                       |
| Sanford, Matthew Richard  | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 07/24/2023-15:44 |                  |                                                                                       |
| Ott, Curtis Lyman         | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 07/24/2023-15:44 |                  |                                                                                       |
| Martin, L. Morgan         | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 07/24/2023-15:44 |                  |                                                                                       |
| Holmes, Janet Brooks      | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 07/24/2023-15:44 |                  |                                                                                       |
| Catalano, Joseph Andrew   | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 07/24/2023-15:44 |                  |                                                                                       |
| Barfield, Kenneth Michael | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 07/24/2023-15:44 |                  |                                                                                       |
| Evans, Scott Christopher  | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 07/24/2023-15:44 |                  |                                                                                       |
| Culbreth, Stephen E       | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 07/24/2023-15:44 |                  |                                                                                       |
| Spivey, Jerry L           | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 07/24/2023-15:44 |                  |                                                                                       |
| Moore, James Bernice III  | 8/18/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 07/24/2023-15:44 |                  |                                                                                       |
| Cobb, Ryan                | NEF(07-19-2023 01:39:11 PM)<br>Motion/Compel                 | Filing |  | 07/19/2023-13:58 |                  |  |

|                           |                                                              |        |  |                  |                  |                                                                                     |
|---------------------------|--------------------------------------------------------------|--------|--|------------------|------------------|-------------------------------------------------------------------------------------|
| Cobb, Ryan                | Mot/Determine Sufficiency Ans Frm Heritage Hauling Inc/Evans | Motion |  | 07/19/2023-13:39 | 11/13/2023-13:39 |   |
| Cobb, Ryan                | ADR/Sanctions Letter                                         | Action |  | 07/08/2023-10:46 | 09/23/2024-10:46 |  |
| Cobb, Ryan                | NEF(06-28-2023 10:46:50 AM) ADR/Sanctions Letter             | Filing |  | 06/28/2023-10:46 |                  |  |
| Cobb, Ryan                | ADR/Notice of ADR                                            | Action |  | 06/27/2023-09:35 | 07/08/2023-09:35 |  |
| Cobb, Ryan                | NEF(05-17-2023 01:34:41 PM) Order/Compel                     | Filing |  | 05/17/2023-13:34 |                  |  |
| Cobb, Ryan                | Order/Compel Responses                                       | Order  |  | 05/17/2023-13:34 |                  |  |
| Cobb, Ryan                | NEF(05-16-2023 01:41:17 PM) Order/Order Cover Sheet \$25.... | Filing |  | 05/16/2023-14:06 |                  |  |
| Cobb, Ryan                | Order/Order Cover Sheet \$25.00                              | Filing |  | 05/16/2023-13:41 |                  |                                                                                     |
| Cobb, Ryan                | NEF(05-11-2023 04:41:56 PM) Order/Electronic Form 4          | Filing |  | 05/11/2023-16:42 |                  |  |
| Cobb, Ryan                | Order/Electronic Form 4/Mot to Compel/Granted                | Order  |  | 05/11/2023-16:41 |                  |  |
| Cobb, Ryan                | NEF(05-11-2023 04:03:58 PM) Order/Consent Order              | Filing |  | 05/11/2023-16:04 |                  |  |
| Cobb, Ryan                | Order/Consent Order/Compel Responses by Boggs Contracting    | Order  |  | 05/11/2023-16:03 |                  |  |
| Cobb, Ryan                | NEF(05-11-2023 03:09:49 PM) Order/Order Cover Sheet \$25.... | Filing |  | 05/11/2023-15:32 |                  |  |
| Cobb, Ryan                | Order/Order Cover Sheet \$25.00                              | Filing |  | 05/11/2023-15:09 |                  |                                                                                     |
| Evans, Scott Christopher  | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/01/2023-10:33 |                  |                                                                                     |
| Moore, James Bernice III  | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/01/2023-10:33 |                  |                                                                                     |
| Spivey, Jerry L           | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/01/2023-10:33 |                  |                                                                                     |
| Culbreth, Stephen E       | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/01/2023-10:33 |                  |                                                                                     |
| Barfield, Kenneth Michael | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/01/2023-10:33 |                  |                                                                                     |
| Catalano, Joseph Andrew   | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/01/2023-10:33 |                  |                                                                                     |
| Holmes, Janet Brooks      | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/01/2023-10:33 |                  |                                                                                     |
| Martin, L. Morgan         | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/01/2023-10:33 |                  |                                                                                     |
| Ott, Curtis Lyman         | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/01/2023-10:33 |                  |                                                                                     |
| Sanford, Matthew Richard  | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/01/2023-10:33 |                  |                                                                                     |
| Martin, Mary Ashley       | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 05/01/2023-10:33 |                  |                                                                                     |

|                           |                                                              |        |  |                  |                  |                                                                                                                                                                             |
|---------------------------|--------------------------------------------------------------|--------|--|------------------|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Martin, Mary Ashley       | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-12:30 |                  |                                                                                                                                                                             |
| Sanford, Matthew Richard  | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-12:30 |                  |                                                                                                                                                                             |
| Ott, Curtis Lyman         | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-12:30 |                  |                                                                                                                                                                             |
| Martin, L. Morgan         | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-12:30 |                  |                                                                                                                                                                             |
| Holmes, Janet Brooks      | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-12:30 |                  |                                                                                                                                                                             |
| Catalano, Joseph Andrew   | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-12:30 |                  |                                                                                                                                                                             |
| Barfield, Kenneth Michael | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-12:30 |                  |                                                                                                                                                                             |
| Culbreth, Stephen E       | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-12:30 |                  |                                                                                                                                                                             |
| Spivey, Jerry L           | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-12:30 |                  |                                                                                                                                                                             |
| Moore, James Bernice III  | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-12:30 |                  |                                                                                                                                                                             |
| Evans, Scott Christopher  | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-12:30 |                  |                                                                                                                                                                             |
| Evans, Scott Christopher  | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-09:46 |                  |                                                                                                                                                                             |
| Moore, James Bernice III  | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-09:46 |                  |                                                                                                                                                                             |
| Spivey, Jerry L           | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-09:46 |                  |                                                                                                                                                                             |
| Culbreth, Stephen E       | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-09:46 |                  |                                                                                                                                                                             |
| Barfield, Kenneth Michael | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-09:46 |                  |                                                                                                                                                                             |
| Catalano, Joseph Andrew   | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-09:46 |                  |                                                                                                                                                                             |
| Holmes, Janet Brooks      | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-09:46 |                  |                                                                                                                                                                             |
| Martin, L. Morgan         | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-09:46 |                  |                                                                                                                                                                             |
| Ott, Curtis Lyman         | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-09:46 |                  |                                                                                                                                                                             |
| Sanford, Matthew Richard  | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-09:46 |                  |                                                                                                                                                                             |
| Martin, Mary Ashley       | 5/11/2023_MOTION_Roster/Notice of Case Roster Publication Se | Action |  | 04/10/2023-09:46 |                  |                                                                                                                                                                             |
| Cobb, Ryan                | NEF(04-04-2023 12:22:38 PM) Motion/Compel                    | Filing |  | 04/04/2023-13:20 |                  |                                                                                        |
| Cobb, Ryan                | Motion/Compel Discovery/Moore                                | Motion |  | 04/04/2023-12:22 | 05/11/2023-12:22 |   |
| Cobb, Ryan                | NEF(03-30-2023 09:35:58 AM) ADR/Notice of ADR                | Filing |  | 03/30/2023-09:42 |                  |                                                                                        |

|                              |                                                              |        |  |                  |                  |                                                                                       |
|------------------------------|--------------------------------------------------------------|--------|--|------------------|------------------|---------------------------------------------------------------------------------------|
| Cobb, Ryan                   | ADR/Alternative Dispute Resolution (Workflow)                | Action |  | 03/28/2023-14:44 | 06/28/2023-14:44 |                                                                                       |
| Bigelow, David Alan          | NEF(03-09-2023 01:37:55 PM) Notice/Other                     | Filing |  | 03/09/2023-16:44 |                  |    |
| Bigelow, David Alan          | Notice/Transfer Within Firm                                  | Filing |  | 03/09/2023-13:37 |                  |    |
| Bigelow, David Alan          | Notice/Notice of Appearance                                  | Filing |  | 03/09/2023-13:37 |                  |                                                                                       |
| Bigelow, David Alan          | NEF(02-17-2023 01:29:21 PM) Order/Protection from Court ...  | Filing |  | 02/17/2023-13:29 |                  |    |
| Bigelow, David Alan          | Order/Protection from Court Appearance                       | Order  |  | 02/17/2023-13:29 |                  |    |
| Bigelow, David Alan          | NEF(02-17-2023 11:07:06 AM) Proposed Order/Protection fr...  | Filing |  | 02/17/2023-11:58 |                  |    |
| Bigelow, David Alan          | Order/Order Cover Sheet \$25.00                              | Filing |  | 02/17/2023-11:07 |                  |                                                                                       |
| Bigelow, David Alan          | NEF(12-30-2022 02:52:43 PM) Notice/Notice of Appearance      | Filing |  | 12/30/2022-15:08 |                  |    |
| Bigelow, David Alan          | Notice/Notice of Appearance                                  | Filing |  | 12/30/2022-14:52 |                  |                                                                                       |
| Bigelow, David Alan          | Answer/Answer to Plaintiffs Complaint                        | Filing |  | 12/30/2022-14:52 |                  |    |
| Boggs Contracting Inc        | NEF(11-22-2022 04:57:13 PM) Notice/Notice of Appearance      | Filing |  | 11/23/2022-09:12 |                  |    |
| Boggs Contracting Inc        | Notice/Notice of Appearance                                  | Filing |  | 11/22/2022-16:57 |                  |                                                                                       |
| Boggs Contracting Inc        | Answer/Answer and Jury Demand                                | Filing |  | 11/22/2022-16:57 |                  |    |
| Cincinnati Insurance Company | NEF(10-11-2022 10:33:44 AM) Add Party to Case                | Filing |  | 10/11/2022-14:47 |                  |    |
| Cincinnati Insurance Company | Add Party to Case                                            | Filing |  | 10/11/2022-10:33 |                  |                                                                                       |
| Cobb, Ryan                   | NEF(09-26-2022 11:47:42 AM) Service/Certificate Of Servi...  | Filing |  | 09/26/2022-14:33 |                  |   |
| Cobb, Ryan                   | Service/Certificate Of Service Certified Mail on Boggs Contr | Filing |  | 09/26/2022-11:47 |                  |  |
| Cobb, Ryan                   | NEF(09-20-2022 01:01:28 PM) Order/Pro Hac Vice               | Filing |  | 09/20/2022-13:02 |                  |  |
| Cobb, Ryan                   | Order/Pro Hac Vice Admission of Jerry L Spivey               | Order  |  | 09/20/2022-13:01 |                  |  |
| Cobb, Ryan                   | NEF(09-20-2022 12:42:19 PM) Order/Pro Hac Vice               | Filing |  | 09/20/2022-12:43 |                  |  |
| Cobb, Ryan                   | Order/Pro Hac Vice Admission of Stephen E Culbreth Esq       | Order  |  | 09/20/2022-12:42 |                  |  |
| Cobb, Ryan                   | Receipt of Verified App for Pro Hac Vice/Stephen E Culbreth  | Filing |  | 09/08/2022-11:07 |                  |  |
| Cobb, Ryan                   | Receipt of Verified App for Pro Hac Vice/Jerry L Spivey      | Filing |  | 09/08/2022-11:05 |                  |  |
| Cobb, Ryan                   | NEF(09-02-2022 11:40:02 AM) Motion/Admission Pro Hac Vic...  | Filing |  | 09/02/2022-12:30 |                  |  |

|            |                                                                 |        |  |                  |                  |                                                                                                                                                                                                                                                             |
|------------|-----------------------------------------------------------------|--------|--|------------------|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cobb, Ryan | NEF(09-02-2022 11:43:00 AM)<br>Order/Order Cover Sheet \$25.... | Filing |  | 09/02/2022-12:29 |                  |                                                                                                                                                                           |
| Cobb, Ryan | NEF(09-02-2022 11:13:59 AM)<br>Order/Order Cover Sheet \$25.... | Filing |  | 09/02/2022-11:44 |                  |                                                                                                                                                                          |
| Cobb, Ryan | NEF(09-02-2022 11:12:09 AM)<br>Motion/Admission Pro Hac Vic...  | Filing |  | 09/02/2022-11:44 |                  |                                                                                                                                                                          |
| Cobb, Ryan | Order/Order Cover Sheet \$25.00                                 | Filing |  | 09/02/2022-11:43 |                  |                                                                                                                                                                                                                                                             |
| Cobb, Ryan | Motion/Admission Pro Hac Vice/Evans                             | Motion |  | 09/02/2022-11:40 | 09/20/2022-11:40 |    |
| Cobb, Ryan | Order/Order Cover Sheet \$25.00                                 | Filing |  | 09/02/2022-11:13 |                  |                                                                                                                                                                                                                                                             |
| Cobb, Ryan | Motion/Admission Pro Hac Vice/Evans                             | Motion |  | 09/02/2022-11:12 | 09/30/2022-11:12 |    |
| Cobb, Ryan | Summons & Complaint                                             | Filing |  | 08/30/2022-14:44 |                  |                                                                                                                                                                          |



IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

The Honorable David P. Caraker, Circuit Court Judge  
Civil Action No. 2022-CP-22-00739

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Appellate Case No. 2025-001074

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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,

of which Boggs Contracting, Inc. is the Appellant.

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**CERTIFICATE OF COUNSEL**

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I, Jay Thompson, Esquire, attorney for Appellants, certify that the Record on Appeal complies with Rule 210(g) of the South Carolina Appellate Court Rules.

**MURPHY & GRANTLAND, P.A.**

s/Jay Thompson

J.R. Murphy, Esquire, S.C. Bar No. 7941

Jay Thompson, Esquire, S.C. Bar No. 75030

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*Counsel for Appellant Boggs Contracting, Inc.*

Columbia, South Carolina  
November 24, 2025