

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RICHARD E. ROBINSON,

Plaintiff,

v.

3M COMPANY f/k/a MINNESOTA
MINING AND MANUFACTURING
COMPANY, *et al.*,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2025-CP-40-04961

In re:

Asbestos Personal Injury Litigation

Coordinated Docket

RECEIVED**Sep 21 2026****SC Court of Appeals****ORDER GRANTING MOTION TO COMPEL DEFENDANT TOPBUILD CORP.
AND MOTION FOR SANCTIONS**

This matter comes before the Court upon Plaintiffs' motion to compel Defendant Top Build Corp and motion for sanctions. The court has considered the pleadings of both parties, evidence presented and arguments of counsel and makes the following findings and grants the following relief:

Defendant Topbuild Corp. is sued individually and as successor to United Subcontractors, Inc., successor to Standard Insulating Company, Inc. ("Standard")

I. BACKGROUND

Standard was first sued in a case brought by counsel for Robinson in the *Nicholas Murphy* matter in March of 2020, the *Richard Carpenter* matter in September of 2020, and the *Tommy Wannamaker* matter in March of 2021 for Standard's work as an insulation contractor at various industrial sites throughout South Carolina and North Carolina.¹

¹ *Murphy v. Covil Corporation, et al.*, C/A No. 2020-CP-40-01364, In the Court of Common Pleas for the 5th Judicial Circuit, County of Richland, South Carolina ("Murphy"); *Carpenter v. Armstrong International, Inc., et al.*, C/A No. 2020-CP-40-04475 In the Court of Common Pleas for the 5th Judicial Circuit, County of Richland, South Carolina ("Carpenter"); *Wannamaker v. 3M Company, et al.*, C/A No. 2021-CP-38-00240,

Standard's corporate representatives Jay Fleet ("Mr. Fleet") and Frederick Judson ("Mr. Judson") were deposed in the aforementioned cases. Throughout the depositions, Standard repeatedly testified under oath that Standard was a residential insulation company that: (1) never performed any industrial work at any time during the history of the company; (2) never performed any work with asbestos-containing materials; (3) never performed any work at Duke Power Plants; (4) never supplied materials to Duke Power; and (5) never performed any type of asbestos abatement work. It appears that, based on Standard's testimony, Plaintiff dismissed Standard from each of the cases and did not sue Standard in future cases.

Subsequently, Plaintiff identified documents within a production from a different defendant showing Standard performed insulation work at the Duke Power Belews Creek Steam Station and asbestos abatement work at the Celanese Fibers Celriver Plant in Rock Hill, South Carolina. Mr. Judson was deposed in the present matter on May 21, 2026 and, when confronted with documentary evidence, the transcript make clear that Mr. Judson acknowledged his prior testimony was false. The motion before the Court followed and was heard on July 9, 2026.

II. RELEVANT FACTUAL HISTORY

Richard Robinson ("Mr. Robinson") was diagnosed with lung cancer on or about February 4, 2025. Plaintiffs' Original Complaint was filed in this matter on July 18, 2025 alleging Defendants, including but not limited to Standard, exposed Mr. Robinson to

In the Court of Common Pleas for the 5th Judicial Circuit, County of Richland, South Carolina ("Wannamaker").

asbestos through his work as a textile worker and insulator at various industrial jobsites located primarily in South Carolina and North Carolina.

A. Standard Was One of the Largest Insulation Firms in the Charlotte Area by the 1970s.

Standard Insulating was founded by David Judson in 1945 in Charlotte, North Carolina.² It was incorporated around 1956.³ By 1977, Standard was advertising itself as “one of the areas largest [insulating] firms.”⁴ Standard performed insulation work throughout the Southeast United States, including South Carolina, North Carolina, Florida, Georgia, Oklahoma, Virginia, and Kentucky.⁵

In 1998 Standard merged with several other insulation companies to form United Subcontractors, Inc. (“USI”).⁶ In 2018, USI merged again to become a wholly owned subsidiary of Topbuild, Corp.⁷

B. Standard Testified Under Oath It Never Supplied To Industrial Plants, Never Performed Work in Industrial Settings, and Never Performed any Asbestos Abatement at Any Time.

1. Jay Fleet testified Standard never performed industrial work.

Jay Fleet was presented to testify as Standard’s corporate representative on April 6, 2021 in the *Carpenter* matter. Mr. Fleet never worked for Standard.⁸ He first became involved with Standard when the company he worked for, Carroll Insulation, and Standard

² See Deposition Transcript of Frederick Judson, *Murphy v. Covil Corporation, et al.*, dated Sept. 24, 2021 (“9/24/21 Judson Dep. Tr.”) at 64:21-65:13; see also, Deposition Transcript of Jay Fleet, *Carpenter v. Armstrong International, Inc., et al.*, dated Apr. 6, 2021 (“Fleet Dep. Tr.”) at 25:25-26:4.

³ See, 9/24/21 Judson Dep. Tr., at 65:18-20.

⁴ The Charlotte News, “Wait May Mean Insulation Scare,” dated July 13, 1977; 9/24/21 Judson Dep. Tr., at 97:12-16 (“Q: Would you agree with this characterization that Standard Insulating was one of the areas largest firms in 1977? A: Yes.”).

⁵ See 9/24/21 Judson Dep. Tr., at 70:16-71:4.

⁶ See Fleet Dep. Tr., at 17:15-18:25, 98:10-21.

⁷ See *id.* at 99:7-100:13.

⁸ See Fleet Dep. Tr., at 16:3-18:25.

were both part of a merger that formed United Subcontractors, Inc. (“USI”) in 1998.⁹ The only things Mr. Fleet did to prepare for his deposition were read Standard’s objections to the deposition notice, Standard’s discovery responses, articles of merger, and interviewed Fredrick Judson (“Mr. Judson”), the former president of Standard.¹⁰ The only information Mr. Fleet had regarding the historical operations of Standard came from his discussions with Mr. Judson.¹¹

Mr. Fleet testified that Standard was a “residential insulation company.”¹² According to Mr. Fleet, Standard only performed residential work prior to the mid-1970s, when it began performing some “light commercial work.”¹³ Mr. Fleet testified that Standard never acted as a distributor, only an installer.¹⁴ Mr. Fleet went on to testify that Standard never performed any industrial work, asbestos removal, or any other work involving asbestos:

Q: Do you know whether or not Standard Insulating specifically, but any of the companies that merged in to become part of United Subcontractors, ever did asbestos remediation type work?

A: It wasn’t our scope of work to do that type of work. We were all residential insulators ... We did no industrial work, no asbestos removal. We had nothing – you know, no companies had anything to do with asbestos.¹⁵

2. Frederick Judson testified Standard never supplied to and/or performed industrial work.

⁹ See *id.* at 17:18-18:1, 26:10-14.

¹⁰ See *id.* at 20:2-21:2.

¹¹ See *e.g., id.* at 46:11-25, 86:15-17, 93:20-24, 108:2-6, 110:17-22.

¹² Fleet Dep. Tr., at 112:5-16.

¹³ *Id.* at 24:10-25.

¹⁴ See *id.* at 48:21-49:5 (“Q: Do you know whether or not Standard Insulating ever retailed insulation or insulation-type products or related equipment? A: No. They were an installer of insulation. They never distribute any ...”).

¹⁵ *Id.* at 47:2-17 (emphasis added).

Frederick Judson was first presented to testify as Standard's corporate representative on September 24, 2021. Mr. Judson explained that he was designated the corporate representative because "I have sixty years of experience, knowledge and background of Standard Insulating."¹⁶ Mr. Judson is the son of Standard's founder, David Judson.¹⁷ He started working as a laborer in approximately 1960 when he was 12 years old.¹⁸ He continued working for Standard until he graduated from East Carolina in 1970.¹⁹ Mr. Judson left for a short time before coming back to Standard in the early 1970s.²⁰ Mr. Judson's primary job in the early 1970s was business development or sales until he moved into production scheduling around 1974.²¹ Around 1975, Mr. Judson became the General Manager and an officer of Standard.²² He bought Standard in 1978 and remained owner until the merger that created USI in 1998.²³ Mr. Judson was CEO of USI for a little over 3 years after the merger.²⁴

Mr. Judson explained there are three types of insulation work: residential, commercial, and industrial.²⁵ Residential work includes buildings and houses where people live; commercial is "anything other than a residence that was not industrial."²⁶ Standard had relationships with general contractors for work but "the primary focus was residential [contractors], because that's all we did."²⁷ Throughout his deposition in *Murphy* as well

¹⁶ 9/24/21 Judson Dep. Tr., at 14:3-12.

¹⁷ See Ex. 1, 9/24/21 Judson Dep. Tr., at 94:7-9.

¹⁸ See *id.* at 20:10-18.

¹⁹ See *id.* at 15:17-22, 20:10-18.

²⁰ See *id.* at 23:18-24:4.

²¹ See 9/24/21 Judson Dep. Tr., at 24:10-17, 26:4-9.

²² See *id.* at 27:4-28:1.

²³ See *id.* at 30:13-31:2.

²⁴ See *id.* at 36:12-37:6.

²⁵ See 9/24/21 Judson Dep. Tr., at 33:10-24.

²⁶ *Id.*

²⁷ *Id.* at 88:4-24.

as subsequent depositions, Mr. Judson was adamant that Standard never performed any work at industrial plants:

- “the primary focus was residential because that’s all we did.”²⁸
- Q: Did Standard ever perform industrial insulation work?
A: No.²⁹
- “The fact that Standard Insulating or TopBuild did not do any asbestos-containing work – which is an industrial insulation process – made discovery of any documents or any volume of documents almost nil.”³⁰

Mr. Judson was specifically asked whether Standard had a relationship with Duke Power or performed work at any Duke power plants. He testified that starting in the “mid, late 1970s,” Standard began working on commercial properties for Duke.³¹ According to Mr. Judson, Duke referred to Standard as “an approved residential insulation vendor” and the only work Standard did was on Duke office buildings and residential re-insulation projects.³² Mr. Judson further testified that Standard never performed work at any Duke power plant and never supplied any materials to any Duke power plant:

- Q: To your knowledge, has Standard ever done any work at all at any of the Duke Power plants?
A: No. And I’ll underscore the word there, power plants, that just wasn’t our scope of work.
Q: Okay.
A: So the answer pretty clearly, no.³³
- Q: ... did you sell any materials to Duke at any point in time? Is it your contention – is it the contention of the company that you never did?
A: I don’t recall selling any materials to Duke Power per se ...³⁴

²⁸ *Id.*

²⁹ Deposition Transcript of Frederick Judson, *Robinson v. 3M Company, et al.*, dated May 21, 2026 (“5/21/26 Judson Dep. Tr.”) at 136:10-12

³⁰ *Id.* at 31:9-24 (emphasis added).

³¹ Ex. 1, 9/24/21 Judson Dep. Tr., at 101:15-22.

³² *Id.* at 90:11-92:4, 145:23-146:6.

³³ *Id.* at 90:11-17 (emphasis added).

³⁴ Deposition Transcript of Frederick Judson, *Wannamaker v. 3M Company, et al.*, dated Dec. 8, 2021 (“12/8/21 Judson Dep. Tr.”) at 45:1-20 (emphasis added).

On December 8, 1988, Jeff Griffith III wrote a letter to S.L. Smith identifying the names and addresses of vendors who “have or may have supplied asbestos containing materials to Duke Power Company.”³⁵ The letter identified Standard as one such insulation contractor/materials supplier.³⁶ Mr. Judson was asked about the Duke letter during his 2021 *Murphy* deposition and testified that Mr. Griffith, “made a mistake” and confused Standard with an entirely different company, Standard Insulation Company of North Carolina.³⁷ Mr. Judson then, once again, vehemently denied Standard ever performed any work at industrial job sites: “All of those people on there are industrial insulation contractors except one, that is Standard Insulating Company in Charlotte. Never done it, didn’t do it, didn’t install any of those projects.”³⁸

3. Frederick Judson Testified that Standard Never Performed Asbestos Abatement.

In 2021, Mr. Judson testified that Standard never at any point in time performed any work on any asbestos materials and never performed any asbestos abatement work:

Q: Are you aware of whether Standard ever had to perform repair work or maintenance on any asbestos-containing materials or insulation?

A: I’d be aware of that one and the answer is no.

...

Q: Has standard ever performed any asbestos abatement work?

A: No.³⁹

³⁵ Duke Letter, dated Dec. 8, 1988.

³⁶ *See id.* at 2.

³⁷ 9/24/21 Judson Dep. Tr., at 103:15-20, 105:12-106:10.

³⁸ *Id.* (emphasis added).

³⁹ 9/24/21 Judson Dep. Tr., at 80:21-25, 83:7-9 (emphasis added).

Mr. Judson was shown a 2001 North Carolina workers' compensation order *Hurley v. Standard Insulating Company, et al.*, in which Standard was the defendant-employer.⁴⁰

The evidentiary rulings issued by the N.C. Industrial Commission included:

- Charles Julian Hurley was employed by Standard from 1981 through part of 1985.⁴¹
- Standard had abatement crews which removed asbestos containing insulation.⁴²
- Sometime in 1982 or 1983 Standard's abatement crew performed work at Armstong schools in Greenville, South Carolina and the decedent "helped the abatement crew remove the asbestos filled bags and plastic from the area where the asbestos had been removed."⁴³

Mr. Judson confirmed Mr. Hurley worked for Standard before claiming the evidentiary findings by the North Carolina Industrial Commission that Standard performed abatement work are "incorrect" and any work with asbestos "is totally absolutely against our corporate policy[.]"⁴⁴

4. Documents show Standard's Prior Testimony is False.

In August of 2024 Standard Insulation Company of North Carolina ("SIC") – the same company Mr. Judson blamed when asked about the Duke letter – produced

⁴⁰ See *Hurley v. Standard Insulating Company, et al.*, I.C. No. 714936, dated July 25, 2001 ("WC Order"); see also 9/24/21 Judson Dep. Tr., at 116:7-121:20.

⁴¹ See WC Order, at 3, ¶1.

⁴² See *id.* at 4, ¶8.

⁴³ *Id.* at 5, ¶¶11-13.

⁴⁴ 9/24/21 Judson Dep. Tr., at 119:9-121:9 ("Q: And it says, defendant employer had abatement crews which removed asbestos-containing insulation. So were – I guess, based on what you've told me today, do you take issue with – I guess, with this finding of fact that Standard had abatement crews that removed asbestos-containing insulation? A: That is incorrect. ... So there's several things in there that – that decision has been rendered, that is yesterday's news, but I will tell you there are numerous inaccuracies in that particular document, none of which make a difference right now. Mr. Hurley died from a heart attack. He was a good guy. It is extremely unfortunate. And as – if, if, if he went on to that site and had not gotten a clean bill of health from the hygienist, who's an independent person, and if that's where he got exposure to asbestos, it's a sad situation, because that is totally absolutely against our corporate policy, specifically doing the spray backs. I mean, it's just a sad situation if that's where he contracted exposure to asbestos.") (emphasis added).

documents in *Cox v. 3M Company, et al.*⁴⁵ While reviewing the SIC document production, Plaintiff's counsel identified several documents showing Standard did in fact perform work at industrial plants.

The first such document is an April 1974 purchase order from Mill Power Supply – the purchasing arm of Duke Power – to Standard, to furnish and deliver insulation to the Duke Power Belews Creek Steam Station units 1 and 2 powerhouse precipitator control rooms.⁴⁶ The purchase order was an addendum to a 1972 order and was for over 5,000 square feet of insulation “required for unit 1 steaming.”⁴⁷ Further, the purchase order states the order was confirmed by phone with David Judson, Standard's owner.

BELEWS CREEK 1-2
1ST ADDENDUM TO ITEM 1176.00-1, DATED 10-5-72

**FURNISH AND DELIVER INSULATION FOR THE BELEWS CREEK
 1-2 POWERHOUSE PRECIPITATOR CONTROL ROOMS 502 AND 503
 AS SHOWN ON DRAWINGS BC-1101-6, DETAIL 2, AND BC-1101-
 9-1, DETAILS 18, 23 AND 24.**

**MATERIAL IS TO BE THERMAFIBER FAST-FIT BLANKETS AS
 MANUFACTURED BY UNITED STATES GYPSUM COMPANY, CHICAGO,
 ILLINOIS, OR DESIGN ENGINEERING APPROVED EQUAL.**

QUANTITY REQUIRED IS 5020 SQ. FEET

**TUBES O.C.F. FRICTION FIT @ 120 SQ. FT.
 TUBES U.S.G. THERMAFIBER @ 70 SQ. FT.**

REQUIRED FOR UNIT 1 STEAMING

CONFIRMING PHONE ORDER OF 4-19-74 TO MR. DAVID JUDSON

⁴⁵ *Cox v. 3M Company, et al.*, C/A No. 2024-CP-40-00911, In the Court of Common Pleas for the 5th Judicial Circuit, County of Richland, South Carolina (“*Cox*”).

⁴⁶ Purchase Order, dated Apr. 24, 1974, bates SICNC_Cox_0001119-20.

⁴⁷ *Id.*

The 1974 purchase order directly contradicts the testimony of both Mr. Fleet and Mr. Judson. Mr. Judson was recently confronted with the purchase order and conceded that Standard did in fact supply materials to Duke Power:

Q: Okay. Was – did – just focusing on this location because that’s what we have in front of us, in this – was Duke Power at this location, Belews Creek, was this like a customer that, you know, Standard Insulating was an account or a customer for a while or just a cone-off same?

A: Mill-Power Supply was the purchasing arm for Duke Power. And our warehouse was close to where Duke Power is. We had a good working relationship with Duke Power and Mill-Power. Oftentimes they would pick up products from the warehouse. This looks to be a delivery to the particular respective plant of those 46 packages of insulation.⁴⁸

Another document located within the SIC document production is a 1985 Notification of Asbestos Abatement.⁴⁹ The 1985 Asbestos Abatement Notification shows Standard was hired to remove/abate “10 linear feet of trowelled on asbestos electrical conduit insulation” from the Celanese Fiber Celriver Plant in Rock hill, South Carolina.⁵⁰

Mr. Judson initially testified Standard never performed any work at Celanese.⁵¹ However, when confronted with the 1985 Asbestos Abatement Notification, Mr. Judson not only admitted that Standard perform work at Celanese, but that Standard spent several years in the mid to late 1980s performing asbestos abatement at various locations.⁵² Mr. Judson further admitted he not only knew the asbestos abatement was being performed by Standard, but knew how Standard performed abatement work “because I wanted to be

⁴⁸ 5/21/26 Judson Dep. Tr., at 101:14-102:4 (emphasis added).

⁴⁹ See Ltr. from Robert Williams to Robert Betterton, subject: “Notification of Asbestos Abatement,” dated Dec. 11, 1985, bates SICNC_Cox_0003661-64.

⁵⁰ *Id.* at 3.

⁵¹ See 5/21/26 Judson Dep. Tr., at 88:21-25 (“Q: Did Standard Insulating Company or USI perform any work at, for lack of a better term, the Celanese plant in Spartenburg, South Carolina? A: No, sir.”).

⁵² See *id.*, at 103:7-17, 105:15-107:15 (“Q: So I just want to make sure. So we know that – I have here that Standard Insulating Company did perform asbestos abatement services work at at least Celriver in Rock Hill, South Carolina and at least at other places, because it did it for a couple years. You just don’t have in your memory or in front of you the list? A: That would be correct.”).

familiar with what we're doing.”⁵³ Notably, although Mr. Judson claims to not remember any other locations where Standard performed asbestos abatement work, he used asbestos abatement at Duke Power plants as his example when explaining the process:

... The owner – in this case lets use the example of Duke Power, at that facility. They felt as though they had a, an asbestos product that needed to be removed. They asked and gave specifications from their engineer as to how it was to be done. And it was done in an encapsulated environment. Again, you glove-bag it, you take it out. I am equally sure that there were dozens of plants around the country where the product was used and not maintained as well as Duke Power does it. I have no knowledge of what those companies might be. All I know is when we went into a facility, like this small job, there was a lot of ambiguity as to whose responsibility the airborne fiber might be ...⁵⁴

5. Mr. Judson's Testimony at the July 22, 2026 Hearing

Mr. Judson acknowledged at the hearing in this case that he knew within 48 hours of reviewing his deposition in the *Murphy* case taken on September 24, 2021 that his answers had been, at best inaccurate⁵⁵. Further, he gave the same inaccurate answers in a deposition taken three months later in December of 2021 in the *Wannamaker* case, despite understanding that his answers were inaccurate⁵⁶.

Standard and its subsidiaries hired subcontractors to do much of the asbestos abatement work:

Q. ..Despite Standard Insulating, Standard Specialty and subsequently Standard Environmental doing asbestos anatement work, that what actually occurred was those companies or a combination of those hired contractors to do the abatement work under your license, correct?

A: In many cases, yes.⁵⁷

⁵³ *Id.* at 113:19-115:2 (“Q: Now, do you have any personal knowledge as to actually how this abatement was performed? Was it – who was it near? Who – how was it done, what – you know, what documentation was required? Anything like that? A: Yes, because I wanted to be familiar with what we’re doing ...”).

⁵⁴ *Id.*

⁵⁵ See Transcript of July 22, 2026 hearing pg 36.

⁵⁶ *Id.* At 37

⁵⁷ *Id.* at 41

Q. Mr. Judson, do you understand the relationship between a contractor and a subcontractor?

A: Yes, ma'am.

Q: And when you, as a contractor, Standard, any one of your Standards, as a contractor on a job, you're the one that gets paid, are you not?

A: Yes, ma'am

Q. And then you pay the subcontractors?

A: Yes, ma'am

Q. But you have responsibility for their work, do you not?

A: That is correct.

Q. And that includes their asbestos work; is that not correct?

A: Yes. ⁵⁸

Mr. Judson's testimony at the hearing made clear he had given a second deposition, again, giving inaccurate testimony about the role Standard and his other affiliated companies played in asbestos remediation projects.

Despite his testimony that Standard hired sub-contractors to do abatement work, Standard Speciality Contractors, and later, Standard Environmental, were subsidiaries of Standard which were set up to do exactly that kind of work. Perhaps Standard did hire yet other contractors to do abatement work, but Standard Environmental and Standard Specialty are both listed as the contractors doing the work in the North Carolina Department of Health Services document introduced at the hearing on this matter. At best, Standard and its subsidiaries were responsible for the work of the additional sub-

⁵⁸ *Id* at 43-44

contractors they hired, at worst, it was Standards' subsidiaries that Standard hired to do the work, further illustrating the inaccuracies in Mr. Judson's testimony.

C. Standard Failed to Comply with Its Discovery Obligations.

On March 31, 2026 Plaintiff noticed the deposition of Standard to take place at a mutually agreeable time.⁵⁹ Plaintiff's counsel conferred with counsel for Standard and the parties agreed to conduct the deposition in conjunction with the *Edward v. 3M Company, et al.*, matter on May 21, 2026.⁶⁰ Prior to the deposition, Standard produced approximately 14,000 pages of documents. However, Mr. Judson confirmed and no new documents were identified by Standard since his 2021 depositions and he did not review the production in anticipation of his deposition.⁶¹

Mr. Judson explained the reason Standard limited and/or failed to perform any additional searches was because they still maintained the company never performed any industrial work or any work involving asbestos so there were no documents to find:

Q: Okay. What documents did you review if you didn't review all of them?

A: I was asked to do a search for any documents that might exist relating to anything to do with operations, contracts, exposures that might impact the two referenced individuals. The searches that I did and the documents I reviewed were what was gathered from the search. They were miniscule, in terms of the transfer over the years of locale that those documents might have existed. The fact that Standard Insulating or TopBuild did not do any asbestos-containing work – which is an industrial process – made discovery of any documents or any volume of documents almost nil.⁶²

Previously, Mr. Judson testified four locations were searched for documents: (1) the building he owned in Charlotte where Standard was located starting in 1978; (2) a

⁵⁹ 30(b)(6) NOD of Topbuild Corp.

⁶⁰ See 1st Amended NOD of Topbuild Corp.

⁶¹ See 5/21/26 Judson Dep. Tr., at 50:9-51:12.

⁶² *Id.* at 31:9-24.

location in Salt Lake City, Utah where Standard moved to when it left Charlotte; (3) a Topbuild office in St. Paul, MN; and (4) a Topbuild facility in Florida.⁶³ Mr. Judson testified none of those locations had relevant physical records, but an electronic file was located on USI's server by searching "Standard Insulating."⁶⁴ He knows the electronic file was sent to Standard's counsel but did not have any information about what the file contained and doesn't know what, if any, other search terms were performed on USI's server.⁶⁵ No searches were conducted other than at the locations and server identified by Mr. Judson, and no requests were made to any entities outside Standard/Topbuild.

III. ARGUMENTS & AUTHORITIES

South Carolina Rule of Civil Procedure 26(b)(1) provides that a party is entitled to discovery on

any matter, not privileged, which is relevant to the subject matter involved in the pending action whether it relates to a claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

Rule 30(b)(6), SCRCF provides that a party may notice the deposition of a corporation and describe with reasonable particularity the matters on which examination is requested. In that event the corporation shall designate one or more persons and for each person designated, the matters on which he or she will testify. The rule does not provide an alternative to designating a representative on properly noticed areas of inquiry.

A. Discovery Sanctions Against Standard are Appropriate

⁶³ See Ex. 1, 9/24/21 Judson Dep. Tr., at 42:14-43:2, 47:14-51:3, 52:8-53:8.

⁶⁴ See *id.* at 53:17-25, 131:19-133:10.

⁶⁵ See *id.*; see also Ex. 4, 5/21/26 Judson Dep. Tr., at 34:18-35:8.

The selection of a sanction for discovery violations is within the trial court's discretion. *Kershaw County Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990).

“In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice.” *Griffin Grading & Clearing, Inc. v. Tire Service Equip. Mfg. Co.*, 334 S.C. 193, 199, 511 S.E.2d 716, 719 (Ct. App. 1999) (citing *Laney v. Hefley*, 262 S.C. 54, 202 S.E.2d 12 (1974)).

The South Carolina Court of Appeals previously explained “[t]he entire thrust of the discovery rules involves full and fair disclosure, to prevent 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). “Discovery sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent.” *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 123, 512 S.E.2d 510, 524 (Ct. App. 1998). The sanction should be aimed at the specific conduct of the party sanctioned. *Id.* (citing *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990)). While “[t]he imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court, ... whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules.” *Temple v. Tec-Fab, Inc.*, 370 S.C. 383, 390, 635 S.E.2d 541, 544 (Ct. App. 2006). Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result, overleniency must be avoided. *Id.*

Here, Standard willingly and intentionally provided false testimony under oath about the entire nature of Standard's business, including testimony that Standard never performed industrial work, never performed any work with asbestos-containing materials, never performed any work at Duke Power Plants, never supplied materials to Duke Power, and never performed any asbestos abatement.⁶⁶ Standard's false representation was only discovered due to documents being produced by a similarly named Defendant in a different case.

The discovery rules are designed to allow parties to prepare for trial. Standard's complete disregard for the rules has significantly prejudiced Plaintiff's ability to prepare for trial, including Plaintiff being unable to determine the full scope of Standard's business, the job sites Standard performed work, the locations Standard supplied asbestos-containing materials, and the locations Standard performed asbestos abatement work. The factors the Court is to consider in awarding sanctions – the discovery posture of the case, willfulness, and degree of prejudice – all weight heavily in favor of imposing significant sanctions.

Under modern practice in South Carolina, where a party is in possession of evidence but does not make it available to the other party, then the party who sought the evidence is permitted a "negative inference" charge to the jury.

Plaintiff requested this Court allow evidence of Standard's false testimony, instruct the jury that it can draw adverse inferences from Standard's false testimony, grant the presumption that Richard Robinson was exposed to asbestos insulation supplied, installed, and/or removed by Standard at various locations during his time as an insulator from 1966-1983, and prohibit Standard from introducing any opinions, testimony, or

⁶⁶ See *supra*, Section II.

evidence suggesting that it did not sell, install, or remove asbestos-containing insulation at any worksite of Plaintiff.

B. Standard is Compelled to Comply with Its Discovery Obligations.

Plaintiff further requested that Standard be compelled to comply with its discovery obligations. Standard, just as every other corporate defendant, has an obligation to prepare a representative of its choice to provide full and truthful testimony regarding the nature and scope of its business as well as the locations it performed work. Standard's discovery obligations also included conducting reasonable searches to determine what job sites Standard supplied materials to and what locations Standard performed insulation work, including installation, repair, and abatement. Standard approached its document search under the false guise that it never performed industrial work or abatement work, and thus, there were no documents to find:

Q: Okay. What documents did you review if you didn't review all of them?

A: I was asked to do a search for any documents that might exist relating to anything to do with operations, contracts, exposures that might impact the two referenced individuals. The searches that I did and the documents I reviewed were what was gathered from the search. They were miniscule, in terms of the transfer over the years of locale that those documents might have existed. The fact that Standard Insulating or TopBuild did not do any asbestos-containing work – which is an industrial process – made discovery of any documents or any volume of documents almost nil.⁶⁷

Standard's failure to make any effort to determine what locations it supplied to and/or performed work at, in conjunction with its failure to present a witness prepared to provide complete and truthful answers to Plaintiff's questions has resulted in significant prejudice to Plaintiff and has made it impossible to determine what locations Standard supplied to and/or performed work at. As such, Plaintiff requested an Order compelling

⁶⁷ Ex. 4, 5/21/26 Judson Dep. Tr., at 31:9-24.

Standard to conduct a proper search for all information reasonably available, including but not limited to, record requests for the following:

- Internal document searches for all asbestos abatement performed by Standard.
- Record requests for all asbestos abatement performed by Standard. The record requests should include, but are not limited to, requests (FOIA or otherwise) to: OSHA, South Carolina Department of Environmental Services, North Carolina Department of Health and Human Services, and North Carolina Health Hazards Control Unit;
- Records requests to Duke Power and Mill Power Supply identifying all work performed and/or materials supplied by Standard;
- Record requests to Hoescht Celanese, Celanese Fiber, and Fiber Industries identifying all work performed and/or materials supplied by Standard;
- Record requests to all job sites and/or locations identified in this matter or any prior lawsuits in which Standard has been involved identifying all work performed and/or materials supplied by Standard.

The Court grants this requests and orders that this be undertaken and a prepared representative be presented.

IV. CONCLUSION

The sanctions sought by Plaintiffs and ordered by the Court are directly related to the conduct complained of and are the minimum sanctions necessary to undo the harm caused by Standard's complete disregard for the discovery rules as well as its intentional and willful failure to cooperate in good faith in the discovery process. Standard's discovery misconduct has caused significant prejudice to Plaintiff. Thus, the Court enters the following sanctions:

1. evidence of Standard's false testimony will be permitted to be offered into evidence;

2. the Jury will be instructed that it can draw adverse inferences from Standard's false testimony;
3. the Court will instruct the jury that it is to presume that Richard Robinson was exposed to asbestos insulation supplied, installed, and/or removed by Standard at various locations during his time as an insulator from 1966-1983; and
4. Standard is precluded from introducing any opinions, testimony, or evidence suggesting that it did not sell, install, or remove asbestos-containing insulation at any worksite of Plaintiff.

Therefore, it is hereby **ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion to compel and Motion for sanctions is **GRANTED**.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Richard E Robinson vs 3M Company , defendant, et al
Case Number: 2025CP4004961
Type: Order/Compel

So Ordered

Jean H. Toal
