THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Jean H. Toal, Circuit Court Judge

Case No. 2017-CP-42-04429

Jerry Howard Crawford, individually and as Personal Representative of the Estate of Evelyn Kay Crawford, Respondent

v.

Celanese Corporation, Aurora Pump Company; Carrier Corporation, CNA Holdings, LLC, f/k/a Hoechst Celanese Corporation; Covil Corporation; Crane Co., Daniel International Corporation f/k/a Daniel Construction Company, Inc.; Flowserve Corporation, individually and as successor-in-interest to Anchor/Darling Valve Company, and individually as successor-in-interest to Durco Pumps; Flowserve, US Inc.; Fluor Constructors International, f/k/a Fluor Corporation; Fluor Constructors, International, Inc.; Fluor Daniel Services Corporation, Fluor Enterprises, Inc.; Ford Motor Company; Genuine Parts Company, d/b/a Rayloc (a/k/a NAPA); The Goodyear Tire & Rubber Company; Goulds Pumps, Inc.; Grinnell, LLC f/k/a Grinnell Corp., f/k/a ITT Grinnell Corp.; Honeywell International, Inc., f/k/a Allied-Products Liability Signal, Inc., sued as successor-in-interest to Bendix Corporation; Ingersoll-Rand Company; John Crane, Inc., Metropolitan Life Insurance Company, a wholly owned subsidiary of Metlife Inc.; National Automotive Parts Association, (NAPA); Parker-Hannifin Corporation, Pneumo Abex, LLC, successor-in-interest to Abex Corporation; Spirax Sarco, Inc.; SPX Cooling Technologies, Inc., individually and as successor-in-interest to Marley Cooling Towers, Co.; Standard Motor Products, Inc.; sued as successor-in-interest to EIS Automotive, United States Fidelity & Guaranty Company; and The William Powell Company, Defendants,

Of Which, Covil Corporation is the Appellant.

APPELLANT'S REPLY BRIEF

WALL TEMPLETON & HALDRUP, P.A.

Mark H. Wall
Morgan S. Templeton
Graham P. Powell
Thomas B. Boger
145 King Street, Suite 300
Charleston, SC 29401
Tel: 843-329-9500
Mark.Wall@WallTempleton.com
Morgan.Templeton@WallTempleton.com
Graham.Powell@WallTempleton.com
Tommy.Boger@WallTempleton.com
Attorneys for the Appellant

Table Of Contents

Table Of Authorities

ARGUMENT AND ANALYSIS

Appellant Covil Corporation ("Covil") submits this reply in response to the Brief of Respondents Jerry Howard Crawford and Evelyn Kay Crawford (collectively "Crawford"). This court should reverse the trial court's order granting a new trial following the jury's verdict finding Covil was not liable to Crawford on the causes of action asserted for negligence, strict liability, and breach of warranty because the trial judge's decision is controlled by errors of law and the trial court abused its discretion.

First, the trial judge's decision to grant a new trial is based on the impermissible reversal of the burden of proof and therefore controlled by error of law and should be reversed. See Brief of Appellant at 11. Second, the defense verdict is supported by the evidence presented and accepted by the jury and the trial judge's decision to grant a new trial where the verdict was not "wholly unsupported by the evidence" is therefore controlled by error of law, constitutes an abuse of discretion, and should be reversed. See id. at 11-13. Third, the trial judge admitted that her decision to grant a new trial was consistent with her conscious unsuccessful effort to direct proceedings towards a favorable outcome for Crawford at trial demonstrating the failure to recognize and appreciate the responsibility of fairness and impartiality. See id. at 13. The trial judge's decision is therefore controlled by error of law, constitutes an abuse of discretion, and should be reversed.

Crawford argues (1) the trial court's decision to grant a new trial was not an abuse of discretion nor "wholly unsupported by the evidence" because there was conflicting evidence and the preponderance of the evidence supports a verdict in favor of Crawford, Brief of Respondents at 15; (2) Covil's reliance on Worrell v. South Carolina Power Co. is misplaced because the appellate court may affirm the trial court even if the jury's verdict was not wholly unsupported by the evidence, id. at 19; (3) the trial judge's decision was not based on a lack of fairness and impartiality

because the court's statements were made outside the presence of the jury and have no bearing on whether the trial judge abused her discretion, id. at 19; (4) the trial court did not commit an error of law by stating at the hearing on Crawford's motion for judgment notwithstanding the verdict and for a new trial that the jury's verdict was "contrary to the clear preponderance of the evidence" because the trial court's written order correctly states that the trial judge may grant a new trial if the verdict "is contrary to the fair preponderance of the evidence," id. at 19-20; and (5) the trial court did not shift the burden of proof to Covil by finding that Covil failed to present evidence that it did not supply the insulation material but rather properly considered conflicting evidence concluding that the trial record did not justify the verdict.

I. The Trial Court Should Be Reversed Because The Order Granting A New Trial Is Controlled By Errors Of Law And The Trial Court Abused Its Discretion

A. The Trial Court's Order Granting A New Trial Is Controlled By Compounded Errors Of Law In The Reversal Of The Burden Of Proof

The trial court should be reversed because the order granting a new trial pursuant to the thirteenth juror doctrine is controlled by the trial court's error of law shifting Crawford's burden of proving Covil's liability to Covil to disprove liability to Crawford. Crawford has the burden of proving that Covil is liable to Crawford with respect to the causes of action asserted for negligence, strict liability, and warranty. See Brief of Appellant at 7. The trial court's order granting a new trial is based on Covil's purported failure to show it *did not* do the things complained of by Crawford. See id. If this court finds that the trial judge's decision to grant a new trial is based on this impermissible reversal of the applicable standard as to the burden of proof, the trial court's order must be found to have been controlled by an error of law and reversed. See Skinner v. Trident Med. Ctr., L.L.C., No. 2004-UP-496, 2004 WL 6334912, at *1 (S.C. Ct. App. Sept. 30, 2004) (affirming trial court's order granting defendant's motion for a new trial and noting that the

trial court's order was not challenged on the basis that it was controlled by an error of law such as the application of an incorrect standard).

Contrary to the clear language in the trial court's order, Crawford argues that "the trial court did not attempt to shift the burden to Covil by stating that it failed to present evidence regarding the use of Covil's products at Celanese Spartanburg." Brief of Respondents at 20. The trial court specifically found that "Covil failed to present any evidence to contradict Plaintiff's evidence that Covil was the supplier of the asbestos-containing thermal insulation installed at Celanese."[1] [Order at 7; R. ___]. Although opinions applying the thirteenth juror doctrine hold that a trial judge is not required to set forth express findings of fact, here the trial judge did make such findings within the framework of the order demonstrating the court's application of a reversed burden of proof and, therefore, the trial judge's decision is manifestly controlled by errors of law. See Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990) (finding neither judge nor jury are required to state reasons for a verdict).

The imposition of a reversed burden of proof is readily apparent beginning with the trial judge's decision that Crawford conclusively proved that Covil supplied insulation at the plant. See [Order at 7; R. ___] (finding that "Mr. Crawford was exposed to asbestos-containing insulation, which Plaintiff proved was supplied by Covil"). The court's order then includes no consideration of any potential shortcomings in Crawford's presentation of the evidence that could have led to the jury's verdict for Covil before turning to the issue of whether Covil met its improperly shifted

[1] As set forth, *infra*, Covil absolutely presented evidence that contradicted the evidence presented by Crawford that failed to establish that the insulation was supplied by Covil. Therefore, the trial court's order in this regard is simply wrong.

burden of disproving Crawford's claims.[2] Following this negative inference precursor, the court stated that "Covil's defense was that it did not supply the thermal insulation installed at Celanese, pointing only to the absence of sales invoices or records of sales to that facility."[3] [Order at 7; R. ___]. The trial court then found that Covil failed to present evidence that Covil was not the supplier at Celanese and "failed to present any evidence to contradict any of the testimony that Covil was one of Daniel Corporation's primary insulation suppliers" during the time period that Daniel Corporation installed insulation at Celanese.[4] [Order at 7-8; R.___] (emphasis added).

Crawford argues that the trial court committed no error of law by granting the motion for a new trial nor did the trial court shift the burden of proof. Brief of Respondents at 20. Crawford argues that "Covil attempts to manufacture error by giving this Court snippets of statements made at trial or at the hearing on [Crawford]'s motion for a new trial." Id. Crawford argues that statements were made by the court in context of discussions regarding "Covil's failure to present

---

[2] The confident tone of the trial court's order finding that Crawford absolutely proved that Covil supplied the insulation stands in contrast to the trial court's remarks during the motion hearing. Again compounding error and clearly shifting the burden to Covil, the trial judge said that "[t]he plaintiffs' evidence was not robust, but it was the only direct evidence that there was about who supplied." [JNOV TT at 47:24-48:1; R.___]. ". . . I don't say that the plaintiffs' evidence is robust . . . . but the evidence from . . . Celanese and Daniels is not at all dispositive and the evidence from Covil is . . . only that they had no records. So that is the dilemma I face." [JNOV TT at 49:10-16; R.___]. By contrast, in the order granting a new trial, the trial court found that "Plaintiff presented overwhelming evidence to support each of his claims against Covil." [Order at 6; R. ___].

[3] Again this finding by the court is simply wrong. As set forth, *infra*, Covil argued not only the absence of its own records but any testimony or records from the voluminous documents of Daniel Construction or Celanese that likewise failed to establish that Covil supplied the insulation.

[4] As set forth, *infra*, this finding is simply false and ignores the record. Further, Covil never disputed that it was one of Daniel Construction's insulation suppliers, see Brief of Appellant at 7, which hardly equates with a finding that Covil in fact supplied the insulation at the Celanese plant nor that Crawford otherwise met its burden of proving Covil's liability. Moreover, the fact that Covil was one of Daniel Construction's suppliers neither justifies any negative inference of Covil's liability nor shifting the burden to Covil to disprove that it supplied the insulation.

evidence to rebut [Crawford]'s evidence that Covil supplied asbestos-containing products to the Celanese Spartanburg plant" and the court "gave Covil the opportunity to tell the court what evidence was presented in defense of the claim that that Covil supplied asbestos-containing products Celanese Spartanburg." Id. Although the "snippets" to which Crawford refers are not specifically identified, the context in which the trial judge reached the conclusion that "Covil failed to present any evidence to contradict Plaintiff's evidence that Covil was the supplier of the asbestos-containing thermal insulation installed at Celanese" is clear from the trial judge's conduct of the proceedings. See [Order at 7; R. ___]. The court's burden shifting analysis was evident during the hearing on Crawford's motion as follows:[5]

> THE COURT: Well, here – here was the big issue as I saw it in this case and the only real dispute in this case. It was product identification. It was whether or not Covil products were used at Celanese when Mr. Crawford worked there.
>
> [JNOV TT at 28:17-22; R.___].
>
> . . .The only issue was, [w]ere Covil products used at Celanese? [Covil] offered no proof about any of this . . .
>
> [JNOV TT at 29:9-12; R.___].
>
> MR. BOGER: Additionally, we . . . relied on the Celanese 30(b)(6) witness and the Daniel 30(b)(6) witness. . . who both confirmed that they have gone through all of their records. The . . . Celanese 30(b)(6) witness said they have no records of Covil being on site or selling them any products in the relevant time frame. The Daniel 30(b)(6) witness said, "No, we did the installation job."
>
> [JNOV TT at 31:7-16; R.___].
>
> There was the Daniel 30(b)(6) witness that said the only evidence that they had that Covil was at the Celanese plant was that there were three employees that installed a fire retardant material on some structural steel stairs and that they had searched

[5] During the hearing on Crawford's motion for judgment notwithstanding the verdict and for a new trial, the trial judge referenced testimony that was not actually presented during trial and misstated testimony that was presented. As such, it should be noted that the court's statements during the hearing should not be regarded as an accurate reflection of the evidence presented at trial. However, the court's statements during the hearing demonstrate that the court's decision to grant a new trial was controlled by error of law because the trial judge required that Covil disprove Crawford's claims as subsequently set forth in the court's written order.

the records and have not had any results for the sales that Covil made to Daniel as Daniel admitted they installed the insulation. That all was presented . . .

[JNOV TT at 31:22-32:5; R.___].

MR. BOGER: The Daniel 30(b)(6) witness said . . . they did the installation of the asbestos, that they did the job. . . .

THE COURT: Yes. . . But . . . they said, ". . . we have no records about . . . who supplied the insulation." . . . They did the insulation job, but they don't have any records of who supplied the insulation, right? That's the most they could say. . . [w]ell, they had to get the insulation from somewhere, and their response was, "[w]e don't have any records about who supplied the insulation," correct? . . . So then what we've got left after we get through the 30(b)(6)s of your company, Celanese and Daniel is some insulation was used when Daniel did insulating work in the plant. . . . So insulation clearly was used at the plant. . . These three companies said, "We don't have any record of who's the insulation supplier. . ."

[JNOV TT at 32:16-20; 32:22-24; 33:2-5; 33:8-11; 33:14-23; R.___].

THE COURT: . . . that's the sum and substance of what we have as evidence in this case on who supplied it, correct?

[JNOV TT at 34:5-7; R.___].

THE COURT: All right. Well, then what you've got, Mr. Boger, simply and solely is there is at least some evidence that Covil supplied, and from the other side there's no information about who supplied it, right?

MR. BOGER: I disagree, Your Honor. I think that a reasonable juror could take the testimony of those 30(b)(6) witnesses who are sitting here today looking at records from 50 years ago that are showing no evidence of sales from Covil to Celanese or to Daniel for that plant versus a gentleman that has gone off from his memory 40 years ago that says, "I think I saw a Covil truck at the plant."

[JNOV TT at 34:20-35:8; R.___].

THE COURT: But there - - the other thing that was, you know, said was they don't know who supplied it. They know insulation was used. It was used extensively in the Celanese operation. They have miles and miles of piping that transmits very high temperature from materials, and they insulated those pipes.

MR. BOGER: And Daniel did the work and Daniel had other sources that it got insulation from, including manufacturers.

THE COURT: That's what I'm trying to ask you is, [w]hat was there in the evidence about any other supplier that supplied insulation during this time? Did y'all put up anything about that?

. . . So then all you've got . . . we know that there was plenty of insulation used at the plant. We know that. . . . But we have from your side no information about the name of any supplier and from their side some information about Covil. That's undisputed evidence, is it not?

MR. BOGER: Not when at least three witnesses testified that they don't have any records showing any sales from Covil to Daniel or Celanese

. . .

THE COURT: . . . [s]o "[w]e have no records" is some evidence of who supplied the insulation?

MR. BOGER: It's eviden[ce] that Covil did not supply the insulation. . . .

THE COURT: My trouble with that, Mr. Boger, is there was nothing put in about any sales receipts from anybody that supplied insulation, yet we know that there was a lot of insulation in this plant.

[JNOV TT at 35:10-24; 36:5-16; 36:22-37:8; R.___].

MR. BOGER: . . .when their witness says . . . "I went through all of our 40 boxes of records and didn't find anything, no sales receipts" . . . [and] [h]e found evidence that we were there - -that we were there installing fire retardant on some steel stairs. So it wasn't that "I didn't find anything." It was that "I found this, but I didn't find - - I found something on fire retardant. I didn't find anything on asbestos."

And . . . these were multiple witnesses and they're credible people, professional 30(b)(6) witnesses for these companies that, again, went back and looked at documents from 40 years ago and couldn't find anything versus a gentleman who was not a distributor, was not involved in purchasing insulation. He was an insulation worker that says, "I think Covil supplied the insulation. I think I saw a truck."

[JNOV TT at 37:20-38:16; R.___].

THE COURT: You don't have any evidence on your side.

[JNOV TT at 38:25-39:1; R.___].

Although the trial court should be reversed because the decision to grant a new trial results from the trial court's reversal of the burden of proof expressly set forth on the face of the order and is therefore controlled by error of law, Crawford's arguments regarding the trial judge's conduct of the trial and hearing further support Covil's argument. The trial court's reversal of the burden of proof is readily apparent from the face of the order and the trial judge's approach

evidenced by the hearing transcript could not be more clear. "Juries do not have to accept even uncontradicted testimony, much less testimony that contradicts itself." Nestler v. Fields, No. 2016-001541, 2019 WL 361651, at *2-3 (S.C. Ct. App. Jan. 30, 2019) (citing Black v. Hodge, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991) (stating that "[t]he fact that testimony is not contradicted directly does not render it undisputed. . . . [t]here remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation."). Covil was not required to establish that it did not supply the insulation material. The trial court thought otherwise granting a new trial based on the imposition of a reverse standard of proof and, therefore, the order granting a new trial is controlled by error of law and should be reversed.

B. The Defense Verdict Is Supported By The Evidence Presented And Accepted By The Jury And Therefore Not "Wholly Unsupported By The Evidence"

(1) The Trial Court Erred By Applying The Preponderance Of The Evidence Standard

As set forth in Covil's brief, it is understood and recognized that our appellate courts have indicated that the review of a trial court's decision to grant a new trial based on the thirteenth juror doctrine is limited "to consideration of whether evidence exists to support the trial court's order." See Brief of Appellant at 7 (citing Curtis v. Blake, 392 S.C. 494, 505, 709 S.E.2d 79, 85 (Ct. App. 2011)). Equally certain, however, is that our appellate courts consistently adhere to principles safeguarding the fact finding province of the jury applying the thirteenth juror doctrine, directly or indirectly, to determine from the record whether the jury's verdict was "wholly unsupported by the evidence." See Brief of Appellant at 6 (citing Worrell v. S.C. Power. Co., 195 S.E. 638, 641 (S.C. 1938) ("[t]his court has no jurisdiction to review matters of fact in an action at law; except to determine if a verdict is wholly unsupported by evidence") (emphasis added). Worrell remains

good law and the "seminal" opinion applying the thirteenth juror doctrine. See Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 567 S.E.2d 851 (2002) (applying the federal court thirteenth juror standard and reversing trial court's order granting new trial following defense verdict noting distinctions between federal court clear and convincing standard and state court preponderance of the evidence standard).

Although Crawford argues that the "wholly unsupported by the evidence" standard applies only to appellate review of the trial court's order and has no application to a trial judge's decision to grant a motion for new trial, opinions applying the thirteenth juror doctrine continue to reference whether the jury's verdict was "wholly unsupported by the evidence" based on the record below even if the appellate courts hold the trial court to a lesser standard reviewing the jury's verdict and extend further latitude to the judge's decision on appeal. "In considering a motion for a new trial, the trial judge must look to see if the evidence justifies the jury verdict." Lane v. Gilbert Const. Co., 383 S.C. 590, 599, 681 S.E.2d 879, 883 (2009) (citing Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (emphasis added); see Johnson v. Hoechst Celanese Corp., 317 S.C. 415, 421, 453 S.E.2d 908, 912 (Ct. App. 1995) ("[u]nder the thirteenth juror doctrine, a trial court may grant a new trial if the judge believes the verdict is unsupported by the evidence") (citing Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265 (1990) (emphasis added); see also Brief of Respondent at 15 (referencing the standard set forth in Lane).

Covil believes that the trial judge's decision should be viewed in the context of the foundation for the rule and its historical context. See Brief of Appellant at 6-7 (noting that the South Carolina Supreme Court has historically found that it "has no jurisdiction to review matters of fact in an action at law; and therefore, unless a verdict is wholly unsupported by evidence, or is so excessive as to justify the inference that it was capricious, or influenced by passion, prejudice,

or other considerations not found in the evidence . . .) (citing Blackmon v. Kirven, 170 S.E. 157 (S.C. 1933)). The trial court's order granting a new trial references neither Worrell nor the "wholly unsupported by the evidence" standard. See [Order at 5-6; R. ___]. The order references various opinions for the proposition that a trial judge may grant a new trial when the evidence does not justify the verdict, if the verdict is contrary to the fair preponderance of the evidence, or if the trial judge finds justice has not prevailed, and that the court may take its own view of the evidence with the decision to grant a new trial in the discretion of the trial judge. See [Order at 5-6; R. ___]. The trial court then states that "[w]ith this standard in mind, the Court finds that the jury's verdict in favor of Covil is unsupported by the evidence presented during trial." See [Order at 6; R. ___]. The trial court's order states that Crawford's motion for a new trial is granted based on "the overwhelming evidence against Covil on the issues of Mr. Crawford's exposure to Covil-supplied insulation, Covil's knowledge of the danger and failure to warn, and Mr. Crawford's injury and damages, the Court finds that the jury's verdict for Covil was contrary to the fair preponderance of the evidence." See [Order at 8; R. ___]. Accordingly, the trial court granted a new trial based on its own view of the "preponderance of the evidence" standard, the "evidence does not justify the jury's verdict" standard, or both.

Although prior opinions reference the "preponderance of the evidence" standard, Covil respectfully submits that this court should find that application of this standard by any court and the trial judge here amounts to an error of law. See [Order at 8; R. ___]. First, the "preponderance of the evidence" standard is referenced in—but not clearly supported by—prior appellate opinions and represents a major shift from the historical purpose and parameters of the thirteenth juror doctrine. The trial court's order cites Dent v. Redd for the proposition that "[i]t is settled that the trial judge has the authority and the responsibility to grant a new trial when, in his judgment, the

verdict of the jury is contrary to the fair preponderance of the evidence." [Order at 6; R. ___] (citing Dent v. Redd, 270 S.C. 585, 586, 243 S.E.2d 460, 460 (1978)). Dent appears to be the first opinion that references a "fair preponderance of the evidence" standard without citation to any prior authority despite language in the opinion that this standard is "settled." See id. The "preponderance of the evidence" language appears in later opinions based on this language originating with Dent and with the "preponderance of the evidence" language frequently commingled with other standards. It should be noted here the South Carolina Supreme Court has acknowledged inconsistencies and varying language used by appellate courts in opinions reviewing decisions to grant or deny motions for a new trial based on the thirteenth juror doctrine. See S.C. State Highway Dep't v. Clarkson, 267 S.C. 121, 126, 226 S.E.2d 696, 697 (1976) (stating that "regardless of what might appear to be inconsistencies in the statement of the principles governing appellate review of the exercise of the discretion of the trial judge in such matters, the principle consistently applied in all of the cases has been that the decision by the trial judge will not be disturbed unless his finding is wholly unsupported by the evidence, or the conclusion reached has been controlled by error of law.").[6] Here, Covil submits that the "preponderance of the evidence" standard lacked any precedent when it first appeared in Dent, the standard was not essential to the court's analysis and the outcome in Dent,[7] and this language represents a departure

[6] It should be noted, too, that some differences in the manner in which the law is set forth in appellate opinions applying the doctrine are due not only to changes to the collective jurisprudence over time but also whether liability was contested and whether the jury reached a verdict for the plaintiff or defendant. See, e.g., Vinson, 324 S.C. at 408-09, 477 S.E.2d at 725 (upholding trial court's decision to deny plaintiff's motion for a new trial following defense verdict because the jury returned a verdict in favor of the defendant "thereby making a clear and unambiguous finding that [the defendant] was not liable for [the plaintiff]'s alleged damages.") (distinguishing Page v. Crisp, 303 S.C. 117, 399 S.E.2d 161 (Ct. App. 1990) (finding plaintiff entitled to damages where liability is admitted unless the plaintiff completely fails to prove damages).

[7] As stated by the court in Dent:

from the historical purpose and application of the thirteenth juror doctrine that should be rejected by this court generally and regarded as error of law in its application by the trial in the case at bar.

Second, application of the "preponderance of the evidence" phraseology introduces a balancing or weighing of testimony by the trial court that significantly departs from the issue of whether the jury's verdict was "wholly unsupported by the evidence." Here, the trial court's order does find "that the jury's verdict in favor of Covil is unsupported by the evidence presented at trial" but does not state that the verdict is "wholly unsupported by the evidence" and goes on to analyze (some but not all) of the evidence ultimately finding the verdict "without evidence" under the preponderance of the evidence standard.[8] [Order at 6-7; R. ___]. A trial judge's decision that a jury's verdict "is unsupported by the evidence presented at trial" is similarly worded but markedly different from a trial judge's decision that a jury's verdict is "wholly unsupported by the evidence" justifying a new trial. Notably, the trial court equates a finding that "the evidence does not justify the verdict" with a determination that the verdict is "contrary to the fair preponderance of the evidence." [Order at 5; R. ___] (noting that "contrary to the fair preponderance of the

---

It is settled that the trial judge has the authority and the responsibility to grant a new trial when, in his judgment, the verdict of the jury is contrary to the fair preponderance of the evidence. This Court will not disturb the trial judge's decision to grant a new trial upon the facts unless his finding is wholly unsupported by the evidence or the conclusion reached was controlled by error of law. South Carolina State Highway Department v. Clarkson, 267 S.C. 121, 226 S.E.2d 696 (1976); South Carolina State Highway Department v. Terrain, Inc., 267 S.C. 186, 227 S.E.2d 184 (1976); Adams v. Duffie, 244 S.C. 365, 137 S.E.2d 276 (1964); Mack v. Frito-Lay, Inc., 243 S.C. 376, 133 S.E.2d 833.

Dent v. Redd, 270 S.C. 585, 586, 243 S.E.2d 460, 460 (1978).

[8] The fact that the trial court applies a "preponderance of the evidence" standard and then goes on to find there is "no evidence" to support the jury's defense verdict does not mean that, if the preponderance of the evidence standard should not be applied, the trial court's error is harmless. If the preponderance of the evidence standard is not the proper standard and the decision to grant a new trial is based on the application of the preponderance of the evidence standard and a finding of "no evidence," a trial court applying the "wholly unsupported by the evidence" could certainly reach a different outcome.

evidence" is evidence that "does not justify the verdict," stated differently). If a trial judge may properly grant a new trial so long as "any evidence" supports the trial judge's decision and the appellate court's review is limited to whether the trial judge's decision is "wholly unsupported by the evidence" rather than a standard that mirrors whether the jury's verdict is "wholly unsupported by the evidence," it is difficult to conceive of any circumstance under which an appellate court could find that the trial court abused its discretion. The standard is effectively whether the trial court erred as a matter of law. See, e.g., Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 36-37, 606 S.E.2d 209, 213 (Ct. App. 2004) (discerning no material difference between the circuit court's application of a standard of review couched in the affirmative that findings would be affirmed "*if there is* any evidence to support them" versus the statutory standard that "findings *will not be disturbed unless* a review of the record discloses that there is no evidence which reasonably supports" them.). Without application of the "wholly unsupported by the evidence" standard, directly or indirectly, the boundaries that otherwise safeguard the integrity of the process are eroded.[9]

Third, requiring that the trial judge determine whether the jury's verdict was "wholly unsupported by the evidence" and permitting the appellate court to conduct a proper inquiry into the trial court's analysis comports with general principles of fairness and the avoidance of errors that might otherwise evade review if incongruous standards are applied by the trial court and appellate court on review. This is particularly true where, as here, the trial judge made express

[9] Covil does not dispute that the thirteenth juror doctrine has been found not to violate the constitutional right to a jury trial because the case may be tried again, but this alone does not support any deviation from the proper standard to be applied by the trial court and this court on review. In other words, the fact that a party is not denied the right to a jury trial because the party will be provided another jury trial may support the existence and constitutionality of the doctrine but not its erroneous application.

findings of fact on which the decision to grant a new trial is based that are easily compared with the record. The appellate court's review to ensure that the trial judge granted a new trial only after finding that the jury's verdict was "wholly unsupported by the evidence" is likewise consistent with general principles that respect the role of judge and jury. See, e.g., Vinson v. Hartley, 324 S.C. 389, 407, 477 S.E.2d 715, 724 (Ct. App. 1996) ("[t]he law rather forbids this court assuming to take upon itself the powers, duties, rights, and privileges of a jury") (citing Anderson v. Aetna Casualty & Sur. Co., 175 S.C. 254, 282, 178 S.E. 819, 829-30 (1934)). "Under our law, where the case is tried to a jury, the judge cannot perform the jury's function for it." Vinson, 324 S.C. at 408, 477 S.E.2d at 725 (Ct. App. 1996) (citing Johnson v. Phillips, 315 S.C. 407, 417, 433 S.E.2d 895, 901 n. 7 (Ct. App. 1993), rev'd in part on other grounds, 318 S.C. 453, 458 S.E.2d 427 (1995)).

Finally, application of the "preponderance of the evidence" standard where the trial court ignores contrary evidence on issues for which the plaintiff bears the burden of proof and errs by reversing that burden highlights the importance of this court's review of whether the trial court abused its discretion. Again, Covil maintains that the trial court's decision to grant a new trial should be viewed under the "wholly unsupported by the evidence" standard. Here, the trial court's error reversing the burden of proof constitutes an error of law controlling the decision to grant a new trial that in and of itself warrants reversal. Covil recognizes that the thirteenth juror doctrine, where properly invoked, necessarily means that trial court may "veto" or "hang" an otherwise unanimous jury verdict. That said, a trial judge's decision to override or "veto" a verdict with respect to a decision the jury necessarily had to make in relation to the proof required on each cause of action--of particular importance here proof that Covil supplied the insulation--is distinguishable from a trial judge's decision to override the jury with a respect to a decision the

jury absolutely did not have to make--here that Covil did not disprove that it supplied the insulation. See Vinson, 324 S.C. at 411-12, 477 S.E.2d at 727 (finding the jury could have determined that medical bills did not result from the accident and review of the record therefore showed the court's decision to deny the motion for a new trial following a defense verdict was not "wholly unsupported by the evidence" nor "controlled by an error of law."); see also Johnson v. Parker, 279 S.C. 132, 135, 303 S.E.2d 95, 97 (1983) (stating that "[a] jury verdict should be upheld when it is possible to do so and carry into effect the jury's clear intention."). If this court finds that the trial judge's decision should be premised upon a finding that the jury's verdict was not "wholly unsupported by the evidence" and this court's review permits inquiry into whether the trial judge's decision to grant a new trial was proper in relation to such a finding, this court should find that the trial judge's decision to grant a new trial is controlled by error of law and should be reversed.

(2) The Trial Court Erred By Ignoring Evidence And The Jury's Verdict Is Not "Wholly Unsupported By The Evidence"

(a) Evidence Other Than Absence Of Records Ignored

Although case law supports the notion that the trial court was not obligated to set forth the bases for its order granting a new trial, the court did so here. The trial court's express findings demonstrate that the trial judge's decision was controlled by error of law because the trial judge disregarded evidence and compounded that error of law by shifting the burden of proof. The trial court further abused its discretion by disregarding, misstating, and improperly construing evidence. The trial judge's decision that Covil failed to disprove that it supplied the insulation during the relevant time period, notwithstanding the impermissible shift of the burden of proof, ignores the evidence submitted and accepted by the jury at trial. See Brief of Appellant at 7-8 (setting forth facts supporting jury verdict).

The trial court arrived at the tenuous but definitive conclusion that Covil supplied the insulation and thereafter insisted that Covil must disprove that it supplied the insulation. See [Order at 7; R. ___] (finding that "Mr. Crawford was exposed to asbestos-containing insulation, which Plaintiff proved was supplied by Covil"). The trial judge made the decision that Crawford conclusively proved that Covil supplied the insulation based upon: (1) the testimony of former Daniel Construction employee Harley Neelands and (2) a Daniel Construction vendor list exhibit.

The trial court found that Crawford conclusively proved that Covil supplied the insulation based on Mr. Neelands' testimony that he "thinks" Covil was the supplier of insulation at Celanese because he thinks he saw the Covil trucks approximately forty-five years ago.

Q. Okay. So if you were working for Daniel at the Celanese Spartanburg plant --
A. Yeah.
Q. -- who provided you with those materials?
A. I think they brought -- bought it from Covil Insulation, and they brought it in there. I think.

[Neelands Dep. at 134; R.___]. Crawford relied upon Neelands' testimony that he saw the Covil truck on site but Mr. Neelands never testified that he saw any Covil employees on the project, saw any insulation deliveries from the Covil truck, nor that he could identify any material supplied by Covil on site. [JNOV TT at 7; R.___; Neelands Dep.; R.___].

Covil presented evidence contradicting Mr. Neelands' testimony that he "thinks" Covil may have been the supplier. The trial court's order completely ignores the critical testimony of another employee and corporate representative of Daniel Construction, Don Buck—in fact, there is no indication in the order whatsoever that there was any such testimony. Mr. Buck testified that he reviewed forty boxes of Daniel Construction's records constituting its entire project file and found one reference to Covil having three employees on the job site installing fireproofing material on structural steel. [Buck Depo at 57, 111, R.___] (emphasis added). Mr. Buck testified:

Q: Would you be able to -- let me first back up and ask you -- do you remember seeing Covil Insulation anywhere in there?

A: Yes, I saw Covil -- I saw Covil Insulation had people on the job -- three or four people on the job doing fireproofing on steel – on structural steel.

[Buck Depo at 57; R.___].

Q: Well, you told me earlier from documents that you reviewed that you know Covil was there doing some work?

A: No, no. Covil was there with three men doing spray-on insulation – fireproofing insulation. That's what they were doing. Three mens –

Q. So they were at least there?

A. They were there at that time, okay.

[Buck Depo at 111; R.___].

Although the trial court's order references the testimony of Mr. Buck as to Daniel Construction's presence on site at the Celanese facility every year between 1970 and 1974, [Order at 1; R. ___], the trial court's order completely ignores Mr. Buck's testimony that Covil was on site performing spray fireproofing on structural steel work. The jury could have believed both Mr. Neelands and Mr. Buck. Mr. Neelands could have observed the Covil truck when Covil was on site performing fireproofing work rather than delivering insulation. Mr. Neelands never testified that he observed Covil delivering insulation and Mr. Buck testified that the only records indicated that Covil was on site performing spray fireproofing work on structural steel. As such, the trial judge's order completely ignores Mr. Buck's testimony constituting an error of law and abuse of discretion. It is telling that the trial judge did consider Mr. Buck's testimony in the court's evaluation of Crawford's motion for directed verdict but found Mr. Buck's testimony not credible, which may explain the absence of this critical testimony repeatedly submitted and argued by Covil from the trial court's order.[10] Despite Covil's presentation of evidence and arguments regarding

[10] I conclude that Exhibit 822.5 puts Covil directly in the picture as a subcontractor/vendor Hoechst Spartanburg job site November '71 to November '75. And I find Mr. Buck's testimony to the

the significance of Mr. Buck's testimony in addition to the absence of any evidence in the thousands of documents referenced above, and particularly the evidence indicating that Covil performed fireproofing work on structural steel, the trial court's order disregards Mr. Buck's testimony. Moreover, the trial court's order specifically states that there was no evidence presented that contradicted the conclusion that Covil supplied insulation on the project. Mr. Buck's explanation of the manner in which the subcontractor/vendor list indicated to him that Covil was likely not a supplier of insulation was also not referenced in the trial court's order but was disregarded as indicated. The trial court specifically found that Covil presented no evidence to contradict Crawford's claim that Covil supplied the insulation. As such, the court's order stating that Covil failed to present any evidence to contradict Crawford's evidence that Covil was the supplier of the material is completely inaccurate, contrary to the record, and constitutes error of law. See [Order at 7; R. ___] (emphasis added).

(b) Evidence Of The Absence Of Proof Improperly Discounted Generally And In Relation To Reversal Of Burden Of Proof

Crawford did not call any witnesses who identified any Covil employees on site. Crawford did not call any witnesses who testified that they observed Covil trucks delivering insulation and only one witness, Mr. Neelands, testified that he "thinks" Covil supplied the insulation because he observed Covil's trucks. Crawford did not ask Mr. Neelands and Mr. Neelands did not testify whether he knew if the Covil trucks he saw on site were delivering insulation as opposed to performing spray fireproofing work on structural steel consistent with the sole reference in Daniel Construction's forty boxes of documents regarding Covil's involvement on the project. Crawford

---

contrary not believable, in the light of what everyone else has said about this. He basis it—he then kind of equivocates a little bit when he's asked more questions about what this list means." [TT at 471:25-472:12; R.___].

did not call any Daniel Construction employees, project managers, superintendents, or any of the 466 employees of Daniel Construction who were on site who could specifically testify that the insulation was supplied by Covil. Covil argued that Mr. Carpenter was a disgruntled former employee of Covil and that Mr. Covil said there was no vault to protect documents from the huge fire that caused $700,000 worth of damage. [TT at 559; R.__]. However, Covil argued, those issues were irrelevant for the jury's determination of the sole issue presented—whether Covil was a supplier or subcontractor or applicator of asbestos containing products at Celanese. [TT at 559-560; R.__]. Covil argued that the records reflect that there was no evidence of any sale of any product by Covil to Daniel Construction or Celanese, that Mr. Glenn reviewed the post-fire Covil documents and found no mention of any sale of any product to Daniel or Celanese, and that Celanese representative Boyer found no evidence of any sale after searching 20,000 documents. [TT at 559-564; R.__]. However, Covil argued the best evidence was that of Mr. Buck who testified that his review of forty boxes of Daniel Construction documents found no documents related to insulation but instead showed that Covil was on site performing fireproofing work on structural steel. [TT at 565; R.__]. Moreover, Covil referenced Mr. Buck's testimony that Daniel Construction purchased insulation material directly from manufacturers and not from Covil. [TT at 565; R.__]. The most critical piece of evidence, as argued to the jury, was the vendor list relied upon by the trial court in making the conclusive determination that Covil supplied the material. [TT at 565-566; R.__; Exhibit 822.4; R.__]. Covil argued that Mr. Buck's testimony was that the document included all of Daniel Construction's regular subcontractors and vendors in the left hand column and, if a subcontractor or vendor worked on the project or supplied materials, that same list would include a description of the work or materials—and there was none for Covil. [TT at 565-566; R.__; Exhibit 822.4; R.__].

At the end of the day, the uncontradicted evidence was that Daniel Construction was the purchaser of insulation materials installed at Celanese Spartanburg and it was Daniel Construction that installed the insulation. Daniel Construction had no records whatsoever within its forty boxes of documents. Crawford pointed to none. Crawford pointed to no documents in the thousands of documents from Covil, Celanese, and Daniel Construction indicating any evidence that Covil whatsoever that Covil supplied the insulation. To the extent Crawford conducted a review of these voluminous yet relied instead on creating the perception that the documents were not thoroughly reviewed by others, Crawford did so at its own peril. The trial court acknowledged but ultimately wholly discounted any notion that a jury could believe that thousands and thousands of documents showed no evidence that Covil supplied the insulation. These thousands of documents were not only Covil documents but those of Celanese and Daniel Construction. These thousands of documents were not only reviewed by Covil but by testifying representatives of Celanese and Daniel Construction who found no evidence that Covil supplied the insulation material. The trial court's order is based on findings that Covil was one of Daniel Construction's insulation suppliers during the time period, a substantial amount of insulation material was installed, Mr. Neelands' forty-five year old recollection that he thought Covil may be the supplier, that he saw Covil trucks on site, and the vendor/subcontractor list included Covil despite the testimony of Mr. Buck explaining that the master contractor/vendor list that was site-specific modified as a matter of course did not indicate any involvement on the project by Covil. There was more than sufficient testimony that Crawford failed to meet the burden of proof as well as evidence contradicting Crawford's claims. The trial court's order setting forth express findings of fact completely disregarding the evidence presented by Covil therefore constitutes an error of law and an abuse of discretion and the trial court should be reversed.

C. The Trial Court Failed To Recognize And Appreciate The Responsibility Of Fairness And Impartiality

Despite Crawford's argument to the contrary, Covil respectfully suggests that the trial record and specifically the transcript of the hearing on Crawford's motion for judgment notwithstanding the verdict and for a new trial indicate the potential or likelihood that principles of unfairness and impartiality were associated with the trial judge's decision to grant a new trial. Our judges rightfully expect, command, and deserve the utmost respect from the litigants and their counsel. That said, Covil is compelled to raise this issue on appeal for two reasons: (1) the presumption of fairness and impartiality is at the very core of the thirteenth juror doctrine generally serving as the basis for the deferential standard applied to the trial court's decision to grant or deny a new trial; and (2) the trial judge made express statements on the record regarding the decision to grant a new trial that included the trial judge's admittedly conscious efforts to issue rulings in favor of Crawford at trial that were unsuccessful and, because the jury found otherwise, the trial judge granted Crawford's motion for a new trial. "As has often been said, the trial judge is the thirteenth juror, possessing the veto power to the Nth degree, and, it must be presumed, recognizes and appreciates his responsibility, and exercises the discretion vested in him with fairness and impartiality." Youmans ex rel. Elmore v. S.C. Dep't of Transp., 380 S.C. 263, 271–72, 670 S.E.2d 1, 5 (Ct. App. 2008) (citing Worrell, 186 S.C. at 313–14, 195 S.E. at 641). Although it goes without saying that the trial judge's fairness and impartiality are critical to our justice system, the presumption associated with this court's review of an order granting a new trial has not been described as a non-rebuttable one. Further, if there is substantial evidence of unfairness or impartiality, it follows that the normal presumption regarding the trial court's broad discretion and deference on review should not apply. Crawford's argument that the trial judge's statements at trial and during the hearing on Crawford's motion are irrelevant on the issue of

fairness because they were made outside the presence of the jury should not be considered in this particular context because the issues involve the trial judge and thirteenth juror doctrine. See Brief of Respondents at 19. The trial court's statements during the motion hearing, respectfully, speak for themselves indicating that the decision to grant a new trial was not based on impartiality and fairness:

> That is the sum and substance of the information as I best recall it about Covil's connection. But there is evidence that Covil's lack of records is not completely explained by the fire because there is another employee who says the records were not burned - - the records of sales and the other pertinent records were not burned in the Covil fire of 1973 because they were stored in vaults and they were stored behind a firewall and that the records were still - - still in existence after the fire. There's also some information that other clients other than Covil plant in Spartanburg that burned in nearby access in North Carolina and other places to this - - Celanese supplied Celanese with material.
>
> So that - - those are the things that trouble me greatly about this matter and the fact - - I don't say the plaintiffs' evidence is robust on this point, but the evidence from - - from Celanese and Daniels is not at all dispositive and the evidence from Covil is nothing but a positive nature, only that they had no records. So that is the dilemma I face.
>
> In addition to that, the Covil representative, Mr. Glenn reviewed a miniscule portion of the records of Covil that are still in existence and available, less than a hundred pages is my recollection, out of thousands and thousands of pages of material that are available, and that was by his own admission. So his disclaimer - - or information about the sales is based on a very small microfiber of materials in the Covil file, and that is also something that is very worrisome to me.
>
> The atmosphere at this trial was a repeated violation of the orders that I had given pretrial about what could be said and what could not be said, and the most egregious was the continued attempt to inject into this trial Covil's lack of ability to pay. I do not think that the information about being a defunct corporation and the information about being out of business was pertinent to any issue before the jury.
>
> The issue had only - - the issue - - the jury had before it no issue impacted by ability to pay. They only had before it issues regarding Covil's - - the question of Covil's supply of its materials and question of what those materials - - what impact those materials had on the health of the plaintiffs. So the continued mention

> of those issues was a very prejudicial thing for the trial of this case in my - - in my view.
>
> I hate to have this thing repeat itself, and if I have to try it again, I can tell you that any variance from the pretrial orders I make is going to result in a striking of the pleadings of the defendant and the imposition of liability as a sanction for repeated failure to obey the orders of the Court. I think that would have been justified in this case, but I did not do that.
>
> So I think the only reasonable choice I have is to exercise my authority to hang the jury and grant the motion to - - per the outline of directives in Folk[en]s versus Hunt and any number of cases, but that's kind of the leading case on the Thirteenth Juror. I am going to grant the motion to act as the thirteenth juror, hand the jury and direct that the case be retried.

[JNOV TT at 48:17-51:15; R.____].

If the trial judge did not make these statements, the court's order granting a new trial would not be called into question as to fairness and impartiality. Here, however, it is difficult to reach any conclusion other than the trial judge meant what she said; that the order granting a new trial was based on perceived spoliation, discovery conduct, and counsel statements all of which resulted in negative inferences and curative charges with respect to which Crawford did not move for mistrial; that the jury nevertheless granted a defense verdict; and the order granting a new trial was an additional and further remedy and retribution against Covil for the matters already raised, ruled upon, and for which non-objectionable relief was provided at trial. The conclusion is inescapable from a plain reading of the trial judge's statements that the decision to grant a new trial here was necessarily tainted with a degree of unfairness and impartiality that cannot be ignored. The trial judge's order is therefore expressly controlled by error of law and abuse of discretion and must be reversed.

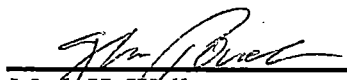
CONCLUSION

WHEREFORE, Appellant Covil Corporation respectfully requests that this court reverse the order of the trial court granting the Respondents' motion for new trial and issue an order

remanding this action to the trial court reinstating the jury's verdict in favor of Covil Corporation for the reasons set forth herein and in Covil Corporation's brief, that this court grant oral argument so that Covil Corporation may be heard on the matters and things set forth herein, and for such other and further relief as the court deems just and proper.

Dated this 5th day of April, 2019.

WALL TEMPLETON & HALDRUP, P.A.



Mark H. Wall
Morgan S. Templeton
Graham P. Powell
Thomas B. Boger
145 King Street, Suite 300
Charleston, SC 29401
Tel: 843-329-9500
Mark.Wall@WallTempleton.com
Morgan.Templeton@WallTempleton.com
Graham.Powell@WallTempleton.com
Tommy.Boger@WallTempleton.com
Attorneys for the Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Jean H. Toal, Circuit Court Judge

Case No. 2017-CP-42-04429

Jerry Howard Crawford, individually and as Personal Representative of the Estate of Evelyn Kay Crawford, Respondent

v.

Celanese Corporation, Aurora Pump Company; Carrier Corporation, CNA Holdings, LLC, f/k/a Hoechst Celanese Corporation; Covil Corporation; Crane Co., Daniel International Corporation f/k/a Daniel Construction Company, Inc.; Flowserve Corporation, individually and as successor-in-interest to Anchor/Darling Valve Company, and individually as successor-in-interest to Durco Pumps; Flowserve, US Inc.; Fluor Constructors International, f/k/a Fluor Corporation; Fluor Constructors, International, Inc.; Fluor Daniel Services Corporation, Fluor Enterprises, Inc.; Ford Motor Company; Genuine Parts Company, d/b/a Rayloc (a/k/a NAPA); The Goodyear Tire & Rubber Company; Goulds Pumps, Inc.; Grinnell, LLC f/k/a Grinnell Corp., f/k/a ITT Grinnell Corp.; Honeywell International, Inc., f/k/a Allied-Products Liability Signal, Inc., sued as successor-in-interest to Bendix Corporation; Ingersoll-Rand Company; John Crane, Inc., Metropolitan Life Insurance Company, a wholly owned subsidiary of Metlife Inc.; National Automotive Parts Association, (NAPA); Parker-Hannifin Corporation, Pneumo Abex, LLC, successor-in-interest to Abex Corporation; Spirax Sarco, Inc.; SPX Cooling Technologies, Inc., individually and as successor-in-interest to Marley Cooling Towers, Co.; Standard Motor Products, Inc.; sued as successor-in-interest to EIS Automotive, United States Fidelity & Guaranty Company; and The William Powell Company, Defendants,

Of Which, Covil Corporation is the Appellant.

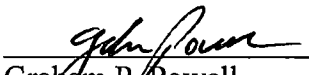
PROOF OF SERVICE

I, Graham P. Powell, of Wall Templeton & Haldrup, do hereby certify that I have served a copy of Appellant's Reply Brief by depositing the same in the United States Mail, properly posted on April 5, 2019 addressed as follows to counsel of record:

Theile B. McVey
KASSEL McVEY ATTORNEYS AT LAW
1330 Laurel Street
Columbia, South Carolina 29202
tmcvey@kassellaw.com
Attorney for Respondent Jerry Howard Crawford and Evelyn Kay Crawford

Jonathan M. Holder
DEAN OMAR BRANHAM, LLP
302 N. Market Street, Ste. 300
Dallas, Texas 75202
jholder@dobllp.com
Attorney for Respondent Jerry Howard Crawford and Evelyn Kay Crawford

WALL TEMPLETON & HALDRUP, P.A.



Graham P. Powell
Post Office Box 1200
Charleston, South Carolina 29402
843-329-9500

Wall Templeton
ATTORNEYS

Graham P. Powell
Graham.Powell@WallTempleton.com
Telephone: 843.329.9500 Ext. 204
Facsimile: 843.329.9501

April 5, 2019

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Jerry Howard *Crawford vs. Aurora Pump Company, et al*
Appellate Case No: 2018-001965

Dear Ms. Kitchings:

Enclosed for filing, please find an original and two copies of Appellant's Reply Brief along with Proof of Service.

Please file the originals of each and return file-stamped copies to me in the envelope provided for your convenience.

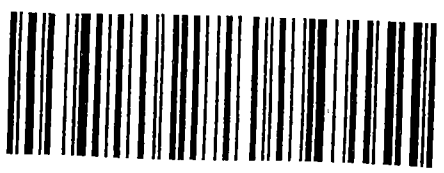
Thank you for your time and attention to this matter.

Sincerely,

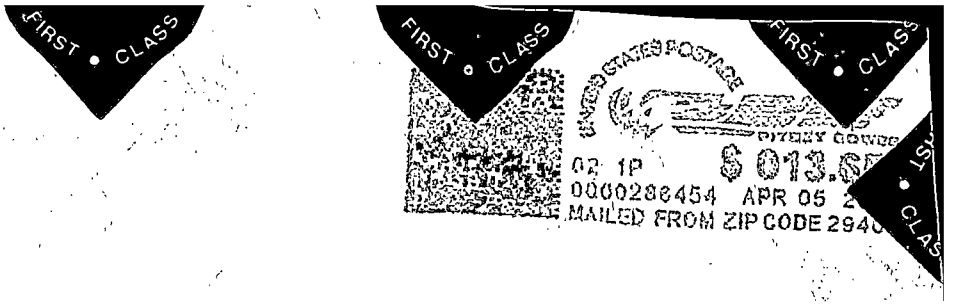
WALL TEMPLETON & HALDRUP, P.A.

Graham P. Powell

GPP:are
enclosures
cc: Theile B. McVey, Esq.
Jonathan M. Holder, Esq.



7015 0640 0005 7406 423



FIRST CLASS MAIL

FIRST CLASS MAIL

Wall Templeton
ATTORNEYS

145 King Street, Suite 300
Charleston, South Carolina 20401

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201