No. 23PA25 DISTRICT 16

SUPREME COURT OF NORTH CAROLINA

****

SHEILA MARTIN SESSOMS,
Administratrix of the ESTATE OF
MATTHEW GIBSON SESSOMS,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A.,
et al.,

Defendants.

From the Court of Appeals
No. COA24-265

From Robeson County
No. 21-CVS-3104

****

AMICI CURIAE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE NORTH CAROLINA CHAMBER LEGAL INSTITUTE IN SUPPORT OF THE TOYOTA DEFENDANTS

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INDEX

TABLE OF CASES AND AUTHORITIES

Cases

Other Authorities

Rules

Constitutional Provisions

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INTRODUCTION

The fundamental promise of our civil justice system is straightforward: disputes are decided on the facts and the law, with contested issues of material fact resolved by a jury. That promise means little if a party can win its case not by proving

1 No person or entity (other than amici curiae, their members, or their counsel), helped write the brief or contributed money for its preparation.

its claims at trial, but by maneuvering its opponent into an impossible discovery trap and then claiming victory through sanctions.

Yet that is effectively what happened here. The trial court's sanctions order deemed established virtually all elements of the Plaintiff's claims: that the vehicle was defectively designed, that it was defectively manufactured, that Defendants had constructive notice of the defects, and that safer alternative designs existed. (R pp 1895-97.) These are the kinds of contested factual questions that juries exist to resolve. By deeming them established as a sanction for alleged discovery failures, the trial court transferred the jury's constitutional role to itself. The result was litigation by sanction rather than litigation on the merits—an outcome that harms not only the parties in this case but the integrity of North Carolina's civil justice system.

This case presents an opportunity for this Court to provide much needed guidance on the standards governing baseline discovery rules and sanctions in North Carolina. While discovery disputes are common, they rarely reach this Court. The result is that trial courts operate without clear direction, and parties lack certainty about how discovery rules will be applied. The Court of Appeals' decision—which affirmed most of the trial court's discovery rulings while inviting the trial court to reimpose the same sanctions on remand—provides little guidance and threatens to perpetuate the very problems that led to this appeal.

The Chamber of Commerce of the United States of America and the North Carolina Chamber Legal Institute submit this brief to urge the Court to establish clear principles governing discovery sanctions—principles that will benefit all litigants, promote the fair administration of justice, and preserve North Carolina's reputation as a state where disputes are resolved on their merits.

STATEMENT OF INTEREST OF AMICI CURIAE

Amici curiae have important interests in clear rules of litigation procedure that lead to a fair resolution of a dispute on the merits.

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files amicus curiae briefs in cases like this one, which raise issues of concern to the nation's business community. The U.S. Chamber has filed many amicus briefs in state and federal courts on discovery questions.

The North Carolina Chamber Legal Institute is a nonpartisan, nonprofit affiliate of the North Carolina Chamber of Commerce, which is often recognized as the

leading business advocacy organization in North Carolina. The N.C. Chamber is organized to provide a medium through which persons having a common business interest in the improvement of conditions favorable to the economic development of North Carolina may promote their common business interest by: (a) identifying, investigating, studying, researching, and analyzing in a nonpartisan manner those aspects of the legal environment and legal system in North Carolina that enhance the business climate, workforce development, and quality of life of the State, including the prospects for the creation and retention of jobs for the State's citizens; (b) educating and instructing the business community and general public by disseminating and publishing the knowledge gained as a result of those activities; and (c) serving as a champion for job providers on potentially precedent-setting legal issues with broad business climate, workforce development, and quality-of-life implications before state and federal courts. Throughout the State, the N.C. Chamber's member businesses employ citizens from every walk of life.

ARGUMENT

I. Cases Should Be Decided on Their Merits Not Through Discovery Sanctions.

Discovery exists to serve the trial process, not to replace it. When the discovery rules were enacted, this Court emphasized that discovery should not focus not "on gamesmanship, but on expeditious handling of factual information before trial

so that the critical issues may be presented at trial unencumbered by unnecessary or specious issues and so that evidence at trial may flow smoothly and objections and other interruptions be minimized." *Willis v. Duke Power Co.*, 291 N.C. 19, 34, 229 S.E.2d 191, 200 (1976). When discovery is functioning properly, it narrows the issues, facilitates settlement, and ensures that the cases that proceed to trial are decided efficiently and fairly. When discovery malfunctions, it becomes an end in itself, consuming resources, delaying resolution, and ultimately preventing the fair adjudication of claims. At scale, the resources that businesses can be forced to dedicate to discovery under unworkable rules pull substantial sums of money out of the State's economy, limiting job growth and diminishing the State's business climate. And inappropriate discovery sanctions can shift the jury's role to the court before the parties have developed the factual record.

Below, the sanctions order interfered with the Defendants' right to a trial on the merits. Sanctions were used to decide the heart of the case in the Plaintiff's favor, depriving the Defendants of their right to have these issues decided by a jury. The right to trial by jury is enshrined in the North Carolina Constitution: "In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable." N.C. Const. art. I, § 25. Case-dispositive sanctions that deem liability established

effectively deprive parties of this constitutional right. *Mut. Fed. Sav. & Loan Ass'n v. Richards & Assocs., Inc.*, 872 F.2d 88, 92 (4th Cir. 1989) (discretion to impose the most severe sanctions is narrow because of "party's rights to a trial by jury and a fair day in court"). The jury never gets to weigh the evidence on these critical questions—the court has already decided them as punishment for discovery conduct. This is not what the framers of the state constitution contemplated when they guaranteed the right to jury trial, nor is it what the drafters of the Rules of Civil Procedure envisioned when they created the modern discovery system.

This approach transforms discovery from a tool for facilitating trials into a weapon for avoiding them. When discovery sanctions can be used to obtain the functional equivalent of a directed verdict on liability, the incentives for all parties change. Plaintiffs are encouraged to pursue aggressive discovery tactics in hopes of provoking potentially sanctionable conduct. Defendants are pressured to settle even meritless claims rather than risk having their defenses stripped away. The result is that fewer cases are decided on their merits—exactly the opposite of what the discovery rules were designed to achieve. At the same time, when plaintiffs are incentivized to pursue discovery beyond what is necessary to build a record for trial, litigation costs can balloon, harming litigants and providing no benefit to courts or jurors.

To be sure, there is a place for discovery sanctions, even severe ones. But severe sanctions are intended for when one side essentially refuses to participate in discovery, or repeatedly violates court orders. In cases like that—where the party seeking discovery is denied the tools needed to prepare for trial—there may be no alternative to case-dispositive sanctions. That scenario, however, is miles away from what happened in this case.

North Carolina has a well-established policy of treating businesses even-handedly to promote a favorable business climate. *See, e.g.*, *Alford v. Shaw*, 318 N.C. 289, 306, 349 S.E.2d 41, 51 (1986). Indeed, with the Business Court, the State has benefited from a reputation for a predictable, sophisticated judiciary. Yet the approach taken below is inconsistent with North Carolina's cultivated reputation for fair adjudication.

II. Due Process Requires Specific Notice Before Sanctions Can Be Imposed.

The trial court's errors did not begin when it imposed case-dispositive sanctions. Rather, they began with the preceding discovery order, which was too vague to satisfy due process requirements. The order lacked specificity sufficient for the Defendants to know whether they had or had not complied. Due process requires courts to comply with notice-based procedural requirements before case-dispositive sanctions are imposed.

This Court has repeatedly held that due process requires specific notice of alleged violations before penalties can be imposed. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *In re Chastain*, 386 N.C. 678, 686, 909 S.E.2d 475, 481 (2024) (quoting *McLean v. McLean*, 233 N.C. 139, 146, 63 S.E.2d 138, 143 (1951)). In *Chastain*, this Court held that an elected official could only be removed based on conduct specifically identified in the charging affidavit—not based on additional allegations that emerged at the hearing. The Court explained that "respondents must have notice of all allegations in the affidavit so that they can mount a defense against those allegations." *Id.* at 687, 909 S.E.2d at 482. Penalizing a party for conduct not identified in the charging document violates due process.

Similarly, in *Durham Green Flea Market v. City of Durham*, this Court held that a notice of violation was defective because it failed to describe the specific violations, leaving the property owner to "guess" at what needed to be fixed while facing $500 per day penalties. *Durham Green Flea Mkt. v. City of Durham*, 923 S.E.2d 524, 529 (N.C. 2025). The City had issued a notice stating only that the property failed to

"comply with an approved site plan" without identifying which aspects of the property were out of compliance and how to correct them. *Id.* at 526.

This Court rejected that approach. It held that the notice "told the Market, 'You know what you did. Now fix it.' We do not believe that this is the kind of notice" that basic fairness requires. *Id.* at 529-30. The property owner was left "guessing as to exactly which violations the planning department had in mind [while] facing potentially steep civil penalties if it guessed incorrectly." *Id.* at 530.

The principles from *Chastain* and *Durham Green* must also apply to discovery sanctions, which are tempered by due process protections. *See OSI Rest. Partners, LLC v. Oscoda Plastics, Inc.*, 266 N.C. App. 310, 315, 831 S.E.2d 386, 390 (2019) (citing *Griffin v. Griffin*, 348 N.C. 278, 500 S.E.2d 437 (1998)).[2] A discovery order that declares responses "inadequate" without identifying specific deficiencies leaves the responding party in the same position as the property owner in *Durham Green Flea Market*—guessing at how to comply while facing severe penalties. And sanctions based on findings that go beyond the specific discovery failures identified in the order—such as speculation about documents that "should" exist—raise the same

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2 The same is true in federal court. *See Next Invs., LLC v. Bank of China*, 12 F.4th 119, 134 (2d Cir. 2021) (the discovery order the litigant failed to obey must have been "clear and unambiguous"); *Satcorp Int'l Grp. v. China Nat. Silk Imp. & Exp. Corp.*, 101 F.3d 3, 6 (2d Cir. 1996) (due process requires clear notice before imposition of discovery sanctions).

concerns addressed in *Chastain*. Here, the trial court's order merely speculated that Defendants had failed to produce documents that they control, even though Defendants had submitted sworn affidavits explaining why the documents no longer exist. Sanctions must be based on actual evidence of bad-faith discovery practices, not speculation of non-compliance.

The proceedings below fell short of the notice constitutionally required by due process. The terse discovery order made blanket findings of non-compliance without specifying what was deficient. (R pp 1308-11.) The order found that discovery responses were "inadequate" but did not identify which responses were inadequate, why they were inadequate, or what specifically needed to be done to cure the deficiencies. A satisfactory order would have laid out the steps Defendants needed to take to comply with the discovery rules and avoid sanctions. But Defendants were left to guess what the trial court expected. This is not how discovery should work. The Rules of Civil Procedure contemplate a process in which parties exchange information, identify disputes, and resolve those disputes through orderly procedures. When a court declares responses inadequate without explanation, and then punishes non-compliance, it short-circuits that process and leaves the responding party in an impossible bind.

This lack of specificity is a critical problem. When discovery orders are vague, they become traps: whatever the responding party does can be deemed insufficient after the fact. Clear, specific orders protect both parties—the responding party knows what it must do, and the requesting party knows what it is entitled to receive. Vague orders serve neither interest and invite the kind of spiraling discovery disputes that occurred here.

The requirement of specificity is not merely a procedural nicety—it is essential to the fair administration of justice. A party cannot comply with an order it does not understand, nor can it be(lawfully) sanctioned for failing to comply with an ambiguous order. *See, e.g.*, *City of Brevard v. Ritter*, 285 N.C. 576, 581, 206 S.E.2d 151, 154 (1974) ("a mistaken interpretation of doubtful language would be a defense to the charge"); *Williams v. Chaney*, 250 N.C. App. 476, 480, 792 S.E.2d 207, 210 (2016) (party cannot be held in contempt for violating an "ambiguous" order). A party cannot defend against a motion for sanctions when it does not know what conduct is being challenged. And a court cannot fairly evaluate compliance when the standard for compliance was never articulated. The due process principles articulated in *Chastain* and *Durham Green* apply with equal force in the discovery context, where the impact from sanctions can be just as high as in official removal proceedings or zoning enforcement actions.

III. Sanctions Must Be Proportional to Actual Harm.

The United States Supreme Court has established that discovery sanctions should be compensatory, not punitive. In *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101 (2017), the Court held that, with civil sanctions for bad-faith conduct, the complaining party is entitled only to a remedy that redresses the losses it sustained, but not more than that. *Id.* at 108. This is a "but-for test," requiring but-for causation between the discovery violation and the sanction imposed. *Id.* at 108-09.[3] Any greater sanction would exceed a court's normal inherent powers because it would be punitive, demanding the protections afforded by the criminal law. *Id.* at 108.

Consider the practices of a neighboring state. The Georgia Court of Appeals applied *Goodyear*'s principle in *Ford Motor Co. v. Conley*, reversing disproportionate discovery sanctions. 908 S.E.2d 757 (Ga. Ct. App. 2024), *cert. denied* (Aug. 12, 2025). A Georgia trial court had sanctioned the defendant for violating a pretrial order on a motion in limine by essentially striking the defendant's answer. *Id.* at 761. The sanctions order led to a $1.7 billion verdict against the defendant. *Id.* at 753; Press Release, Am. Tort Reform Ass'n, *Georgia Grabs Unwanted Crown as America's Top Judicial*

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3 Although *Goodyear* involved a court's imposition of sanctions through its inherent power, sanctions under Civil Rule 37(b) are still intended to be remedial, not punitive. *See, e.g.*, *State v. Bare*, 197 N.C. App. 461, 469, 677 S.E.2d 518, 525 (2009) (sanctions under Civil Rule 37(b) "are not criminal punishments").

Hellhole (Dec. 5, 2023), https://dub.sh/N5bpi66. The Georgia Court of Appeals reversed, finding that the sanctions were disproportional: "[L]esser sanctions" that "stop short of foreclosing the presentation of the merits of one side of a controversy" must be considered before case-dispositive sanctions are imposed. *Ford Motor Co.*, 908 S.E.2d at 761.

Below, the commonsense principles from *Goodyear* and *Ford* were nowhere to be seen. No proportionality analysis occurred. The trial court set out to punish the Toyota Defendants, and the Court of Appeals invited the trial court to do the same on remand. The sanctions chosen by the trial court go far beyond remediation of any real or perceived defects in the Defendants' discovery responses. The sanctions order deems all the central allegations of the complaint established, essentially striking the Defendants' answers. (R pp 1895-97.) This contrasts with *Goodyear*; for sanctions to be appropriately compensatory and proportional, the complaining party is only entitled to a remedy that fixes the harm actually caused by the sanctioned party.

The sanction imposed here was not merely disproportionate, but was entirely punitive, since the trial court never found that the Plaintiff was prejudiced by any discovery shortfall. The Plaintiff did not show that she was unable to prove her case without the supposedly missing documents. To the contrary, the Plaintiff has identified expert witnesses prepared to testify about design and manufacturing issues, and

has received thousands of pages of documents that were produced. There was no finding that any particular document was needed to establish any particular element of Plaintiff's claims, and no finding that Plaintiff's experts could not render opinions without the allegedly missing materials. If the Plaintiff can prove her case with the evidence available, then the "harm" from any discovery shortfall is speculative at best.

Besides failing to conduct a prejudice inquiry, the order also did not explain how lesser sanctions could not adequately address any (theoretical) harm, such as adverse inference instructions that would allow the jury to draw conclusions from any discovery failures. Instead, it jumped directly to the most extreme remedy: deeming virtually all liability elements established.

This approach is punitive, not remedial. Sanctions that "foreclos[e] the presentation of the merits" go beyond remedying actual harm caused. *See Ford Motor Co.*, 908 S.E.2d at 761. They punish the responding party by denying its day in court. And punitive sanctions require far more rigorous procedural protections than were afforded here—including specific findings of willful misconduct and actual prejudice. *Goodyear*, 581 U.S. at 108.

IV. Good-Faith Compliance Efforts and Legitimate Business Practices Should Not Be Punished.

The record demonstrates that the Defendants conducted extensive, good-faith efforts to comply with their discovery obligations. Defense counsel filed a detailed, 58-page declaration documenting the thorough steps taken to respond to discovery requests. (R pp 1424-82.) Representatives of Toyota and Subaru submitted sworn affidavits explaining the searches they conducted and the results of those searches. (R pp 1695-1704.)

These efforts were substantial. After the trial court entered its first order compelling discovery, Toyota and Subaru expanded their original searches and produced newly found responsive documents. Where documents no longer existed, Defendants served affidavits explaining how the search was conducted and why the requested documents were no longer available. And Defendants produced privilege logs, as directed by the court. (R p 1410.)

Toyota "conducted searches in places where such information may reasonably be located" for meeting minutes and communications regarding design considerations for frontal impacts, side impacts, post-collision fires, crashworthiness, and occupant protection. (R p 1702.) When those searches did not locate responsive documents, Toyota explained that the results were "consistent with [its] document retention policy applicable to these types of documents." (R pp 1702-03.) Toyota further

searched for communications or technical information exchanged between it and Subaru concerning crash performance and fire and thermal event performance, again with results consistent with its retention policies. (R p 1703.) Subaru conducted similar searches and provided similar explanations. (R pp 1695-98.)

The Defendants did not simply say "we don't have it"—they explained what they searched, how they searched, and why the absence of certain documents was consistent with their established business practices. These are the litigation practices of responsible corporate counsel, not sanctionable offenses.

The companies also produced their document retention policies to the court under protective order. (R pp 1473, 1475.) These policies were not created for this litigation—they are standard business practices that govern how the companies maintain records across all their operations. They reflect legitimate judgments about what documents need to be retained and for how long, balancing regulatory requirements, operational needs, and storage constraints.

The trial court, however, treated these explanations not as evidence of good-faith compliance, but as evidence of wrongdoing. The existence of document retention policies was used offensively—as if maintaining such policies demonstrated that documents had been improperly destroyed. This gets the analysis exactly backwards.

Document retention policies are legitimate business practices and are near-universal among larger corporate entities. Companies maintain such policies for valid operational, regulatory, and legal reasons—including compliance with industry standards, management of storage costs, and protection of proprietary information. The existence of a retention policy is merely evidence of responsible corporate governance. This Court has long held that an inference of withheld or spoliated evidence can arise only where a party fails to produce evidence "within his control." *Yarborough v. Hughes*, 139 N.C. 199, 183, 51 S.E. 904, 907-08 (1905). Where a party does not possess a document—because it was disposed of pursuant to routine policies *before* litigation was anticipated—there is nothing to produce and nothing to sanction. Indeed, the Rules of Civil Procedure are intended to protect litigants who lose electronically-stored information based on "routine, good-faith" document retention systems. *See* N.C. R. Civ. P. 37(b1).

Treating retention policies as evidence of spoliation creates a paradox: companies with orderly records practices are viewed with suspicion, while companies with chaotic recordkeeping might escape scrutiny. That cannot be the law. When documents are disposed of pursuant to routine policies adopted for legitimate business

reasons and applied consistently—not in anticipation of litigation—that is ordinary business practice, not spoliation.[4]

More fundamentally, a party seeking sanctions must establish that responsive documents actually exist (or existed); that the responding party had possession, custody, or control; and that the party improperly withheld or destroyed them. Speculation that documents "should" exist—based on external assumptions about how businesses operate—is not evidence that they do. A requesting litigant may believe that certain documents must exist, but suspicion is not proof. When defendants conduct reasonable searches, explain their retention policies, and produce what they found, they discharge their discovery obligations. The trial court erred by treating the absence of documents as proof that they were improperly destroyed.

This burden-shifting was particularly problematic with respect to documents created by third parties or held by government agencies. The discovery order required Defendants to identify and log documents that they do not possess, including

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4 Of course, there is a distinction between complying with general-purpose internal retention policies and affirmatively destroying evidence in anticipation of litigation. Companies routinely implement litigation holds to preserve all documents when they have *reasonable* notice that the documents may be relevant to current or reasonably foreseeable future litigation. But companies need not indefinitely preserve terabytes of electronically stored information in the absence of notice of litigation. There is no record evidence that the Toyota Defendants departed from any conventional corporate governance practice to spoliate evidence.

documents held by federal agencies. If Defendants have never seen these documents, they cannot describe them. If Defendants do not possess them, they cannot produce them. Requiring parties to produce information about documents they do not have—and sanctioning them for failing to do so—turns the discovery rules on their head. Rule 34 of the North Carolina Rules of Civil Procedure requires production of documents in a party's "possession, custody or control." N.C. R. Civ. P. 34(a). It does not require parties to speculate about documents that might or might not exist somewhere in the world.

Left uncorrected, the approach taken below creates unnecessary uncertainty for businesses operating in North Carolina. When courts infer misconduct from the absence of documents—despite reasonable searches and the application of lawful retention policies—companies are left unable to manage risk or conduct routine operations with confidence. Predictable, proof-based discovery standards are essential to a stable legal environment and to the State's ability to attract and retain investment.

V. Clear Rules Benefit All Litigants and Protect North Carolina's Business Climate.

Clear discovery rules protect all litigants—plaintiffs and defendants, large corporations and small businesses, individuals and organizations. When parties know what is expected of them, they can comply. When orders are specific, disputes can

be resolved efficiently. And when sanctions are proportional to actual harm, the system operates fairly.

Conversely, vague orders and disproportionate sanctions harm the civil justice system. They encourage gamesmanship over good-faith compliance. They pressure parties to settle meritless claims rather than risk catastrophic sanctions. They divert judicial resources from deciding cases on their merits to refereeing discovery disputes. And they undermine public confidence in the fairness of the courts.

These concerns are not abstract. The U.S. Chamber's Institute for Legal Reform has found that discovery costs now comprise 50 to 90 percent of total litigation costs in cases where discovery is actively used. U.S. Chamber of Commerce Inst. for Legal Reform, *101 Ways to Improve State Legal Systems* 52 (8th ed. Dec. 2024), https://dub.sh/XCr2W6A. Discovery has become "the focus of litigation, rather than a mere step in the adjudication process." John H. Beisner, U.S. Chamber Inst. for Legal Reform, *"The Centre Cannot Hold"—The Need for Effective Reform of the U.S. Civil Discovery Process* 1-2 (May 2010), https://dub.sh/6Nf7tTA. When discovery itself becomes the battlefield where cases are won or lost, the system has lost its way.

Nearly 90 percent of business executives and in-house counsel report that a state's litigation environment could affect their company's decisions about where to

do business. U.S. Chamber of Commerce Inst. for Legal Reform, *Ranking the States: A Survey of the Fairness and Reasonableness of State Liability Systems* 3 (Sept. 2019), https://dub.sh/xO2GzyT. North Carolina has worked to cultivate a business-friendly environment, and its courts have earned a reputation for fair and efficient resolution of disputes. Unpredictable litigation rules—like those applied below—undermine that competitive advantage and could discourage businesses from locating or expanding in the State.

The ripple effects extend beyond the immediate parties. Every company that sells products in North Carolina, employs workers here, or conducts business with North Carolina entities is potentially subject to litigation in North Carolina courts. When those companies see that vague discovery rules can be weaponized to obtain liability findings without a trial, they adjust their risk calculations accordingly. Some may decide to limit their exposure by reducing their North Carolina presence. Others may build the cost of unpredictable litigation into their prices, harming consumers. Still others may avoid entering the North Carolina market altogether. These effects are hard to quantify but real.

This concern is not limited to large corporations. Smaller businesses are even more vulnerable because they lack the resources to fight back against discovery abuse. This is the rare discovery case to reach the Supreme Court because most

businesses cannot afford the costs of a protracted appeal; they will simply capitulate. The rules established in this case will govern every business dispute in North Carolina, and the smaller members of the Chambers have the most to lose from unpredictable, sanction-heavy discovery practice.

The broader economic data confirms the magnitude of these concerns. The total costs and compensation paid in the United States tort system reached $529 billion in 2022—equivalent to 2.1 percent of GDP and more than $4,200 per household. U.S. Chamber of Commerce Inst. for Legal Reform, *Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System* 6 (3d ed. Nov. 2024), https://dub.sh/gIexbNB. Those costs have been growing at an average annual rate of 7.1 percent—far outpacing both inflation and GDP growth over the same period. *Id.* And those rising litigation costs are not going to the benefit of injured parties; for every dollar paid in compensation, 79 cents goes to legal fees and expenses. *Id.* at 11.

The consequences are not confined to courtrooms. A companion study found that for every additional $1 million in commercial automobile tort costs, American GDP declines by approximately $2 million, and that nationwide reductions in such costs would increase GDP by an average of $52.3 billion per year and create 5.7 million additional jobs over a ten-year period. U.S. Chamber of Commerce Inst. for

Legal Reform, *Tort Costs in America—Commercial Auto: An Analysis of the Economic Impact of Commercial Automobile Tort Costs* 5-6 (Oct. 2025), https://dub.sh/rSzjGSm. These figures underscore what is at stake when litigation rules incentivize sanction-based outcomes over trials on the merits: rising tort costs do not merely burden individual litigants—they depress economic growth, reduce employment, and raise prices for consumers across every sector of the economy.

The Court should use this case to establish clear principles: discovery orders must be specific enough to permit compliance; sanctions must be proportional to actual harm; good-faith efforts must be recognized; document retention policies are necessary for large businesses; and cases should be tried to juries on their merits, not won through discovery warfare.

These principles are not revolutionary. They derive from basic concepts of due process, proportionality, and fairness that underpin our legal system. But they must be articulated clearly so that trial courts and litigants know what is expected, and so the Court of Appeals, in future cases, does not lose sight of discovery's purpose. The absence of clear guidance has contributed to the problems evident in this case.

CONCLUSION

Businesses operating in North Carolina do not seek special treatment. They ask only for clear rules, applied evenhandedly, that allow disputes to be decided on their merits. This Court should reverse the judgment below and establish principles that will guide trial courts in future cases: due process requires specific notice before sanctions can be imposed; sanctions must be proportional to actual harm; good-faith compliance and document retention practices must be recognized; and case-dispositive sanctions are reserved for circumstances far more egregious than those present here. These principles will promote efficiency, fairness, and predictability in North Carolina's courts—benefiting all litigants and strengthening the State's civil justice system.

This the 10th day of February, 2026.

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This the 10th day of February, 2026.

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