

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

)  
) FOR THE SIXTEENTH JUDICIAL  
) CIRCUIT

Timothy W. Howe, Individually and as  
Personal Representative of the Estate  
of Wayne Erwin Howe, deceased, and  
Jeanette Howe,

)  
) Civil Action No.: 2015-CP-46-03456  
)

Plaintiffs,

ORDER REGARDING  
COVIL CORPORATION  
DISCOVERY MOTIONS

v.

RECEIVED

Air & Liquid Systems, et al.,

MAR 05 2018

Defendants.

SC Court of Appeals

A hearing was held in Columbia, South Carolina on January 24, 2018. The Court ordered the Defendant to produce documents requested in Plaintiff's 30(b)(6) deposition notice by Monday, January 29, 2018. The Court further ordered to produce a witness on or before February 9, 2018 to discuss the noticed topics based on what was known or reasonably available to the company.

The deposition of Jim Covil demonstrates that the company made no effort to ascertain what was available to the company regarding multiple locations identified in Plaintiff's notice. Additionally, a reasonable effort to ascertain insurance coverage and limits for the company was not made despite a properly noticed deposition request.

"The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial." *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). "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," sanctions must be imposed. *Id.*

While Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result, over leniency must be avoided. *Id.* “If a party fails to obey an order or provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment.” *Griffin Grading & Clearing, Inc. v. Tire Serv. Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).


“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.” *Id.* at 199, 511 S.E.2d at 719. In *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), the South Carolina Court of Appeals stated “[t]he 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.” *Id.* “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).

Defendant has failed to produce a witnesses to discuss what is known to the company regarding the location and nature of its work as an insulation supplier and contractor. This information was sought in the corporate representative deposition notice as well as in this Court’s Standing Order Discovery. Defendant repeatedly failed to produce relevant and requested information. Thereafter, Defendant failed to comply with this Court’s order on January 24, 2018. Trial is set for March 12, 2018. The failure to produce records prevents the parties from preparing for trial. Plaintiff alleges injuries as a result of exposure from insulation. Defendant is an insulation contractor who failed to comply with this Court’s order to ascertain

what is known or reasonably available to the company about the location of its work. As such, the court will strike Defendant's pleadings.

In addition, the Court orders Covil to produce a witness regarding Topic 21 who has researched the issue of what insurance coverage exists for the company. This request, requires Covil to obtain information from your insurers regarding the nature and limit of the policies at issue. This deposition is to occur on or before March 2, 2018.

**AND IT IS SO ORDERED.**



Jean Hofer Toal, Chief Justice of  
the South Carolina Supreme Court,  
Retired, Acting as Circuit Court  
Judge

February 23, 2018

Columbia, South Carolina.