

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Oct 19 2022

S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Jean H. Toal, Acting Circuit Court Judge

Appellate Case No. 2022-000368
Court of Appeals Opinion No. 2021-UP-422

APPENDIX
VOLUME III

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

v.

Air & Liquid Systems Corp., Individually and as Successor-in-Interest to Buffalo Pumps, Inc; Airco, Inc.; Airgas USA, LLC, f/ka National Welding Supply, Inc.; Albany International Corp.; Asten-Johnson, Inc.; Aurora Pump Company; A.W. Chesterton Company; Beloit Corporation; Black Clawson Converting Machinery, LLC, Individually and as a Subsidiary of Davis-Standard LLC; CBS Corporation, a Delaware Corporation f/k/a Viacom, Inc., Successor by Merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation; CGR Productions, Inc., f/k/a Carolina Gasket and Rubber Company; CNA Holdings, Inc., f/k/a Hoechst Celanese Corporation; Celanese Corporation f/k/a Hoechst Celanese Corporation (Sued Individually and as Successor-in-Interest to Fiber Industries, Inc.); Cleaver Brooks, Inc.; Covil Corporation; Crane Co.; Crown Cork & Seal Company, Inc.; Daniel International Corporation; Davis-Standard Corporation, LLC; Dezurik, Inc. d/b/a Dezurik-Apco Williamette Eagle, Inc.; Fisher-Klosterman, Inc., as Successor-in-Interest to Buell Engineering Co.; Flowserve Corporation, Individually and as Successor-in-Interest to Durco Pumps; Fluor Enterprises, Inc., f/k/a Fluor Daniel, Inc.; Fluor Daniel Services Corporation; Foster Wheeler Energy Corporation; General Electric Company; The Gorman-Rupp Company; Goulds Pumps, Incorporated; Ingersoll-Rand Company; Linde, LLC f/k/a The Boc Group, Inc., f/k/a Airco,

Inc.; Marsulex Environmental Technologies Corporation,
Individually and as Successor-in-Interest to Buell Engineering Co.;
Marsulex Environmental Technologies, LLC, as Successor-in-
Interest to Buell Engineering Co.; Metropolitan Life Insurance
Company, a Wholly-Owned Subsidiary of MetLife Inc.; Peerless
Pump Company; Presnell Insulation, Inc.; Riley Power, Inc.,
Individually and as Successor-in-Interest to Babcock Borsig Power,
Inc., and Riley Stoker Corporation, Individually and as Successorin-
Interest to D.B. Riley; SCAPA Waycross, Inc.; Sepco
Corporation; SPX Cooling Technologies, Inc., f/k/a Marley
Cooling Technologies, Inc., f/k/a The Marley Cooling Tower Co.;
Sterling Fluid Systems (USA) LLC; Trane U.S., Inc., f/k/a
American Standard, Inc., f/k/a American Radiator & Standard
Manufacturing Company; Union Carbide Corporation; Uniroyal,
Inc., f/k/a United States Rubber Company, Inc.; United Conveyor
Corporation; Velan Valve Corp.; Viking Pump, Inc.; Warren
Pumps LLC; Yuba Heat Transfer Corporation; and Zurn Industries, ...Defendants,

Of which Cleaver Brooks, Inc. is the..... Petitioner.

WOMBLE BOND DICKINSON (US) LLP

M. Todd Carroll, SC Bar No. 74000
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-6504
todd.carroll@wbd-us.com

M. Elizabeth O'Neill, SC Bar No. 104013
One Wells Fargo Center, Suite 3500
301 South College Street
Charlotte, North Carolina 28202-6037
(704) 350-6310
elizabeth.oneill@wbd-us.com

RICHARDSON PLOWDEN & ROBINSON,
P.A.

Steven J. Pugh, SC Bar No. 14341
1900 Barnwell Street
Columbia, South Carolina 29201
(803) 771-4400
spugh@richardsonplowden.com

Attorneys for Petitioner Cleaver-Brooks, Inc.

KASSEL MCVEY ATTORNEYS AT LAW

Theile B. McVey, SC Bar No. 16682
John D. Kassel, SC Bar No. 3286
1330 Laurel Street
Columbia, SC 29201
(803) 256-4242
tmcvey@kassellaw.com
jkassel@kassellaw.com

DEAN OMAR BRANHAM SHIRLEY, LLP

Renee M. Melancon, Admitted *pro hac vice*
Jonathan M. Holder, SC Bar No. 77935
Todd Barnes, Admitted *pro hac vice*
302 N. Market Street, Suite 300
Dallas, Texas 75202
(214) 722-5990
rmelancon@dobslegal.com
jholder@dobslegal.com
tbarnes@dobslegal.com

Attorneys for Respondents

INDEX TO APPENDIX

Cleaver-Brooks’s Opening Brief	App’x 1
Respondents’ Brief.....	App’x 53
Cleaver-Brooks’s Reply Brief.....	App’x 103
Court of Appeals Opinion No. 2021-UP-422	App’x 131
Cleaver-Brooks’s Petition for Rehearing and Suggestion for Rehearing <i>En Banc</i>	App’x 137
Respondents’ Return to Petition for Rehearing	App’x 163
Cleaver-Brooks’s Reply in Support of Petition for Rehearing and Suggestion for Rehearing <i>En Banc</i>	App’x 192
Court of Appeals’s Denial of Petition for Rehearing.....	App’x 221
Record on Appeal (Volume I).....	R. p. 1
Record on Appeal (Volume II)	R. p. 496
Record on Appeal (Volume III).....	R. p. 868
Record on Appeal (Volume IV).....	R. p. 1156
First Appendix to Record on Appeal	R. p. 1612
Second Appendix to Record on Appeal.....	R. p. 1614
Third Appendix to Record on Appeal.....	R. p. 1629

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2019-000164
Circuit Court Case No. 2015-CP-46-3456

RECORD ON APPEAL
(VOLUME II)

RECEIVED

MAY 30 2019

SC Court of Appeals

Timothy W. Howe, Individually and as Personal Representative of
the Estate of Wayne Erwin Howe, Deceased, and Jeannette Howe Respondents,

v.

Air & Liquid Systems Corp., Individually and as Successor-in-
Interest to Buffalo Pumps, Inc; Airco, Inc.; Airgas USA, LLC, f/k/a
National Welding Supply, Inc.; Albany International Corp.; Asten-
Johnson, Inc.; Aurora Pump Company; A.W. Chesterton Company;
Beloit Corporation; Black Clawson Converting Machinery, LLC,
Individually and as a Subsidiary of Davis-Standard LLC; CBS
Corporation, a Delaware Corporation f/k/a Viacom, Inc., Successor
by Merger to CBS Corporation, a Pennsylvania Corporation, f/k/a
Westinghouse Electric Corporation; CGR Productions, Inc., f/k/a
Carolina Gasket and Rubber Company; CNA Holdings, Inc., f/k/a
Hoechst Celanese Corporation; Celanese Corporation f/k/a Hoechst
Celanese Corporation (Sued Individually and as Successor-in-
Interest to Fiber Industries, Inc.); Cleaver Brooks, Inc.; Covil
Corporation; Crane Co.; Crown Cork & Seal Company, Inc.;
Daniel International Corporation; Davis-Standard Corporation,
LLC; Dezurik, Inc. d/b/a Dezurik-Apco Williamette Eagle, Inc.;
Fisher-Klosterman, Inc., as Successor-in-Interest to Buell
Engineering Co.; Flowserve Corporation, Individually and as
Successor-in-Interest to Durco Pumps; Fluor Enterprises, Inc., f/k/a
Fluor Daniel, Inc.; Fluor Daniel Services Corporation; Foster
Wheeler Energy Corporation; General Electric Company; The
Gorman-Rupp Company; Goulds Pumps, Incorporated; Ingersoll-
Rand Company; Linde, LLC f/k/a The Boc Group, Inc., f/k/a Airco,
Inc.; Marsulex Environmental Technologies Corporation,

Individually and as Successor-in-Interest to Buell Engineering Co.; Marsulex Environmental Technologies, LLC, as Successor-in-Interest to Buell Engineering Co.; Metropolitan Life Insurance Company, a Wholly-Owned Subsidiary of Metlife Inc.; Peerless Pump Company; Presnell Insulation, Inc.; Riley Power, Inc., Individually and as Successor-in-Interest to Babcock Borsig Power, Inc., and Riley Stoker Corporation, Individually and as Successor-in-Interest to D.B. Riley; SCAPA Waycross, Inc.; Sepco Corporation; SPX Cooling Technologies, Inc., f/k/a Marley Cooling Technologies, Inc., f/k/a The Marley Cooling Tower Co.; Sterling Fluid Systems (USA) LLC; Trane U.S., Inc., f/k/a American Standard, Inc., f/k/a American Radiator & Standard Manufacturing Company; Union Carbide Corporation; Uniroyal, Inc., f/k/a United States Rubber Company, Inc.; United Conveyor Corporation; Velan Valve Corp.; Viking Pump, Inc.; Warren Pumps LLC; Yuba Heat Transfer Corporation; and Zurn Industries ... Defendants,
of whom

Cleaver-Brooks, Inc. is the Appellant.

WOMBLE BOND DICKINSON (US) LLP

M. Todd Carroll
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-6504

M. Elizabeth O'Neill
One Wells Fargo Center, Suite 3500
301 South College Street
Charlotte, North Carolina 28202-6037
(704) 350-6310
Admitted Pro Hac Vice

RICHARDSON PLOWDEN & ROBINSON,
P.A.

Steven J. Pugh
1900 Barnwell Street
Columbia, South Carolina 29201
(803) 771-4400

Attorneys for Appellant Cleaver-Brooks, Inc.

KASSEL MCVEY ATTORNEYS AT LAW

Theile B. McVey
John D. Kassel
1330 Laurel Street
Columbia, SC 29201
(803) 256-4242

DEAN OMAR BRANHAM SHIRLEY, LLP

Renee M. Melancon
Jonathan M. Holder
302 N. Market Street, Suite 300
Dallas, Texas 75202
(214) 722-5990

Attorneys for Respondents

INDEX

Volume I

Orders

Order Granting Plaintiffs' Motion for Sanctions Against Cleaver-Brooks, Inc.	5
Order Denying Cleaver-Brooks, Inc.'s Motion to Alter or Amend Order.....	27
Order Regarding Cleaver-Brooks, Inc. Discovery Motions	32

Pleadings

Summons and Complaint.....	33
Answer of Cleaver-Brooks, Inc. to Plaintiffs' Complaint	70
First Amended Summons and Complaint	85
Answer of Cleaver-Brooks, Inc. to Plaintiffs' Amended Complaint.....	115

Transcripts

Trial Transcript	130
Plaintiffs' Opening Statement.....	131
Cleaver-Brooks's Opening Statement.....	162
Motions in Limine and Other Preliminary Matters.....	179
Witness: Art Welker	
Direct Examination by Ms. Dean.....	227
Cross-Examination by Ms. O'Neill	256
Witness: John Tornetta	
Direct Examination by Ms. Dean.....	265
Motion for Directed Verdict/Motion to Strike.....	350
Witness: John Tornetta	
Direct Examination by Ms. O'Neill.....	386
Cross-Examination by Ms. Dean	431
Redirect Examination by Ms. O'Neill	478

Volume II

Cleaver-Brooks's Proffer of Evidence	496
Plaintiffs' Closing Argument.....	514
Cleaver-Brooks's Closing Argument.....	552
Plaintiffs' Reply Argument.....	573
Jury Verdict.....	579
Discussion of Post-Trial Motions	580

January 24, 2018 Hearing Transcript.....	581
March 9, 2018 Hearing Transcript.....	627
October 10, 2018 Hearing Transcript	657

Trial Exhibits

Plaintiffs' Exhibits

Exhibit 45: Letter of March 18, 1971	677
Exhibit 55: Cleaver-Brooks Records for Boiler O-18343	678

Cleaver-Brooks's Exhibits

Exhibit 11: Index Card for Boiler O-18343	739
Exhibit 12: Index Card for Boiler O-18344	740
Exhibit 13: Cleaver-Brooks Records for Boiler O-18344	741
Exhibit 19: Asbestos Trial Docket Amended General Scheduling Order	775
Exhibit 20: Email Correspondence Among Counsel (Mar. 14, 2018).....	832
Exhibit 21: Email Correspondence from Resolute FP US Counsel (Mar. 9, 2018)	838
Exhibit 23: Email Correspondence from Resolute FP US Counsel (Mar. 12, 2018)	845
Exhibit 24: Email Correspondence from Resolute FP US Counsel (Mar. 12, 2018)	851
Exhibit 25: Email Correspondence from Plaintiffs' Counsel (Mar. 15, 2018).....	856
Exhibit 26: Email Correspondence from Cleaver-Brooks Counsel (Mar. 15, 2018).....	858
Exhibit 27: Email Transmitting Records Regarding Boiler O-18344 (Mar. 15, 2018)...	861
Exhibit 28: Email Correspondence from Cleaver-Brooks Counsel (Mar. 15, 2018).....	862
Exhibit 29: Read Receipt of Records Regarding Boiler O-18344	863
Exhibit 30: Email from Plaintiffs' Counsel Regarding Deposition Designations (Mar. 19, 2018)	864

Volume III

Motions

Cleaver-Brooks, Inc.'s Motion for Protective Order	868
Plaintiffs' Motion to Compel Several Defendants	873
Exhibit 1: Numerous Notices of Rule 30(b)(6) Depositions of Several Defendants, Including Initial Notice of Deposition to Cleaver-Brooks, Inc.....	878
Exhibit 2: Email Correspondence from Plaintiffs' Counsel Regarding Scheduling Depositions for Several Defendants (Dec. 13, 2017)	1056
Exhibit 3: Email Correspondence from Plaintiffs' Counsel Regarding Scheduling Depositions for Several Defendants (Jan. 4, 2018).....	1066

Exhibit 4: Portion of Email Correspondence from Plaintiffs' Counsel Regarding Scheduling Depositions for Several Defendants.....	1075
Cleaver-Brooks, Inc.'s Motion for Summary Judgment.....	1077
Exhibit 1: Portion of Wayne Howe Deposition	1091
Exhibit 2: Portion of Wayne Grant Deposition I from <i>Smith v. CBS Corp.</i>	1094
Exhibit 3: Portion of Wayne Grant Deposition II from <i>Smith v. CBS Corp.</i>	1097
Exhibit 4: Portion of Gilbert Small Deposition from <i>Polk v. Bayer Cropscience, Inc.</i> ..	1100
Exhibit 5: Portion of Gilbert Small Deposition	1105
Exhibit 6: Hand-Drawn Map of Bowater Paper Mill.....	1110
Exhibit 7: Boiler Inspection Report	1112
Exhibit 8: Portion of John Tornetta Deposition I.....	1114
Plaintiffs' Response in Opposition to Cleaver-Brooks's Motion for Summary Judgment	1120
Plaintiffs' Supplemental Response in Opposition to Defendant Cleaver-Brooks, Inc.'s Motion for Summary Judgment and Plaintiffs' Motion for Sanctions.....	1132
Exhibit H: Portion of John Tornetta Deposition from <i>Bumgardner v. ABB, Inc.</i>	1146
Exhibit I: Order from <i>Bumgardner v. ABB, Inc.</i>	1153

Volume IV

Plaintiffs' Motion for Sanctions Against Cleaver-Brooks, Inc.....	1156
Plaintiffs' Motion for Sanctions with Statements of Fees and Costs Against Cleaver-Brooks.....	1161
Exhibit 2: Portion of Wayne Howe Deposition	1182
Exhibit 3: Portion of Gilbert Small Deposition	1192
Exhibit 4: Portion of Records for Cleaver-Brooks Boiler O-18343	1198
Exhibit 8: Portion of John Tornetta Deposition I.....	1227
Exhibit 9: John Tornetta Deposition II	1240
Exhibit 16: Copy of <i>Ethox Chem., LLC v. Coca-Cola Co.</i>	1286
Exhibit 17: Affidavit of Jessica Dean in Support of Fees.....	1290
Exhibit 18: No Exhibit Included in Original: "Will Supplement"	1297
Exhibit 19: Affidavit of Jonathan Holder	1298
Exhibit 20: Order from <i>Parker v. ABC Debt Relief, Ltd.</i>	1304
Exhibit 21: Affidavit of Jessica Dean in Support of Costs with Attachments	1310
Exhibit 22: No Exhibit Included in Original: "Will Supplement"	1387
Exhibit 23: Affidavit of Wende Myers	1388

Cleaver-Brooks, Inc.’s Opposition to Plaintiffs’ Motion for Sanctions	1391
Exhibit E: Portion of Art Welker Trial Testimony	1417
Exhibit F: Plaintiffs’ First Amended Answers to Master Interrogatories 2 and 4	1420
Notice of Filing Affidavits in Support of Plaintiffs’ Motion for Sanctions with Statements of Fees and Costs Against Cleaver-Brooks, Inc.	1424
Exhibit 2: Affidavit of Theile McVey	1427
Exhibit 4: Screenshot of Exhibits	1434
Plaintiffs’ Reply in Support of Motion for Sanctions Against Cleaver-Brooks, Inc.	1436
Exhibit B: Portion of John Tornetta Deposition from <i>Baccaglini v. Cleaver-Brooks</i> ...	1457
Exhibit C: Portion of John Tornetta Testimony from <i>Esposito v. A.O. Smith</i>	1461
Exhibit D: Portion of John Tornetta Testimony from <i>Robaey v. Cleaver-Brooks</i>	1465
Notice of Cleaver-Brooks, Inc.’s Objections to Proposed Order.....	1470
Attachment: Correspondence to the Court.....	1471
Cleaver-Brooks, Inc.’s Motion to Alter or Amend Order.....	1477
Exhibit A: Cleaver-Brooks’s Responses to Plaintiffs’ Master Interrogatories and Requests for Production	1483
Exhibit B: Third and Fourth Amended Rule 30(b)(6) Deposition Notices to Cleaver- Brooks	1557
 <u>Other Materials</u>	
Affidavit of Timothy Howe	1578
Plaintiffs’ Answers to Master Interrogatories and Request for Disclosures.....	1580
Plaintiffs’ First Amended Rule 30(b)(6) Deposition Notice of Cleaver-Brooks.....	1593
Plaintiffs’ Second Amended Rule 30(b)(6) Deposition Notice of Cleaver-Brooks	1600
Notice of Appeal	1608

1 THE COURT: Oh, okay. That's plenty different from what
2 y'all told me at side bar. No, I'm not going to do that to
3 them, we're going to take an early lunch. It is 11:15 for all
4 practical purposes, let's try to begin at a quarter to one.
5 You may go to your jury room.

6 (The jury left the courtroom and a break was taken.)

7 MS. O'NEIL: Your Honor, what I'd like to do is call Mr.
8 Tornetta first for the testimony of the proffer, let plaintiffs
9 ask whatever questions they want for their part of that, and
10 then we'll just admit for ID purposes on the record the
11 exhibits.

12 THE COURT: Very good. Let me for the record state that a
13 ruling was made by me last Friday with respect to issues
14 surrounding the late disclosure at midnight the previous
15 evening or very early Friday morning of additional documents,
16 index cards and one file with regard to the Cleaver-Brooks
17 package boiler or boilers that may be at issue in this case.
18 There had been previous documentary information offered that
19 had two different numbers on it; one was 18343 and one was
20 18344, I'm just speaking from memory but I think I'm right
21 about that, and a good deal of examination has been had the
22 previous Thursday afternoon about what various documents showed
23 about 18343 versus 18344, and there was a big issue raised as
24 to whether there two different boilers and -- whether there
25 were two different boiler at Bowaters that were Cleaver-Brooks

1 boilers and that remains an issue. Then that late evening or
2 early morning further material was supplied by counsel for
3 Cleaver-Brooks to counsel for plaintiff, and this was -- my
4 ruling had nothing to do with any fault on defense counsel's
5 part, defense counsel was not given them until around that time
6 by the witness Tornetta who was on the stand who was the
7 corporate representative, they were for the first time supplied
8 with some of this material from their witness, and they, of
9 course, passed it on to plaintiff's counsel when they received
10 it. The next morning the attempt was made by defense counsel
11 to offer into evidence these additional documents, two are
12 something called index cards which were maintained at the time,
13 and one was an index card 843, 18343, which showed a boiler --
14 a package boiler shipped to Bowater, and another was an index
15 card 18344 showing a package boiler shipped to some place in
16 Illinois, and in addition material from the file of the 18344
17 boiler. I ruled that Mr. Tornetta had had numerous
18 opportunities to discover that material, including direct
19 questions by counsel for plaintiff about the existence of index
20 cards, which he said were in existence but they didn't need
21 them because they are duplicative which they already had. Mr.
22 Tornetta said that at the time when he had in his kin of
23 documents in the 18343 filed, which had two different numbers.
24 I ruled that those documents couldn't -- additional
25 supplementary documents could not be introduced into evidence,

1 and that rule conveyed in the examination of Mr. Tornetta both
2 in plaintiff's case and in the opening of the defense case has
3 proceeded. We now have a break which allows Ms. O'Neil for the
4 defense to complete a proffer she wanted to make with respect
5 to these documents, so I now recognize Ms. O'Neil for that
6 purpose.

7 MS. O'NEIL: Thank you, Justice Toal. Just one point of
8 clarification, I think you just said that we got the records
9 from Mr. Tornetta, he was actually on an airplane coming here
10 to testify as the last witness for plaintiff so I got them from
11 Cleaver-Brooks, I didn't get them from Mr. Tornetta.

12 THE COURT: Very good. But you received them at a very
13 late hour and as soon as you received them you transmitted them
14 to the plaintiff, and the plaintiff, of course, had never seen
15 them before and made the objection that the disclosure was way
16 too late and was prejudicial and I ruled with plaintiff on that
17 issue.

18 MS. O'NEIL: Yes, you did, Your Honor. And just one other
19 clarification. My understanding of the South Carolina Rules
20 with respect to proffers is that I put in the evidence that I
21 think is relevant to the issue but I did not reargue the ruling
22 on the objection; is that correct?

23 THE COURT: That is correct, there's no necessity for
24 that. You made a very complete argument and your record is
25 protected in that regard but you wish to supplement that with

1 this material and you certainly are permitted to do so.

2 MS. O'NEIL: Thank you, Justice Toal. We would call John
3 Tornetta to the stand for the proffer.

4 THE witness, JOHN TORNETTA, remained under oath and
5 Testified as follows:

6 THE COURT: Mr. Tornetta, you have previously taken the
7 witness oath to give truthful testimony and sworn to do that,
8 is that still your oath?

9 THE WITNESS: Yes, it is.

10 THE COURT: Very good, you may proceed.

11 MS. O'NEIL: Thank you.

12 DIRECT EXAMINATION

13 BY MS. O'NEIL:

14 Q Mr. Tornetta, I'm going to hand you what we've marked
15 as Defendant's for ID 11, 12 and 13.

16 MS. O'NEIL: Which for the record, 11 is the Bowater
17 Catawba index card for unit number 18343, and 12 is the
18 National Protein formerly American Milling and Refinery index
19 card for 18344, and 13 is the commercial record for 18344.

20 Q You have seen these documents, correct?

21 A Yes, I have.

22 Q With respect to the index card for the Bowater Catawba
23 Mill, tell me what's that exhibit number?

24 A Exhibit 11.

25 Q Based upon your knowledge or respect to how

1 Cleaver-Brooks kept their historical records in 1957, what
2 would you expect to find with respect to either that index
3 card or in the index file if Cleaver-Brooks had shipped a
4 boiler to Bowater with unit number 18344?

5 A It would have been listed on this card next to 18343.

6 Q And then if you could look at the next exhibit for me,
7 please, which is Exhibit Number 13 -- 12, I believe.

8 A Twelve.

9 Q Twelve. Exhibit 12 is an index card, and what does it
10 say at the top with respect to the company?

11 A National Protein Corp.

12 Q And it has unit number 18344, correct?

13 A Correct.

14 Q And it says at the bottom, or it's sort of in the
15 middle of the page something about American Milling?

16 A Correct.

17 Q Could you read that into the record?

18 A Formerly American Milling and Refining.

19 Q Can you explain what that entry on the card means?

20 A It's an indication that the boiler was moved from one
21 location to another, or in some cases -- in this particular
22 case I believe it was moved when we got the records, but in
23 some cases it shows a change in the name.

24 Q If you could look at the last exhibit I gave you, which
25 is number --

1 A Thirteen.

2 Q Thirteen. And if you could look at the back, I'm

3 actually looking at the manufacturer's data report which is

4 at the very back of the file.

5 A Okay.

6 Q There's the boiler number there?

7 A Correct.

8 Q And you previously gave some testimony on the record in

9 front of the jury about what that means. Could you read

10 into the record the boiler number for the one to which

11 Cleaver-Brooks assigned unit number 18344?

12 A It calls out boiler number 10028.

13 Q And if the unit with pressure vessel number or number

14 boiler number 12 -- I'm sorry, I can't read it.

15 A 10028.

16 Q Thank you -- were sold to Bowater, where would you

17 expect to have found that?

18 A There would have been an additional data record in the

19 records for the Bowater file, or Bowater commercial records.

20 Q That was marked as P55?

21 A I believe so, yes.

22 Q And then if you could flip to the front.

23 A Okay.

24 Q There is a letter dated October 4, 1977, it says

25 Cleaver-Brooks division inter-organization correspondence,

1 do you see that?

2 A Yes, I do.

3 Q And it says, "Please change our unit book customer
4 file" -- and I can't read this, I'm sorry.

5 A I think it says territorial listing. Want me to
6 continue?

7 Q Yes.

8 A From America Milling and Refining Company, Monmoth,
9 Illinois (Orin County) to read National Protein Corp,
10 Champagne, Illinois (Champagne county.)

11 Q Thank you for reading that, without my glasses I can't
12 read anything. And to you what does that indicate?

13 A That tells me the boiler was physically moved from one
14 location that we sold it to initially is the way it appeared
15 looking through the rest of the records, to a second
16 location.

17 Q And does it show that as late as 1977 that boiler was
18 in Illinois?

19 A Yes. That's the way I would take this letter.

20 Q And then if you look at the -- it will be the first two
21 pages of the exhibit, but as I recall you saying in front of
22 the ladies and gentlemen of the jury, you actually read a
23 commercial record from the back up because it went in the
24 file so that -- is on the bottom?

25 A Typically, yes, unless there was an addition to

1 microfiche. After it was initially microfiched it was
2 usually chronological from the back to the front, not always
3 but generally that's the way I find it.

4 Q And there is a message dated 1/4/78 which talks about
5 unit number 18344, do you see that?

6 A Yes.

7 Q And it is asking to send three copies of a wire readout
8 to Champagne, Illinois?

9 A Correct.

10 Q And it is your understanding that that is a request
11 being made from National Protein in Champagne, Illinois for
12 documents related to unit 18344?

13 A Yes. Either with National Protein or it looks like
14 it's Reliable Plumbing and Heating, so maybe on behalf of
15 National Protein it may have been somebody working on the
16 boilers wanted some wire diagrams in 1978.

17 Q And then there's another one that I don't -- I can't
18 see that there's a date on it.

19 A I don't see a date either.

20 Q Does that indicate a second request made for something
21 related to 18344 to be sent to Illinois?

22 A Yeah. I think it's in response to the first -- the one
23 we just read asking for it, it is Sid Snow sending the
24 wiring diagrams to Mr. Walters it looks like.

25 Q And based upon these documents we've looked at, is

1 there any doubt in your mind that according to
2 Cleaver-Brooks records unit number 01844 (sic) was in
3 Illinois at least as late as 1978?

4 A 18344, yes.

5 MS. O'NEIL: Those are all of my questions.

6 MS. DEAN: Your Honor, can I ask a couple of questions?

7 THE COURT: Yes, of course, Ms. Dean.

8 MS. DEAN: Thank you.

9 CROSS EXAMINATION

10 BY MS. DEAN:

11 Q You did not produce to attorneys to provide to us in
12 this case Exhibits 11, 12 or 13 at any moment prior to your
13 deposition in this case, whether it be the first one or the
14 second one, the second being done on March 6th, correct?

15 A Correct.

16 Q You were not asked to pull Exhibits 12 and 13 by anyone
17 at Cleaver-Brooks until Thursday, and that is Thursday,
18 March 15th when we were in our fourth day of trial, correct?

19 A I believe so, yes.

20 Q Ms. O'Neil represented that those documents were
21 provided to her by someone else at Cleaver-Brooks while you
22 were in flight, does that sound right to you?

23 A Yes.

24 Q About when was Cleaver-Brooks' counsel provided for the
25 first time Exhibit 12 and 13?

1 MS. O'NEIL: Objection, that would call for
2 attorney/client privileged information.

3 THE COURT: All right.

4 MS. O'NEIL: We would only know --

5 THE COURT: I don't know that it's pertinent, I don't want
6 to get into attorney/client information, but let me think a
7 minute.

8 Q I'll represent to you Ms. O'Neil after Ms. McVey made a
9 request on the 14th for any new information before you took
10 the stand the next morning, first obtained Exhibits, 11, 12
11 and 13 at 11:38 p.m. Do you know how many hours had passed
12 before you were aware those records were pulled and that we
13 were provided them on the 14th?

14 MS. O'NEIL: Again, attorney/client information.

15 THE COURT: I'm going to allow this line of questioning,
16 it's a timing situation on a failure to produce earlier and a
17 statement by Mr. Tornetta that they needed these records so I'm
18 going to allow the questions.

19 MS. O'NEIL: But I would like -- I have a concern about
20 broaching the privilege, Your Honor, so I would state on the
21 record that I received these documents approximately whenever
22 we got out of court and I looked at them during my preparation
23 of Mr. Tornetta, so that was before 11:30 at night.

24 THE COURT: But after 5:30 at night.

25 MS. O'NEIL: Oh, yeah. I didn't get anything until after

1 we got out of court and I went back to the hotel and ate dinner
2 then sat down to prep --

3 THE COURT: That's the sequence I thought was at play
4 here. It wasn't a question that you had these documents in
5 your hands before -- at some earlier time when you either by
6 phone or in person prepared Mr. Tornetta, you got them after we
7 left court that day and you ate dinner and Tornetta got here
8 and at some point you these documents and then --

9 MS. O'NEIL: And I did meet with him with those documents
10 before I sent them to plaintiff's counsel, I'll state that on
11 the record. But I am concerned about broaching the privilege
12 not in South Carolina but somewhere else.

13 THE COURT: I don't want to get into discussions with
14 other lawyers in Cleaver-Brooks internal operation so I
15 understand and that's why I am being cautious about this, but I
16 think we have got a full picture out here, Ms. Dean, have we
17 not.

18 MS. DEAN: All I really wanted to confirm is they got them
19 soon after, so I think with that representation --

20 THE COURT: Very good. I think we've got on the record
21 what Ms. Dean is after.

22 Q The only other questions I have, is you have indicated
23 under oath not only in the depositions taken in this case
24 but repeatedly for years that a unit number is like a serial
25 number which is a specific ID for a particular boiler, fair?

1 A Yes. As we pointed out, there's a couple of other
2 serial numbers that may be on data reports and things like
3 that, but the unit number is how we would have filed things.

4 Q You never disclosed or discussed in your deposition or
5 in discovery that you reviewed that you believed the second
6 unit number in the commercial records produced to us in this
7 case was a typo, correct?

8 A The 18344 reference in the 18343 file?

9 Q Yes, sir.

10 A No. I don't think we discussed that unit number in
11 those depositions at all.

12 Q The first time you indicated that a second unit number
13 was, in fact, not a second boiler but a typo was in court
14 when I asked you standing in this spot and you were sitting
15 on the stand in the spot you're currently in right now.

16 A Yes, I believe so.

17 Q You then on examination by Ms. O'Neil discussed the
18 various reasons why you believed that typo appeared four
19 times, and that your understanding of the records made it
20 clear to you it was a typo. An example of that was that a
21 field report should have been for each one, and the fact
22 that there was only a field report for 44 and not for 43 is
23 an example of how your knowledge of those documents led you
24 to conclude that there was, in fact, not two boilers despite
25 there being two boilers; is that fair?

1 A I believe so, yes.

2 Q None of those things were identified in written
3 discovery or in depositions to the parties before you stated
4 them in this courtroom in front of the jury, correct?

5 A Correct. Other than us producing the records that
6 showed the two different ones and not discussing it at all
7 in depositions, correct.

8 Q So even though I think you were in the courtroom when
9 the Court indicated that Exhibits 12 and 13 could not come
10 before the jury, it is not just the cards and the commercial
11 records associated with the 404 unit boiler number that's
12 new, it is all of your testimony that the understanding of
13 the commercial records relating to Bowater are wrong, they
14 are not two unit numbers as they state but there is a typo
15 as to one of those unit numbers, fair?

16 A Correct. I didn't discuss the typographical error at
17 all in the depositions.

18 MS. DEAN: Thank you, that's all I wanted to ask him.

19 THE COURT: Very good.

20 MS. O'NEIL: Brief redirect, very brief.

21 REDIRECT EXAMINATION

22 BY MS. O'NEIL:

23 Q Mr. Tornetta, when you reviewed the commercial records
24 to prepare to verify interrogatories or to give a
25 deposition, what was your focus?

1 A My focus is when we shipped it initially, the unit
2 number to pull the microfiche, and then the invoice to find
3 out when we shipped the boiler and what type it was.

4 Q Do you go through to try and look to see if there's
5 anything different about unit numbers or anything else?

6 A No.

7 MS. O'NEIL: Those are all of my questions.

8 THE COURT: Very good. That completes the proffer?

9 MS. O'NEIL: No, I've got documents, it completes the
10 testimony.

11 THE COURT: That completes the testimony of Mr. Tornetta.
12 Shall he come down or do you want to proffer these documents
13 through him?

14 MS. O'NEIL: No, he can come down.

15 THE COURT: You may come down, thank you, Mr. Tornetta.
16 You may proceed with marking the documents.

17 MS. O'NEIL: I will state to the Court that each one is
18 marked specifically as ID. Defendant's 20 for identification
19 purposes is a March 13, 2018 email at 9:51 p.m. from Ms. McVey
20 to Ms. Pugh and myself attaching a revised life care charge
21 from their expert, Sarah Lustig, "This will change Dr. Wood's
22 economic loss numbers and I will get that to you in the
23 morning."

24 (Break in proceedings.)

25 MS. O'NEIL: 21 for identification is an email March 9th,

1 2018 at 5:50 p.m. from Mr. Tom Kennaday who has, I believe,
2 already gotten on the record here as counsel for Bowater
3 sending to Ms. Dean, myself and some other lawyers some
4 documents, "Pursuant to questions I was asked after the
5 deposition of my client, Resolute FPUS, one taken in the Smith
6 and Sizemore cases, one taken in Howe, I followed up with Mr.
7 Art Welker," and then there are some documents.

8 THE COURT: This is 22?

9 MS. O'NEIL: Yeah, but I didn't mean to mark Defendant's
10 22 so I am going to withdraw Defendant's 22 for identification,
11 it's got nothing to do with this issue. Defendant's 23 for
12 identification purposes is a March 12, 2018 email from Mr.
13 Kennaday again to Ms. Dean and myself attaching additional
14 documents that Art Welker had found. Defendant's 24 for
15 identification purposes is another email from Mr. Kennaday
16 March 12th at 8:07 p.m that just simply is again to Ms. Dean
17 and myself, it says, "Art found more documents, call me with
18 your questions." Defendant's 25 is an email sent at 9:43 a.m.
19 from Ms. McVey to Mr. Pugh asking whether, "If there were any
20 documents that show what was or was not at the Bowater
21 location, please confirm that we already have them and that
22 they've been Bates numbered. Exhibit 26 for identification
23 purposes is an email from me to Ms. McVey and Ms. Dean at 11:35
24 p.m. on March 15th stating, "Although we believe we are not
25 obligated to produce this given that it is evidence that came

1 directly in response to the arguments made in court today
2 regarding unit number 018344, Ashley will forward you a link to
3 the document shortly, they're too big to email." Exhibit 27
4 for identification is the March 15, 2018 email from Ms. Couch
5 to plaintiff's counsel with the link. Exhibit 28 is a March
6 15, 11:57 a.m email that I presented to plaintiff's counsel
7 regarding that production because I had failed to include Mr.
8 Pugh on the first one and included some other person where I
9 was correcting that and asking plaintiff's counsel to please
10 confirm they received the link. Defense 29 for identification
11 is an email report from our software at 12:07 a.m. which shows
12 that Ms. McVey downloaded the documents. Defendant's Exhibit
13 30 for identification purposes is an email on Monday, March
14 19th, sent at 2:32 a.m., so this morning with new objections
15 and counter-designations to Cleaver-Brooks designations for
16 their own witness, Wayne Howe.

17 THE COURT: What do these have to do with anything?

18 MS. O'NEIL: I think this is relevant to the appellate
19 issue, Your Honor.

20 THE COURT: The appellate issue with regard to these other
21 things -- oh, tit for tat, they sent them late, therefore I
22 sent them late, or you sent them late, therefore they sent them
23 late.

24 MS. O'NEIL: That's why I asked --

25 THE COURT: I consider that very irrelevant to anything

1 even on proffer, I think that's a little over the top. I don't
2 think y'all ought to do each other that way.

3 MS. O'NEIL: Exhibit 34 for identification purposes is a
4 second 2:33 a.m. email from this morning regarding additional
5 designations for Gilbert Small from the plaintiff.

6 THE COURT: And again, I consider these -- I'm about at
7 the end of my patience about this -- I consider this kind of
8 stuff irrelevant. This other was something that had been asked
9 for, y'all -- everybody has had the Howe and Small depositions
10 for a very long time, it's just a question what you're asking
11 to use and that's been a moving target in this trial for both
12 sides about what ends up being designated and what not, it was
13 certainly done very late at night or early in the morning, but
14 early morning again is not your fault but very definitely your
15 client's, was a completely new revelation for the first time,
16 and that's why I see these late night and early morning
17 exchanges between you counsel on something otherwise that is
18 not pertinent at all over documents that have been well known
19 for some time is not pertinent to the other rulings.

20 MS. O'NEIL: I understand that, Your Honor. Exhibit 31 is
21 a complete copy of the first deposition of John Tornetta
22 including the exhibits.

23 THE COURT: No, it will be Exhibit 32, 31 was Gilbert
24 Smalls.

25 MS. O'NEIL: Oh, you're right. No, I got those backwards.

1 Exhibit 34 is Gilbert Small, Your Honor, I had to go out of
2 order.

3 THE COURT: Okay. And then Exhibit 31 is Tornetta?

4 MS. O'NEIL: Exhibit 31 is Tornetta, correct. And it is a
5 complete copy of this first deposition which was taken on --
6 the first one is his first deposition, Your Honor, I can't --

7 THE COURT: What's the date of it?

8 MS. O'NEIL: I believe it is February 6th, Your Honor, but
9 I can't see it. I would just not specifically for the record
10 the commercial record is attached as Exhibit 4.

11 THE COURT: The commercial record of 18343.

12 MS. O'NEIL: Yes, thank you, Your Honor, I understand what
13 Ms. Dean was asking. And Exhibit 32 is the March 6, 2018
14 deposition taken of John Tornetta in this case. And Exhibit 33
15 for identification purposes is the deposition of Art Welker
16 taken on February 20th, 2018 in this case. I skipped one at
17 the beginning, Exhibit 19 is a complete copy of the asbestos
18 trial docket amended general scheduling order for this case
19 including the attachments thereto. And that is the Defendant's
20 proffer.

21 THE COURT: Very good.

22 MS. O'NEIL: And we will get for plaintiff's counsel those
23 two exhibits, I put the sticker for 22 on the wrong thing and I
24 just need to fix that.

25 THE COURT: Very good, all of that is done. Ms. Dean?

1 THE COURT: Very good, all of that will be done. And now
2 closing arguments.

3 MS. DEAN: Okay to proceed?

4 THE COURT: You may proceed, Ms. Dean.

5 MS. DEAN: I think we're ready. Good morning. I woke up
6 excited this morning. You're going to be read 30 pages of law,
7 you heard a week of facts and I get to now explain why those
8 facts prove repeated violations of safety that caused a lot of
9 harm to this family and I've been waiting to do that for two
10 years, so I really am excited. And it's the first time since
11 opening that I get to talk to you. It's not a conversation but
12 it's easier than talking to a witness about why I think there
13 is powerful evidence in the case of repeated wrongdoing. When
14 we started I told you I want to give you a fray kind of outline
15 of a puzzle. And I believe these were the two biggest
16 disputes, and then we got evidence later that day and later
17 that week including midnight information, but I'll tell you I
18 think I was wrong, I think there's a third major dispute; the
19 location and number of Cleaver-Brooks boilers. So I would go
20 to the heart of the matter first, and then I want to explain
21 once that's cleared up about why you have a repeated violation
22 of clear law and clear standards in South Carolina for which
23 they offered no justification. Let's talk about the boilers
24 that were at Bowater that Cleaver-Brooks sold. Their biggest
25 argument is that our records are incomplete, messed up and

1 filled with errors. There's not two boilers, we just made a
2 lot of mistakes, and at the same time complete and reference
3 every sale of records that happened to Bowater and they said
4 both things within a span of minutes. Let's start with the
5 first. Their claim that the records they have show the
6 totality of what could have been sold to this plant in the 50's
7 and 60's, that's at the heart of their claim. How did they try
8 to prove it? There's no document retention policy. Companies
9 have those to say what document they kept, which ones they
10 didn't and why. They produced nothing that they showed to you.
11 This is a multinational company of thousands of employees
12 leading the industry. They had the ability to bring any one
13 they want to speak on their behalf. They bring a gentleman who
14 started in 1985 and has no personal knowledge of what was and
15 was not kept in the 60's and 70's. He makes bold claims, and I
16 tried to show you how he's done it for years with very little
17 research that always helps his client, that always helps his
18 employer, Cleaver-Brooks. The claim here was the units in our
19 records are the university -- universe of the boilers. I said,
20 "Wait a second, you mentioned on the stand that you were
21 working on a group of South Carolina cases." You will see in
22 the notation on those Bates labels Howe, Sizemore, Smith. This
23 is Mr. Howe's case. But in learning about the other cases we
24 said, "You say your records are complete but in these two
25 places my guy worked, Duke Clifford and Duke McGuire, you got

1 nothing. And Duke and the state of North Carolina have records
2 that you were there in the 50's and 60's." He just dances
3 around that, "Well, things move." I'm not claiming their
4 records are incomplete bringing evil motive, that's my point.
5 Things move, your records aren't complete, admit what we all
6 know to be true. And there was this moment of clarity that
7 came right at the very end of the second day that he was here,
8 so I'm just talking about on Monday where Ms. O'Neil asked him
9 this question: "How long to your knowledge does Cleaver-Brooks
10 keep these records that show the pressure vessel or boiler
11 number for each pressure vessels it makes?" Clear chance to
12 read over that. Now, in 2018 they're kept forever. Back in
13 the day before microfilming they were all of the records for
14 specific boilers -- all of our records for specific boilers
15 were kept until we were told that the boiler was taken
16 completely out of service. The notion that their records
17 define the universe of what was at Bowater is clearly
18 demonstrated to be false. It's more than that. Even if we
19 just look to the documents you have we know from common sense
20 and the facts that there's more than one boiler. This is how I
21 know that. The timeline. The first boiler I want to talk
22 about I referenced as unit 43, that's the one that they do not
23 dispute was at Bowater that they sold that had a bunch of
24 asbestos on it. Even in opening Ms. O'Neil said "We're not
25 disputing that would get into the air, we know that's the

1 boiler at Bowater." We knowed it was shipped on November of
2 1957. I tried to reference in this presentation, this is why
3 I've gotten little sleep, every place I can show you where you
4 can verify things yourself. So in Exhibit 55 and Bates label
5 six, for instance, that's -- it was operating. It took ten
6 days to hook it up. It's an industrial boiler, they say that
7 in their own records to get it started, they complete that on
8 February 10th and 11th, that's on Bates 5. We then get this
9 document at the start of trial that's been marked as Exhibit 45
10 from Bowater, it's the one that Art Welker says is the one and
11 only document I could find proving Cleaver-Brooks was there.
12 "Sorry, Ms. Dean, you're right. I messed up when I talked to
13 you in February, I said there was no record of Cleaver-Brooks,
14 I found the record." What that record showed is that in 1971,
15 and this is Exhibit 45, there was a Cleaver-Brooks gas fired
16 boiler, but where? In the administration building. We didn't
17 know the unit number, we don't know a lot, but this is what we
18 know, the universe from Bowater. Combine that with the sworn
19 testimony of a person who has no dog in this fight, Art Welker,
20 the engineer who spent hundreds of hours, not a couple of
21 minutes like Mr. Tornetta, hundreds of hours trying to figure
22 out what happened, and he said the administration building was
23 constructed in 1961. And remember the plant? They have unique
24 names from number one papering mill from the TNP for each one
25 of the buildings. We don't know exactly in '61 but it's 1961.

1 He also tells us on Thursday, March 15th, that the powerhouse
2 was built when the plant was built, and that's in 1957. A
3 boiler operating in February of '58 is not in a building that
4 doesn't exist. Unit 18343 is not the boiler put in the
5 administration building, that's the first thing we know
6 cleanly. We also know, as I showed to this to Mr. Welker, that
7 the two places that there were boilers initially believed was
8 in the powerhouse in '57 and again in this admin building. So
9 where it went, where it clearly went was in the powerhouse,
10 which completely lines up with the testimony in this case.
11 Wayne Grant was asked, "Do you remember package boilers? Yes,
12 a couple of them," and then there was one. The very next part,
13 "Do you know where any of those boilers were installed or when
14 at Bowater? I'm going to say they were installed at different
15 times. I'm thinking the 50's, '56 or '57" -- this is key --
16 "I'm thinking that's the year they installed at Bowater." So
17 he doesn't remember exactly when Bowater is created, if it is
18 '52, '56 or '57, but he remembers those package boilers coming
19 in at the beginning of the plant, which corresponds with their
20 1957 boiler and it corresponds with what Art Welker knows
21 because he did a lot of research. The second reason we know
22 there's two boilers, look at Exhibits 41 and 42. We took the
23 25 pages of records that they have left about a boiler that
24 they had a history with for 30 to 40 years, and we divided it
25 in to two to show cleanly there are two boilers, you can see on

1 each of them the highlights to the two boilers over and over
2 again. When we talked to Mr. Tornetta a week before this trial
3 started on March 6th, there was no doubt that there were two
4 Cleaver-Brooks boilers. The whole dispute was were they in
5 this office building and administrative building, or were they
6 in the powerhouse where Wayne worked? And then there was a
7 game change, Art Welker took the stand, he said, "I did more
8 research. One of them is Cleaver-Brooks, they're right, one of
9 their boilers did go to the admin building but the other is
10 not, it's a Kewanee Boiler." And then the story changed, we
11 got the midnight testimony. There aren't two unit numbers.
12 Yes. Unit numbers distinctly are the social security number
13 for a boiler. Yes. I said for years since 2001 that means two
14 boilers, but for the first time I'm going to tell you at 11:30
15 at night that I believe that's something different, because now
16 they don't have a location for their second boiler. They come
17 up with a story that there are repeated mistakes, that it went
18 to Illinois, they don't have a single document to evidence that
19 story, not a one. But here was the next question I had, and I
20 asked it twice. Okay. You say that four times four different
21 people made a mistake. Did you check the documents to see if
22 there was any other indicators that showed to us whether these
23 were two identical boilers, one boiler that was confused for
24 two distinct boilers? And he was like, "Ms. Dean, I don't know
25 what you are talking about." I asked it a different way; model

1 number, size, horsepower, anything, did you actually care
2 enough to look? And he said, "I don't know what you're talking
3 about." Let me show you what I'm talking about. The model
4 number on this one is 723-30. 723-30. Again. Again. Then we
5 start seeing 700-30, an entirely different model number. And
6 we have one document where they reference both. And then you
7 have again Art Welker's testimony. And the Judge will read to
8 you how you kind of weigh the validity of a witness. I think
9 the fact that he has no dog in this fight, the fact that you
10 got to meet him, the fact you saw his sincerity, the fact that
11 he owns his mistakes speaks highly for what he did. And what
12 he said when I showed him this document is, "Sir, do you know
13 if this Cleaver-Brooks boiler referenced in Bowater's documents
14 is a second or a third boiler? I don't know." But the idea
15 that there are multiple boilers that were at Bowater is
16 something everyone but Mr. Torretta at midnight believes. You
17 are asked to determine what is more likely true than not, I
18 want to hesitate on that for a moment. Because on TV, at least
19 before I was a lawyer when I just wanted to be one and argued
20 with my mom you hear beyond a reasonable doubt. In criminal
21 cases where you can lose your life or your liberty, we insist
22 on that. It is at the heart of our justice system that we
23 would rather err on the side of letting people out than putting
24 an innocent man away. In a civil context it is a lower
25 standard. At the heart of it is weighing credible evidence,

1 you want to believe it, and when you do it you want to decide
2 what is more likely and we have the burden to prove that. But
3 when you're especially looking at events that were 40 years ago
4 it's not 100 percent. I would have liked to, one, understand
5 all the facts better before we started; and two, have more
6 certainty about what happened to this family. But when we
7 asked what is likely just based on the records we see that
8 there is a Cleaver-Brooks boiler in the place where Wayne Howe
9 worked for years, and where the heart of his job was to work on
10 boilers. But we don't just have records. You have the
11 deposition of Johnny Reed Bogan. I've never met him.
12 Cleaver-Brooks was at the deposition but none of you have ever
13 met him. Weighing someone's testimony is something you're
14 legally given a definition of, but it's something we do every
15 day. Whether Jonathan says something -- I'm teasing him -- or
16 my mom, or a person who hasn't been straight with me, we weigh
17 what we're going to put to that, right? "I'm going to be on
18 time," oh, okay. It's hard to do that when you've never looked
19 at a person, when you don't know if they're more like Tim Howe
20 or John Tornetta, and you don't have that, and I recognize that
21 makes your job harder. But I want to talk about why I believe
22 his sworn testimony is incredibly believable and by itself
23 proves our case. First you'll be told -- and I reference
24 charge numbers, because we had an opportunity all day yesterday
25 to talk about what that's going to be, and this is instructions

1 I think Chief Justice Toal is going to give you. Direct
2 evidence is the testimony of a witness who claims to have
3 actual and direct knowledge of the facts such as an eye
4 witness. It is evidence if believed immediately establishes
5 the fact. John Tornetta has no direct evidence. He literally
6 wasn't around during the time frame when we were discussing
7 these things, but Johnny Bogan does, he was an eye witness, he
8 was there. What else do we know? His testimony was sworn. He
9 was born and raised in Greer, he put his hand on the Bible and
10 he swore to tell the truth, for most people that means
11 something. He also told you why he knows about this, and I
12 want to spend a few minutes here. He indicates that in '69 or
13 '70 he went to Bowater, it was for shutdown six weeks at a
14 time, he probably did that four to five different times, and
15 that was with a gentleman by the name of Mr. Sizemore. So
16 first of all you have in the 60's and 70's time frame weeks
17 upon weeks going in and working with the boiler with Mr.
18 Sizemore who was a specialist in working on field erect
19 boilers. There's more. And you heard all of this before you
20 knew the dispute, which is part of the reason I'm re-going over
21 it. He came back without Mr. Sizemore for years, 17 years
22 working on boilers. This is a person over the course of four
23 decades who went to this plant for weeks at a time to work on
24 only one thing; boilers. That was all he did. All of the
25 other witnesses you heard kind of had a lot of responsibility,

1 these were specialists on boilers. what was his job? He was
2 also tested and kind of coming in after two years.
3 Appreciating what we were fighting about for a long time can
4 sometimes get lost. But what Art welker and what
5 Cleaver-Brooks told us all of the way until they got to trial
6 is that Johnny Bogan and Wayne Howe were just flat wrong, there
7 aren't package boilers in the power house, there were only giant
8 big field erect boilers. They got it wrong. I talked to Art
9 about it, there were only five. I kept asking Art questions
10 because I kept talking to people, this doesn't make sense. And
11 it came back and he admitted, "Johnny Bogan was right, Wayne
12 Howe is right. I didn't come until 2015. But it turns out in
13 the 60's and 70's and 80's they were using process boilers and
14 heating boilers in the powerhouse that were package boilers.
15 And so Johnny Bogan, again, someone who doesn't have a dog in
16 this fight, Wayne Howe, when he had no idea we were going to
17 have this dispute said they were there, and they were. He also
18 says that there were four Babcock and Wilcox boilers, no
19 dispute. The other contractual evidence I think is involved in
20 this Exhibit 10. Cleaver-Brooks in this time frame was the
21 world's largest manufacturer of these boilers. Everything
22 pieces together to believe that what Mr. Bogan said, even
23 though he didn't get to meet you, is right. The last part, and
24 it was just a side note I think that came in when you were read
25 testimony for hours that was from Mr. Grant. He thought there

1 was a Cleaver-Brooks boiler at Celanese. He spent the first
2 ten years of his career with Wayne Howe at Celanese from '67 to
3 about '77. The lawyer for Cleaver-Brooks said "we didn't make
4 those type," and they were right, they didn't make four-story
5 Cleaver-Brooks, we're not arguing that or disputing that. But
6 he asked this question, which I love, "So with that
7 representation in mind, that being we didn't make those types
8 of boilers, is it possible that Cleaver-Brooks is the name of a
9 boiler you recall from some period but not necessarily at
10 Celanese in Rock Hill?" And you got to see Wayne Grant's
11 response, he paused, he thought about it, "Yeah. Yes." He
12 worked at two places, Celanese and Bowater. Everything points
13 to Johnny Bogan being accurate. So the next thing we have to
14 prove is not just that was in the powerhouse, but because Wayne
15 Howe spent so much time there, that's why we were focusing on
16 the powerhouse that he worked with that boiler. How would we
17 have done that? In Wayne Howe's testimony he was asked whether
18 they were all field erect boilers after talking about a bunch
19 of really large seven to ten story boilers. He says, "No. we
20 have packaged boilers, a couple of them, there may be one
21 package boiler down there now. That was at the powerhouse?
22 Yeah." The records show there was a Combustion Engineering
23 boiler. The records powerfully point to the fact that there
24 was also a Cleaver-Brooks boiler. And there's testimony, but
25 again, his memory because he worked there for a long time, was

1 spot on. "Did you ever have an occasion to work on the package
2 boilers? Yes." Gilbert Small. You were read his testimony
3 for a long time, verifies the same, every boiler in that
4 powerhouse, all of them, were worked on by Wayne Howe. I don't
5 think anybody disputes that. The nature of the work is
6 critical. How do you expose this -- how did he get exposed to
7 asbestos from those boilers? Wayne tells us when he's asked,
8 "kind of walk me through a day when you're working with
9 boilers. Some of us would start pulling the gaskets off the
10 doors and replace them, some of us would go in the boiler and
11 start cutting tubes out and replace them." Now, first
12 sometimes your best way to fight something is to create a
13 false fight. No one said ever that a six foot tall man who
14 weights 226 pounds crawled in the boilers. What he says is
15 that we opened them up, some of us would go into the boiler,
16 which means you're sticking your head to pull out tubes where
17 all of the asbestos is, and they would do that work. The
18 second thing -- I didn't appreciate this because I don't do
19 boilers -- this is absolutely talking about package boilers and
20 not field erect boilers. How do we know that based on the
21 evidence? We talked about this with Art Welker and I showed
22 you in opening, this is an actual field erect boiler. I showed
23 a little man, I cut them out and I stacked them up. These are
24 the tubes in the field erect boiler. You don't open a door and
25 pull out tubes with the height of 11 men, he was talking about

1 package boilers. It completely fits the description of hinge
2 doors that they had and the seven foot tubes that men pull out
3 where someone goes to the front and the rear of those two doors
4 to do that work. This is a Cleaver-Brooks manual saying it is
5 accomplished by opening the front and rear doors just as he
6 explained, and we know because I read it to you methodically
7 just in opening that you interact with gaskets, packing and a
8 bunch of cement. He also talks about in relation to the
9 boilers changing out valves, changing out the gaskets on them,
10 replacing them. Exhibit 6 is from the Bowater plant sale,
11 these are all valves with asbestos. That is a picture of one
12 of the flanges when the gasket goes between them, this is what
13 he did, this is what he worked on. "Did you have a
14 responsibility for any gaskets or seals on the boiler doors or
15 access points?" Again, this is talking about a package boiler.
16 You heard about the hand holes -- thank you, I'm tired -- the
17 hand holes which is one access point and then the two big
18 doors. And his answer, "Oh yeah, pipefitters, we have done all
19 of that." That was their job replacing the gaskets on the
20 door. He did that job as a contractor for Beta at Bowater and
21 he said, "That's the only place I worked. It wasn't like I was
22 at Bowater two days a week and somewhere else." In the time
23 frame from '77 to '86 Beta was at Bowater, and then he was one
24 of the few people hired as a contractor to be an employee there
25 to do the same work until he became a master mechanic. And so

1 this is something he did for decades. We know that doing that
2 maintenance involved a lot of interaction with asbestos. Now,
3 John Tornetta says, "Exhibit 12 has nothing to do with this
4 case." He didn't give you the benefit of his rational, and I
5 don't understand it. This talks about all of their package
6 boilers and the specific dimensions that they admit apply here
7 in the exact right time frame. It also matches up with the
8 operating manual they had in terms of where all of the asbestos
9 went. The reason I think they want to disassociate themselves
10 is because this gives the details of the actual work that they
11 knew would happen because they instructed on how it would. For
12 the cement and the rope and the furnace cement you were doing
13 mechanical actions like scraping and wire brushing and using
14 hammers, and that's extraordinarily. That's why their lawyer
15 admitted from the get-go "Of course we knew there was asbestos
16 and of course we knew about it released out in the air." This
17 is their Exhibit D18, it is an America Society of Mechanical
18 Engineering document that talks about routine repair. I took
19 out different sections for boilers. What they say is different
20 for Mr. Tornetta, not that you would have done an inspection
21 yearly or sometimes longer, but you have to do them once a year
22 and there needs to be maintenance and there needs to be repair,
23 and it talks about the why's that shows that Wayne's testimony
24 about doing this work completely makes sense in terms of how
25 frequently and regularly he did it. There are all of these

1 different reasons and deteriorating insulation to taking off --
2 checking hand holes, corrosion, seal on the drums, and it goes
3 on for pages. You'll be told by Chief Justice Toal in charge
4 four circumstantial evidence is indirect evidence. We call it
5 connecting the dots, sometimes I like it when the legal words
6 just match with life. Direct evidence. Cleaver-Brooks was
7 there in the powerhouse. Johnny Bogan, "I worked on all of the
8 boilers. Direct evidence, Wayne Howe, Gil Small. The asbestos
9 was all over it. Direct evidence from documents at the time.
10 We have to connect the dots to show how there was repeated
11 exposure but the evidence, I believe, is clear. There are some
12 issues that are undisputed to Mr. Howe dying from the terrible
13 disease, that he worked with asbestos from boilers for years
14 and that he didn't do anything wrong. And I really want to
15 focus for a moment on the significance of that last agreement,
16 the fact that he didn't do anything wrong. Because I think
17 what will become clear when you hear the charge is that all of
18 this, whether you're a multinational company or whether you're
19 an individual, whether you're a school teacher or an accountant
20 had basic duties. It's the idea of personal responsibility
21 when we're in a society with each other, but the specific
22 duties are triggered by what rules we have. And so here I
23 believe what you will hear is that when you make and sell a
24 product, when you choose to put something into the stream or
25 commerce and sell it to the public all over, no matter what

1 product it is, you have an obligation to educate yourself of
2 the hazards and inform. At the heart of this is you are the
3 expert in what you choose to sell and your personal
4 responsibility as you know what you're selling, and to make
5 sure you don't keep other people in the dark. Then there are
6 employers, premise owners, those are -- with OSHA in the
7 1970's, what they're doing extends back to the 1930's, they
8 have the obligation to have a safe workplace, and at the heart
9 of the OSHA regulations in particular have to do with control.
10 You're the ones armed with knowledge that can come out with
11 ventilators, make sure people use respirators, demand that you
12 wet things down. You have better power to do that than anyone
13 else. And then there are employees, workers or users, and they
14 absolutely have an obligation as well to follow the rules. And
15 first of all no one disputes here that this is where Wayne was
16 in this group, right? He was the worker, the user, sometimes
17 as a contractor, sometimes as an employee. And no one disputes
18 that the way he worked, the way he followed the rules, the way
19 he behaved as a foreman was reasonable upright, there's no
20 complaint after two years of working. I reference this first
21 because I think that's a powerful point, but second because
22 these duties interweave with each other. You'll hear that one
23 person doesn't get off the hook because another person messes
24 up, that's the first thing. You can't point to your brother
25 and say he did it too, but I think it's more complicated than

1 that, and that the trigger of all of this starts with the
2 maker. They are to inform the employer who is to control the
3 work that goes to the employee, and when they failed they've
4 created not only a violation of legal rules but they created a
5 real harm for everyone else. There is no dispute here about
6 that failure. And what you've heard, and I spent probably too
7 much time on it, was that this duty is particularly critical
8 when there are three factors. First, when it's not obvious.
9 You know not to touch something really hot. You really need
10 information when you can't glean it yourself. And every one
11 admits that with asbestos if people don't tell you it can hurt
12 you in your life you have no idea. The second is when it's not
13 public. Sometimes the news can let you know that toys or paint
14 or something that it's not obvious at all is bad because they
15 want everybody to know. But with asbestos this didn't become
16 in the mainstream, and you heard me ask Mr. Tornetta about it
17 several times until the late 80's or late 90's. Companies
18 knew, trade organizations knew, but the public did not. And
19 when you have a non-obvious harm that's not in the public and
20 you're talking about something that's life or death, that is
21 when this duty becomes -- it's always a duty, there's never an
22 option to or not, but it suddenly becomes critical. There's
23 one more thing that I really believe was going to be undisputed
24 because everybody else in this case, everybody else in the
25 medical community, everyone has said it's clear but Dr. Oury,

1 the doctor that I talked to on Sunday, and you saw the
2 videotape of him earlier, and that is Wayne Howe's mesothelioma
3 was caused by asbestos. It's in his medical records for each
4 facility he was treated at, it was said by Dr. Holstein. With
5 Dr. Oury I went through the reports with other companies, every
6 other medical person in this case, yes, this is clearly
7 asbestos caused mesothelioma. And we also went through the
8 consensus report, which is called the Helsinki Criteria, that
9 when you have a documented asbestos it signals, signals just
10 from the tumors existence what caused it and that's
11 mesothelioma. But there are questions about how and why that
12 happened that relate to our DNA, and that's why we brought you
13 the top expert, look at his CV, hundreds of publications,
14 published more about this than anyone else about why we still
15 get this disease, and what he says is that some of us are more
16 susceptible than others. There's a reason a wife gets it and
17 her husband who had a lot more direct exposure doesn't. But
18 what he said equally as clearly, and I hope it doesn't get
19 lost, is you don't get it no matter how susceptible you are
20 unless something comes in and that something is asbestos and
21 causes the DNA error. He showed you our DNA and then he showed
22 you at the very end of his presentation when he's still setting
23 up this, he said this was for a Nobel Lariate, is he showed
24 these explanation marks, lightening bolts. He made a -- we
25 don't have lighting bolts in our DNA, but that represents

1 asbestos. Because without asbestos he said you had to have
2 five to 20 errors, and without -- he has a picture of it.
3 without the asbestos binding the DNA repeatedly 107 people
4 don't die every year from mesothelioma. The only reason Wayne
5 Howe lost his life was because of exposure to asbestos. And
6 when I cleanly asked Dr. Oury, "Is there anyone in South
7 Carolina, in this country, sir, in the whole world that agrees
8 with you? Nope," was his answer. I think that's powerful. So
9 at the heart of what we have to prove and why we brought you
10 here requires us to show three things, and this is from a car
11 wreck cause to a complicated medical malpractice case to this,
12 you have to show fault. Did they do something wrong? Did they
13 run the light? Cause. Was the bad thing the reason the person
14 got hurt? You can run a light and not hit somebody. And
15 finally damages, and then you qualify it. So the rest of my
16 time has to go through these standards. Focusing on causation
17 first. One of things that Justice Toal will tell you in charge
18 23, again, I wrote these down but they're helpful to reference,
19 it's in a charge called there can be more than one cause. Yes,
20 there can be more than one cause. In a case like this where
21 everyone says this is a cumulative dose, it's exposures over
22 time, that's really important. It's more complicated than the
23 average case which is why you have been asked to be here more
24 often. I was the first one to tell you others are responsible.
25 we believe that, we have fought that, we know it to be true,

1 but that doesn't mean that Cleaver-Brooks gets off the hook.
2 You have to look at everyone that created the exposure. This
3 helped me think about it the first time. It's kind of a basic
4 and sophomoric drawing. This is the idea that you have someone
5 polluting the river and then there's a contribution from
6 different people, and it takes a cumulation of all three before
7 the bad act happens. Each part has to play their role, that's
8 cumulative dose. And what the law says is that the fact that
9 there's negligence of a third party and concurred with the
10 Cleaver-Brooks negligence does not relieve a company of
11 liability. Let's talk about that. My personality if I was
12 asked, what is the total loss for this family? I would want to
13 know what each person who did this would pay. I can't talk
14 about it, they can't talk about it, you don't get to know, that
15 would frustrate me. What you are asked to do and really help
16 us out with is were they a part of the problem and what's the
17 total loss, and then we have clear rules and amazing judges
18 that sort that out later and you don't get to know. But what
19 we do need help with is were they part of the problem and what
20 is the total loss. When does the fault of others get you off
21 the hook? There is a defense called an intervening cause that
22 tells you the one time you can, and this is the one part of the
23 case where they have the burden to prove something. And I
24 mention that because we had evidence and witnesses to establish
25 what we had to prove, and I think here you heard nothing. For

1 intervening cause, which is charge number 24, they have to show
2 three different things, all three of these things to get off
3 the hook. First, the idea that if somebody else has done
4 something and you could have never expected it and it 100
5 percent causes the problem, even if we have proved that you
6 were icky, you did something bad, you didn't cause the problem
7 and so you aren't responsible. The first step we have to prove
8 is that other persons' actions you had no control, none
9 whatsoever, not even partial control, they didn't prove that.
10 I asked Mr. Tornetta, "Did you have numerous ways to
11 communicate to Bowater hazard information?" Could you have put
12 it on the manual? Could you have put it on the vessel itself?
13 Could you talk to them when you started it up? Could you have
14 called them in 1969 when you sold new equipment. Yes, yes, yes
15 and yes." They clearly did not have complete control, but they
16 had the baseline, the first step and the duty in line to make
17 things happen here and they completely failed. They also have
18 to prove that other people doing something wrong in this case,
19 and they never clearly in opening or at any point in time
20 defined who that is, but they have to show that that action was
21 not foreseeable. That Celanese as a fiber plant wasn't using
22 asbestos, that Bowater, it was unforeseeable that they would
23 have insulation, and I think that's their argument. And
24 there's no evidence of that, there is the exact opposite. You
25 heard from Dr. Holstein, you heard from their own corporate

1 representative and you heard from Art welker, that people for
2 hot applications which were routine in these facilities used
3 asbestos in the 50's 60's and 70's and until the 90's. This
4 was not only foreseeable, it was widely known and undisputed.
5 And finally they would have to show that whoever's fault it is
6 that they are trying to blame was 100 percent at fault, and
7 that is something that they couldn't get any expert in the
8 whole world to say, not Dr. Oury, not anyone else because they
9 didn't bring anyone else. Because what everyone says is that
10 it's all the exposures during the right period that counted,
11 that's cumulative dose. Dr. Brody said that, Dr. Holstein said
12 that, the Helsinki Criteria, the scientists that Dr. Oury,
13 their guy, said were great scientists, the right picks, says
14 that. And read Exhibit 29 if you're interested, this is not a
15 contested issue in the world. And this was a drawing I had
16 with Dr. Holstein to say, "If you had 20 to 25 years of
17 exposure, can you pick out some part and say that's it? No."
18 Ms. McVey asked the same thing of Brody who gave the cigarette
19 of example, "Can you say it's this pack and not that? No." So
20 the fact there are a lot of other people that exposed him from
21 his employees to the premises owner to Foster, Wheeler, and
22 Riley made boilers or Babcock and Wilcox, not disputed, but
23 that doesn't give them a free pass. We ask that they pay their
24 fair share, we can't tell you what we believe that to be. They
25 have the contention they should pay nothing, zero, not at all,

1 and I think that's a really hard position to take in this case.
2 So we have to show was Cleaver-Brooks part of the problem. I
3 want to talk to you about what is a total loss, and then I want
4 to show you that we have shown that this wasn't an isolated
5 event, this conscious, willful, known, careless, a particular
6 type of behavior that's worth noting. You spent a week and a
7 half with us and it may be more, I promised the family I will
8 do this, I want to thank you. No matter what you decide in
9 piecing together history from 30 or 40 years ago, you have
10 shown up on time, I see you writing notes, you're attentive. I
11 think this is the nicest court I have ever been in. It is hard
12 to hear sometimes what you don't want, it's hard to figure out
13 what you want to hear but you've been listening. You've beared
14 with us as we've shown you all the documents implied and for
15 that alone, for having the chance to be heard, I think that's
16 what makes this country amazing and I thank you and I wanted to
17 take that time. So I'm going to get quickly into the actual
18 laws on fault, we've talked about causation, but fault. There
19 are three different ways we believe that they acted in
20 violation of South Carolina rules, we only have to prove one.
21 We are showing you three because it goes into the very last
22 question you're asked. This is not isolated. Over and over
23 and over again in every way that South Carolina regulates
24 people they violate the rules, one is enough but this is a
25 company that is problematic. In terms of defending their

1 behavior, their actions, what evidence did you hear? How many
2 witnesses came in? Dr. Oury -- I asked a question, "Are you
3 here to explain Cleaver-Brooks conduct? No." Tornetta, who
4 was the person they could pick out of anyone, "Can you explain
5 why people -- you didn't make the decisions, can you explain
6 why they did? Is there anything you could admit you would do
7 differently? I'm not here to talk about that." There is not a
8 human being, not one they could pay an as expert and not one
9 from all the people that worked here that took that stand to
10 justify how they behaved. It is not disputed they sold boilers
11 with lots of asbestos that exposed lots of people to it, and
12 they don't have a word to explain their behavior. The first
13 question that I want to go through that you will be asked deals
14 with strict liability. You'll be asked that we, the jury, find
15 that defendant Cleaver-Brooks, Inc. is strictly liable for
16 selling products that were a proximate cause of Wayne Howe's
17 injury and damages. I want to explain why I believe the answer
18 to that must be yes. Strict liability has to do with liability
19 without fault. It doesn't look at conduct, it looks at the
20 product which is very different than -- it deals with whether
21 the product was defective, and defective means unreasonably
22 dangerous. When I think of a defect I think of something not
23 working, right? It's a little counterintuitive to me how the
24 law defines it, it just means it's not reasonably safe as
25 designed. There are two defects in this case; asbestos and a

1 lack of warning. There are instructions for each. The design
2 defect is charge 13, the failure to warn is charge 14. To
3 answer yes to this question we only have to prove one defect.
4 But again, I go through this to show over and over again no
5 matter how this state has looked at the issue they fail. The
6 use of asbestos is uncontested. There was a suggestion that I
7 added exhibits that have nothing to do with the boilers in this
8 case, I'm going to address that. But I want to be clear,
9 first, these are the exhibits based on their own Bates number
10 that dealt with the boilers that were sent to Bowater. 220
11 pounds of drums of asbestos in it. JM 106 mail order was 70
12 and 91, two percent asbestos. Asbestos -- packing, which we
13 looked at, which was 40 to 100 percent asbestos. Asbestos
14 gaskets that were in a variety of different places. Then I
15 showed you this sheet and this in two exhibits, Exhibit 11 and
16 Exhibit 57. They were one page documents talking about where
17 insulation should go on the boiler, and I thought what they did
18 here was clever. They were shown Exhibit 57 that suggested an
19 insulation and specifications for LR boilers. "Ms. Dean showed
20 this to the jury, does this have anything to do with the boiler
21 at issue? No." I agree. It showed that asbestos cement was
22 352, it showed that that's 100 percent raw asbestos, it showed
23 that his claim on Friday wasn't true, but that's not the boiler
24 at issue. The boiler at issue is Exhibit 11, which he was
25 asked about. Look at the difference, it deals with all of

1 their steam boilers. It is undisputed that these were steam
2 boilers for a package, and what it shows is you must have
3 insulation all over the boiler shell that includes 85 percent
4 magnesium insulation block and asbestos cement. We don't know
5 which particular kind but we know they ranged from 40 to 100
6 percent asbestos. They read to you eight pages about joint
7 compound used in the 80's and 90's. I added that last exhibit
8 to say that's not asbestos, but I also thought that last
9 exhibit was really helpful because it says one percent
10 products. Joint compound comes in a bag of powder being mixed
11 and used only four times is not okay, it kills people. This is
12 a 40 to 100 percent asbestos cement that was a powder, raw.
13 Whether it's combined with other agents or not it's in an
14 environment that releases easier than anything else. And they
15 used pounds of it on the inside door frame and outside of the
16 door. They tried to indicate insulation was only pipe
17 covering, but Mr. Tornetta was clear about this and Dr.
18 Holstein was clear about this and the literature is clear about
19 it, the Navy documents that they attached as Exhibit 3.
20 Asbestos cement is the first type of insulating material. You
21 also have pipe covering block in that millboard that they
22 added, they are all insulating materials where one out of every
23 ten men that worked on them were reported on the 60's to be
24 dying of horrible diseases, that's what insulation is. That 85
25 percent mag is 15 percent asbestos, and then you've also got

1 the cement. It's not just Exhibit 11 shows that they were
2 selling pipe insulation, the law is that if you sell, require
3 or specify something you are legally responsible for it. And
4 so even if they didn't sell it but just knew it was going to be
5 there, and this is important because things get replaced over
6 time, right, they sold the initial ones. They contest whether
7 they sold the replacement parts, we're going to get into that
8 in a little bit. But even if they didn't because their
9 documents required and specified it, they are responsible for
10 it. And here we know that they have to anticipate the
11 environment of their product, that's the charge, and that they
12 sold and tied in the service of pipe -- we know that because
13 this is Exhibit 10 talking about package boilers fire tube
14 types, specifically progress boilers, the boilers at issue.
15 Burner operation is controlled by steam or hot water, hot means
16 insulation. Fuel piping for gas or oil operation is furnished,
17 that's by Cleaver-Brooks, and is ready for connection to
18 service sources. In that same document they boast of the
19 advantages of their boilers because it's a single source ready
20 for operation. They come in, they do the service connections,
21 there was the possibility for that pipe insulation. So what is
22 unreasonably dangerous? It has to do with a few factors. The
23 first is that is it more dangerous than the ordinary person
24 would assume? If you want to be expected then they may be
25 really dangerous, but that takes the unreasonableness out. And

1 there is no dispute this is why everyone admits wayne Howe did
2 nothing wrong here, that the ordinary person working in that
3 plant, Wayne Grant, Gil Small, Wayne Howe, Johnny Bogan, did
4 not expect this. They expect they might burn themselves, they
5 are working with hot things, they are working with welding
6 blankets, but not to die of cancer. That's why I talked about
7 those other -- the second factor is outweighing the benefit of
8 the product versus the harms. Boilers are awesome, they do
9 good things, I get cold easily, but that's not what you are
10 weighing. It's a boiler with asbestos. And what you've heard
11 is that sometimes asbestos was critical. In the Navy they
12 needed something heat resistant and fast. Speed in a war is
13 critical. You don't need that for a boiler. It was used for
14 the heat and you heard that mineral wool and fiberglass were
15 available. You heard from Dr. Holstein there was an
16 alternative design to use metal gaskets, but you had to design
17 it with those things. Mineral wool is thicker, you can't just
18 substitute them out. Metal has a dirt connection and they
19 chose to build, manufacture and design something with asbestos
20 so that the life of that boiler you are stuck with asbestos.
21 The last thing about unreasonable danger you are asked to
22 consider is the highly risk of harm and the seriousness of
23 harm. No one questions that this harm was serious, you can't.
24 The likelihood you've heard repeatedly, this is rare, this is
25 small, for boilers and pipe insulators it's one out of every

1 ten guys. And in terms of how likely it is, it is being called
2 the most clearly demonstrated health effect in our history as a
3 country. This number is incredible to me. Every toxin, every
4 problem in the workforce combined, one out of the three is
5 because of asbestos. That's why men lose their lives resulting
6 in over 100,000 deaths for decades every year. The second
7 defect is a lack of warning. This requires the seller to give
8 a warning on any dangerous conditions that is likely to be
9 encountered. This is why we talked about what was known,
10 because you only have to warn about what was known. If it is
11 known today but not back then, that's not fair, so I spent a
12 lot of time talking about what was known and when the products
13 were sold. They admit the products were sold in 1957. They
14 admit they continued to sell replacement parts until 1969,
15 that's in the record. They say but it wasn't asbestos, that's
16 not the point. You're going to hear from the Judge, the point
17 is that it is an opportunity to do the right thing, and when
18 you're contacting them and when you are selling products to
19 them you have an opportunity to do the right thing.
20 unequivocally we know they had relationships from their own
21 documents in 1969. And then we believe we have shown that they
22 were selling throughout the life of the boiler. They threw out
23 there they could have got it from somebody else. What's
24 likely? Their own manuals say to get it from them, when they
25 have agents all over the place and where their own records show

1 they only use their agents. We believe that they were selling
2 parts until these boilers were taken out in the 80's. I'm
3 running out of time so it's going to get messy. Undisputed
4 that they knew asbestos -- before they sold the boiler they
5 sold the boiler, and Judge Toal is going to tell you they
6 didn't know it was going kill them with life long mesothelioma,
7 you just needed to know that there was a serious harm and the
8 danger. They were told by their own suppliers, there were
9 hundreds of articles. Their own expert in his own book talks
10 about the disease. The Navy said by '68 it had been known for
11 years specifically about boilers, I put all of these records
12 from all of these groups. This is not a disputed fact. The
13 exhibit from the ABA Product Safety Committee, this is one of
14 the last things that came in, and I'm sorry -- why do we care
15 about OSHA? Because men and woman are dying, their families
16 are being deprived of their loved ones, and innocent children
17 suffer for years afterwards. They sat in that discussion and
18 did nothing. People in the industry, this was Babcock and
19 Wilcox, were figuring out a way to do something different, they
20 did nothing. And then we get to Cleaver-Brooks. They didn't
21 warn for both reasons and we only have to prove one, we believe
22 you should put yes. Negligence focuses on conduct, I think
23 this is the clearest one we've got. It has to be the failure
24 to act reasonably, the way someone in the same or similar
25 situation would act. You don't have to have rules, even if

1 there's no rule that says don't text, if you do something
2 unreasonable and hurt somebody you can be brought to a court.
3 According to the law companies must research the potential
4 health hazards of their products. This is the law of South
5 Carolina, this is what will be charged. You are held to the
6 skill of an expert, you have a duty to stay abreast. I asked
7 Tornetta did you do one thing for one minute ever? Any
8 evidence? Nothing. It's a black and white violation of the
9 law. You must test, charge 14 says it. We didn't test, we
10 didn't look at other people's tests, we didn't do a thing. You
11 must warn. It never happened. They could not point to a
12 single resource, a single dime, a single piece of effort to
13 care about safety, that's why you answer yes to that question.
14 The third group of questions is about implied breach of
15 warranty, that has to do with a product being fit for its
16 original purposes. At the heart of that is that have you to
17 foresee how a product is used and educate people about harms.
18 It dove tails into everything we've been talking about about
19 warnings, it's just framed differently, and that's why the
20 answer is yes. The exposures that happen here were frequent,
21 regular and for long durations, and you've heard they were
22 substantial. There was very little dispute about this. But
23 the evidence is clear, mesothelioma is a big old cancer caused
24 by very long exposures. I read this with Dr. Oury, you've seen
25 this not just in workers but their wives and their children.

1 we have indicated that there's no known safe level, but oury
2 said there is. I'm not going to tell you what it is and I'm
3 not going to look at any exposures in this case, so I can't
4 tell you whether Cleaver-Brooks is there or not, and nobody
5 else is going to come here either and say it, but there's a
6 safe level. He is alone on this. As you decide between
7 experts that are paid millions of dollars, I mean, crazy
8 amounts of money, I think he looked objectively. All of these
9 groups have evaluated this issue, along with all of the
10 articles we attached in Exhibit 28 and said the plaintiffs are
11 right here, these experts are telling you what is true in the
12 medical community. The defendants rely on looking at friction
13 literature reanalyzed by people that were paid 30 million plus
14 dollars in 2001 afters asbestos is no longer being used, so
15 it's for here, it's for the courtroom to say something like
16 that. I don't think that's -- but you were also told by the
17 judge not to leave your common sense at your door. This is
18 banned in 55 countries. It's functionally banned in the U.S,
19 meaning the rules mean no one use it. People's wives are
20 getting sick, that's how low of an exposure can result in
21 death. And you heard from Bowater's person, it was a 12 minute
22 video, but whether it be gaskets or packing, if you use a glove
23 box you don't let anybody touch it, you have negative air, you
24 are dressed up in this suit, you have a fine layer of
25 contamination because this stuff is deadly. And even the

1 people that made the gaskets that went in Cleaver-Brooks
2 boilers admit in Exhibit 31 it causes disease. I asked
3 Holstein this question, "If he had only been there four years,
4 not 24, and it was just cement, is that enough to cause it by
5 itself? Yes. Is it substantial if it's among a lot of stuff?
6 Yes. The same with gaskets? Yes." You start combining all of
7 different asbestos, there's no question here. And this has
8 been undisputed. I want to spend the next couple probably ten
9 minutes talking to you about damages. I booked myself to
10 little time. This is not about passion or sympathy even though
11 these are issues that invoke them. We are not here because you
12 want to feel sorry for this family. This is about justice.
13 This is about righting a wrong when you blatantly violate the
14 rules of the state. To do that you are told by Justice Toal
15 that there's no definitive standard I can give you to determine
16 the amount of damages. You, the jury, are to use calm and
17 reasonable judgment. That's hard. Use your own judgment, what
18 is life worth? What is a husband worth? I think it's the
19 hardest question that a person can be asked. But in a
20 philosophical and practical sense I want to give you some
21 guidance. First you are told there was 13 years of life lost,
22 that a person of his age, just allcomers; fat, skinny, people
23 that worked out, people that didn't, people that smoke, people
24 that didn't live 13 years. You were told by Dr. Holstein it's
25 not disputed that his health was above average. But at minimum

1 we are talking about 13 years of life lost. You should also
2 consider the severity in terms of the nature of the harm,
3 whether the harm is temporary in limitations; is this a burn, a
4 rash, a lost finger, a lost leg? It's the most serious you can
5 get, it's the loss of life. Is this a problem that can be
6 really horrible like burns, but that only lasts for a small
7 period of time, or chronic back pain, or something that is
8 forever. And how much does it limit your day to day -- in all
9 ways that these are measured this is the most serious harm you
10 can come before a jury about. There are three categories of
11 damages, this is a question for the ages. The first one is
12 survival. This is looking at what happened to Wayne Howe.
13 Talk about a wrong you cannot right. This isn't about making
14 this right, it's about consequences associated with actions.
15 And the law recognizes that the estate steps into his shoes so
16 that you can say wait a second, what he went through must be
17 considered. The first part is easy, medical expenses.
18 Everyone has stipulated and agreed that his reasonable medical
19 expenses because of this horrible disease is right here, over
20 half a million dollars, but there are more. The pain from one
21 of the most horrible diseases that ever exists; anxiety. I want
22 you to think about this not for sympathy but because you will
23 have to think about it to quantify it. Walking in after a
24 surgery and seeing your son's face and knowing things aren't
25 okay and they never will be. But the biggest source of harm

1 here isn't this horrible list, it's the loss of enjoyment of
2 life. 13 years of life with your family gone. My suggestions
3 for this are we know the medical bills, the pain and suffering
4 and humility, my strong suggestion is at a bare minimum what
5 the doctors are paid for that loss cannot be more than the
6 person who suffered it, and so I believe at a minimum it should
7 parallel that amount. But the main reason is the loss of 13
8 years of life enjoyment, and this is what I thought. We know
9 that he did a surgery five to eight percent of people died,
10 that Dr. Oury says is hopeless to live. He tortured himself
11 for 12 months, from March to March to live. That tells you
12 what his life is worth to him even in the worse conditions.
13 And so my thought is for every year of that we get a concept
14 from him for what that was worth. This is the total loss that
15 I'm suggesting here and I want to add it together. That turns
16 out to be over 7 million, for a total of 8.129 million dollars.
17 This not what Cleaver-Brooks or Bowater or Foster Wheeler,
18 Riley Stoker pays, it is total loss for this family directly
19 related to what he was willing to be worth, and that's why I
20 thought that was the right way to look at it. The second type
21 of damages are wrongful death. This deals with the loss for
22 the people from the date that he passed away on March 2nd the
23 date he would have lived 13 years later. The beneficiaries are
24 his family, his wife and his kids. The first thing is the
25 reasonable value of services Wayne provided his wife, and here

1 because she was diagnosed with Alzheimer's in 2003, he was
2 critical. Like his mother-in-law even when he has stage four
3 cancer he completely took care of her when she was losing her
4 ability to grasp on to what she had learned for so long. And
5 so we brought a life care planner and we brought an economist
6 to say that's going to vary depending on whether she has to be
7 put in a home or whether they can figure out a way to keep her
8 in their home. And so while there's no dispute on this, there
9 is a range for you to decide based on what you heard the family
10 talk about. But again, that's not it. The real heart of it
11 has to do with the real loss, not having a husband, not having
12 a father. I have found that for me I can deal with really hard
13 things when I have my inner circle, for me that's Hugo and my
14 mom, the people that know you in and out. They know when you
15 need a hug, they know when you need to be left alone, they know
16 when you need a cup of coffee, they know you when you're losing
17 your mind, literally. He was her anchor for 50 years in
18 sickness and in health and when she needed him he was taken
19 away. We believe her loss at a minimum should be his, the cost
20 of medical bills. And for the children, and I think you can
21 evaluate what they said and how much of a father he was, how
22 much direction he gave, the adult children are a lot less, it's
23 very different than I think losing a spouse. But more than
24 anything, I think you could tell is they care about their mom
25 being taken care of, that's why they're here. That amounts to

1 1.6 million to 2.7 depending on what care you think is most
2 reasonable. The last is Ms. Howe's loss of consortium, that's
3 time from when he was diagnosed to when he died because
4 wrongful death starts at death. That deals with the hardest
5 things in the world to identify and quantify. There's no
6 question that there was love here and there was loss here. I
7 leave it to you to decide what that's worth, but they loved
8 each other too. The last thing is punitive damages by clear
9 and convincing evidence. I have to show that they acted
10 willfully, that they knew and they intentionally didn't do
11 things. And we believe that there is a pattern of practice for
12 years of not caring, that this wasn't a momentary lapse for
13 something that didn't have to happen. I have only left myself
14 a couple of minutes which means I have been talking a long
15 time. I really appreciate your time.

16 THE COURT: Thank you, Ms. Dean. Ladies and gentlemen of
17 the jury, we'll take the first break now, we won't be long but
18 we'll take a break now, ten minutes or so for you to refresh
19 yourselves.

20 (The jury left the courtroom.)

21 THE COURT: Court will be at lease for at least ten
22 minutes.

23 MS. O'NEIL: Your Honor, we do need to take something up.
24 The last -- I think the second to third last slides that Ms.
25 Dean showed the jury referred to punitive damages and she

1 talked about punitive damages which is directly in violation of
2 Your Honor's instructions that punitives were not to be raised
3 or discussed in phase one.

4 THE COURT: Well, I don't regard it as out of bounds to
5 say what she said. She did not ask them to award punitive
6 damages, she simply used that as a predicate for saying that
7 they are being asked to find whether by clear and convincing
8 evidence willfulness or reckless and wantonness has been shown
9 so I would overrule the objection. I might say to you, by the
10 way, that I've had a chance to look at the South Carolina rules
11 on how these arguments are presented, and simply call your
12 attention to Rule 51 of the South Carolina Rules of Civil
13 Procedure that very clearly says that the closings are done,
14 written requests can be made and the Court shall instruct the
15 jury after arguments are completed. And I mention that now
16 because I think the instructions themselves will also
17 supplement what I've just said by way of my ruling on this
18 issue. All right.

19 MS. O'NEIL: I just -- one other question. What does the
20 Court show Ms. Dean has left for time?

21 THE COURT: I show she's got about six minutes left.

22 MS. O'NEIL: Thank you.

23 (A break was taken.)

24 THE COURT: All right, ladies and gentlemen, all are
25 peaceful? Any issues? All right, very good. Bring the jury

1 in.

2 (The jury returned to the courtroom.)

3 THE COURT: Thank you ladies and gentlemen, all are
4 present. And we'll now hear the closing argument presented on
5 behalf of defendant by Ms. O'Neil.

6 MS. O'NEIL: Good morning, ladies and gentlemen. I am
7 going to turn the timer on on my phone because we are time
8 limited. First I want to thank you, I want to thank you for
9 all of your time and attention. I know you had a lot of other
10 things going on in your lives. I know that there were times we
11 thought we were going to get out sooner than we did. I know
12 that we asked you to come in every morning in traffic, the
13 weather has not always cooperated with the commute and the walk
14 in the parking lot and I want to thank you for all of your
15 efforts throughout this trial. You paid attention and you're
16 now getting to the important part where you stop listening to
17 us and you start deciding what you think. The Court is going
18 to tell you that the plaintiffs have the burden of proof, and
19 what that means is they have to prove every single element of
20 their case of liability by what's called the preponderance of
21 the evidence. The defendants don't have to disprove it, the
22 plaintiffs have to prove it. What that means is if you have to
23 guess what the answer is -- I will try -- if you have to guess
24 what the answer is, if you're not sure whether something has
25 been proven or not, that means that the plaintiffs have failed

1 to meet their burden of proof and Cleaver-Brooks wins. what
2 that means is if the evidence is exactly equal, that is it
3 doesn't go one way or the other, that means that the plaintiffs
4 have failed to meet their burden of proof and Cleaver-Brooks
5 wins. The first questions you have to ask yourself is whether
6 the plaintiffs have proven by the preponderance of the evidence
7 that wayne Howe was exposed to asbestos from a Cleaver-Brooks
8 boiler at Bowater. The Judge is going to give you some
9 instructions on this. One of the things she's going to tell
10 you is that exposure must be of such frequency, regularity and
11 duration that it was a substantial factor in causing Mr. Howe's
12 mesothelioma. Once is not enough. The Court is also going to
13 instruct you that the mere fact the injury occurred does not
14 permit you to draw the conclusion that the injury was caused by
15 the negligence, strict liability or breach of warranty of
16 another. So if the plaintiffs have not proven by a
17 preponderance of the evidence that Mr. Howe was exposed to
18 asbestos from a Cleaver-Brooks boiler then your inquiry is
19 over. So I want to talk about that evidence, I want to talk
20 about the evidence of exposure. The plaintiffs did not bring
21 you any witness who said they saw Mr. Howe work with a
22 Cleaver-Brooks boiler at Bowater. Mr. Howe didn't say that and
23 Mr. Bogan didn't say that. All Mr. Bogan said was that there
24 was a Cleaver-Brooks boiler up there at the powerhouse. He
25 never said he even worked with Mr. Howe, he talked about a

1 fellow named Mr. Sizemore. He never said that boiler was in
2 the powerhouse, what he said was "Up there." Nobody said to
3 him, "Mr. Bogan, what do you mean by up there?" It could be up
4 there from where he was sitting giving his deposition
5 testimony. It could be up there in either of those two
6 administration buildings, which were up there north of the
7 powerhouse. Mr. Welker said that that mill was 1,800 acres,
8 that is a lot of room for a Cleaver-Brooks boiler to be up
9 there instead of in the powerhouse. But regardless of that,
10 plaintiff brought no witnesses who saw Mr. Howe work on a
11 Cleaver-Brooks boiler, people saw him work on plenty of other
12 stuff but not that. I told you in opening and Mr. Tornetta
13 told you last week and he told you again this week that
14 Cleaver-Brooks never denied shipping a boiler to Bowater in
15 1957. Cleaver-Brooks never denied that when that boiler was
16 made in the factory up in Milwaukee, Wisconsin some asbestos
17 containing products were used. The question is whether Mr.
18 Howe was exposed to those products. The evidence in this case
19 is that all of the asbestos containing components in the
20 Cleaver-Brooks boiler shipped to Bowater were inside that
21 boiler. There's no external insulation, and the insulation
22 that was inside was not asbestos containing. That's pretty
23 different than the field erected boilers that Mr. Howe and the
24 other people talked about. A Cleaver-Brooks progress boiler is
25 four feet, six inches high. A field erected boiler, Mr. Welker

1 told you at Bowater -- I apologize ladies and gentlemen of the
2 jury, apparently I didn't have that set correctly -- so that
3 field erected boiler is what Mr. Welker told you there were at
4 the Bowater Paper Mill and powerhouse, several of them, 125
5 feet high. I looked up whether -- when this courthouse was
6 built, and what it said on the Internet was that over Justice
7 Toal is 23 feet high. You could not fit a field erected boiler
8 in this courtroom, but you sure could fit the Cleaver-Brooks
9 progress boiler, a Cleaver-Brooks progress boiler is four feet,
10 six inches high. Four feet, six inches high. A Cleaver-Brooks
11 progress boiler is nine feet long and four feet wide. Nine
12 feet is basically from here to here. Mr. Tornetta told you
13 that the furnace tube on that boiler was 12 inches, 12 inches
14 around. There is no way, no way a 6-foot tall, 226 pound
15 person got inside the Cleaver-Brooks boiler, which is what Mr.
16 Howe said he did inside the boiler. So what were the asbestos
17 containing parts of this boiler with regard to insulation? You
18 saw a list of asbestos products from plaintiff's counsel
19 several times during this case, but what was the evidence about
20 these things as it relates to the Cleaver-Brooks boiler? A lot
21 of talk about 100 percent raw asbestos. Mr. Tornetta told you
22 that this was not used in building the boiler shipped to
23 Bowater and that he wasn't aware of it being used. What he
24 said was he thought of it as cement, not fibers, and that makes
25 me think of cotton. This is cotton, this is a 100 percent

1 cotton shirt. I wouldn't say I was wearing cotton if I was
2 watering this shirt, I would say I was wearing a shirt. But
3 when Mr. Tornetta said it wasn't 100 percent asbestos, what he
4 was shown was this, a 352 cement product list that says that it
5 was 100 percent chrysotile by weight, but what he wasn't shown
6 was right above that exact same product but only 25 to 40
7 percent asbestos containing cement. So which one did
8 Cleaver-Brooks use? Cleaver-Brooks doesn't know and the
9 plaintiffs didn't give you any evidence about which of these
10 two products Cleaver-Brooks used, so you don't know. And if
11 Cleaver-Brooks doesn't know and you don't know and the
12 plaintiffs didn't give you any evidence they haven't met their
13 burden to prove things by the preponderance of the evidence.
14 But in any event it doesn't matter because this wasn't used at
15 all on the boiler shipped to Bowater. This case is about Mr.
16 Howe and his claim about exposure to asbestos from the boiler
17 shipped to Bowater, not some other boiler and not something
18 somewhere else. And this is the product, the cement that was
19 used back in 1957 when Cleaver-Brooks built that boiler in
20 Milwaukee, Wisconsin, and it says that that product was between
21 7.1 and 3.85 percent chrysotile asbestos, and it was
22 discontinued six years before Mr. Howe set foot at Bowater.
23 Now, there's a big stack of exhibits here and you're going to
24 take a lot of this stuff back in the jury room with you, big
25 stack of exhibits. A lot of it doesn't have anything to do

1 with the Cleaver-Brooks boiler at Bowater. Plaintiff's counsel
 2 talked to you about Plaintiff's Exhibit 11. And in fact, Mr.
 3 Tornetta did say Exhibit 11 doesn't have anything to do with
 4 the boiler at Bowater, and neither does 12, and neither does
 5 that one, and neither does that one, and neither does that one
 6 and neither does that one. The question is about the boiler at
 7 Bowater. So on the question of whether plaintiffs have met
 8 their burden of proof about that boiler let's look at some more
 9 evidence. Cleaver-Brooks shipped that boiler in 1957. If the
 10 plaintiff's theory about maintenance on that boiler is true it
 11 was maintained for 20 years before Mr. Howe set foot at
 12 Bowater. There were no asbestos containing replacement parts
 13 sold by Cleaver-Brooks, and we'll talk about that in a little
 14 bit. But that means that it was for 20 years every year the
 15 plaintiff's theory is correct, those gaskets packing cement
 16 products were taken out and replaced every year for 20 years
 17 before Mr. Howe got to Bowater, and those products didn't come
 18 from Cleaver-Brooks. What did come from Cleaver-Brooks was a
 19 toggle switch which was not asbestos containing. What did --
 20 and so that means the plaintiffs didn't meet their burden of
 21 proof. What did come from Cleaver-Brooks was a control pump
 22 and low water cutoff which was not asbestos containing, so that
 23 doesn't help the plaintiffs meet their burden of proof to show
 24 Mr. Howe was exposed to asbestos. And what Plaintiff's 55
 25 contains are parts descriptions for materials used in the

1 construction of that boiler back in 1957, and while they may
2 have asbestos in it, none of those were replacement parts sold
3 to Bowater. So that doesn't help the plaintiffs meet their
4 burden of proof because all of these materials would have been
5 taken off in the 20 years before Mr. Howe got to the plant. So
6 let's talk about that boiler. That is the front folder from
7 back in the day when they were paper folders, the manila
8 folder, with the unit number 18343 and the model number
9 P72330S. Now Mister -- he went out in 1958 to start this
10 boiler up and he wrote down the wrong unit number, he wrote
11 down 18344. And this field report also has another clerical
12 error in it, he says Bowaters, not Bowater. I guess he should
13 have been more careful. And his field report was used to
14 create this invoice, and this invoice has the wrong unit number
15 too because it relied on the field report, and it also has the
16 misspelling for Bowater. And this invoice was used to create a
17 remittance request, which carried forward the wrong unit number
18 and the misspelling of the paper mill's name. Now, Mr.
19 Tornetta says this 18344 boiler was never at Bowater, you're
20 going to have to decide if you think this is a clerical error
21 or it's evidence of two boilers at Bowater. Some things for
22 you to consider while you do that. Mistakes happen. This is
23 from the State, a newspaper here in South Carolina on Sunday,
24 here is the heading, "Early free agency, a-g-e-n-c-e-y, winners
25 include the Browns. The people at the State have editors,

1 copyright editors, proof readers, I'm pretty sure today they
2 have spellcheck, and on Sunday they issued a paper that has an
3 error. The second thing, I don't know if you noticed this but
4 in Ms. Dean's closing too, there was a typographical error.
5 She had a slide that says there's know, know, k-n-o-w, safe
6 level of asbestos. I'm pretty sure that was supposed to say
7 known, k-n-o-w-n. Mistakes happen. The second thing I want
8 you to think about when you're deciding if that's a clerical
9 error or evidence of multiple boilers is the plaintiff spent
10 the day with John Tornetta and a week with various witnesses
11 talking about the asbestos containing components of a
12 Cleaver-Brooks boiler that I told you in my opening contained
13 asbestos, why would they do that instead of bringing you a
14 bunch of witnesses to testify that Mr. Howe worked on that
15 boiler? Certainly if he worked on it every year and every
16 month somebody would have seen him work on that. There's a lot
17 of people over there at Bowater. There's people who worked for
18 AME, there's people who worked for Beta, there's people who
19 worked for other contractors like Mr. Bogan. If Mr. Howe
20 worked on that boiler all the time why did nobody come here and
21 tell you that? The plaintiffs didn't bring you a single
22 witness who even knew Mr. Howe. We did. We brought you Wayne
23 Grant and Gilbert Small. The only coworker witness that
24 plaintiffs brought you was Johnny Bogan, Johnny Bogan, not a
25 Bowater employee, not an AME employee, not a Beta employee. He

1 was a contractor for somebody else. He worked as a boilermaker
2 at Bowater, and he identified four big field erected boilers at
3 the powerhouse. Mr. Welker told you that those were the ones
4 in the powerhouse, four big 125 feet tall, 50 feet wide field
5 erected boilers. Mr. Bogan had no testimony at all about Mr.
6 Howe, he talked about Mr. Sizemore. And what did Mr. Bogan
7 say? He said that that fellow who he apparently worked right
8 next to, Mr. Sizemore, he couldn't even say Mr. Sizemore worked
9 on a Cleaver-Brooks boiler, and that's because the
10 Cleaver-Brooks boiler was in the administrative building. Two
11 administration buildings at Bowater. You recall this
12 testimony, there was the new office building, which was built
13 later, and there was the original building which was where
14 paper machine number two got put in. The original building was
15 built when the mill was built, which was when the
16 Cleaver-Brooks boiler was shipped and there is no evidence that
17 Mr. Howe ever worked in either of these administration
18 buildings. So I would submit to you that whether or not there
19 were one boiler or two boilers for Cleaver-Brooks at Bowater,
20 doesn't make any difference because there is no evidence Mr.
21 Howe worked around one. The plaintiff's case comes down to
22 Johnny Bogan's testimony about a boiler up there at Bowater and
23 a clerical error, and I would submit to you that they have not
24 met their burden of proof. So I want to talk to you a little
25 bit about the claims about failure to warn and what we call

1 state of the art. Plaintiffs claim that Cleaver-Brooks failed
2 to warn Mr. Howe or his employers about the dangers of
3 asbestos. All of the experts agree that nobody knew asbestos
4 could cause mesothelioma until 1960. Dr. Brody agreed that at
5 least by 1960 nobody had published a paper saying chrysotile
6 asbestos can cause mesothelioma. And even in 1960 nobody said
7 that because Dr. Wagner, the fellow who wrote the paper in 1960
8 about the discovery of mesothelioma, he was talking about
9 amphibole asbestos, specifically crocidolite of miners, people
10 who were digging it out of the ground. And that's important
11 because we talked about in opening and the witnesses talked
12 about, there's different fiber types, and the fiber type that
13 was used in the products that Cleaver-Brooks put in that boiler
14 in 1957 were chrysotile. So before 1960 there were studies
15 about asbestos workers, and workers in textile mills using lots
16 of raw asbestos and people mining raw asbestos, but there was
17 nothing about mesothelioma and there was nothing about people
18 working on package boilers. And that's important because this
19 case isn't just about asbestos, it's about Mr. Howe and Mr.
20 Howe's claim that Cleaver-Brooks should have warned him about
21 the chrysotile asbestos components it put on a boiler in 1957
22 that he was out of sight of when he went to in 1977. Now, part
23 of the instructions the Court is going to give you is that a
24 manufacturer has no duty to notify previous purchasers of its
25 products about later developed safety devices or to retrofit

1 those products if the products were non-defective under the
2 standards existing at the time of manufacture or sale. There's
3 no evidence that back in 1957 Cleaver-Brooks knew or should
4 have known that those chrysotile components in that boiler
5 would cause mesothelioma. Plaintiff's experts admit that
6 nobody knew -- nobody knew about mesothelioma until 1960,
7 that's three years after Cleaver-Brooks shipped that boiler.
8 But plaintiffs claim that Cleaver-Brooks should have contacted
9 somebody after that and said, "Hey, we sold you a boiler back
10 in '57, maybe it's still got some asbestos containing parts on
11 it, not that we put on it but maybe we put some other ones, be
12 careful." But plaintiff's own experts don't agree with that.
13 Dr. Holstein said the reason when he found out, he, the expert,
14 about the dangers of asbestos, when he found out a company that
15 he was hired for specifically for the reason to look at whether
16 there was a problem with asbestos, when he found out there was
17 he didn't tell them to go find anybody who had use their
18 product in the past or brought their products in the past
19 because by then the horse was already out of the barn. In 1972
20 OSHA came into effect, and OSHA did say that you have to have
21 caution, they said that you need to avoid breathing dust and
22 you need to label things, but what they said was it doesn't
23 apply where asbestos fibers have been modified by a bonding
24 agent, a coating or binder or other material, like a gasket.
25 And OSHA went into effect 15 years after Cleaver-Brooks sold

1 that boiler to Bowater and five years before Mr. Howe got
2 there. If OSHA required a warning Mr. Howe's employers were
3 supposed to get it. Dr. Holstein specifically told you OSHA
4 was enacted to create obligations for employers to create safe
5 places. And what he also said the premises owners, when you've
6 got contractors like Mr. Howe who worked for some place like
7 Beta or AMA, Beta or AME have an obligation to ensure that OSHA
8 is met, and so do the places he goes to, Bowater and Celanese.
9 There's no evidence that any of those people warned Mr. Howe.
10 Then you have the MSDS sheets. Dr. Holstein said that these
11 weren't required by federal law until 1981, 24 years -- he said
12 1980, this one is from 1981. This is a John Crane MSDS sheet
13 for an asbestos containing gasket, 24 years after
14 Cleaver-Brooks shipped that boiler to Bowater. Twenty-four
15 years of monthly maintenance, 24 years of annual change outs,
16 24 years of no parts containing asbestos being purchased from
17 Cleaver-Brooks. And if nobody provided this to Cleaver-Brooks
18 until 1981, how were they supposed to warn Bowater or Mr. Howe?
19 Now, you're going to be asked -- you're going to be asked some
20 questions about strict liability and breach of warranty, and
21 you're going to be told that a product had to be merchantable
22 back in 1957 when it was sold. It had to operate the way it
23 was supposed to and it had to operate safely, that means it had
24 to heat hot water and had to operate without an explosion. And
25 you're also going to be told that to breach that warranty of

1 merchantability that product had to get to Mr. Howe 20 years
2 after it was shipped in the same condition as when
3 Cleaver-Brooks sold it, 20 years of replacing those products.
4 Another instruction the Court is going to give you is that
5 plaintiffs have to prove what's the called existence of a
6 reasonable alternative design. The Court is going to tell you
7 that if there's no evidence that Cleaver-Brooks could have
8 designed the boiler using non-asbestos containing parts and
9 still not have it explode, still have it work right, then the
10 plaintiffs have failed to meet their burden of proof. Now, you
11 did hear testimony about other types of gaskets. You heard
12 about rubber gaskets, metal gaskets, graphite coated gaskets,
13 teflon gaskets, but nobody came and told you, nobody with
14 expertise in building a boiler came and told you these could be
15 used in place of asbestos. Dr. Holstein said, Dr. Holstein, an
16 occupational medicine doctor, said they were available.
17 Plaintiffs didn't bring you a boilermaker, they didn't bring
18 you a boiler manufacturer, they didn't even ask Johnny Bogan if
19 it was possible to build a boiler in 1957 and seal it correctly
20 without using asbestos containing components. If you look at
21 D17, which is one of the exhibits that we marked, you'll see
22 that there was a list of things in 1980 about using different
23 kinds of gaskets, in 1980 a list of different things for making
24 gaskets, and it includes asbestos and non-asbestos containing
25 gaskets, and the reason it does that is because different parts

1 of a boiler need different things. Nobody came and told you,
2 there's nothing in this stack that says you didn't have to have
3 the asbestos because something else would have worked just as
4 well. Other things were available but no evidence that they
5 could have been swapped out. And also nobody even went to the
6 American Boiler Manufacturers Association Product Safety
7 Committee and talked about using some other material to replace
8 asbestos. This is Defendant's Exhibit 14 and it talks about
9 Cleaver-Brooks' participation in the ABMA product safety
10 committee, and those meetings were centered around safety
11 issues and OSHA, and the meetings in 1972 were specifically
12 discussing the safety standards and the codes now covering
13 boilers. Not a word about asbestos or replacing asbestos. In
14 1973 the Assistant Secretary of Labor, John Stenler, who was in
15 charge of OSHA, came and spoke to the ABMA, and what he talked
16 about was noise. This is the fellow in charge of OSHA. And he
17 came specifically to the Boiler Manufacturers Association,
18 specifically to their product safety committee specifically to
19 talk about OSHA and he didn't talk about asbestos, and you'll
20 see those materials are in Defendant's 14. The only discussion
21 in there about asbestos was in a presentation called review of
22 OSHA standards as they apply to Babcock and Wilcox Power
23 Generation Group, Babcock and Wilcox Power Generation Group.
24 The testimony is Babcock and Wilcox made some of those 120 feet
25 tall and 50 feet wide field erected boilers, not package

1 boilers. I submit to you that plaintiffs have not met their
2 burden of proof with respect to alternative design or failure
3 to warn. And I want to talk to you a little bit about damages
4 and recklessness. I've gone over some reasons why I think
5 plaintiffs have not met their burden of proof for liability,
6 but I do need to talk about the last couple of questions on the
7 verdict form. The Judge is going to tell you that you only
8 answer those questions about damages and recklessness if you
9 answer yes to questions one, two or three, if you answer no to
10 those three questions you're done, and that's what I believe
11 the conclusion is from the evidence in this case, no to one,
12 two and three. But if you disagree and you get to damages you
13 will need to decide what to award and so I do need to talk to
14 you about that. Mesothelioma is a terrible disease, that's no
15 question, and mesothelioma caused Mr. Howe's death, that's no
16 question. And there were medical costs associated with his
17 death, that's no question, that's why we stipulated to that.
18 The plaintiffs have argued and have told you that all of those
19 exposures contribute together to cause mesothelioma, all of the
20 insulation, all the building product, all of products he worked
21 on those giant field erected boilers at Celanese and Bowater,
22 all the work he did on that satellizer and precipitators at
23 Celanese all combined, I would ask that you consider that when
24 you're doing as the plaintiff said if you get to the damages in
25 deciding what would be Cleaver-Brooks' fair share of the

1 damages if you award them. Now, the plaintiffs have asked for
2 damages with respect to the ongoing care for Mrs. Howe. Mrs.
3 Howe seems like a very nice lady, she unfortunately has
4 Alzheimer's. Now, we didn't hear from any doctors about her
5 disease or what's required to care for her, but I think we can
6 all agree that a person who has Alzheimer's has some special
7 needs. But Alzheimer's is not related to the mesothelioma,
8 Sarah Lustig, the plaintiff's expert, told you that.
9 Alzheimer's exists unrelated to mesothelioma or asbestos
10 exposure. What Dr. Lustig also told you was that Mrs. Howe was
11 going to incur those costs for her care in home or outside
12 regardless of whether or not her husband got mesothelioma. So
13 we would therefore suggest if you do award damages that this
14 amount, as difficult as it is to deal with somebody who has
15 Alzheimer's in your family, this amount should be zero because
16 these damages or these costs were going to be incurred anyway.
17 Now, the last question asks you to determine whether
18 Cleaver-Brooks was willful, wanton or reckless. That actually
19 requires a higher level of proof than the liability stuff we've
20 been talking about. Plaintiffs have to meet even more proof
21 and the Court is going to give you an instruction on that, it's
22 called clear and convincing. The question about willfulness,
23 recklessness or wantonness focuses specifically on whether
24 Cleaver-Brooks acted this way with respect to Mr. Howe. The
25 question is not generally did they do something bad, but did

1 the plaintiffs meet their burden of proof to show that
2 Cleaver-Brooks acted in a willful, wanton or reckless manner
3 towards Mr. Howe. Yeah, they didn't warn him. I submit to you
4 they didn't need to, I submit to you I've gone over the
5 evidence that I think shows that, but also remember what Dr.
6 Holstein said. When I asked Dr. Holstein when you worked over
7 at the Navy hospital, you, the occupational medicine expert who
8 knew about asbestos diseases, did you ever go over and tell the
9 people there working with asbestos, all of those Navy sailors
10 working with that asbestos that was a problem and that was
11 dangerous? Do you remember what he said? What he said was,
12 "well no, I never saw my supervisor, he worked days, I worked
13 nights." They worked at the same place. Cleaver-Brooks is in
14 Milwaukee, Wisconsin when they sold the boiler in 1957 to
15 Bowater in South Carolina, Mr. Howe didn't get there for 20
16 years, I submit to you that that is -- the failure to warn Mr.
17 Howe is not reckless, is not wanton, is not willful. Now, Mr.
18 Howe did contract mesothelioma and it caused his death, and
19 there is no question about this and everyone is deeply sorry
20 about it, but the question is did the Cleaver-Brooks products
21 cause it? And when Dr. Holstein was asked about gaskets what
22 he said was, "I would need to know a little bit more." If he
23 didn't know you don't know, and if you don't know the
24 plaintiffs haven't met their burden of proof about exposures.
25 But what do we know? What does the evidence show about Mr.

1 Howe's actual exposures? When you ask about exposure the first
2 inquiry is did asbestos cause it. The second -- and the
3 testimony from all of the experts in this case is that a
4 certain percentage of mesotheliomas are not caused by asbestos.
5 The second inquiry is if asbestos caused the mesothelioma, what
6 type, and in a lawsuit what source? Dr. Oury, who testified by
7 video, he said there is a definitive way to answer these
8 questions, a definitive way. You could do that by examining a
9 person's lung tissue, but if you have that you can look at it
10 and you can see if it has asbestos in it and you can see what
11 kinds. That was not available in this case. And so Dr. Oury
12 said a man in his profession, a pathologist, he can't say -- he
13 can't say yes, he can't say no because he doesn't have the
14 evidence he needs as a pathologist to answer that. But the
15 evidence in this case does show lots and lots and lots of
16 asbestos exposure. So was this mesothelioma caused by
17 asbestos? Yeah, probably. Can't be definitive because we
18 don't have the lung tissue, but probably, yes. And what is the
19 evidence about that exposure? First there's Defendants Exhibit
20 5, which when you go back in the jury room it's kind of hard to
21 miss because it's a really big stack of papers, and that shows
22 that there was over 40,000 square feet of asbestos containing
23 materials taken out of the Bowater Paper Mill, and a lot of
24 that was pipe insulation. Half rounds fit around the pipe with
25 wires on them. They're dusty to the touch. They're dusty if

1 you drop them on the floor. They're dusty if you put them on
2 the table. They're dusty if you throw them in a box. A lot of
3 that 45,000 square feet was pipe covering like this. You
4 remember, we said this is not asbestos, but Mr. Welker told you
5 this looks very much like the asbestos pipe covering over at
6 Bowater. The unconverted evidence is that Mr. Howe was exposed
7 to that. We brought you Gilbert Small, and Gilbert Small said
8 Mr. Howe was exposed to asbestos at Bowater from insulation on
9 precipitators, from turbine blankets, from insulated bands,
10 from dryer felts, from Johns Manville transite wall board, and
11 from miles and miles of pipe insulation. He said that what
12 they did was get a hammer and beat on that pipe insulation. If
13 it's dusty when you touch it, imagine how dusty it is when you
14 beat on it with a hammer? And Mr. Small gave some descriptions
15 of that that were presented to you. Mr. Small, who worked
16 directly with Mr. Howe, what was his testimony about Mr. Howe's
17 working on a Cleaver-Brooks boiler? None. We also brought you
18 Mr. Grant, Mr. Grant is the fellow we have the video. Mr.
19 Grant told you he worked right with Mr. Howe when Mr. Howe was
20 exposed to asbestos at Celanese from removal of insulation on
21 duct and pipework, and he worked right next to Mr. Howe when he
22 was installing insulation on pipes and standing next to people
23 who were using joint cement. And that's not the joint cement
24 that's in the document you were shown this morning, if you look
25 at that P69, that's joint cement to use in your house, it says

1 interior ceilings and walls. This cement was the joint cement
2 that goes with pipe covering. And Mr. Grant told you, you
3 heard him say that they took that and they had to clean it up,
4 they used shovels, they threw in in wheelbarrows, they threw it
5 on flat beds and they dumped it in the dumpster, and that all
6 of that created dust and exposed Mr. Howe to asbestos. He
7 talked about their work on the satellizers over at Celanese. I
8 have no earthly idea what a satellizer is, but Mr. Grant told
9 you it takes an eight foot asbestos gasket, an eight foot
10 asbestos gasket. He told you that Mr. Howe was exposed to
11 asbestos from the precipitators over there at Celanese and four
12 great big huge Riley Stoker field erected boilers, and he told
13 you at Bowater Mr. Howe got exposed to asbestos from Johns
14 Manville transite boards. Mr. Grant, who worked with Mr. Howe,
15 what was his testimony about Mr. Howe working on a
16 Cleaver-Brooks boiler? None. Now, the plaintiffs showed you
17 some of the testimony about Mr. Howe -- or about Mr. Grant's
18 testimony about Cleaver-Brooks and about him talking about the
19 Cleaver-Brooks boilers over at Celanese, this is what address
20 plaintiff showed you in their opening, "I would represent to
21 you that Cleaver-Brooks never manufactured a boiler of that
22 size at that time. So with that representation in mind, it's
23 possible that Cleaver-Brooks is a name that you recall for some
24 period but not necessarily Celanese in Rock Hill? Yes." The
25 next question, "And so with all of that in mind you're not

1 specifically able to say you saw Mr. Howe work on a
2 Cleaver-Brooks boiler at Celanese in Rock Hill, could you?
3 Yes. Could you? No, you could not do that." Mr. Grant had a
4 chance to say he saw Mr. Howe work on a Cleaver-Brooks boiler,
5 he said he couldn't do that. But let's look at Mr. Howe's own
6 testimony about his asbestos exposure, because who would know
7 better than Mr. Howe. And yes, Mr. Howe was sick when he gave
8 his deposition, he was. Mr. Howe remembered even though he was
9 sick that he worked on brakes and gaskets, and clutches, he
10 worked on drywall and joint compound, that he believes he got
11 exposed to asbestos from welding rods, gloves, aprons and
12 blankets. He was able to remember that he thought he was
13 exposed to asbestos from insulation precipitators, that he
14 thought he was exposed to asbestos because he was standing by
15 insulators who were mixing up muds and cements and dumping
16 asbestos in a bag, and he remembered specifically beating
17 insulation, piped insulation off with hammers. He remembered
18 the JM transite wallboard, and he remembered that very
19 specifically. What was Mr. Howe's own testimony about working
20 with the Cleaver-Brooks boiler? None. What he did remember
21 very specifically though was when he had cut that transite
22 siding and he had to take it down to the river, he remembered
23 very specifically he was told to take that down there, cut it
24 away from everybody else, away from everybody except Mr. Howe.
25 And Mr. Howe also very specifically remembered what it was like

1 removing asbestos containing insulation from duct work, and he
2 remembered it was dusty and what he said is, "I've been in dust
3 moving insulation, that it was so bad you couldn't see in front
4 of you in my earlier years. You just have to hope it's dust
5 you're breathing. I mean a lot of dust. You come out covered.
6 You couldn't tell who you were." Dr. Holstein said to believe
7 the workers, believe the workers. Thank you.

8 MS. DEAN: I just need --

9 THE COURT: Just one moment. Thank you, Ms. O'Neil. All
10 right. Now, I would like to proceed with your very short reply
11 right now, Ms. Dean.

12 MS. DEAN: Yes, Your Honor. To get the powerpoint on the
13 right computer might take two minutes at most.

14 THE COURT: All right, jury. I will let you go to your
15 jury room, you might as well relax while we get this setup.

16 (The jury left the courtroom and a break was taken.

17 (The jury returned to the courtroom.)

18 THE COURT: All right. Reply from the plaintiff by Ms.
19 Dean?

20 MS. DEAN: Thank you, Your Honor. I want to touch on a
21 few issues in six minutes. The nine foot boiler took ten days
22 to install, shown for industrial use that was loaded with
23 asbestos. There are valves that you can put in your hand, some
24 of them larger, that you have to take out to a parking lot, put
25 in a glove bag and a five level decontamination unit. No one

1 disputes that because this isn't ten stories high there's
2 asbestos in some places, lots of it, it's fire tubes with no
3 asbestos, that this is deadly and harmful and they just don't
4 even talk about it, instead they put tape on the door. They
5 say, "But wait a second, we sold it with a lot of asbestos but
6 there's no proof the replacement parts came from us." Yes,
7 there is. That's what their manuals say is expected and it is
8 the only evidence in the record. But even if there weren't
9 they were like, "How do you prove asbestos is there in 1977
10 when Wayne Howe showed up?" That's why I asked Tornetta on the
11 stand, "Were you still selling asbestos for these when you
12 walked in the door from 1985?" Unequivocally "Yes." They
13 don't respond to the evidence in the case. They were designed
14 and built to use asbestos and continued to do so for the life
15 of that boiler. It was decades of exposure because of the
16 decisions they made. So they come up with a new theory.
17 You're right, if it was our boiler in the admin building that
18 was built in '61 we have problem, so maybe it went to the --
19 which is at the footprint of the number two paper mill. No one
20 said that, they didn't ask Art welker that. And what Art
21 welker said is paper machine number two came in the 80's, there
22 were some buildings that were there before him and they started
23 in '68. She had a lot of slides with a lot of evidence. This
24 idea that the admin building was the office building that was
25 built in '57, that was built in '68 is showing the level of

1 desperation to prove that that second boiler and maybe third
2 wasn't in the powerhouse. She asked the question about why
3 didn't we ask Johnny Bogan? Because they were there and they
4 didn't say "You got it wrong, Johnny." But I wasn't and this
5 family wasn't, because it was eight years before Wayne Howe got
6 sick, right? Put this into context. And then what he said in
7 direct evidence that the Court says you can believe to prove
8 everything if you believe it to be true is that that boiler,
9 the one that was sold in '57 and can't be in the admin building
10 is exactly where he said it was, they have no response. I also
11 showed documents including Exhibits 10 and 11 that explicitly
12 deal with package boilers in the 50's and 60's that shows pipe
13 insulation and cement. They show a big X saying it doesn't
14 apply. why? It shows cleanly that it does. Explain yourself.
15 There's literally no explanation. So they're only out is to
16 talk about how bad asbestos is, the exact same types of
17 asbestos by other people, it was an eight foot gasket and ours
18 is three. They were hammering off pipe insulation, their
19 manuals talk about hammering off their cement. I agree that
20 they are not fully responsible, but you can't say with a
21 straight face that the exact same conduct done by others is
22 safe for them, and that's what they're asking you to do. They
23 said ignore Janette's care. Please understand what they're
24 telling you to do, that means that wayne did nothing for his
25 wife. His loss means nothing. I think that may be the most

1 farfetched proposition that they've put out here so far. They
2 said nobody knew about 1975, ignoring '57 -- I'm sorry. Their
3 own authors, books, ignoring the fact that you have to look all
4 the way to 1969 at minimum, ignoring Exhibit 3, Exhibits 1
5 through 4 for the plaintiff, Exhibit 38 through 40. And here
6 is Exhibit 40, "Industry actively opposes objective research
7 and creating a change of information on occupational diseases
8 because it's more afraid of the possibility of paying
9 compensation benefits than it is that workers will die from the
10 lack of proper information and adequate protection. Much of
11 the same situation holds true in the asbestos industry," and
12 then they go on to talk about asbestos. That's the year they
13 sold this boiler. If anyone in the world would have taken the
14 stand and said that it wasn't well known in industry in the six
15 different trade organizations I showed you evidence of they
16 would have bought them, but no one would uphold the position
17 that they told you to bring today. Last thing, I'm sorry, I
18 know I'm worked up. The fifth question asks whether there was
19 clear and convincing evidence that their conduct was willful,
20 was it wanton or was it reckless, and I will suggest to you it
21 was all three. They knew it was harmful and they willfully
22 chose not to test or research, they were reckless with the
23 lives of others, and it simply has to be with failing to use
24 care when you know you need to when the law requires it. Here
25 is the best example. In 1956 they go to Pennsylvania, you hire

1 lawyers and accountants, you get an engineer, you're building a
2 plant, and in that state they say asbestos is a danger, I
3 showed it to you, it kills people. By that date they admit
4 that they would have known about those laws, that's actual
5 knowledge, and from that moment forward they disregard it for
6 the lives of thousands of people for decades. Most cases deal
7 with moments of negligence. You look away, yell at the kids,
8 cause a car accident. You're a pharmacist and you grab the
9 wrong medicine and someone dies. You are an ER doctor and you
10 didn't sleep. That is not this case. This is not a week, it's
11 not a month, it's not a year, it is decades of knowing. Their
12 own suppliers told them, the laws of the state told them, the
13 ABMA told them and they don't do a thing. And the actual board
14 of directors, the people that made this decision don't even
15 show their face. That is a company who has been willful and
16 wanton. You've heard a lot of evidence, but please allow the
17 lack, the glaring lack of evidence from this company who
18 doesn't have the burden of proof but does have the right to
19 defend themselves why did you ignore? why did you ignore
20 yourself? why did you ignore the ABMA? I showed that you were
21 explicitly talking about asbestos, that it hasn't been banned
22 but it's severely limited. why didn't you test? It's the law
23 of South Carolina. why didn't you research? You have to in
24 this state. why did you use asbestos when you had mineral wool
25 and fiberglass and metal? And you hear an hour speech and the

1 silence speaks volumes. In the 1930's it was known that it
2 could kill people, but what Dr. Holstein told you is that it
3 was known it could be prevented. We are here more than
4 anything because this didn't have to happen. Again, thank you.

5 THE COURT: Thank you, Ms. Dean. Ladies and gentlemen of
6 the jury, it's now time for me to charge you on the law that
7 applies to this case and the law that applies to the facts in
8 this case. And it's your duty to find the facts from the
9 evidence, and to those facts you must apply the law as I give
10 it to you, and you must decide this case based on the evidence
11 and the law. You should not be concerned with what the law
12 should be, but with what it is. And you must not be influenced
13 in this case by any personal likes or dislikes or any undue
14 sympathy or prejudice, and that means you must decide this case
15 solely on the evidence before you according to the law, and you
16 will remember that you took an oath to do just that when we
17 began this trial. So follow my instructions, you must follow
18 all of them and not single out some and ignore others because
19 they're all equally important. Please don't read into these
20 instructions or anything I may have said or done during this
21 trial any indication of what I think the facts are or what I
22 think your verdict ought to be. Because under our system of
23 justice you, the jury, are the sole and exclusive judges of the
24 facts and I am not going to intrude on your constitutionally
25 guaranteed right to determine the facts, just as I know you are

1 after we had further discussions." I will then bring the jury
2 out after we bring our alternates up here, then we will read
3 the verdict.

4 (The jury returned to the courtroom.)

5 THE COURT: You may be seated. Ms. Strait?

6 THE CLERK: Yes. State of South Carolina -- I'm sorry,
7 Court of Common Please, State of South Carolina, County of York
8 case of Timothy W. Howe, individually as personal
9 representative in the estate of Wayne Irvin Howe, deceased, and
10 Janette Howe versus Cleaver-Brooks, Incorporated.

11 THE COURT: Not picking you up very well, Lynn.

12 THE CLERK: I'm sorry. Case number 2015-CP-46-0346, as to
13 the cause of action of negligence we, the jury, find the
14 defendant, Cleaver-Brooks, Incorporated, the question was was
15 negligent and its negligence was the proximate cause of Wayne
16 Howe's injury and damages. we, the jury, answer no. As to
17 strict liability, we, the jury, find that the defendant,
18 Cleaver-Brooks, Incorporated, is strictly liable for selling
19 products that was the proximate cause of Wayne Howe's injuries
20 and damages. we, the jury, check no. As to implied warranty,
21 we, the jury, find the defendant, Cleaver-Brooks, Incorporated,
22 breached the implied warranty in selling its products and its
23 breach was the proximate cause of Wayne Howe's injuries and
24 damages. we, the jury, check no. Signed this day by David
25 Ferguson, foreperson, March 21, 2018.

1 of the various exceptions that are made and grounds for motions
2 for a judgment non-standing veredicto and any other motions
3 post-trial that either side feels need to be made. I really
4 cannot conceive any motions that would be made by defense in
5 light of the verdict, I know that the plaintiffs will have
6 motions. And so the first thing I say is I turn to you, Ms.
7 McVey, for anything you would like in a preliminary way to put
8 upon the record?

9 MS. MCVEY: No, ma'am. The only thing, I would formally
10 request ten days to make our post-trial motions.

11 THE COURT: That's granted. Ms. Dean?

12 MS. DEAN: Just a point of clarity. The motion that we
13 discussed on Friday about sanctions related to what we called
14 the midnight documents, is that governed by ten days or can
15 that be later?

16 THE COURT: You know, that's a good question and I'm not
17 sure I know the answer about whether it would be regarded as a
18 Rule 59 kind of thing or whether it would be regarded as kind
19 of bound up in the JNOV situation. I think for safety sake you
20 might want to make it again. The way I do it is this: I'm
21 still dealing with post-trials in Stewart, you get together a
22 filing that meets that ten day requirement and then I will
23 allow you within 30 days -- I think -- isn't that what we did,
24 Ms. McVey?

25 MS. MCVEY: Yes, ma'am.

1 the documents. Then in number 2:

2 Defendants who have provided responsive documents
3 but have not provided deposition date.

4 They X'd out Asten Johnson and they added SPX to that.
5 So, that's what happened with SPX.

6 MR. MERIWETHER: Thank you, Your Honor.

7 THE COURT: Now before Ms. Dean commences, how about
8 some of you husky, younger lawyers in here get that podium
9 for Ms. Dean and bring it up here to the ---

10 MR. EARLY: I'll get it, Judge. I'm a husky, young
11 lawyer. I'm not a young lawyer. I'm a husky lawyer.

12 (A PAUSE.)

13 THE COURT: There we go. Now we're cooking. All
14 right, Ms. Dean. Yes, ma'am.

15 MS. DEAN: So again this is Jessica Dean. First just
16 to explain kind of the structure of our motion is we had
17 certain defendants that provided us a deposition date but
18 have not provided us the documents. And sometimes they
19 promise they or they provided us some, but at the end of
20 the day, a good chunk of documents that we have asked for
21 timely, the time that they are supposed to be produced has
22 come and passed, and we don't have them. So, where we have
23 a deposition but no documents are the first group.

24 In the second group, we have been produced documents.
25 We believe that we have all responsive documents. I kind

1 of put that kind of limitation in there because some of
2 them were produced yesterday; some of them were produced
3 four days ago. We are basing it on representations. If
4 there's problems down the road, I just am alerting the
5 court we haven't been able to verify. But for what we care
6 about today is that we asked for a deposition. It was
7 properly noticed under the rules. They didn't give us a
8 date.

9 And then the third category is where we're lacking
10 both and for different defendants, there are wildly
11 different reasons. Some defendants have genuinely ignored
12 us for two months and just not provided us the dates we
13 need until this hearing got set. The power of just having
14 this hearing has caused a lot of work to be done in the
15 last five days, I mean, and even some resolutions. So, I
16 don't want to minimize that almost, I think, everyone in
17 this room has really worked with us in the last week. But
18 we did have for many defendants a lot of silence for a long
19 time despite clear rules that you have thirty days and you
20 need to do this, and despite clear communication from Mr.
21 Holder while we unilaterally noticed these -- and in one
22 case we accidentally did it on a Sunday -- we are willing
23 to change the date, the location, the time. We're willing
24 to consolidate them if that helps them in cases where there
25 are multiple things. We just need you to get your clients

1 to talk to us.

2 And so the good news is that I think the breadth of
3 the problems with the vast majority of these have reduced,
4 but we're still in a position where a huge amount of
5 information that was sought overwhelmingly back in November
6 -- they were noticed in November. We needed to get it
7 before Christmas in December. Still hasn't been provided.

8 THE COURT: Okay. Well, now in your categories, then,
9 category one is provided the deposition dates but no
10 documents, and that is Aurora and Yuba?

11 MS. DEAN: Yes.

12 THE COURT: All right. Well, let's stop you right
13 there and find out from Aurora and Yuba.

14 MS. DEAN: Okay.

15 THE COURT: Mr. Meriwether.

16 MR. MERIWETHER: Yes, Your Honor, Robert Meriwether on
17 behalf of Aurora and Yuba.

18 THE COURT: All right, what's going on?

19 MR. MERIWETHER: The -- Aurora, of course, is a
20 long-standing defendant in this litigation and Ms. Dean
21 and, and all the folks on the plaintiffs' side of the bar
22 are thoroughly familiar ---

23 THE COURT: All I need to know now is why there are no
24 documents.

25 MR. MERIWETHER: Well, Your Honor, Aurora has never

1 had the ability to search for documents by anything other
2 than serial number. The other way we can find out -- we
3 can either give you the keys to the warehouse, but, I mean,
4 it's a bunch of microfilm or something like that, but I, I
5 won't swear to that, but it's, it's all kept by serial
6 number, by pump serial number.

7 THE COURT: That's not acceptable. They're going to
8 have to find out some way to decipher that. We're not just
9 going to make them go to a big warehouse with numbers and
10 have to look at it, Mr. Meriwether. They're going to have
11 to make some better response than that.

12 MR. MERIWETHER: Well, I understand that, Your Honor.
13 The -- we -- this has been the fact of the matter for
14 Aurora for a long time.

15 THE COURT: Well, in this court it's not going to do,
16 and the sanctions will be severe if they don't get these
17 documents to us.

18 MR. MERIWETHER: Well, we'll, we will -- I will
19 certainly let them know that ---

20 THE COURT: It's not your fault; I'm not fussing with
21 you.

22 MR. MERIWETHER: I understand. I understand.

23 THE COURT: But deliberately having a system that
24 makes it impossible to access anything you've stored is not
25 going to cut it with me.

1 MR. MERIWETHER: Well, I understand that, Your Honor,
2 but I want to be careful about the deliberate part because
3 this is, this is the way that this company has kept
4 records, you know, fifty years.

5 THE COURT: Well, they officially have some ability to
6 decode it if they need documents. So, they are going to
7 have to decode it to give the documents in a lawsuit that's
8 been legitimately filed in which they have been a party
9 forever. They're going to have to -- they know about this
10 problem. They've been knowing about this problem. I'm
11 sure as thorough as you and your staff are you have advised
12 them from the beginning that these requests were made.
13 They're going to have to do something about this, and we
14 can talk here for a minute about what kind of timeframe
15 we're talking about. But that's just not going to cut it.

16 MR. MERIWETHER: Well, Your Honor, I think that as far
17 as timeframe goes, I think Ms. Dean may be mistaken about
18 the deposition. They, they said that ---

19 THE COURT: You mean they haven't agreed to deposition
20 dates either?

21 MR. MERIWETHER: No. We've got deposition dates. I
22 was thinking she was saying we had.

23 THE COURT: No. She says you're in the category, the
24 first category. You've set deposition dates, but she's
25 received no documents. That, that really is beyond any

1 kind of understanding.

2 MR. MERIWETHER: Well, that, that -- believe me. We
3 will have a telephone conference this afternoon with
4 Aurora.

5 THE COURT: Okay. Well, the case is scheduled for
6 March. When is this deposition scheduled?

7 MR. MERIWETHER: February the 8th, I believe.

8 THE COURT: All right, and today is January the 24th.

9 (A PAUSE.)

10 THE COURT: You tell them that these documents are
11 going to have to be produced by January 29th, which is next
12 Monday, and if not, sanctions will be forthcoming. I will
13 of course have a hearing on those, but I have to tell you
14 that there's certainly a precedent for striking pleadings
15 when no documents are produced and when the production
16 request is of a long-standing and the trial date and the
17 depositions are set. And that's not your fault at all.

18 MR. MERIWETHER: I understand, Your Honor.

19 THE COURT: But they've got to get with the program.
20 They can't just say what you just said, and it's the only
21 thing they've given you to say. So, it's again not your
22 fault at all, Mr. Meriwether, and I'm not trying to be
23 harsh, but they've got to produce some documents.

24 MR. MERIWETHER: I believe that we will have an
25 interesting chat this afternoon.

1 THE COURT: Very good. Get me an order, Ms. Dean.
2 Just make notes now as we go along because there are going
3 to have to be separate orders on these issues because they
4 will go to different parties and folks, but this would be
5 an order directed to Aurora. All documents requested must
6 be produced by January the 29th.

7 MS. DEAN: Yes, Your Honor.

8 THE COURT: All right.

9 MR. MERIWETHER: Yuba, I think, was the next one that
10 I needed to speak to.

11 THE COURT: Yes.

12 MR. MERIWETHER: Yuba is, Yuba is in an interesting
13 position in this lawsuit. Yuba was not a party to this
14 lawsuit when Mr. Howe was deposed. I know his deposition
15 never finished, and it was incomplete when he passed away
16 untimely, but Yuba was not a defendant. The only
17 deposition which -- of a fact witness that Yuba was in the
18 case for was Gilbert Small, I believe, the coworker at
19 Bowater.

20 Yuba did an asset transfer where they, they
21 essentially sold their company but they kept the
22 liabilities, and so all the documents went with them. They
23 have -- they've got to go to somebody else to ask them to
24 search their own documents and say please as a favor, we
25 need you to look for the stuff. They've done that.

1 I told them when we got the request that if they could
2 get the purchaser of the company to go and look for
3 records, they needed to focus on Bowater because it's the
4 only site that we've had a coworker in.

5 THE COURT: That makes sense.

6 MR. MERIWETHER: And so they did. They got in touch.
7 Bless their hearts, the, the people that we sold the
8 company to did do the work of looking through it all, and
9 they let me know last night and I let Ms. Dean know this
10 morning that there are no new ---

11 THE COURT: There are no new Bowater documents?

12 MR. MERIWETHER: Exactly. There's nothing -- we, we
13 searched for Bowater, for paper mill, for Catawba, for Rock
14 Hill, for whatever the Resolute FPUS name that they are
15 now, we searched all those critters and we got nothing.
16 So, we would -- right now it would be most helpful if we,
17 we could get a dismissal because we're not at Bowater, and
18 I feel it would be -- it's somewhat onerous to have to put
19 up a corporate rep. We'll, we'll do it if we have to, but
20 if we can get an affidavit that just says, you know, we've
21 had these searches run and we're not there.

22 THE COURT: Okay. All right. Here's what we need to
23 do there.

24 MS. DEAN: If I may just explain two things quickly?

25 THE COURT: Yes, ma'am.

1 MS. DEAN: I'm sorry to interrupt.

2 THE COURT: No, ma'am. That's all right.

3 MS. DEAN: The first is that the implications of the
4 lack of records means very different things for very
5 different companies. Durco testified -- Duriron, a
6 defendant I know well -- that they have incredibly complete
7 records and if they're not there, that means we don't
8 believe it happened. Yuba has not made that clear at all.

9 One of the things our document request asked for is
10 their document retention. Are they claiming that our
11 witness was wrong that it was a Yuba heat exchanger because
12 their records didn't bear it out? Or are they saying they
13 just don't know internally? Either way, all the other
14 elements of proof that I have to prove -- because I have
15 testimony that those Yuba heat exchangers are there. What
16 do they know, where is the asbestos, when did they know it,
17 were there alternatives are still things that I have to
18 prove in the case. I have a very triable case.

19 So, the first premise is when I found out this morning
20 for the first time that, despite asking for months about
21 these records, they don't have them -- and, I mean, Robert
22 told -- Mr. Meriwether told me the moment he knew. My
23 follow-up question is what does that mean? He doesn't know
24 yet.

25 The second thing, and this is the one that's going to

1 come up a lot, and that's why I wanted to pause on it. Mr.
2 Meriwether said we -- despite the notice asking for each
3 location where Wayne Howe worked, which included Celanese,
4 not just Bowater, we only looked at Bowater because that's
5 the only place where a coworker said the name Yuba. And
6 Yuba responded by saying okay, that makes sense.

7 I respectfully disagree and it's a big disagreement
8 and want to spend a moment on it. Examples help me. In
9 the Pete Bumgardner case, I was in this courtroom. Pete
10 Bumgardner testified he worked in Celanese boiler drives by
11 crawling around in them, but he had no idea who made them,
12 none. Cleaver Brooks knew. They have records that said
13 every single one of them was their boilers. They didn't
14 give me any of those records, and Judge Hill at first did
15 not push them to until I found a coworker that said those
16 are Cleaver Brooks, and then it turned out that what they
17 knew for fourteen months and I didn't is that every one of
18 their boilers were their boilers.

19 My point is this. Often people don't remember certain
20 things. They could work on something every day and not
21 remember the name plate that says Foster Wheeler or Cleaver
22 Brooks or Yuba when we know that they are working on the
23 boilers. Where these heat exchangers are at Celanese, if
24 they have records that say those are ours, the first step
25 -- and, and it's literally question number one in the

1 standing order of discovery is is your equipment there. I
2 don't know the answer to that. And so when I talked to Mr.
3 Meriwether, he said, well, I only questioned them on
4 Bowater.

5 I get why that's the first place to push because they
6 know we've got them there despite what their records say.
7 But it doesn't limit that we have both in the standing
8 order of discovery and in the notice a reasonable request
9 that they've had, according to the rules, was sufficient
10 time to tell us so that if they're at Celanese and they're
11 sitting on that, I still don't know.

12 THE COURT: Okay, here's what we're going to do.

13 MR. MERIWETHER: Your Honor, might I correct a few
14 misstatements because I think it's very important. Number
15 one, number one, we're not identified in here as, as
16 Bowater. The only thing that I say ---

17 THE COURT: Well, what she said ---

18 MR. MERIWETHER: I thought she did.

19 THE COURT: --- is that she has other witnesses that
20 may identify you with Bowater, but she definitely has
21 witnesses that identify Yuba at Celanese, which is another
22 place he worked. That's what I understood.

23 MR. MERIWETHER: Your Honor, I don't think she's got a
24 witness that identifies Yuba anywhere in the case.

25 MS. DEAN: Let me, let me -- we have him working

1 around boilers, which is where the heat exchangers are. We
2 don't at Celanese know who made it. That's kind of my
3 point. If I can figure out who made them, I have
4 sufficient testimony I believe ---

5 THE COURT: Well, let me get this straight. They said
6 their information is that they don't have any heat
7 exchangers at Bowater, okay? That's what they looked for,
8 and they couldn't find any heat exchangers at Bowater.

9 MS. DEAN: That's my understanding.

10 THE COURT: Do you have any information contrary to
11 that?

12 MS. DEAN: No.

13 THE COURT: All right. Next we go to Celanese,
14 another place he worked. They haven't looked for that,
15 right?

16 MS. DEAN: That's my understanding.

17 THE COURT: Are there other places besides Celanese
18 that will be involved in this thing that you think might
19 lead to information about a Yuba heat exchanger?

20 MS. DEAN: Yes. There, there is, and we've listed
21 them out in our notice so it will be clear. Five locations
22 at issue: American Enka, Crown Cork and Seal, two Celanese
23 locations -- one in Narrows and one in Rock Hill -- and
24 Bowater. So, my point is at Bowater where they say they
25 don't have records, I want to know what that means. And in

1 the other four locations, given that we have testimony --
2 and Celanese is where we have the strongest testimony that
3 he worked in the vicinity of the heat exchangers -- they
4 need to tell us if those are theirs, if they know.

5 THE COURT: All right.

6 MR. MERIWETHER: Your Honor, I respectfully must
7 correct the record. There is no indication from any
8 witness available to be used against Yuba that he worked
9 anywhere but Bowater.

10 Here's the point. They took Mr. Howe's deposition
11 without suing Yuba. He talked about where he worked. Mr.
12 Howe died. They then amended it and put in a coworker. He
13 happens to be a coworker only from Bowater. The only place
14 that Yuba is in this case is Bowater because the only
15 witness available to be used against them, the only witness
16 who has been -- fact witness who has been taken since Yuba
17 was added to the case is a Bowater witness. That's why I
18 had them search for it.

19 THE COURT: Well, here's what we're going to do;
20 here's what we're going to do. First of all, you want the
21 now controller of the records at Yuba, which is the company
22 they sold to, we want them to be -- am I right here?

23 MR. MERIWETHER: No, Your Honor. Yuba's got no
24 records left. Yuba goes ---

25 THE COURT: That's exactly what I said, Mr.

1 Meriwether.

2 MR. MERIWETHER: Oh, I'm sorry.

3 THE COURT: I said we've got a company to which Yuba
4 sold ---

5 MR. MERIWETHER: Right.

6 THE COURT: --- that now controls the records.

7 MR. MERIWETHER: Correct.

8 THE COURT: That's who you made the inquiries of.

9 MR. MERIWETHER: Exactly.

10 THE COURT: What Ms. Dean wants to know -- and they
11 were all targeted to Bowater. She wants to know what it
12 means to say that there are no documents relative to
13 Bowater. She wants some kind of more definitive statement
14 about whether there is any information that Yuba supplied
15 any equipment at Bowater.

16 MR. MERIWETHER: Right.

17 THE COURT: And she doesn't want to play nice games
18 about whether they have a document to that effect or some
19 other kind of information to that effect. She wants to
20 know whether Yuba had any equipment at Bowater.

21 MR. MERIWETHER: Right.

22 THE COURT: So, that needs to be asked to the people
23 to whom -- that needs to be asked to the Yuba people
24 because they certainly would know that, whether or not
25 they've got the documents not. And second of all, that

1 needs to be asked to the people who now have their records.

2 MR. MERIWETHER: Right, Your Honor.

3 THE COURT: So, that's the first thing. The second
4 thing is she's got four other, as I recollect it, that you
5 haven't asked about.

6 MR. MERIWETHER: Correct.

7 THE COURT: She wants you to ask them whether they
8 have any records relative to those other four companies,
9 and I am going to require that that be asked to them, and
10 get an answer to her by Monday the 29th, January the 29th,
11 and then we'll see where we go from there.

12 MR. MERIWETHER: All right, Your Honor. Thank you so
13 much.

14 THE COURT: All right, and it doesn't obligate you.
15 It doesn't put you on the hook for anything. We just have
16 to see what they produce, if anything. They might not
17 produce anything, but that I think is at least a reasonable
18 request to make.

19 And, Ms. Dean ---

20 MR. MERIWETHER: And we -- I'll make it to them.
21 They'll make it to their, their buyer ---

22 THE COURT: Exactly, but ---

23 MR. MERIWETHER: And we'll get it back.

24 THE COURT: I think you need to, also need to
25 emphasize to your client at Yuba who are still controlling

1 -- the new company is not controlling this. Your client is
2 Yuba, as I understand it.

3 MR. MERIWETHER: Correct. They still have the
4 liabilities.

5 THE COURT: Right, and they're going to have to be
6 asked whether there's any other information they have
7 besides the records that now are at their purchasing
8 company that ---

9 MR. MERIWETHER: They -- absolutely, Your Honor.

10 THE COURT: --- that indicate that they have any
11 equipment or had any equipment at the these locations,
12 Bowater and the other four.

13 MR. MERIWETHER: Absolutely.

14 THE COURT: And, you know ---

15 MR. MERIWETHER: We understand. I believe that Yuba
16 has nothing left whatsoever about that.

17 THE COURT: It's not a question of what they have
18 left. They have some people that worked and ran the Yuba
19 corporation. They need to be asked ---

20 MR. MERIWETHER: Your Honor, I believe they went with
21 the sale.

22 THE COURT: Well, some kind of way those people have
23 got to be asked what they know about whether there was any
24 equipment at these various locations.

25 MR. MERIWETHER: Understood.

1 THE COURT: Okay. Very good.

2 And, Ms. Dean, you'll get up some kind of order to
3 that effect.

4 MS. DEAN: Yes, Your Honor.

5 THE COURT: I can't do anything more than that. I
6 mean, Mr. Meriwether is as honest as they make them. He's
7 going to ask them what we have said they need to be asked,
8 and we'll see what they produce.

9 MS. DEAN: Yes, Your Honor.

10 THE COURT: Very good. All right, that's Yuba. All
11 right.

12 MS. DEAN: The next group.

13 THE COURT: Item A or item 1, we know where we're
14 going. On Aurora and on Yuba, you're going to get up
15 orders and they got to produce the things by January the
16 29th, right?

17 MS. DEAN: Yes.

18 THE COURT: Now we go to the second category and the
19 second category is they're produced documents, but there's
20 no date for depositions.

21 MS. DEAN: Yes, and first one on this is Daniel where
22 -- just at least a little context with how many moving
23 parts that are here. We first sought these depositions in
24 November to occur in December, then amended to January, and
25 we're now in a position where your scheduling order

1 indicates these are to be completed by the 9th.

2 One just kind of procedural thing I'd like to take up,
3 and it may be at an odd time, is if the parties agreed to
4 do it after the 9th, is that agreeable to the court?

5 THE COURT: Oh, you know it is, yeah.

6 MS. DEAN: Okay.

7 THE COURT: If the parties agree to do it later,
8 that's perfectly fine. But I am a little tired of Daniel
9 and Union Carbide going back to the beginning of time and
10 saying, you know ---

11 MR. McDONALD: Sure.

12 THE COURT: --- this is all. We can't do anything
13 because this is -- we don't have enough time and so forth.
14 This is an old case, and they've been knowing about it for
15 a long time. Whether they've been parties or not, this
16 isn't any new mystery that's just come up upon the horizon
17 to these two defendants.

18 MR. McDONALD: Sure. This ---

19 THE COURT: I want them to get with the program and
20 quit filing all these motions that talk about wanting to
21 get out of the case and ---

22 MR. McDONALD: Okay.

23 THE COURT: --- have the trial delayed. I'm not going
24 to do that.

25 MR. McDONALD: Well, let's put Union Carbide to the

1 side. That a different -- we're talking about Daniel, if
2 you don't mind.

3 THE COURT: All right.

4 MR. McDONALD: And Daniel has produced the documents
5 in *Howe*. We objected to the deposition notice as being
6 incredibly overly broad. You're familiar with the Colleton
7 case. We felt like, you know, if we pushed it all the way
8 we could get stricken, but Mr. Holder and I spent two hours
9 on Saturday ---

10 MR. HOLDER: Saturday night.

11 MR. McDONALD: Saturday night, I mean, really, and we
12 greatly -- we agreed to the basic outline of the scope of
13 an appropriate deposition against Daniel, that Daniel would
14 give, and that would be really *Howe*, *Sizemore*. *Smith*
15 really is a big one for Daniel coming up, okay?

16 THE COURT: Is that at a 30(b)(6) deposition?

17 MR. McDONALD: That's right, Your Honor.

18 THE COURT: Let me tell you something. I am not going
19 to get in these wrangles. 30(b)(6) ought to be done, and
20 it ought never have any kind of ---

21 MR. McDONALD: Well.

22 THE COURT: --- contention about it.

23 MR. McDONALD: I just suggest to you, Judge, and we're
24 not -- we've agreed. So, we've got an outline, but there
25 are times when a 30(b)(6) is overly broad. I'll ---

1 THE COURT: Rare as hen's teeth.

2 MR. McDONALD: Well, you'd have to ---

3 THE COURT: Rare as hen's teeth.

4 MR. McDONALD: These are, these are very broad, and I
5 just hope you'll have an open mind about that.

6 THE COURT: All right.

7 MR. McDONALD: But we're agreed ---

8 THE COURT: But you've agreed on Daniel.

9 MR. McDONALD: That's right.

10 THE COURT: True, Ms. Dean?

11 MR. McDONALD: Well, I'll -- let me just finish. So,
12 they needed dates and so I offered the Tuesday or Thursday
13 before the 9th and, in fact, probably any time that week I
14 could get the witness available to work that. So, I've
15 offered a date and we have produced all of our documents at
16 Bowater. Mr. Holder came and reviewed the documents.

17 MS. DEAN: Your Honor, there's two, two issues, and I
18 -- this, this isn't a Daniel-specific issue.

19 THE COURT: That's what I'm trying to resolve right
20 now is Daniel, where there's been a lot of back and forth,
21 and now we're down to either Tuesday or Thursday before the
22 9th or some other date that we -- can we get that resolved?

23 MS. DEAN: Here's why it's harder to resolve. By all
24 of the -- by this not being isolated to Daniel, but Daniel
25 definitely fits in the problem. What we are getting is an

1 influx of documents. In the last forty-eight hours, I was
2 able to review Cleaver Brooks's documents that I didn't get
3 for fourteen months and I believe I should have that shows
4 that Daniels was involved with installing their boiler at
5 Bowater. This morning I find out from Mr. Meriwether that
6 one of the cooling towers at Bowater which our client
7 describes working with was put in by Fluor. I don't even
8 know of Moff knows that. I found that out as I'm walking
9 in here.

10 By defendants ignoring properly noticed depositions
11 that should have happened last year, if we get into a
12 situation where all these deposition -- because you're
13 hearing it the first time right now. We'll get it before
14 the depo date. I'll get before the 8th. There's now
15 twenty people that are going to say same thing. We are
16 good and we are efficient, but our lawyers can't go through
17 10,000 documents from twenty different parties and depose
18 people in a nine-day period.

19 THE COURT: Well, that's not before me right now.
20 What is before me right now is just trying to get these
21 deposition dates set. That, that ---

22 MS. DEAN: That is why.

23 THE COURT: You know, if you are going to have them
24 set in any kind of a framework that allows the case to be
25 tried in March, which Ms. McVey has very, very strongly

1 insisted upon -- that's that reason why it finally got set.
2 It's an old case. That's what happens in these things.
3 I'm as sympathetic as I can be about that. I used to deal
4 with document dumps all the time by these folks. But
5 you've got the documents, and you're going to make your
6 best effort at it, but right now all I'm talking about is
7 setting the depositions.

8 MS. DEAN: So, that's why we have request number 3
9 which is listed on page 4 of our motion, and that is even
10 if they give us our documents after we requested them, even
11 if they give us a depo date, because we have asked for well
12 over thirty days -- we're talking more than double -- the
13 notion that we should lose our trial date is rewarding
14 them. What should happen is that we should have more time
15 the entire month of February to get this done, which can't
16 occur if summary adjudication happens on the 26th.

17 And sure, we're saying for people that know what you
18 want -- you were very clear; Fluor Daniels, Daniel, UCC,
19 get with the program -- and have caused this delay
20 shouldn't be rewarded for putting plaintiff in a pinch and,
21 therefore, they can still have directed verdicts heard,
22 they can still have motions heard, but we shouldn't have to
23 be pushed in this two-week timeframe. So, part of our
24 request is not only do we confirm the date, which is very
25 helpful so that everybody knows what's happening in the

1 next two weeks, but that as we confirm these dates.

2 If we sit down and it turns out there are four
3 depositions on the 8th -- and I think that's a reality --
4 we can then look at the entire month of February on working
5 this out with everybody because summary adjudication isn't
6 occurring because discovery wasn't completed. And the only
7 reason it wasn't completed is because they did not respond
8 to a request that they should have. And I think given that
9 those are the clear facts, that is a fair request. So ---

10 THE COURT: Well, let me say this. I have no
11 hesitation about having sanctions hearings on people that
12 don't produce documents when they're supposed to, but I'm
13 not going to sanction them by saying they can't pursue
14 their motion for summary judgment. I don't know why they
15 pursue all these motions for summary judgment; that's
16 another hen's teeth proposition. They are rarely granted,
17 but the deck is going to have to be cleared on that if they
18 stay in the case or don't settle the case before we try the
19 case. So, and I'm not -- I would not be prepared to just
20 simply say they can't pursue their motion for summary
21 judgment. So, I'm not going to do that, Ms. Dean.

22 MS. DEAN: Okay.

23 THE COURT: Okay.

24 MS. DEAN: Okay, and so we made that request for
25 everybody in this category, the third. I hear you saying

1 no, so ---

2 THE COURT: Okay. Very good.

3 MR. McDONALD: Could I ---

4 MS. DEAN: --- in that case, we will figure out a way
5 to make the 8th work.

6 THE COURT: All right. Very good.

7 MR. McDONALD: Can I just add one more thing, Your
8 Honor?

9 THE COURT: You just won, so what are you fussing
10 about?

11 MR. McDONALD: I, I want Your Honor to understand
12 something about Daniel's responses to discovery, all right,
13 and this hold true for every case, all right? When we
14 respond to the initial discovery, we say -- I mean, we
15 don't -- we're out of business now, all right? Our --
16 whatever project records are left are in warehouses in
17 Greenville. We will run a search and we will pull them
18 together and you can review them. And there have been
19 responses from Daniel to the plaintiffs a couple of years
20 old, and the ---

21 THE COURT: You don't need to get into that because
22 ---

23 MR. McDONALD: Well, that's right, but ---

24 THE COURT: --- because this was ---

25 MR. McDONALD: --- when they complain about the lack

1 of production ---

2 THE COURT: This was not a squabble about production.

3 MR. McDONALD: Well, she tried to make it one..

4 THE COURT: Well, and I didn't allow that.

5 MR. McDONALD: Sure.

6 THE COURT: So I don't need to go into that.

7 MR. McDONALD: Okay. I just wanted you to understand.

8 Anybody that wants to come see our documents, call us.

9 THE COURT: Noted.

10 MR. McDONALD: Okay.

11 THE COURT: Okay, Union Carbide.

12 MR. McDONALD: Oh, yes, sir -- yes, ma'am, Your Honor.

13 THE COURT: Let her speak first.

14 MR. McDONALD: Okay.

15 THE COURT: Ms. Dean.

16 MS. DEAN: Union Carbide and Mr. McDonald is okay with
17 this. This is -- this parallels three of the cases, I
18 believe, that are before the court. It's in *Howe, Smith...*

19 MR. McDONALD: *Howe and Smith.*

20 MS. DEAN: Just *Howe and Smith.*

21 MR. McDONALD: Just *Howe and Smith.*

22 MS. DEAN: Okay, but that the arguments are the same,
23 and so I think efficiency wise we might want to tackle them

24 ---

25 THE COURT: Sure.

1 MS. DEAN: --- in the same manner. But we are seeking
2 their corporate representative depositions. I know him and
3 Mr. Holder have been trying to discuss a resolution to
4 that. We are even willing to consolidate the two if that
5 is something they want. But we believe that given that we
6 have confirmed that there was the sale of millions of
7 pounds of asbestos insulation to Bowater where our client
8 worked -- in the case of Ms. Smith during the time that her
9 husband was there and in the case of Mr. Howe in locations
10 where we believe he works -- and we need to figure out how
11 long the asbestos would have remained because there is a
12 gap in time that -- it's the same place, same location. We
13 just need a date and to be able to find out.

14 And I know Union Carbide fairly well, and I think Mr.
15 McDonald would say the same thing in the context of
16 supplying asbestos for joint compound. This is my first
17 case and our firm's first case where they supplied the same
18 raw material, asbestos, put in a paper mill. And so we've
19 been eager to get this deposition because unlike a lot of
20 asbestos litigation, this is something that's at least new
21 to me, and so learning how pellet sized versus powder
22 asbestos worked, where it was in the plant, how it worked
23 is really important to us understanding how we're going to
24 prove this case and how, how quick the case is.

25 MR. McDONALD: If I could respond, Your Honor?

1 THE COURT: Again, just so I understand, documents
2 have been exchanged. This is all about ---

3 MR. McDONALD: A deposition.

4 THE COURT: --- setting a deposition ---

5 MR. McDONALD: That's right, Your Honor.

6 THE COURT: A 30(b)(6) deposition ---

7 MR. McDONALD: Right, Your Honor.

8 THE COURT: --- by Union Carbide people to answer
9 questions like she talked about.

10 MR. McDONALD: That right, Your Honor, and let's just,
11 let's just walk through it.

12 THE COURT: All right.

13 MR. McDONALD: And I know you understand. A 30(b)(6)
14 deposition is expensive and burdensome for the, for the
15 defendant and, of course, it's up to the court to balance
16 the need and the relevance, et cetera, all right?

17 Now, here's the situation in the case. We're talking
18 about the *Howe* case, all right? Mr. Howe, Mr. Grant, Mr.
19 Newland, Mr. Small all deposed. No testimony about any
20 exposure to a Union Carbide product, all right? Put that
21 aside. Union Carbide did provide the raw asbestos fiber,
22 not insulation, but fibers. They had a line to Bowater,
23 all right? So that's what they're sued about. Union
24 Carbide responded here are our sales records to Bowater.
25 They're all between 1965 and 1967, all right? Mr. Howe did

1 not arrive at Bowater until 1978, all right?

2 Bowater -- now, Union Carbide, it's a little bit of a
3 mystery to them what was done with the fiber at Bowater.
4 So, in June we served discovery on the plaintiff: what
5 information do you have about exposure to our product?
6 Plaintiffs did not respond to that discovery. We sent new
7 discovery in November specifically asking what information
8 do you have about the use of calidria at Bowater. That
9 discovery has been ignored; plaintiffs have not responded
10 to it. Union Carbide has moved to compel. What do you
11 have? Do you have Bowater depositions, information? What
12 do you have?

13 Bowater has now produced documents. In the document
14 production they made this week are sworn affidavits and
15 sworn testimony in Madison County, Illinois, that the
16 calidria was used in the process to remove some kind of
17 byproduct, and it was used from 19 -- sometime '66, '67,
18 but it ended in December of 1968s. Mr. Howe did not arrive
19 at Bowater until 1978. So, why is Union Carbide having to
20 answer any other questions about it? There's no possible
21 link between that fiber and Mr. Howe.

22 It gets slightly more complicated in the *Smith* case,
23 slightly, but only slightly. *Smith* is a claimed take-home
24 exposure. Ms. Smith's former husband, Lewis Childers,
25 worked at the Bowater plant in the second half of 1968, but

1 he worked as an insulator employed by Daniel Construction
2 in the construction of paper machine number 3, all right?
3 The production was over on paper machine number 1, the
4 Bowater documents show.

5 Now, just so -- we talk a lot about paper machines. A
6 paper machine is an entire plant, all right? They are
7 giant things, cost hundreds of millions of dollars, a
8 thousand people in the sixties to construct. Giant
9 construction project. Their witness in the *Howe* case, Mr.
10 Small, said it's a separate plant, a separate building.
11 During construction they put a fence around it. That was
12 it. So, there's no way Childers is ever involved over
13 there in the production in unit number 1 and involved with
14 calidria. So, that is why we oppose.

15 Plaintiffs have not provided -- responded to our
16 discovery and when you put together what's in the case,
17 there's no way to tie back to Union Carbide. It's quite
18 burdensome for Union Carbide to have to prepare a witness
19 to respond to this point.

20 THE COURT: All right, Ms. Dean.

21 MS. DEAN: Briefly, twofold. The discovery requests
22 and October request, I respectfully disagree with Mr.
23 McDonald's depiction that we didn't respond. I've seen
24 emails from Mr. Holder's. He explicitly and directly and
25 quickly responded that ---

1 THE COURT: Well, what was the response?

2 MS. DEAN: We don't have documents, and December is
3 when we first obtained the Bowater documents, and we have
4 been very clear that we think that they are relevant. I
5 understand Mr. McDonald has them, but there are other
6 people like Moose that are still looking to get them. But
7 there is nothing that we have that is discoverable that
8 hasn't been produced.

9 We understood Union Carbide's fibers were sold to
10 paper mills, including Bowater, from attorneys telling us
11 that. That's why we included them in the suit, and we have
12 been eager from day one to say please verify whether that's
13 so. And so when Mr. McDonald asked, hey, how do you know
14 that ---

15 MR. McDONALD: Well.

16 MS. DEAN: --- we did respond. We don't have
17 documents. We just have been told you were here.

18 MR. McDONALD: And we ---

19 MS. DEAN: So ---

20 THE COURT: Wait a minute. Wait a minute. Whoa,
21 whoa, whoa. No. We're not ---

22 MR. McDONALD: Okay.

23 THE COURT: --- going to do it that way. Ms. Dean is
24 going to complete, and of course I will always come back to
25 you, Mr. McDonald.

1 Go ahead, Ms. Dean.

2 MS. DEAN: There are a lot of balls in the air. There
3 are going to be times when I come to this court and say you
4 know what? They asked and we didn't answer. I'm just
5 telling you this time, that's not what happened.
6 Everything we had, as, as forthcoming as we could be about
7 this issue, we have.

8 So then the second issue he has is that we just can't
9 connect the dots. Yes, they sold millions of pounds of raw
10 asbestos to his work site, but we can't connect the dots.
11 Your Honor, while the sales records suggest that the sales
12 stopped in '68, that doesn't mean the use stopped in '68.
13 We already have information that it went into further
14 years.

15 More importantly, whether -- one of the biggest
16 characteristics of asbestos, particularly in raw form, is
17 that it doesn't go away. If it's in an enclosed space
18 that's shut off and you don't have abatement efforts, it's
19 still there, particularly in raw form. So, what I want to
20 know in Mr. Howe's case is, is the time gap too long? And
21 I don't think that question can be answered by a lawyer's
22 belief. I think I get to ask questions.

23 Similarly in *Smith*, I think that's much cleaner. He
24 references the Small testimony that is in a separate
25 location, but they ignore Harley Newland's testimony. Ms.

1 McVey took that deposition, Mr. Newland's, and he said
2 look, I was there and the reason we were there -- and they
3 both worked for Daniels, being at that site at that time --
4 was to insulate pipes and boilers and in turbines and that
5 they were throughout the plant. They also worked on
6 precipitators and duct work.

7 And so again this is not a case where I feel
8 comfortable telling the court I know for sure that these
9 millions of pounds of asbestos would have been at the right
10 place or the right time, but that's why an investigation is
11 done. And that's all the more reason why ignoring the
12 request and for us to ask those questions is -- isn't
13 acceptable.

14 THE COURT: All right, Mr. McDonald.

15 MR. McDONALD: Well, Judge, quickly respond. I mean,
16 we did provide all of our sales records, and here are the
17 sworn statements in the -- if you would like them, in the
18 Bowater documents that they produced in Madison County
19 litigation explaining that the production use of the
20 calidria ended in December of 1968 at this site.

21 THE COURT: All right. Very good. Let me first do a
22 little bit of housekeeping here. I will first make a
23 ruling with respect to the case that's captioned Howe as PR
24 against Air Liquid and others, and that's 15-CP-46-03456.
25 I will then make a ruling in what we've been calling the

1 *Smith* case but is actually Roxanne Falls as PR of the
2 Estate of Charlotte Gaye *Smith* against CBS Corporation and
3 many others, and that is 2015-CP-46-02155. In each case,
4 we are dealing with response to a 30(b)(6) deposition by
5 Union Carbide, represented Mr. Moff McDonald, and in each
6 of those cases, I will sign an order which you need to
7 prepare for me, Ms. Dean, that requires that Union Carbide
8 respond to a 30(b)(6) deposition in both of these matters.

9 I do it for this reason, Mr. McDonald. I understand
10 your sales records and sworn statements, and you produced
11 what you're supposed to produce, and you say they don't
12 connect the dots. I don't believe this is the moment in
13 time to say you can't take a 30(b)(6) because you haven't
14 contacted the dots. I believe they are entitled to go
15 forward on the basis of the representations Ms. Dean has
16 made and take those 30(b)(6)s. So, I will require that
17 Union Carbide respond to 30(b)(6)s in each of those cases.

18 MR. McDONALD: Certainly.

19 THE COURT: Very good. And when I say order by Ms.
20 Dean, I always mean share first with opposing counsel, and
21 then if they got objections, both of you can submit and
22 submit objections, or hopefully you can agree about at
23 least the contours. Not whether they reserve all their
24 rights with respect to whether they can be required to give
25 the deposition, for example, in this case, but the wording

1 of it, hopefully y'all can agree upon.

2 MR. McDONALD: Sure. Thank you, Your Honor.

3 THE COURT: Very good. All right. Now, that gets ---

4 MS. DEAN: Can I get one clarification, Your Honor?

5 THE COURT: Yes, ma'am.

6 MS. DEAN: Can we just request that they provide us
7 the dates of availability by Friday on or before the
8 scheduling order deadline so that we can all have a
9 timeframe to schedule this?

10 THE COURT: Can you do that, Mr. McDonald?

11 MR. McDONALD: I'll do my very best. I mean, my
12 intent would be to move -- get you a deposition before the
13 9th, and then we would be prepared to move for summary
14 judgment, but I just got to talk to people, you know.

15 THE COURT: He's going to make his best efforts.

16 MS. DEAN: I'll take it.

17 THE COURT: I think that's -- I take his -- he is a
18 man of his word, and I take him at that. So, I think you
19 will probably have something there. Very good.

20 Now, the final one we have on this particular issue,
21 which is they've given documents but no dates, is SPX.

22 MS. DEAN: Yes. The circumstances of this, I've kind
23 of flipped categories on this. We were provided the date
24 to go forward on January 31st, and then when I talked to
25 Mr. Meriwether yesterday, he indicated that date is no

1 longer available and was working on another date. He also
2 informed me that this is one of those scenarios where I
3 come to court and say we messed up in the following way.

4 When we sent out notices for the parties that we
5 believed we had a case against back in November, SPX's
6 notices didn't go out; everybody else's did, but for some
7 reason that one didn't. When we sent out the first amended
8 one, they got it but it references the document request in
9 the notice that they didn't get. So, they've known since
10 December what topics we want to talk about.

11 The 30(b)(6) rule indicates that you need to be
12 prepared what's -- with what's reasonably available to you
13 to talk about those topics. Our document request doesn't
14 include anything that's not in our topic, but we failed to
15 get them the document request. And so I, I agree with Mr.
16 Meriwether that if they don't know what documents we're
17 requesting, we have a glitch. And so he tells me he will
18 work with us to get the documents if we will work with him
19 on the date.

20 My position is, is I'm really concerned about getting
21 all this done by SJ, but I've already lost that with this
22 court, and so I think the main thing we need is a timeframe
23 in which to get these depositions done.

24 THE COURT: Mr. Meriwether.

25 MR. MERIWETHER: Your Honor, she's correct. We didn't

1 get the document request. We -- when I got the amended
2 notice to a notice that I had never gotten, I put the -- I
3 twigged my guys and said, hey, we're going to need to start
4 looking for documents. So, they've been looking. We've
5 got a bunch lined up. I should be able -- they've been
6 pouring in on emails, individual emails and I, I got to
7 figure out how to get into whatever file transfer thing
8 you've got to do with it.

9 THE COURT: Sure.

10 MR. MERIWETHER: I can get it to them probably this
11 afternoon. My corporate rep from SPX is getting needles
12 put into her eyeballs at Duke Medical Center for some
13 reason. It sounds horrible but some sort of minor
14 procedure that she's up in, in -- at Duke Medical for. She
15 will let me know as soon as -- I, I hope, I would hope by
16 tomorrow or the next day when she's got -- and we'll make
17 sure we've done all the records searches and get that stuff
18 to plaintiffs, and we'll just give them a date as soon as
19 we can.

20 THE COURT: Well, why don't we just say this to kind
21 of complete the loop. By Friday, you will advise Ms. Dean,
22 unless your counsel continues to be hospitalized. You'll
23 advise Ms. Dean about proposed dates, as well as get the
24 documents to her.

25 MR. MERIWETHER: Works for me, Your Honor.

1 THE COURT: Very good. That's this coming Friday.

2 MS. DEAN: Yes.

3 THE COURT: Which is the 26th. Very good. I don't
4 think we need an order on that, Ms. Dean. I think Mr.
5 Meriwether will comply with that, I feel quite sure.

6 MR. MERIWETHER: Yes, Your Honor.

7 THE COURT: Very good. All right, now that completes
8 the second category of matters, which is want the date,
9 have the documents, and we now move to the third category
10 of matters, which is you don't have any either one, and
11 that is a whole bunch of people: Cleaver Brooks, Covil,
12 Dezurik, Flowserve, Foster Wheeler, Ingersoll Rand,
13 Marculex, Sterling, and Gorman Rupp.

14 MR. MERIWETHER: I believe I can deal with one real
15 easy, Your Honor.

16 THE COURT: All right.

17 MR. MERIWETHER: For Dezurik, they noticed a
18 deposition for February the 28th. We'll have a witness up
19 in St. Paul on that date. It's all good. We got it
20 resolved because we tendered that date, and they noticed
21 it.

22 THE COURT: And it's what date?

23 MR. MERIWETHER: February 28th.

24 MS. DEAN: Your Honor.

25 MR. MERIWETHER: In St. Paul, Minnesota.

1 THE COURT: And how about documents?

2 MR. MERIWETHER: Records? I -- we got them. We --
3 this is a weird company. They literally have cans of old
4 microfilm and a microfilm reader, but we've 200 pages
5 related to relevant job sites from microfiche and as soon
6 as they're copied, I'm getting them to you.

7 THE COURT: All right.

8 MR. MERIWETHER: I mean, they're -- it just -- this
9 is, this is some antediluvian system of keeping records,
10 but literally they go back to the thirties.

11 THE COURT: Well, can you get the documents to her by
12 the end of next week?

13 MR. MERIWETHER: Yes.

14 THE COURT: All right. That would be the 5th?

15 MS. DEAN: The 5th is a week from Monday. Yeah, the
16 2nd.

17 THE COURT: The end of next week is the 2nd, February
18 the 2nd.

19 MR. MERIWETHER: Sure, Your Honor.

20 THE COURT: Could you get them, get them by February
21 2nd, Mr. Meriwether?

22 MR. MERIWETHER: I feel sure that we can get them
23 printed out.

24 THE COURT: Very good. So, Dezurik is one company
25 that's depo is February the 8th. Docs are coming on

1 February 2nd. How about that?

2 MS. DEAN: The problem with that, and it's limited to
3 this, is we agree to the 28th if there is not a motion for
4 summary judgment going forward, but if there is not ---

5 THE COURT: I'm not going to do it that way, Ms. Dean.
6 I'm not going to deprive people of their right to move for
7 summary judgment.

8 MS. DEAN: I agree. I'm not, I'm not -- I disagree
9 but I lost.

10 THE COURT: Yes.

11 MS. DEAN: And that's clear and I'm not trying to
12 refight it.

13 THE COURT: Okay.

14 MS. DEAN: The problem is is I can't agree to the 28th
15 if my summary judgments are due on the 26th. They need to
16 provide me a date by the 9th like everybody else, and we
17 might even be able to work on the week of the 16th, but I'd
18 probably be able to get that transcript back and respond to
19 their motion for summary judgment by the 26th.

20 THE COURT: How about that, Mr. Meriwether?

21 MR. MERIWETHER: Your Honor, I'll check with him, but
22 I thought it was settled when they noticed it for the 28th.

23 MS. DEAN: We may -- at least...

24 THE COURT: They noticed it, but with this caveat that
25 they didn't want you to make any motion for summary

1 judgment, but that's not by the boards. I'm not doing it
2 that way. So, can you get them something before that that,
3 therefore, allows them to have adequate time to ---

4 MR. MERIWETHER: I will, I will ---

5 THE COURT: --- respond because you're going to make a
6 motion for summary judgement as soon as the 30(b)(6)s are
7 over, aren't you?

8 MR. MERIWETHER: Your Honor, I think that particularly
9 ---

10 THE COURT: Unless the world turns on its axis ---

11 MR. MERIWETHER: --- particularly this client ---

12 THE COURT: --- the other way.

13 MR. MERIWETHER: --- whose name did not escape the
14 lips of any witness in the case, I would likely to move.

15 THE COURT: Yes. Well, then we need to set a date
16 that's not the 28th if the motion is going to be heard the
17 26th, or if they're due to be served by the 26th.

18 MR. MERIWETHER: I will talk to my folks this
19 afternoon and see if we can get an earlier date.

20 THE COURT: Okay, let's do that. All right, earlier
21 date.

22 MR. McDONALD: Ms. Dean, can we go ahead and address
23 Sterling?

24 THE COURT: Well, I'm just not going to ---

25 MR. McDONALD: Oh, oh -- okay.

1 THE COURT: --- jump hither, thither, and yon. I'll
2 let Meriwether do that, probably ill advisedly, because
3 none of these things end up being as simple as people say
4 they are.

5 Cleaver Brooks is the first one.

6 MS. DEAN: Your Honor, this one we've gotten a large
7 way towards resolution, but we asked whether they sold
8 products. No one knew Cleaver boilers, but we had several
9 people saying that he worked -- this is in terms of Bowater
10 location. He worked on all the boilers in the powerhouse.
11 I learned in January on of the boilers sold to Bowater was
12 Cleaver Brooks. They've agreed now to give me all the
13 documents.

14 They've also indicated that *Sizemore* and *Smith*
15 parallel the same issue, that they've confirmed they don't
16 have boilers in any other location but this one and that
17 they'd like to consolidate the three. I just wanted to get
18 that -- my understanding of that agreement on the record.

19 The main thing we then need are the documents and to
20 be able to get a date for all three so that we can discuss
21 with them what they did to confirm that they're not at the
22 other location and learn about this asbestos-containing
23 boiler that was at the place where my guy worked.

24 THE COURT: All right. Now, who represents Cleaver
25 Brooks?

1 MR. THOENSEN: Your Honor, Joe Thoensen with
2 Richardson, Plowden, and Robinson. I'm here for Cleaver
3 Brooks.

4 Ms. Dean is correct. We have largely resolved the
5 issue. Cleaver Brooks searched their records and they did
6 determine that they shipped a boiler to the Bowater
7 Papermill in Catawba, South Carolina. It is a very small
8 boiler and our information, based on several other things
9 that are not up for dispute today but just for some
10 context, is that that boiler was never in the powerhouse at
11 Bowater.

12 THE COURT: That's a connect-the-dot deal.

13 MR. THOENSEN: Exactly.

14 THE COURT: We're just talking about 30(b)(6).

15 MR. THOENSEN: Correct. That, that was part of the
16 reason why we went back and forth a couple of different
17 times. We produced a collection of documents, and we did
18 have a deposition date set for earlier this month. Ms.
19 Dean came back and said I think I need more documents than
20 that, and I said okay. We'll go and get them but if we go
21 and get them, the 19th is not going to work because we also
22 have a microfilm process that is extremely tedious and
23 time-consuming.

24 Our documents that she now is seeking have been
25 collected; they have been organized, and they were sent to

1 me late yesterday. They will be produced to Ms. Dean and
2 her cocounsel as soon as I get back to my office following
3 this hearing.

4 And we did -- as you may imagine, there have been a
5 flurry of emails and things get missed, and I understand
6 that. We offered our witness for February 1st. I
7 understand there's going to be a lot of scheduling concerns
8 for, for a lot of people. We did offer him for February
9 1st; he's still available for February 1st. If that is
10 just impossible for the plaintiffs, we'll work on
11 something.

12 But in terms of document production and a deposition
13 date for a 30(b)(6) witness, this is all in compliance with
14 this court's scheduling order for this trial block that
15 came in on January 11th. We are producing documents before
16 the dates set forth in that order, and we're making the
17 witness available before the date set forth in that, in
18 that order as well. So, with the production of our
19 documents to occur today, we don't believe there is a
20 dispute.

21 THE COURT: Very good.

22 What do you say to that, Ms. Dean?

23 MS. DEAN: I think the issues have been resolved. I
24 do think telling us the day before we have a flight to do
25 their deposition that they didn't give us records that we

1 didn't just ask for the first time ---

2 THE COURT: Well, we're past that now.

3 MS. DEAN: But, yeah, there's a lot of frustration
4 that it takes having a hearing ---

5 THE COURT: Sure.

6 MS. DEAN: --- here to get there, but we're there.

7 THE COURT: Well, we're past that.

8 MS. DEAN: Yeah.

9 THE COURT: So respectfully, Cleaver Brooks, that's
10 okay and that's on -- you say Bowater. That means on the
11 *Howe* case, and then you made some mention of *Sizemore* and
12 *Falls PR for Smith*. Same issue there, or are there no --
13 they say nothing in the plants they worked in. Is that
14 true or not true?

15 MS. DEAN: Given that they have indicated they'll get
16 us all responsive documents today, we will notice the
17 deposition in all three cases February 1st, and I don't
18 think you have anything further to rule on.

19 THE COURT: Very good, and just for the record, then,
20 the three cases we are discussing at this time, Ms. Harris,
21 are the *Howe* case, *Falls PR for Smith against CBS*
22 *Corporation*. That's 2015-CP-46-02155. And *Sizemore as PR*
23 *of the Estate of Sizemore against Bowater Papermill*.
24 That's 2016-25-0440. And these matters will proceed on
25 with 30(b)(6)s and exchange documents along the lines that

1 the counsels have discussed, with no need for a further
2 order at this time.

3 MS. DEAN: Yes, Your Honor.

4 THE COURT: Very good. All right, that does Cleaver
5 Brooks. Now we go to Covil.

6 MS. DEAN: Covil is another scenario where I know
7 we're talking about the *Howe* case, but we are also seeking
8 a deposition in *Smith* and in *Sizemore*, and I should say
9 Falls, the PR. But we had a deposition notice in November.
10 We'd been asking for months. They gave us a date of the
11 31st. I was planning on going out and getting ready for
12 the 31st. They now claim that because their main witness
13 had to go from a part time to a full-time job in January,
14 that they need more time.

15 Again, I believe that the hardship for not planning
16 for something where you've gotten more than the thirty days
17 that the rule requires -- sixty days -- shouldn't fall on
18 the plaintiffs and should proceed on the 31st.

19 The second part of their motion has just been why do
20 we have to do this over and over again. We are happy to do
21 them in a, in a group if that is better for their people.
22 And then their final thing they say is look. Our corporate
23 representative now didn't start with the company until
24 1974. He's the son of the person that owned and started
25 the company who was deposed at length. I think it's 498

State of South Carolina)
)
County of York)

In Re: South Carolina)
Asbestos Litigation,)
)
 Plaintiffs.)
)
)

In The Court of Common Pleas
Sixteenth Judicial Circuit

State of South Carolina) In The Court of Common Pleas
) Sixteenth Judicial Circuit
County of York) 2015-CP-46-3456

Timothy W. Howe, as Personal)
Representative of the Estate)
of Wayne Ervin Howe, deceased,)
and Jeanette Howe, surviving)
spouse,)

Plaintiffs,

VS.

Transcript of Record

Air & Liquid Systems
Corporation, et al.,

Defendants.

March 9, 2018
Columbia, South Carolina

B E F O R E:

The Honorable Jean Hoefer Toal, Judge

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

Jessica M. Dean Esquire
Jonathan M. Holder, Esquire
Theile B. McVey, Esquire

Nicolas A. Charles, Esquire
S. Christopher Collier, Esquire
William P. Early, Esquire

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

Andrew T. Frankel, Esquire
Jase B. Glenn, Esquire
Thomas M. Kennaday, Esquire
Christopher S. Marks, Esquire
Moffatt G. McDonald, Esquire
Yancey A. McLeod, Jr., Esquire
Robert O. Meriwether, Esquire
M. Elizabeth O'Neill, Esquire
Steven J. Pugh, Esquire
Jennifer M. Techman, Esquire
David G. Traylor, Jr., Esquire

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

1 together?

2 THE COURT: We're doing all of them together. They
3 all involve the same thing, I'd be willing to bet.

4 MS. O'NEILL: Okay. Thank you.

5 THE COURT: Very good.

6 Ms. Dean.

7 MS. DEAN: Good morning, Your Honor. This is Jessica
8 Dean behalf of all three plaintiffs. I want to first just
9 acknowledge a thank you to the clerk of court, the court,
10 and while we have spent a lot of time letting the court
11 know about our frustrations, there has still been an
12 extraordinary cooperation and professionalism in a really
13 difficult time and just wanted to express that.

14 The frustration that we have here started with the
15 hearing where counsel for Cleaver Brooks, Joe Thoensen,
16 came on the 24th, represented to the court that we did not
17 need an order because they had already searched their
18 files. They only had one boiler at issue despite us
19 identifying eighty sites between the three, and it was the
20 same location, Bowater. That they would get it to us by
21 that day, and we would have a deposition by February 1st.
22 Based on that, I still said Your Honor, they've jammed us
23 up. They shouldn't be able to have a motion for summary
24 judgement. You disagreed with me, and we moved on.

25 Since then it is unequivocal: they missed it. They,

1 they do not mince words here. We have an email from Mr.
2 Thoensen himself saying I believed that when I said it, but
3 it's not true. We've attached that. Their own responses
4 to our motions for sanctions acknowledge that what was
5 stated was not true and in two fundamental ways. One,
6 Bowater is not the only location at issue and two, they did
7 not produce all of the documents for all the sites by the
8 24th. In fact, productions happen not just after that
9 represented time but after 2/9, which was the scheduling
10 order deadline for these representatives. They continued
11 to be produced until just days ago.

12 Their corporate representative -- and this is why you
13 have a supplement yesterday -- was first able to be
14 available to talk about the documents this week. They
15 offered us a date, the 21st or 22nd initially.
16 Acknowledged in writing -- we attached that -- we wouldn't
17 be ready for everything, so we got a Tuesday deposition
18 which resulted in us getting a Thursday transcript, which
19 is why we got this during the time.

20 And the point the court already made, why am I getting
21 something this late, I understand we bring it to you, but
22 it's because this is by definition trial by ambush. You've
23 already signed an order that if you represented things to
24 the court, Cleaver Brooks, that end up not being true,
25 there will be sanctions.

1 We found out in that deposition on Tuesday, and I hope
2 the court has a moment to look at what we wrote, but where
3 claims made in writing by Cleaver Brooks don't bear out --
4 for instance, one of the things they said in their
5 objection to our proposed order is that on the 24th, we
6 believed Bowater was the only location. The corporate
7 representative says no, I knew and told counsel there were
8 locations in *Sizemore* at issue.

9 We -- after the summary judgment deadline ---

10 THE COURT: Let me stop you here. How many locations
11 are we talking about now?

12 MS. DEAN: So, what we have is in *Howe* Bowater only
13 with a confusion about where it's at that I want to talk
14 about for maybe a minute. In *Smith* three locations where
15 they claim they don't have records for two, but they've
16 seen documents we produced from state boiler registries
17 that make us have high concerns that they haven't produced
18 what they have. And in *Sizemore* seven, one of them being
19 Bowater.

20 And so we have identified in that motion, and it's
21 kind of indented, I think, on the fifth page the specific
22 sanctions we're seeking as to each, and, and, and I think
23 they are reasonable and tailored to the specific harm. We
24 also attached an order from Judge Hill in a case called
25 *Bumgardner*, and I did that because I was actively involved

1 in Pete Bumgardner's case, and it resulted in emergency
2 depositions two days before trial. This is, this is a
3 problem not with Mr. Pugh and not with -- in fact, I think
4 Joe, Joe is one of the most straightforward people I've
5 ever met, but it is a repeated problem with this client,
6 and the particular problem...

7 THE COURT: Go ahead.

8 MS. DEAN: Sorry, in *Howe* is limited. They told me
9 for the very first time that they have a boiler sent to
10 Bowater on January 11th. They told us it was in the power
11 house, but they wanted to limit the documents because he
12 was never inside of it. I then gave them evidence. No,
13 you're wrong about that; here's the testimony where he was
14 inside. Then it became the day before I first met you that
15 they said we were wrong. We don't believe it was in the
16 power house. We believe it was in the admin building.

17 I want the court to appreciate that for two years, the
18 only testimony we had in this case from two different
19 people is every boiler was in the power house and that
20 Wayne Howe worked on every single one of them, and that's
21 clean, right, because if I can find out the boiler
22 manufacturer there, I now know he worked on them.

23 For the first time, six weeks before trial, they said
24 nope. We did sell a boiler. It had a lot of asbestos in
25 it, but it was somewhere else. I immediately took them up

1 on the hearing of looking at the documents they produced on
2 the 24th on the 25th. It didn't bear out what they said.
3 It doesn't show it's in the admin building. I then went to
4 Bowater, the premises location, and asked them if that what
5 was they knew. No. The admin building did have a package
6 boiler, but it was sold in '86. Their boiler was sold
7 almost thirty years earlier in 1957. I then started
8 calling coworkers. Everyone I knew ---

9 THE COURT: Well, did you find out that it was in the
10 power house?

11 MS. DEAN: I did.

12 THE COURT: Was that something that Bowater revealed
13 or coworkers?

14 MS. DEAN: Coworker, including a coworker deposition
15 we found through Mr. Graham, who's working with us in this
16 case, that Cleaver Brooks was at that says, look, there are
17 five really giant field erect boilers and a package boiler
18 from Cleaver Brooks. And so we're here with them now
19 saying you can't have a new witness. You can't introduce
20 this testimony with stuff that I believe they should have
21 produced to us.

22 THE COURT: And who's the new witness?

23 MS. DEAN: His last name, I think, is Bogan, but let
24 me grab it to make sure my memory is right.

25 (A PAUSE.)

1 MS. DEAN: Yeah, it's Johnny Breen B-o-g-a-n, Bogan.

2 THE COURT: All right. Now, I'm still, Ms. Dean, not
3 finding, although I do remember it's in one of your
4 supplemental motions and maybe it comes from Jonathan, but
5 it does list what all you're asking for. Have you got
6 that? I don't think it's in this one.

7 MS. DEAN: I can show you where, if I can approach?

8 THE COURT: Yes, please. Y'all don't have to do all
9 that. I'm not that formal about approaching and all that
10 kind of business.

11 MS. DEAN: I am an informal soul, so I try to make
12 myself be very formal when I get here.

13 So, right at the end, the specific request for each
14 case.

15 THE COURT: All right.

16 MS. DEAN: You'll see for *Howe* it's just limited to a
17 presumption that the boiler is in the power house and/or
18 we're going to ask to be able to use this late-identified
19 witnesses.

20 For the other two cases, it's for the locations where
21 we now know there is boilers not to have trial by ambush by
22 having a presumption that the components that we know are
23 routinely in their boilers were, in fact, in those boilers.
24 I'm summarizing. It's better written in the brief.

25 THE COURT: Okay. All right, I understand your

1 position.

2 MS. DEAN: Okay.

3 THE COURT: Counsel.

4 MR. PUGH: Thank you, Your Honor.

5 THE COURT: Now, does your notebook have your response
6 to this, or is that in some other piece of paper?

7 MR. PUGH: Your Honor.

8 THE COURT: Or is this going to be the response that
9 you're telling me right now?

10 MR. PUGH: I'm about to give you my response, Your
11 Honor.

12 THE COURT: Okay, but you don't have it in writing?

13 MR. PUGH: I do not yet, but we can hand something up.
14 I received their motion, I don't know, 7:00, 6:00 last
15 night.

16 THE COURT: All right.

17 MR. PUGH: May it please the court? Your Honor, again
18 this is Steve Pugh, Richardson, Plowden, and Robinson for
19 defendant Cleaver Brooks. I appreciate what counsel said
20 about my colleague. I was not at the January 24th
21 proceeding, and I appreciate what the court said, that
22 lawyers can only reflect their client's position, but let's
23 talk about our client's position, specifically -- and I'll
24 take the cases one by one.

25 Ms. Dean told you a moment ago that the testimony she

1 had was clean as to the power house and presence of five
2 boilers at the Bowater facility. That's what we're talking
3 about in *Howe*, the power house and boilers in the power
4 house. Let's look at Mr. Howe. His testimony, he did not
5 identify Cleaver Brooks.

6 THE COURT: Let's not get into that argument. I think
7 what we're -- y'all are going to repeat all that in your
8 motion for summary judgment. What I need to know real
9 specifically is the position on this business of not giving
10 them sufficient information about where your boilers were
11 located until late in the game.

12 MR. PUGH: Every ---

13 THE COURT: Because we're now got, we've got other
14 information that identifies Cleaver Brooks. I've got that
15 in my motion for summary judgment.

16 MR. PUGH: That's correct.

17 THE COURT: So, that's ---

18 MR. PUGH: Your Honor.

19 THE COURT: This is not the time to argue that. What
20 I want to understand from you is what your position is on
21 the very late disclosure or really no -- she says you never
22 really made any disclosure that this boiler was in the
23 power house. That she had to go out and find the coworker,
24 and she finally found somebody named Bogan that could
25 identify the Cleaver Brooks boiler as being in there even

1 though she says you've got witnesses that said that was
2 known by the corporation some time before this late date.

3 MR. PUGH: In short, Ms. Dean is incorrect.

4 THE COURT: Well, then what is the facts about -- when
5 did you disclose the information?

6 MR. PUGH: We disclosed our Bowater documents in
7 accordance with your prior order. The deposition of our
8 30(b)(6) designee was in accordance with your prior order.

9 THE COURT: But give me real specifically. Where did
10 you ---

11 MR. PUGH: We sold, we sold ---

12 THE COURT: --- disclose, where did you disclose the
13 location of one of your boilers in the power house at
14 Bowater?

15 MR. PUGH: We provided documents to the plaintiff ---

16 THE COURT: Please don't, please don't tell me ---

17 MS. O'NEILL: Your Honor.

18 THE COURT: --- a big document dump that ---

19 MR. PUGH: No, no, no, no.

20 THE COURT: --- that has a whole bunch -- tell me
21 specifically what document it was and when it was provided
22 that said that one of your boilers was in the ---

23 MR. PUGH: We provided ---

24 THE COURT: --- power house at Bowater.

25 MS. O'NEILL: Your Honor, may I respond to that?

1 THE COURT: You know, I'm never going to get finished
2 with the thing if I have this kind of thing where people
3 clear their throats by arguing their whole case. I've got
4 a real specific question here about this real specific
5 thing, which is sanctions. So, I want to know exactly when
6 it was disclosed.

7 MR. PUGH: We ---

8 MS. O'NEILL: We didn't. That's the answer, Your
9 Honor.

10 THE COURT: You did not disclose?

11 MS. O'NEILL: We did not because we don't have any
12 evidence that it was in the power house. We don't believe
13 that it was in the power house.

14 THE COURT: So, you're going to dispute that ---

15 MS. O'NEILL: Yes, ma'am.

16 THE COURT: --- despite the evidence that's submitted,
17 you just dispute that any ---

18 MS. O'NEILL: Yes. Yes, ma'am. Bowater -- that is
19 correct. We dispute that the boiler was in the power
20 house. We have the testimony from the ---

21 THE COURT: So, is the ---

22 MS. O'NEILL: --- Bowater corporate rep that doesn't
23 identify it. Cleaver Brooks doesn't know where its boilers
24 went.

25 THE COURT: Yeah, that's what I want to know. What

1 information did you give that discloses -- you apparently
2 know that you sold some boilers to Bowater.

3 MR. PUGH: Correct.

4 THE COURT: What information did you give them about
5 where they were located?

6 MR. PUGH: We didn't ---

7 MS. O'NEILL: We didn't have any. We gave them all
8 the documents we have which says we sent a boiler -- we
9 sold it to Bowater. We don't ---

10 THE COURT: Well, why wouldn't you just step up to the
11 plate and say that then instead of ---

12 MR. PUGH: That's ---

13 THE COURT: --- all this kind of we disclosed to them?

14 MR. PUGH: That's what I was attempting to get to. I
15 was trying to tell you ---

16 THE COURT: Well, get to that right away. Don't start
17 it up with all this we disclosed this and we disclosed
18 that. And that implies that ---

19 MR. PUGH: Right.

20 THE COURT: --- you had some information and you
21 disclosed it. You didn't disclose anything period about
22 where your boilers were, as I understand it.

23 MR. PUGH: We disclosed the document that said we sold
24 a boiler to Bowater. What Bowater did with that boiler, we
25 don't have that document to disclose. What we do have ---

1 THE COURT: Does your, does anybody in your company
2 have any information about where those boilers ended up?

3 MR. PUGH: Other than the testimony of the Bowater
4 plant engineer who says it was not in the power house,
5 other coworkers who say it was not in the power house, and
6 the South Carolina State Department of Inspection for
7 Boilers who says it's not in the power house.

8 THE COURT: Well, where did they say it was?

9 MR. PUGH: In the administrative building at Bowater.

10 THE COURT: All right. I think I understand your
11 position.

12 MR. PUGH: Thank you, Your Honor.

13 THE COURT: All right, Ms. Dean, in reply?

14 MS. DEAN: Yes, Your Honor. I'm aware that Ms.
15 O'Neill got brought into the case recently, and so there --
16 that, I think that makes it difficult to know the history.
17 But I have an email on 1/24 at 1:20 -- at 1:14 -- no,
18 that's not right. It's 1/24 at 7:14 p.m. In other words,
19 the night of our hearing, and it says in writing our boiler
20 is in the administration building.

21 So the timeline of this is very clear, I got a call on
22 1/11, so I can't show you a piece of paper, saying it was
23 in the power house. I got a representation from the lawyer
24 before we walked in here it was in the admin building. I
25 then have written communication from their national lawyer

1 saying the same. I then looked into the records, and what
2 they admit now they didn't admit then, they don't bear that
3 out.

4 THE COURT: Well, what do the records say?

5 MS. DEAN: They don't say location.

6 THE COURT: Well, Ms. Dean, Ms. Dean, this is a
7 dispute between -- you don't have anything from anybody on
8 a piece of paper that says where it's located, nor do they.
9 You have got a witness that you found who says that it was
10 in the power house, and they've got written material from
11 the boiler inspection people at the state and some other
12 and the testimony of the Bowater's corporate rep which you
13 all are relying on for location in a lot of places where
14 the defendants don't know where it is that says it's in the
15 admin building. So, it's just a simple factual dispute
16 between the two of y'all as to where this boiler is
17 located. They're not disputing it was sold. They are
18 saying that all their -- they don't have any records, they
19 say, that say the location, just a sales thing, and they
20 say it's in the admin.

21 I want to know one thing, and I'll ask it again of
22 them. When was this admin boiler sold to Bowater?

23 MS. DEAN: So, the only record on an administration
24 boiler that we have seen was produced later than your
25 order.

1 THE COURT: Right.

2 MS. DEAN: Was in 1986, which means it is not the 1957
3 Cleaver Brooks boiler.

4 THE COURT: Well, what is the information you have
5 about the 1957 boiler?

6 MS. DEAN: The information we have, and this is why I
7 think it's -- I agree with the court this is a factual
8 dispute. The reason I am here is because of the timing of
9 when we learned the ---

10 THE COURT: I get the timing. What information do you
11 have about a 1957 Cleaver Brooks boiler?

12 MS. DEAN: The first time we were made aware of that
13 was in mid January of this year about two years after Mr.
14 Howe's deposition.

15 THE COURT: I get that, but what is the information
16 that you got that says there's a boiler in the power house
17 that was sold, or there's a boiler that is in Bowater
18 that's a Cleaver Brooks boiler that was sold in 1957?

19 MS. DEAN: We've got limited records in mid January
20 with the representation it was in the power house. Then in
21 the end of January ---

22 THE COURT: Ms. Dean, please be specific about this.
23 Who gave you the records that indicated it was in the power
24 house?

25 MS. DEAN: Joe called me on 1/11.

1 THE COURT: Who is he?

2 MS. DEAN: He is Cleaver Brooks's lawyer.

3 THE COURT: All right.

4 MS. DEAN: And what he said to me ---

5 THE COURT: Mr. Thoensen called you. Is this just a
6 conversation between y'all, or is this a document?

7 MS. DEAN: It is just a conversation.

8 THE COURT: And he said there's a boiler from 1957 in
9 the power house?

10 MS. DEAN: And we'll produce those documents today,
11 but we would like you to agree only that these, what I call
12 first layer records that show what's on the outside because
13 my guy never went on the inside. Then I said here's the
14 evidence, after I talked to Mr. Holder, of him being on the
15 inside. You need to get me the inside records.

16 THE COURT: All right.

17 MS. DEAN: Then they pulled down their deposition, and
18 that resulted in us having a discussion with you on the
19 24th.

20 THE COURT: Okay.

21 MS. DEAN: That is the first time I heard that the
22 records reflected it was in the admin building, and that's
23 what I have a written email for. And since then I have
24 been to, to what would have been just a typical fact
25 dispute if it was disclosed two months ago, six months ago

1 while preparing for trial in the last ---

2 THE COURT: I understand you've gone to heaven and
3 earth to do that.

4 Okay, I'm going to go back to Mr. Pugh for a minute.
5 Mr. Pugh.

6 MR. PUGH: Your Honor.

7 THE COURT: Do you dispute what she's saying about --
8 and I can't imagine she'd make up a conversation with an
9 attorney. You know Attorney Thoensen?

10 MR. PUGH: He works for me.

11 THE COURT: All right, and did he represent to her
12 that it was a 1957 boiler in the power house and that he'd
13 send her the material the next day?

14 MR. PUGH: I would have no idea why that discussion
15 would take place because that would be contrary to the
16 depositions that had already been taken about the location.

17 THE COURT: So, are you saying she's making it up?

18 MR. PUGH: I'm saying I wasn't on the phone.

19 THE COURT: Where is Mr. Thoensen?

20 MR. PUGH: I'm not sure, Your Honor.

21 THE COURT: Is he here?

22 MR. PUGH: He's not.

23 THE COURT: Well, I want you to -- I'm going to defer
24 ruling on this for a little bit. I want one of y'all to
25 get in touch with him and find out if he would agree that

1 that's what he told her. People can make mistakes.

2 MR. PUGH: Sure.

3 THE COURT: But I'm not going to do this on the basis
4 that he's the one she had the conversation with. Now
5 you're here and we can't verify this.

6 MR. PUGH: I understand.

7 THE COURT: All right. So, you get that straight with
8 me and we'll ---

9 MR. PUGH: I'll get straight with him about that. May
10 I move on to the other cases that were argued initially by
11 her?

12 THE COURT: You talking the ---

13 MR. PUGH: *Smith*.

14 THE COURT: --- the *Smith* and *Sizemore*? Yeah, and
15 *Smith* they say is one and *Sizemore* -- three and in *Sizemore*
16 they say there are seven.

17 MR. PUGH: Correct, Your Honor.

18 THE COURT: And that you didn't disclose them until
19 way after the deadline.

20 MR. PUGH: In *Smith* we didn't disclose what we don't
21 have.

22 THE COURT: It's not a question of we. Why did your
23 client not disclose this?

24 MR. PUGH: They don't have it. There are no documents
25 that my client has reflecting a sale of any boiler or ---

1 THE COURT: Is there anything in any records or any
2 statement by a corporate rep or somebody else just besides
3 a lawyer herself that says there are three for *Smith* and
4 seven for *Sizemore*?

5 MR. PUGH: As to *Smith* are there any records? Yes,
6 there are.

7 THE COURT: All right.

8 MR. PUGH: Let me tell you what they are.

9 THE COURT: All right.

10 MR. PUGH: There are records that Ms. Dean obtained
11 from some online website which she has represented is a
12 North Carolina Department of Labor registry. If you look
13 at those documents, and I believe they've submitted them to
14 Your Honor.

15 THE COURT: Yeah.

16 MR. PUGH: It shows boilers being placed at Duke by
17 either a company called C&C Boiler, which is a company out
18 of Charlotte, or Daniel Construction. Simply put to answer
19 your question directly, Cleaver Brooks has no record of
20 selling, shipping, sending a boiler to Daniel, Cliffside,
21 or McGuire.

22 THE COURT: Now, what kind of efforts did Cleaver
23 Brooks make to satisfy the requests about product
24 identification for these three cases to find out whether
25 your boilers were in there? It sounds like you waited

1 until the very last minute to finally disclose this one
2 that you say is 1987 and in the admin building. That gives
3 me some heartburn right away. If you finally found that
4 out, you could have found it out a lot earlier, but what
5 have you done with these three cases and when did you do it
6 to find out from your client what the information is about
7 boilers?

8 MR. PUGH: Our records historically have never shown a
9 sale to Duke. When Ms. Dean provided the information ---

10 THE COURT: That's something a bunch of these people
11 are going to say.

12 MR. PUGH: Right.

13 THE COURT: That's not dispositive.

14 MR. PUGH: I understand.

15 THE COURT: I'm asking when you were directed on
16 January the 24th ---

17 MR. PUGH: Right.

18 THE COURT: --- to go and find out beyond simply we
19 keep it by machine number, we don't know where it goes,
20 when you were asked to look more closely at that, what did
21 you do?

22 MR. PUGH: Well, there was a exchange between Ms. Dean
23 and Ms. O'Neill, and Ms. Dean said here are some records I
24 found. What about this? My client took the step, went
25 back and looked not only at all of their records, but we

1 got ahold of the Duke production, which was over 24,000
2 pages of documents, and we looked at every single one of
3 them. We did -- not only looking through them. We looked
4 for Cleaver Brooks, we looked for Cleaver, we looked for
5 Brooks. We looked for any possible machination of the term
6 that would show that we had ever shipped, sold, or sent.

7 THE COURT: Okay. Then she sent you something, and
8 what was it she sent you? She sent you some stuff from the
9 North Carolina Department of Labor that ---

10 MR. PUGH: Correct.

11 THE COURT: --- she said indicated that Cleaver Brooks
12 machines had gone into these other locations.

13 MR. PUGH: And ---

14 THE COURT: And what did you do with that?

15 MR. PUGH: We looked at that, and if you look at the
16 records themselves, they show that that was not a record of
17 Cleaver Brooks but, in fact, of a different company.

18 THE COURT: I don't care whether it was your record or
19 not. Finally you got something that seemed to indicate
20 that your machines were in here.

21 MR. PUGH: Your Honor, what I'm telling you directly
22 is this. I have no documents anywhere that show that I
23 sent, shipped, or had a boiler there. Am I denying that
24 somebody -- because my boilers, unlike a lot of these
25 two-story built onsite boilers, you can put on a trailer

1 and pull up in the parking lot outside the courthouse.
2 Somebody apparently put my boiler outside of those Duke
3 facilities to make hot water during a shutdown. I don't
4 have those records.

5 THE COURT: All right, you don't need to get all fussy
6 with me.

7 MR. PUGH: Right.

8 THE COURT: All you need to do is finally, like you're
9 doing now, explain the situation to me instead of going all
10 around the mulberry bush about we don't have any records.
11 You need to let me know something about exactly what went
12 on with this.

13 MR. PUGH: Sure.

14 THE COURT: And what you're saying is you -- that
15 maybe some machines came there, but y'all don't have any
16 records about them, and they weren't in your mind things
17 that were inside the plant.

18 MR. PUGH: Correct.

19 THE COURT: Okay. I got it.

20 MR. PUGH: Thank you.

21 THE COURT: Now, you're going -- apparently, though,
22 there was a time when somebody in your office, Mr. Thoensen
23 probably, maybe incorrectly or confusedly made the
24 representation to Ms. Dean that it was a 1957 boiler that
25 was in the power house. I want that verified because I am

1 -- I'm not of the belief that you would tell a falsehood,
2 and I'm not of the belief she would, and I'm not of the
3 belief Mr. Thoensen would.

4 MR. PUGH: Yes, Your Honor.

5 THE COURT: But sometimes you look at the wrong piece
6 of paper and make a mistake. That's okay. I don't fuss
7 with people or punish people for that, but I want to verify
8 what the conversation was between him and Ms. Dean.

9 MR. PUGH: Understood.

10 THE COURT: Okay?

11 MR. PUGH: And to be clear, that is in the *Howe* case
12 alone, not in the *Smith*.

13 THE COURT: Very good. Thank you.

14 MR. PUGH: And, Your Honor, do you want me to finish
15 with the *Sizemore* matter or you want to ---

16 THE COURT: Well, I think you've covered all three of
17 them, haven't you? I mean, isn't that what you're saying
18 with all of them is that you don't have any information?
19 Therefore, somebody else -- or do you now say you have some
20 information about *Sizemore* and *Falls*? If so, I want to get
21 through this in some reasonable period of time.

22 MR. PUGH: I understand.

23 THE COURT: So, let's quit with the wind up and come
24 with the pitch.

25 MR. PUGH: Understood. *Howe* and *Smith* are the same:

1 we don't have documents to give them.

2 THE COURT: How about *Sizemore*?

3 MR. PUGH: *Sizemore*, there were documents. It's
4 simple as this. You say lawyers sometimes say things that
5 turn out not to be correct. That's exactly what I believe
6 happened on January the 24th by Mr. Thoensen when he said
7 based upon the information that we have today, I am advised
8 or I am of the belief that Bowater is it. Between that
9 hearing and when our corporate rep was produced for his
10 deposition over a week later, that issue became further
11 illuminated in *Sizemore*.

12 The seven sites that Ms. Dean talked about, those
13 records have been produced. Our corporate rep has been
14 redeposed, and we can go through all of those documents *in*
15 *toto* if Your Honor would like, but that's the situation.

16 THE COURT: Okay.

17 MR. PUGH: And I will if -- with Your Honor's
18 indulgence, I will step out and I get ahold of Mr. Thoensen
19 and get him over here.

20 THE COURT: Very good.

21 MS. DEAN: Brief response?

22 THE COURT: Very brief, Ms. Dean. I think I've heard
23 what I need to hear about this thing.

24 MS. DEAN: Only thing I would say is first the Bowater
25 issue was -- wasn't limited to *Howe*. It affects all three

1 cases.

2 Two, the concern in *Sizemore* is clear. It's not just
3 that they got something wrong. It wasn't corrected until
4 well after summary judgment deadlines so that this means
5 trial by ambush. Their mistake, because they waited so
6 long to do it and then they waited so long to correct it,
7 has real harm that they're just not acknowledging.

8 Concrete, three of those boilers we don't have and
9 they acknowledged it on Tuesday, baseline documents about
10 what gaskets, rope, block, asbestos components were used.
11 We didn't find out until Tuesday and get a transcript until
12 yesterday about what's happening at those locations.

13 So, I think the acknowledgment of a mistake combined
14 with adding in how they fix that, when they fix that, and
15 how much problems we have about fixing that, which are well
16 evidenced in our records, is why that is clear trial by
17 ambush.

18 Last thing I'll say is about *Howe*. It is very
19 worrisome when you have a lawyer represent there are no
20 locations at issue but one in all three cases. It turns
21 out they're wrong about six boilers in *Sizemore*. It turns
22 out we talked to their representative, and he said I knew
23 that on the 24th when something different was being said to
24 the court. To say that we can just assume that these two
25 records that are in public record documents they don't

1 exist -- and it's really hard for us when we're preparing
2 for trial the three weeks beforehand to sort out the
3 validity of that. That shouldn't be what we're doing.

4 THE COURT: I gotcha.

5 MS. DEAN: So I'm done.

6 THE COURT: I gotcha.

7 MS. DEAN: Thank you, Your Honor.

8 THE COURT: All right. Okay.

9 MR. PUGH: Your Honor, one thing if I just very
10 briefly?

11 THE COURT: Mr. Pugh, I'm not going to do this; I'm
12 not going to do this.

13 MR. PUGH: I'm not ---

14 THE COURT: I have got all ---

15 MR. PUGH: --- going to respond to that. I'm simply
16 going to say, Your Honor, I will be filing these written
17 responses electronically, and I will hand those to the
18 court once they're signed.

19 THE COURT: That's fine, you know, that comes -- it's
20 like so much else in this thing. At the very minimum,
21 there hasn't been a very timely response to this until we
22 got right jammed up on trial, and that's what's causing all
23 of this, and that is to some extent on y'all.

24 The *Sizemore* thing bothers me a lot where you finally
25 found out there were, in fact, a lot of boilers. So, you

1 know, the projection, hey, I don't make these great, big
2 old boilers. I make small boilers. Therefore, I'm not
3 going to really have to get out here and do anything,
4 that's not how we do. If they've got any information, then
5 -- and when a corporate representative has some information
6 and knows that something different is being told to the
7 court, that doesn't suit me for them to a lay doggo until a
8 couple of days later. That's trifling with the court big
9 time.

10 So, that's all I'm going to say about this right now.
11 I want you to find out what Mr. Thoensen says, and then
12 I'll make some kind of ruling on whether I'm going to allow
13 any of their stipulations or presumptions or whatever it is
14 they're called.

15 MR. PUGH: So I'm clear in my instructions, am I to
16 have him over here, or you want me to report ---

17 THE COURT: I want you to find out -- good Lord, I'm
18 not going to -- where is Mr. Thoensen?

19 MR. PUGH: I'm not sure, Your Honor.

20 THE COURT: Probably not -- is he in Columbia?

21 MR. PUGH: Yes, Your Honor.

22 THE COURT: Well, I don't require -- I'm not going to
23 put him under oath and have some big examination. We're
24 not going to get into that. You as a lawyer are
25 professional enough to find out from him what he says, and

1 I'm going to believe you whatever you tell me. So, find
2 out from him.

3 MR. PUGH: Yes, Your Honor.

4 THE COURT: Okay.

5 (A PAUSE.)

6 All right, Celanese.

7 MS. DEAN: Your Honor, I have a copy of our
8 supplement. Make sure I'm handing you the right thing.

9 THE COURT: Who's here for Celanese?

10 MR. EARLY: I am, Your Honor, Will Early.

11 THE COURT: Hey, Mr. Early.

12 MR. EARLY: And Chris Collier ---

13 MR. COLLIER: Chris Collier, Your Honor.

14 MR. EARLY: --- as you know.

15 THE COURT: Very well.

16 MS. O'NEILL: Do you want me to take a seat since ---

17 THE COURT: Ma'am?

18 MS. O'NEILL: Do you want me to move to the back of
19 the courtroom, Your Honor?

20 THE COURT: I'm comfortable with y'all wherever you
21 sit. If you want to perch where you are, you're fine.

22 MS. O'NEILL: Thank you, ma'am.

23 THE COURT: Y'all work that out.

24 Ms. Dean.

25 MS. DEAN: Your Honor, this relates to the *Howe* case

1 this thumb drive and try to find the record that would
2 answer your question. That's, that's basically what he
3 said, right?

4 MR. BRANHAM: It's exactly what he said, and the most
5 telling thing and then I'll stop. The most telling thing
6 was the lawyer -- not anybody here -- at the deposition for
7 Foster Wheeler, and what he said is it's 187,000 documents.
8 He's only had them for two weeks. How's he supposed to
9 know? And that's exactly right.

10 I don't blame Mr. Tracey for not knowing. He didn't
11 get the documents until two weeks before when he'd signed
12 interrogatories two years ago, right? And so how do you,
13 how do you sign interrogatories and discovery responses
14 without doing the work to know what's out there? And that
15 was the point we made at the deposition is that we have
16 struggled mightily. And Mr. Brolly, who took the
17 deposition, pulled records and asked questions, but there's
18 no way if the corporate representative says you've got to
19 show me something before I can tell you what it means. So,
20 that's -- and, Judge, then I'll stop.

21 THE COURT: Let me ask you this.

22 MR. BRANHAM: Yes.

23 THE COURT: What they try to say is that you were
24 asking for records with regard to eighty jobsites, or he
25 was expected to respond with respect to eighty jobsites,

1 STATE OF SOUTH CAROLINA
 2 COUNTY OF YORK COURT OF COMMON PLEAS
 3 TIMOTHY W. HOWE,
 4 Individually and as Personal
 5 Representative of the Estate of
 6 WAYNE ERVIN HOWE, deceased,
 7 and JEANETTE HOWE,
 8 Plaintiffs,
 9 vs. C/A NO. 15-CP-46-03456
 10 AIR & LIQUID SYSTEMS
 11 CORPORATION, et al.,
 12 Defendants.
 13
 14 H E A R I N G
 15 BEFORE THE HONORABLE JEAN TOAL
 16
 17 DATE: October 10, 2018
 18
 19 TIME: 10:56 a.m.
 20
 21 LOCATION: Richland County Courthouse
 22 1701 Main Street
 23 Courtroom 3-B
 24 Columbia, South Carolina
 25 REPORTED BY: YVONNE R. THURSTON-BOHANNON
 Registered Merit Reporter,
 Certified Realtime Reporter

 COMPUSCRIPTS, INC.
 A South Carolina Corporation
 Court Reporters & Legal Videographers
 www.compuscriptsinc.com
 1.888.988.0086
 Charleston Columbia Greenville
 864.735.0684 803.988.0086 843.640.5383

1 P R O C E E D I N G S
 2 THE COURT: This is a -- I'm guessing that
 3 where we stand is that the plaintiff is the
 4 moving party here. Am I right --
 5 MS. McVEY: Yes, Your Honor.
 6 THE COURT: -- Ms. McVey?
 7 MS. McVEY: Yes, ma'am.
 8 THE COURT: So you may proceed. And
 9 what -- what we've got, we have motions for
 10 sanctions that were made in this case, and
 11 certain rulings have been made about the motion
 12 for sanctions, but I held over the question of
 13 what to award by way of sanctions until the case
 14 was concluded.
 15 I might just say to you, Ms. O'Neill, and
 16 you, Mr. Pugh, I think you all were the ones
 17 that raised the question about whether or not
 18 they could go forward with these motions because
 19 the case was over and the verdict had been
 20 rendered. Am I right?
 21 MS. O'NEILL: Yes, we did, Your Honor.
 22 THE COURT: Okay. All right. I'm not
 23 precluding you arguing that, but just for the
 24 purposes of where we are right now, I will tell
 25 you that if there's any fuss to be had that it's

1 APPEARANCES OF COUNSEL:
 2 ATTORNEYS FOR THE PLAINTIFF
 3 TIMOTHY W. HOWE, Individually and as
 4 Personal Representative of the Estate of
 5 WAYNE ERVIN HOWE, deceased, and JEANETTE
 6 HOWE:
 7 KASSEL McVEY
 8 BY: THEILE B. McVEY
 9 Post Office Box 1476 (29202)
 10 1330 Laurel Street
 11 Columbia, South Carolina 29202
 12 (803) 256-4242
 13 (803) 256-1952 - FAX
 14 tmcvey@kasselaw.com
 15
 16 ATTORNEYS FOR THE DEFENDANT
 17 CLEAVER-BROOKS:
 18 WOMBLE BOND DICKINSON
 19 BY: M. ELIZABETH O'NEILL
 20 One Wells Fargo Center, Suite 3500
 21 301 South College Street
 22 Charlotte, North Carolina 28202
 23 (704) 350-6310
 24 elizabeth.oneill@wbd-us.com
 25
 and
 WOMBLE BOND DICKINSON
 BY: M. TODD CARROLL
 1221 Main Street
 Columbia, South Carolina 29201
 (803) 454-7730
 todd.carroll@wbd-us.com
 and
 RICHARDSON, PLOWDEN & ROBINSON, PA
 BY: STEVEN J. PUGH
 Post Office Drawer 7788 (29202)
 1900 Barnwell Street
 Columbia, South Carolina 29201
 (803) 771-4400
 (803) 779-0016 - FAX
 spugh@richardsonplowden.com

1 with me. All right? I directed that judgment
 2 not be entered in this matter because we had the
 3 pendency of awards on sanctions that had been
 4 levied during the course of the trial, and for
 5 the very reason you project, I did not want to
 6 preclude being able to hear those motions -- the
 7 motions and the request for the specific
 8 sanctions. And that is why I did that.
 9 So the status of it is not inadvertence is
 10 what I want you to understand. You don't have
 11 to agree with what I write to tell them -- to
 12 not enter, but it's not inadvertence on the part
 13 of the clerk's office. It was a direct -- they
 14 asked me, "Judge, in light of these pending
 15 motions, should we enter the judgment?"
 16 And I said, "No."
 17 So if you've got heartburn with that, get
 18 your advisors to look over my shoulder. All
 19 right. That is why the case is in the process
 20 that it's in.
 21 All right. Ms. McVey.
 22 MS. McVEY: Good morning, Your Honor. You
 23 probably recall this case very well. It's a
 24 case that we tried against Cleaver-Brooks in
 25 March of 2018 up in York. At the time of the

1 case -- this is the Howe case -- Cleaver-Brooks
2 when we started trial was the sole remaining
3 defendant, and that became clear on Sunday
4 before we started the trial on March 12th. And
5 that's important for a lot of reasons. This is
6 a case with a lot of defendants in it, and it
7 had a lot of defendants up until we started --
8 we started trial.

9 But just by way of background, Howe
10 testified -- Mr. Howe testified that he worked
11 at the Bowater plant in York. He worked for a
12 subcontractor from 1978 to 1985 and then
13 directly for Bowater from '85 to -- to 2007. He
14 worked as a pipefitter, as a mechanic, and his
15 testimony critical to this issue was that he
16 worked with all the boilers -- on all the
17 boilers in the powerhouse at Bowater. Other
18 coworkers confirmed that Mr. Howe worked at --
19 on all the boilers in the powerhouse, and as you
20 know, Cleaver-Brooks made boilers.

21 So the biggest issue in this case, both at
22 the discovery phase and at trial, was the
23 location and the number of the Cleaver-Brooks
24 boilers. Were the Cleaver-Brooks boilers in the
25 powerhouse at Bowater? Because what we didn't

1 43 and 44, meaning that there were two
2 Cleaver-Brooks boilers that were shipped to the
3 Bowater plant. That's what the commercial
4 records that Cleaver-Brooks produced to us told
5 us.

6 All right. So then they did a 30(b)(6)
7 depo of Cleaver-Brooks. That was scheduled
8 originally for January 19th, a date that
9 Cleaver-Brooks offered. They unilaterally --
10 unilaterally cancelled that date and moved the
11 depo to February 2nd, a time that was closer to
12 trial when things were more hectic. You may
13 recall the plaintiffs objected. We filed a
14 motion to compel, and that was to force
15 Cleaver-Brooks to give us a corporate rep depo
16 and to fully answer the discovery requests that
17 had been served months earlier.

18 The first hearing in this case was on
19 January 24th, 2018, and the -- the hearing
20 really was sort of moot against Cleaver-Brooks
21 when counsel said they would give us the
22 documents that we wanted and that they would
23 have a fully prepared 30(b)(6) witness on
24 February 2nd. Okay.

25 Then we took the deposition of

1 have is Mr. Howe saying, "I worked on the
2 Cleaver-Brooks boilers." He said and Bowater
3 said, "I worked on the boilers in the
4 powerhouse."

5 So were the Cleaver-Brooks boilers in the
6 powerhouse? And if they were, then the
7 testimony from the coworkers and Mr. Howe would
8 be that he worked on Cleaver-Brooks boilers.

9 And I need to back up because it wasn't
10 just these late-produced documents at trial that
11 were the issue, but you probably recall we had a
12 lot of discovery issues in the Howe case. For
13 the first time on January 11th of 2018
14 Cleaver-Brooks produced their commercial file.
15 That's that 25 pages that we talked about. That
16 was over two years after the case had been
17 filed. But they did produce that in January.

18 Those records told us that there were two
19 Cleaver-Brooks boilers. And how did they tell
20 us that? This was the big issue, as you recall.
21 They told us that -- Cleaver-Brooks told us that
22 each boiler has a unique ID number. It's
23 usually a five digit number. And the commercial
24 records and those records told us -- I won't
25 give you all the numbers, but it's essentially

1 Mr. Tornetta, and you remember Mr. Tornetta is
2 the Cleaver-Brooks corporate rep. He testified
3 at trial and he was their 30(b)(6) rep as well.
4 And what he said in his deposition on February
5 2nd is, he said, "Look, here is how we do this.
6 We look at the index card first, and what those
7 tell us is we look at the site, Bowater, and
8 they tell us where the commercial file is, then
9 go get the commercial file."

10 So that's what he told us to do. He said
11 in his deposition that the index cards -- this
12 is important. The index cards have all the same
13 information on them as the 25 pages of
14 commercial records. He said we didn't need the
15 index card. It had the same information.

16 Now, Mr. Tornetta was actually unprepared
17 for certain sites at that deposition. He was
18 not prepared to talk about the Bowater plant,
19 and so we all agreed to come back. And the
20 second deposition was conducted just six days
21 before the trial.

22 He never produced the index cards. He
23 never came back after a second deposition in
24 reviewing the commercial file at Bowater and
25 said, "Hey, there's a typo in this. There

Page 9

1 aren't two unique serial numbers. There are
2 boilers going to Brooks." There's only one.

3 Your Honor, the second motion against
4 Cleaver-Brooks was -- was heard on March 9th.
5 That was just two days -- three before trial on
6 the Friday before trial. And what
7 Cleaver-Brooks initially had said is, "Maybe it
8 was boilers in the powerhouse," but they wanted
9 to limit what documents we could get. We wanted
10 documents that showed us what was inside the
11 boiler.

12 And they said, "No, no. Mr. Howe never
13 worked inside the boiler. He only worked on the
14 outside. You don't get those documents."

15 When we gave them evidence that said, "No,
16 he worked on the inside of the boilers too,"
17 they gave us the documents, but then they
18 changed the story and said, "Cleaver-Brooks
19 boilers was not in the powerhouse. It wasn't
20 there."

21 All right. You remember at that hearing --
22 that was a sanctions hearing -- we requested a
23 presumption that the Cleaver-Brooks boiler was
24 in the powerhouse, and during that hearing, you
25 said -- you said that Cleaver-Brooks engaged in

Page 11

1 boilers were not in the powerhouse but in the
2 administration building. The Bowater corporate
3 rep testified. You remember him, Mr. Welker --
4 or Welker testified that the boilers were either
5 in -- the boilers plural, not just
6 Cleaver-Brooks but boilers in general at the
7 Bowater plant were either in the powerhouse or
8 they were in the admin building. After looking
9 for a hundred hours or so, the Bowater rep
10 testified that he found a document showing that
11 one Cleaver-Brooks boiler was in the
12 administration building.

13 All right. Since the documents give --
14 given to us showed two Cleaver-Brooks boilers
15 with one in the administration building, we were
16 still okay because that meant one was in the
17 powerhouse, and that's how we proceeded to
18 trial. Two serial numbers, as you recall, meant
19 two boilers, and Art Welker, the Bowater
20 employee, you remember in his testimony, agreed
21 with that.

22 So then we have the midnight documents that
23 became to be nefarious. So a little before
24 midnight on the night before the corporate -- I
25 mean, the Cleaver-Brooks' corporate rep was

Page 10

1 the business of not giving plaintiffs sufficient
2 information where the boilers were located until
3 late in the game. You noted that it was a very
4 late disclosure this boiler was not in the
5 powerhouse.

6 But you didn't rule on the presumption
7 issue, but it was clear to everyone at that
8 point, Judge, that the plaintiffs' ability to
9 prove the case against Cleaver-Brooks was was
10 the boilers -- were the boilers in the
11 powerhouse -- at least one of them in the
12 powerhouse? Everyone knew that by the Friday
13 before trial.

14 As I mentioned before, on the Sunday, March
15 11th, everybody also resolved their case. And,
16 in fact, Cleaver-Brooks had an expert Dr. Oury
17 who couldn't come live at trial, so they brought
18 him to York, South Carolina, and we did a video
19 deposition the Sunday before trial. And
20 everyone understood then on the Sunday before
21 they were -- still that the Cleaver-Brooks
22 boilers -- where the Cleaver-Brooks boilers was
23 the key to this case.

24 So we started trial on March 11.
25 Cleaver-Brooks' position at trial was that the

Page 12

1 supposed to testify, Cleaver-Brooks for the
2 first time, for the very first time, produced
3 additional documents, the index cards. Now,
4 Tornetta admitted on the stand the next
5 day plaintiffs had asked for the index cards
6 during the deposition, and Tornetta admitted
7 that Cleaver-Brooks never provided them.

8 What those index cards show that were
9 produced at midnight before the trial was that
10 boiler 43 did go to the Bowater plant and boiler
11 44 went to some other facility in Illinois. And
12 the explanation from Cleaver-Brooks was, "It was
13 just a typo, guys. It was just a typo."

14 It's a pretty important typo. It's not a
15 typo about how you spell Catawba. It's a typo
16 about a serial number, and they were sequential,
17 which made sense. This fundamentally, as you
18 know, changed the course of the trial.

19 You will recall that Ms. Dean crossed
20 Mr. Tornetta before we raised the issue. We
21 never showed Mr. Tornetta the index card for the
22 44 boiler, but we did show him the 43 index card
23 which showed one -- one Cleaver-Brooks boiler
24 over there.

25 And then we made a motion to exclude them

1 from using the 44 documents. And we had a long
2 hearing about that, and during that hearing, as
3 you noted, you said, "It's been known for some
4 time that the linchpin of this case is going to
5 be whether there was a Cleaver-Brooks boiler
6 where Mr. Howe worked."

7 We all knew it. That was the key.

8 You found derelict on the part of
9 Mr. Tornetta and you found that it was
10 incredibly sloppy work for him not to have
11 noticed this until the day before trial, and you
12 found that it was a violation of discovery rules
13 not to provide these documents.

14 Your Honor, you have sworn affidavits in
15 front of you from the family and from us saying
16 that we would never have tried this case if we
17 had known there was only one boiler that went to
18 Cleaver-Brooks -- that went to Bowater. It's
19 critical because we had to have a Cleaver-Brooks
20 boiler in the powerhouse for this to happen.

21 As you know, the jury came back with a
22 defense verdict for Cleaver-Brooks. Your Honor,
23 we haven't moved for a new trial in this case.
24 We don't think that's warranted, but what we do
25 believe is warranted are sanctions against

1 along with itemized out expenses, and I can hand
2 that up if that's helpful.

3 THE COURT: Yes, it is. I've got it in
4 this big notebook. You've got an affidavit of
5 Dean, an affidavit of Holder, and an affidavit
6 of McVey, I think --

7 MS. McVEY: Yes, ma'am. Yes, ma'am.

8 THE COURT: -- or an affidavit of your
9 brother, I think was going to --

10 MS. McVEY: I think me -- I'll show you in
11 a minute.

12 THE COURT: All right.

13 MS. McVEY: Exhibit 21 is the expenses
14 affidavit Ms. Dean.

15 THE COURT: All right.

16 MS. McVEY: And attached to that affidavit
17 listed out itemized expenses. The total of
18 those expenses that we outlined for you are
19 \$95,435.16.

20 Now, Cleaver-Brooks points out one issue
21 that I agree with with those numbers, and that
22 is there's a cancellation fee for Dr. Brody
23 there, and what that was is he was supposed to
24 come later in the first week and we wanted him
25 there early, and so we moved him.

1 Cleaver-Brooks for the showing out of the late
2 disclosure.

3 The expenses the family incurred as a
4 result of this unnecessary trial were extensive,
5 and if it's okay with you, I'd like to go -- and
6 I can do it two different ways. I can go ahead
7 and go through the numbers with you now about
8 the expenses we incurred and the attorneys'
9 fees.

10 What we're asking from you is the
11 expenses -- the actual out-of-pocket expenses
12 the client has incurred, that the lawyers
13 incurred to pass on to the clients as a result
14 of trying this case and for attorneys' fees for
15 the three lawyers who were there to try the case
16 for the seven days of trial time.

17 Would you like me to go ahead and do those
18 numbers?

19 THE COURT: Yes.

20 MS. McVEY: Okay. So let me start first
21 with the expenses of the case. These are of
22 course money that came directly out of the
23 client's total settlements, whatever that was.
24 Your Honor, we produced to you -- and I have it
25 here if you need it -- an affidavit of Ms. Dean

1 I don't think Cleaver-Brooks be responsible
2 for that. So that would reduce that number by
3 \$4,600 which would bring the expenses to
4 \$90,835. And I'm happy to answer specific
5 questions about those expenses, if you'd like.

6 THE COURT: So it's \$4,000 reduction on
7 Brody?

8 MS. McVEY: Yeah, 4600 which would reduce
9 the total number that we're seeking for expenses
10 to \$90,835.

11 THE COURT: All right.

12 MS. McVEY: All right.

13 THE COURT: And 16 cents?

14 MS. McVEY: Yes, ma'am.

15 THE COURT: All right.

16 MS. McVEY: Sorry about that.

17 Your Honor, we also supported and gave you
18 affidavits from Ms. Dean, from me, and from
19 Mr. Holder that we believe go through all the
20 criteria, as well as the brief in our report
21 about why we're entitled to attorneys' fees. So
22 the attorney's fees request from Ms. Dean would
23 be \$85,800, for me would be 77,500, and for
24 Mr. Holder 60,400. What we provided to you in
25 our affidavit are the hours we worked on those

1 dates.

2 Your Honor, we have -- you know,
3 plaintiffs' lawyers don't charge by the hour
4 typically, so it's not something that I can give
5 you where I charge by the hour a bunch of
6 different times. We have given hourly fees in
7 those affidavits, but I leave it to you to
8 determine what's reasonable and what's
9 unreasonable.

10 THE COURT: And the hourly rate was, as I
11 recall it, 500, 450, and what was Holder?

12 MS. McVEY: I think -- hold on. I can tell
13 you. So for Ms. Dean it was 550. For me it was
14 550, and for Mr. Holder it was 400. Let me make
15 sure that's right.

16 THE COURT: Yeah.

17 MS. McVEY: 400 for Mr. Holder.

18 THE COURT: Yeah. Okay. All right. So
19 it's -- all right. I've got it.

20 MS. McVEY: All right. And then we have
21 submitted affidavits from Ms. Myers and
22 Mr. Howe -- Tim Howe. Those -- as you recall,
23 that was Mr. Howe, Mr. and Mrs. Howe's daughter,
24 with Wendy and his son Tim was at the trial.
25 You also recall that Tim's wife Julie was there

1 trial certain rulings were made on discovery
2 issues, and you held open in what amounts.
3 Respectfully, Your Honor, I don't think that's
4 correct. What you ruled on at the trial was --
5 and it is in our Exhibit B to the opposition at
6 page 105. And I'm using that because I assume
7 that's what the Court and Ms. McVey have.

8 If you recall, we attached unofficial
9 transcripts to the opposition because the
10 official transcript was not available, but in
11 Attachment B to our opposition is the transcript
12 from the day at issue. And at page 105 the
13 Court issued the ruling and -- and Ms. McVey is
14 correct. The Court did find that -- it
15 concluded that Mr. Tornetta and Cleaver-Brooks
16 were sloppy in not noticing this discrepancy and
17 not -- having not noticed it and having
18 affirmatively not brought it to anyone's
19 attention.

20 And the Court said that -- this was on --
21 it starts on page 104, line 24. Do you have it?
22 Are you ready?

23 THE COURT: I'm looking at -- well, no, I
24 don't see 104. Yes, I do.

25 MS. O'NEILL: Exhibit -- Exhibit B --

1 the entire time along with Mrs. Howe, Wayne
2 Howe's widow, who -- you know, you recall that
3 Ms. Howe had significant Alzheimer's and it was
4 difficult for them all to be there, but they all
5 were there.

6 Ms. -- Ms. Myers submitted an affidavit
7 saying that she lost income of \$571.84, and Tim
8 Howe missed 70 hours of work at \$33 an hour for
9 a total of \$2,310.

10 Your Honor, so the total expenses that we
11 would be seeking, if we added all of those
12 numbers together, would be \$319,416.84.

13 THE COURT: Say it one more time.

14 MS. McVEY: Sure. \$319,416.84.

15 THE COURT: All right.

16 MS. McVEY: I'm happy to answer any
17 questions.

18 THE COURT: Well, I think what it's best to
19 do is hear now from Ms. O'Neill and Mr. Pugh and
20 then we'll come back.

21 MS. McVEY: Thank you, Your Honor.

22 THE COURT: Ms. O'Neill.

23 MS. O'NEILL: Yes, Your Honor.

24 I'd like to start where the Court started
25 this hearing, Your Honor. You said that at the

1 THE COURT: I see it.

2 MS. O'NEILL: Okay. And it starts on page
3 104, line 24 where you say, "I'm striking all of
4 these things. They're not going to the jury.
5 Whatever you did about talking about it it's
6 something you did. I can't unlock that door.
7 I'm not allowing these things to be put in
8 evidence and not letting it go to the jury, and
9 the basis for it is a violation of South
10 Carolina Rules with regard -- of Evidence
11 regarding production."

12 The Court did say at other places in the
13 transcript that the plaintiffs would have the
14 opportunity to seek sanctions or do other
15 things, but there was no actual finding made,
16 and I think that's an important distinction here
17 because, as the Court indicated to us, that you
18 had directed the clerk not to enter the order
19 because of this potential post -- posttrial
20 motion issue.

21 And I would just note for the record that
22 we did look and found nothing in the public
23 roles with an order indicating that the -- the
24 verdict should not be entered. And I'm not
25 aware -- and maybe it's there and we couldn't

1 find it. There's nothing in the electronic
2 record --

3 THE COURT: Let me clear this up for you,
4 Ms. O'Neill. The clerk asked me whether to
5 enter the verdict, and I told her to wait until
6 we had finished with posttrial motions before
7 entering the verdict. So that was a directive I
8 gave to the clerk.

9 MS. O'NEILL: An order --

10 THE COURT: And therefore there is no
11 verdict yet entered, and the record is clear in
12 that regard.

13 MS. O'NEILL: And just so that I'm clear,
14 may I ask a question?

15 THE COURT: Yeah.

16 MS. O'NEILL: Was that an oral directive?
17 Was that --

18 THE COURT: Yes.

19 MS. O'NEILL: So that's why I couldn't find
20 it.

21 THE COURT: But what you do find is the
22 absence of any entry of verdict --

23 MS. O'NEILL: Yes. That's correct.

24 THE COURT: -- which I frankly thought was
25 all that needed to be done about it at the time

1 since I had these posttrial matters to take into
2 consideration.

3 At that point we didn't know whether they
4 would move for a new trial or just what would
5 happen, whether they would fold in their request
6 for further sanctions financially or not. So I
7 simply told them, "Leave it open until we can
8 hear it." And then of course we had various
9 things occur to bring us to this time.

10 MS. O'NEILL: I understand. And I
11 appreciate that clarification because we did
12 raise that point in our brief because we looked
13 and didn't find a written order in the public
14 role, and the way I interpreted South Carolina
15 Rule of Civil Procedure 58 was that there was
16 supposed to be a written order, and I appreciate
17 the Court's clarification on that and we will
18 move forward on that.

19 I have a whole section on that. I've got
20 to look through my notes.

21 THE COURT: I understand.

22 So the plaintiffs have moved this court for
23 relief under Supreme Court -- I'm sorry, South
24 Carolina Rule of Civil Procedure 37(b). That
25 rule does best support for authority to do

1 certain things, but it allows the award of fees
2 for violation of the order. And there is no
3 order of this Court for the production of index
4 cards. And there is no order of this Court for
5 production of any records with respect to boiler
6 unit number 18344. The Court may recall that
7 the boiler that was at Bowater had unit number
8 18343.

9 The failure to produce index cards -- and
10 Ms. McVey said that Mr. Tornetta acknowledged at
11 trial that he had been asked about the index
12 cards at his deposition and about production of
13 them. And he was asked on the record a lot of
14 questions about the index cards. There's no
15 question in the record at either of his
16 depositions asking him to give them to me.

17 And I was not present at that deposition,
18 Your Honor, so I cannot say what occurred off
19 the record, but when you look at the record of
20 this case, there is no record of a request to
21 them, and there is no motion to this Court for
22 an order of production of index cards, and there
23 is no order compelling the production. And
24 there is no order at all about 18344.

25 And I think that's relevant because the

1 plaintiffs argue -- they cited the case of
2 Ethox, E-T-H-O-X, Chemical, LLC, versus
3 Coca-Cola for the proposition that corporate
4 representatives have to have knowledge of the
5 documents that they're being asked about in
6 their deposition and they have to be prepared to
7 answer questions about them.

8 And the record does show that at the first
9 deposition Mr. Tornetta was not fully prepared
10 to answer the questions asked about Bowater
11 documents. That's why there was another one.
12 But Ethox and all the other cases focus on the
13 witness's ability to answer questions, not
14 volunteer, not point things out. Answer
15 questions.

16 And answering questions is the key
17 component, and nobody ever asked Mr. Tornetta
18 about wanting 344 as a unit number in the
19 Bowater record. And, you know, we stated at the
20 trial -- the Court told you -- I stated at the
21 trial I didn't notice the discrepancy until the
22 plaintiff raised it. Mr. Tornetta said he had
23 not noticed it.

24 I understand the Court found that that was
25 sloppy, but -- so the plaintiffs' point that we

1 wouldn't have had a trial if they had known
2 that, if I'd known it, I would have been running
3 around the courthouse waving it in opposition to
4 summary judgment because the plaintiffs --
5 Ms. McVey said at the trial that they knew --
6 they found that out before and they made a
7 decision that -- that that was one of their
8 arguments.

9 But their summary judgment motion, if you
10 look at their summary judgment motion, Your
11 Honor -- your summary judgment motion --
12 plaintiffs' summary judgment motion -- I'm
13 sorry, not the plaintiffs --

14 THE COURT: Yeah.

15 MS. McVEY: -- plaintiffs' opposition to
16 summary judgment, what they said on page 11 was,
17 "Cleaver -- Cleaver-Brooks confirmed that the
18 specifications for the boiler located at Bowater
19 called for the boiler to be insulated."

20 It goes on and talks about their arguments
21 about Bowater inspection reports, and then it
22 says -- it -- it talks about, "Plaintiffs submit
23 that the exhibit," meaning the commercial
24 records, "in fact, supports Wayne Howe and
25 Gilbert Small's testimony that the exhibits show

1 Those doc --

2 THE COURT: And those documents were a
3 diagram of the administration building, were
4 they not?

5 MS. O'NEILL: That was included within --
6 it is a series of documents, but that is
7 included within those documents. But those
8 documents also show -- they show there were two
9 administration buildings, an old one and a new
10 one, and they also showed that it was a
11 combustion engineering package boiler in the
12 powerhouse.

13 And then trial started on the 12th, and the
14 plaintiffs opened and they didn't raise this --
15 this two boiler issue. They continued to argue
16 that there were pow -- package boilers in the
17 powerhouse and they had other arguments about
18 Cleaver-Brooks using a hundred percent raw
19 asbestos, et cetera.

20 And then on that same morning at 9:08 a.m.
21 Bowater sent all counsel in the case, so
22 Ms. McVey, Ms. Dean, myself, Mr. Pugh, some
23 additional documents it had found over the
24 weekend, again, in response to the plaintiffs'
25 informal request that it continue to look. And

1 that during the time that Cleaver-Brooks insists
2 it shifted its boiler to Bowater the only
3 boilers at Bowater were located in the
4 powerhouse."

5 The only boilers were located in the
6 powerhouse. And the argument -- the argument on
7 summary judgment for plaintiffs' opposition was
8 talking about boilers in the singular for
9 Cleaver-Brooks only references plural in the
10 powerhouse, and that at the time was the
11 battleground because Cleaver-Brooks said, "Our
12 boiler was not in the powerhouse. So if your
13 gentleman was in a boiler in the powerhouse,
14 it's not ours."

15 And then if the Court recalls -- and this
16 is I believe -- when I went back and looked at
17 the transcripts that were prepared for this
18 hearing, it was not quite as articulate as I had
19 remembered it in my head being, but the Court
20 will recall that what happened in this case was
21 that on March 9th Bowater produced some
22 additional documents that it had found pursuant
23 to the plaintiffs' informal request that it
24 continue to look for them, and those documents
25 were marked as Trial Exhibit 21.

1 those documents showed that the Cleaver-Brooks
2 boiler, at least at a certain point in time, was
3 in the administration building. And those
4 documents were marked as Trial Exhibit 23.

5 So Cleaver-Brooks is trying the case with
6 the belief that we're talking about one boiler.
7 No one had asked its witness this question. We
8 had noticed this as the trial counsel. The
9 witness had not noticed this. And I -- I
10 understand and respect the comments the Court
11 made in the trial about how the client should
12 have done that, but it didn't happen.

13 This is not where we withheld something and
14 had this big gotcha. We -- it's exculpatory.
15 So if we noticed it, we would have waved it
16 around. But at that point in time the
17 plaintiffs know that there's no -- that -- that
18 the Cleaver-Brooks boiler at least there's some
19 good evidence it was in the powerhouse.

20 We did not know -- Cleaver-Brooks did not
21 know and it could not know that the plaintiffs
22 would misinterpret the mistake in the startup
23 report suggesting that there were two boilers.
24 We couldn't know that anymore than we would know
25 that in closing the plaintiffs would tell the

1 jury that because Cleaver-Brooks used Johns
2 Manville 352 which is in one of its parts
3 numbers that it used a hundred percent raw
4 asbestos when there's actually two different --
5 the Court may recall this at trial. There's two
6 different kinds of JM 352. One of them is ten
7 percent asbestos.

8 I mean, we couldn't know that the
9 plaintiffs would make the mistake about JM 352,
10 and we couldn't know that the plaintiffs would
11 make this mistake about the document.

12 THE COURT: Ms. O'Neill, let me just ask
13 you this. Would you agree that the original
14 discovery requests of plaintiffs encompassed
15 these index cards that lie at the heart of this
16 problem?

17 MS. O'NEILL: No, Your Honor, for two
18 reasons.

19 THE COURT: I mean, they -- these were very
20 broad requests for all records that dealt with
21 machines that supplied the Bowaters. And in
22 response what your client did was to say, "We
23 don't have those records anymore."

24 I conducted two hearings about that before
25 this case was tried where y'all represented on

1 not -- it's -- it's completely understandable
2 because there are a lot of moving parts.

3 But when we had the hearing, we talked not
4 just about the Howe case, we also talked about
5 the Smith and the Sizemore case. And one of the
6 issues in Smith and Sizemore was the Duke Power
7 plant, and the plaintiffs said, "You're supposed
8 to give us documents about boilers of the Duke
9 Power plant."

10 And we said, "Those documents we don't have
11 any way to find or figure out because we don't
12 have a unit number. We don't show sales to
13 Duke, and so we don't have any way to get to
14 those documents."

15 The Bowater documents we had had and we had
16 produced before that hearing. The index card
17 for unit number 18343 was not produced, and it
18 had --

19 THE COURT: Why wasn't it produced?

20 MS. O'NEILL: It had not been produced
21 because historically Cleaver-Brooks has not
22 produced them because it's not really a record
23 that relates to the boiler. It is part of a --
24 an index system to find those records. So to --

25 THE COURT: I -- I consider that to be a

1 the part of Cleaver-Brooks they couldn't get
2 these index cards because they didn't have them
3 anymore or they couldn't locate them, or
4 "We can't" --

5 MS. O'NEILL: I think you're mistaken, Your
6 Honor.

7 THE COURT: -- "we can't find -- we can't
8 use the numbering system to drill down the
9 location of where boilers were located."

10 I mean, we spent a whole lot of time with
11 y'all saying, "It's just not possible to go back
12 in time for this time in the '50s and early '60s
13 and find out where our boilers went. They go
14 through suppliers," and all this kind of stuff.

15 Then later on comes information that they
16 have unit numbers on them and there are index
17 cards that are the beginning of the process, but
18 Mr. Tornetta had those in his office but did not
19 tell anybody and didn't review them. I mean,
20 that is the -- the -- what proceeded the then
21 several depositions of Tornetta and then what
22 came up in the middle of the trial about this
23 thing. That's what concerns me.

24 MS. O'NEILL: I think you're misremembering
25 what -- or conflating a couple things which is

1 distinction without a difference, and
2 Mr. Tornetta ultimately said that's the way he
3 came back to find his Illinois shipment of the
4 boiler was to go back to those index cards and
5 then go forward for them and look at the
6 records.

7 So it is not a persuasive argument for
8 me -- to me for you to then come back and say,
9 "Well, the reason we didn't disclose it to begin
10 with is because they really don't mean anything.
11 It's the file that means something, and we can't
12 find the files without the number."

13 I mean, that --

14 MS. O'NEILL: I understand that. Two --
15 two points to that, Your Honor. And I do
16 understand your position, but for the record --
17 so the -- the request for production in this
18 case are documents that relate to the boiler,
19 the sales, the purchase orders. It does not
20 include your internal index. I understand Your
21 Honor feels differently, and I will tell you
22 having learned of that we produced those index
23 cards.

24 But the second reason these documents in
25 our position were not required by discovery is

1 because the discovery request is for boilers
 2 or -- I'm going to use boilers for
 3 Cleaver-Brooks, but for documents relating to
 4 products that employers -- where the plaintiff
 5 claims that he worked, job sites where the
 6 plaintiff claims to have worked, and --
 7 THE COURT: But it turns it out there were
 8 documents in their file that you produced early
 9 on in the light of the assertion that each
 10 boiler has a discreet unit number and that's
 11 where you check -- trace things. There are
 12 documents that are -- Cleaver-Brooks produced
 13 documents that come from either Cleaver-Brooks
 14 centrally or from its suppliers and they've
 15 got -- some of them have 40 -- 1843 and some of
 16 them have 1844, and both of those sets of
 17 documents show those pieces of equipment as
 18 going to Bowater.
 19 MS. O'NEILL: The 1843 -- 1844 documents
 20 don't show that boiler going to Bowater. That's
 21 why we don't believe those were -- even if --
 22 even if we went back in time and we knew that --
 23 that -- or we had found this -- this discrepancy
 24 or the plaintiffs had asked a question, 18 --
 25 well, 18344 is the one that was in Illinois.

1 The plaintiffs' argument was --
 2 THE COURT: You have got some documents in
 3 here that show 1844 as going -- I think it's
 4 from Orangeburg to --
 5 MS. O'NEILL: Yes, that's correct.
 6 THE COURT: -- to --
 7 MS. O'NEILL: Yes.
 8 THE COURT: -- to Bowater.
 9 MS. O'NEILL: Right. That is --
 10 THE COURT: And that is -- and you've got
 11 some other documents in that file that show 1843
 12 going to Bowaters.
 13 MS. O'NEILL: Right.
 14 THE COURT: And, you know, given
 15 Cleaver-Brooks' insistence that those numbers
 16 are discreet numbers that are for different
 17 units, it is -- I mean, it is absolutely amazing
 18 to me that you now blame them for not bringing
 19 your attention to it if you didn't notice it.
 20 They noticed it, and as I said in the
 21 transcript, that's what they're supposed to do.
 22 That's what they do is notice these differences.
 23 And, no, they don't refer to them to you if
 24 they've got some reason to think you're going
 25 down the path that it's just one boiler.

1 They've got written documents back at the time,
 2 ancient documents that have two different
 3 numbers and have those numbers going to the
 4 Bowater plant.
 5 That's what the problem is, and it could
 6 have been cleared up very easily by your
 7 30(b)(6) expert by going to those index cards
 8 which he testified about that said he either
 9 couldn't find or they weren't necessary or we
 10 don't disclose it. And my order said to
 11 disclose everything, the directives I made
 12 pretrial. I -- I made that very clear.
 13 MS. O'NEILL: And, again, I understand the
 14 Court's position, but when we looked for the
 15 documents for Bowater, there's one unit number.
 16 There's one unit number on the index card.
 17 There's one unit number on the file folder
 18 which --
 19 THE COURT: Are there not some documents --
 20 MS. O'NEILL: Yes.
 21 THE COURT: -- that talk about 1844 --
 22 MS. O'NEILL: Yes.
 23 THE COURT: -- and say that it was started
 24 up at the Bowater plant?
 25 MS. O'NEILL: Yes. And so the documents

1 when you look at them say 18343 which was
 2 shipped to Bowater.
 3 THE COURT: Right.
 4 MS. O'NEILL: Nothing says 18344 was
 5 shipped to Bowater, but there is a handwritten
 6 startup report from the contractor -- local
 7 contractor who was hired who wrote 18344. And
 8 that document was used --
 9 THE COURT: That's a Cleaver-Brooks
 10 document produced by Cleaver-Brooks.
 11 MS. O'NEILL: It was not a Cleaver-Brooks
 12 document. It was sent to Cleaver -- the -- the
 13 report itself is not a Cleaver-Brooks document,
 14 but it's produced by Cleaver-Brooks --
 15 THE COURT: Because it was in your records.
 16 MS. O'NEILL: Yes, ma'am. Yes, ma'am. I
 17 just want to make sure that distinction is
 18 clear.
 19 THE COURT: It -- it was in your records --
 20 MS. O'NEILL: Yes.
 21 THE COURT: -- and had been in your
 22 records --
 23 MS. O'NEILL: Right.
 24 THE COURT: -- probably since the '50s when
 25 it was made.

1 MS. O'NEILL: Yes. And that document was
2 used -- the startup report was used to create an
3 invoice request which was used to create a
4 payment book.

5 THE COURT: And those --

6 MS. O'NEILL: Right.

7 THE COURT: -- so the 1844 thing was
8 replicated several different times with activity
9 by a supplier or -- or a contractor and Bowater
10 is the place where it took place, activity on
11 the 1844 boiler which would -- all right -- of
12 necessity make them think they're two different
13 boilers and that you just don't have all the
14 records to either one of them.

15 MS. O'NEILL: Your Honor, respectfully I
16 think that -- and they certainly don't -- it is
17 up to them. If they don't want to tell -- don't
18 want to do any discovery on their --

19 THE COURT: They don't need to. They've
20 got the record -- they've got the records that
21 you produced that say that the 1844 boiler was
22 started at the Bowater plant at a certain time.
23 They don't need anything other than that to show
24 you.

25 It's up to Mr. Tornetta on your behalf to

1 and that's what I finally went to for the
2 midnight disclosure of documents."

3 MS. O'NEILL: Well, the -- the location of
4 them and the fact that he's had them is in his
5 deposition in this case but --

6 THE COURT: No question. And -- and the
7 fact that you could clear up any ambiguity about
8 the records, which y'all ultimately did the
9 day -- the midnight before the day of his
10 testimony, that all that could be cleared up if
11 he went to his index cards, and obviously at a
12 certain point he did that.

13 MS. O'NEILL: And -- and respectfully, Your
14 Honor, we disagree -- I understand the Court's
15 position, but we respectfully disagree that the
16 defendant has an obligation to have found --
17 noticed that, understood or anticipated how the
18 plaintiffs would interpret it and to
19 affirmatively have done it in the absence of
20 question.

21 I understand the Court disagrees with that,
22 but that is our position.

23 THE COURT: I -- I think you're parsing
24 things very closely to saying the absence of a
25 direct question. They can't ask what they don't

1 say, "Wait a minute. There's another way to
2 crosscheck this."

3 They don't have access to that. He had
4 access to that from the get-go.

5 MS. O'NEILL: I respectfully disagree --

6 THE COURT: Did he not -- well, did he not
7 have access to these index cards all along?

8 MS. O'NEILL: He did, Your Honor, but I
9 respectfully disagree that --

10 THE COURT: And was he not asked during --
11 was he not asked in his depositions to give the
12 plaintiffs the index cards --

13 MS. O'NEILL: It's not --

14 THE COURT: -- directly asked that?

15 MS. O'NEILL: It's not on the record of
16 those depositions, Your Honor, and I was not
17 present, so I cannot say any more than that.

18 THE COURT: Well, my understanding is
19 that -- that -- number one, that what was argued
20 to me was the witness has been asked many times
21 to produce those index cards and they say,
22 "Don't produce them," or they can't locate them
23 or whatnot, and it wasn't until right at the end
24 when he suddenly disclosed, "I have them in my
25 office and I had them all along in my office,

1 know. He's -- they asked many times about those
2 index cards and asked them to be produced and
3 they were not, and suddenly when Cleaver-Brooks
4 found itself in a bind with the approach they
5 were going to take, they produced the cards.

6 I mean, that -- that's what I see. And as
7 I said on the record, it is not a reflection on
8 you and it's not a reflection on Mr. Pugh. You
9 can only deal with what the client tells you,
10 but it is a big-time reflexion on the client to
11 have put these people through the rigors of a
12 trial they've settled with everybody else when
13 they held the key to saying, "Hey, these are two
14 different -- these are the -- this notation
15 is -- don't believe 1844. It's not true."

16 MS. O'NEILL: And certainly, Your Honor, if
17 we had known that that's what their plan was, we
18 would have been --

19 THE COURT: You produced the documents.
20 You could look at them as well to say, "Oops, I
21 forgot or I didn't see it, but that's all on the
22 plaintiff because I get to withhold the
23 documents that could quantify." That's, you
24 know --

25 MS. O'NEILL: I didn't know clarification

Page 41 1 was necessary, sir, Your Honor, and I understand 2 the Court's position. 3 THE COURT: But Mr. Tornetta apparently 4 figured it out, didn't he? 5 MS. O'NEILL: Well, actually I -- Your 6 Honor, as I said at the time of the trial, but 7 when they crossed Mr. Welker and raised the 8 question, I looked again, and on a break, 9 because Mr. Tornetta was on the plane on the way 10 down here, I called somebody and said, "I need 11 this question answered." 12 And I -- we -- I said that when we had 13 the -- either the initial hearing or the offer 14 of proof, Your Honor, but I did that. 15 I'd like to move on to the amount of the 16 fees and the costs -- 17 THE COURT: All right. 18 MS. O'NEILL: -- because I think I get 19 where this is going. 20 MR. PUGH: Hold on before you get there. 21 Judge, can I just say one thing just to 22 kind of bring a little clarity to what we're 23 talking about here, if you don't mind? 24 THE COURT: I don't mind. 25 MR. PUGH: All right. The -- the whole --	Page 43 1 then go to pull records with regards to -- 2 THE COURT: He was asked about that -- 3 MR. PUGH: Nobody -- 4 THE COURT: -- Mr. Pugh, you just want to 5 add to what Ms. O'Neill has very ably argued on 6 your behalf. 7 MR. PUGH: I'll be quiet. 8 THE COURT: But this is -- I mean, the 9 logic of this just escapes me because what 10 you're saying is Mr. Tornetta was asked many 11 times about the documents that ultimately were 12 disclosed to plaintiff at the eleventh hour. He 13 was asked about those documents, could have gone 14 to those documents and solved this problem, that 15 it's not his fault and it's not y'all's fault 16 and it's up to the plaintiffs. It's their 17 fault. 18 I -- I don't get that. I really don't. 19 These people were put through the rigors of a 20 trial that they didn't need to be put through 21 and so were y'all because you had a guy that 22 either because he was extremely sloppy or maybe 23 something worse than that. I don't understand 24 it. 25 He had the ability to do this, and only
Page 42 1 43, 44, the whole business, everybody -- and I 2 think you get this, but everyone -- plaintiffs, 3 us, Bowater, everybody operated going in and 4 during that trial that if at all there, was one 5 Cleaver-Brooks boiler at Bowater, one. And the 6 one Mr. Tornetta had already been deposed about 7 twice, and the commercial records -- 8 THE COURT: Mr. Pugh, I -- that's not 9 clarification as far as I'm concerned. 10 Ms. O'Neill has already made those points -- 11 MR. PUGH: Here's where I'm going with it. 12 THE COURT: -- saying that they referred to 13 "it" and "one" and so forth. 14 MR. PUGH: Here's -- here's where I'm going 15 with that. And I understand your criticism of 16 Mr. Tornetta was well heard. But it would 17 require that everybody be on the same sheet of 18 music with regard to noticing a discrepancy in 19 some third party's document that ends up in 20 Cleaver-Brooks file. 21 THE COURT: But it -- 22 MR. PUGH: Then -- and then -- 23 THE COURT: It's been in Cleaver Brooks's 24 files since the '50s. 25 MR. PUGH: Right, but then he would somehow	Page 44 1 when his counsel finally said one more time, 2 "Look -- clarify this. I see this discrepancy." 3 Did -- the guy who had the records and who 4 produced the records -- he's the man who 5 searched for the records and got these things to 6 you to begin with. He's the corporate rep that 7 does all of this. That's all he does for the 8 job is respond to discovery requests and he then 9 testifies as the corporate rep. That's what he 10 said. 11 So he had all this stuff, but it's somehow 12 the plaintiffs' fault that it's not until the 13 eleventh hour that they were produced. I -- I, 14 you know -- I don't understand the logic of that 15 argument. 16 MR. PUGH: I don't think I helped much. 17 THE COURT: I think Ms. O'Neill was 18 perfectly capable of projecting an argument you 19 want to make, and she is now on damages. 20 So tell me about it, Ms. O'Neill. 21 MS. O'NEILL: I do need to make one comment 22 on the record, though, because I'm certain 23 Cleaver-Brooks will see this transcript and I 24 will probably get in a lot of trouble if I don't 25 clarify that Mr. Tornetta does have other jobs.

Page 45 1 It's the primary part of his job, but he has 2 other jobs. 3 THE COURT: Well, one of his job is he's 4 the guy -- 5 MS. O'NEILL: Yeah, that's correct. 6 THE COURT: -- to deal with discovery. 7 MS. O'NEILL: Oh, yeah. That's correct. 8 THE COURT: But there isn't somebody else 9 that does part of it and he does part of it -- 10 MS. O'NEILL: Yeah, that's correct. 11 THE COURT: -- he does it all. 12 MS. O'NEILL: That's correct. 13 So -- but I want to pick up on something 14 the Court said. We would not -- we would not 15 have had a trial if we had this. And as I said 16 before, if -- if Cleaver-Brooks had noticed the 17 discrepancy and known this, we certainly would 18 have been waving those exculpatory documents 19 around, but -- 20 THE COURT: Well, you did know -- 21 MS. O'NEILL: There's also -- 22 THE COURT: -- you just didn't make the 23 connection. You -- you did know. I mean -- 24 MS. O'NEILL: But is there a -- 25 THE COURT: -- you finally looked at the	Page 47 1 putting that tape on the door that it was too 2 little a boiler to have done what they say it 3 did. That was essentially what -- what you 4 all -- it was a little teen -- teeny tiny thing. 5 MS. O'NEILL: That was one of our 6 arguments, yes, sir. 7 THE COURT: Yeah. 8 MS. O'NEILL: But -- but I think that's 9 relevant to the point of, you know, the -- the 10 various representations and arguments that we 11 should get all of our fees because if we had 12 known this, we wouldn't be here. There are 13 other arguments that they had because if that's 14 the only argument, then under Rule 11 once they 15 learned that it didn't work, they -- that should 16 have been the end of the case and they couldn't 17 have continued to advance it. 18 THE COURT: Would you have -- did you make 19 a Rule 11 motion? 20 MS. O'NEILL: No, I did not, and I'm not 21 going to, Your Honor. I -- but I think it goes 22 to the point -- because I don't -- I don't -- 23 and the point is -- and my point is that it's 24 not the only reason we were at trial. That's 25 what -- that's my point. I didn't make a
Page 46 1 documents and figured it out. They had already 2 looked at the documents, and because they were 3 not given anything from the index cards, they 4 had assumed that those two numbers were 5 different, which they are. 6 MS. O'NEILL: I understand, Your Honor. 7 But here -- here's the question -- here's the 8 problem that I have with the theory that but for 9 the failure to produce that we would not be 10 here. If the entire case rests on the two 11 boiler theory, then when -- when it was clear 12 and when they learned through the midnight 13 documents or whatever you want to call them 14 about there being one boiler, under Rule 11 the 15 case should have been immediately dismissed. 16 And it wasn't. 17 And the two boilers -- or actually I think 18 in closing it turned out to be maybe three 19 boilers -- was one part of the argument, but it 20 wasn't the only argument that they made. So I 21 don't believe that -- 22 THE COURT: That's not the only argument 23 you made either. You made -- 24 MS. O'NEILL: It's not. 25 THE COURT: -- a very effective argument by	Page 48 1 Rule 11 motion because I don't believe it's the 2 only reason we were at trial. 3 I don't believe it's the only argument that 4 they had and were going to make, and in the 5 absence of two boilers if you -- knowing that 6 there's only one, we would have never been 7 there. I didn't make a Rule 11 motion because I 8 don't think that's accurate. And so I think 9 that that -- that's a -- that's a fundamental, 10 important point that we need to -- to look at. 11 With respect to the affidavits, Ms. McVey 12 said that they're plaintiffs' lawyers. They 13 don't charge by the hour. They don't really -- 14 I think that was intended to address our point 15 about how the rules say what you have to do is 16 show this is a customary going rate for lawyers 17 in your area for similar and the same type of 18 work. 19 So she may not be able to say, "Here's my 20 invoice," but there's all kinds of ways 21 plaintiffs' lawyers prove their hourly rate, and 22 they do it all the time. They show awards in 23 similar cases to other people. They show class 24 action awards where attorneys' fees have been 25 granted. They show the rates charged for

1 similar work where an attorney fee award under a
2 fee shift -- shifting statute has been -- has
3 been done.

4 And the plaintiffs did none of that here,
5 Your Honor, and I think that if the Court is
6 inclined to -- I think that before the Court
7 awards any attorneys' fees an analysis of that
8 needs to be made. It needs to be delved into to
9 see what is, in fact, the rate that's being
10 given to people in class -- plaintiffs' lawyers
11 in class actions, what is the going rate that
12 plaintiffs' lawyers in South Carolina are
13 getting for complex, significant cases. I'm not
14 suggesting we go look and see --

15 THE COURT: Well, now, this isn't a class
16 action. This is an individual classic tort
17 case.

18 MS. O'NEILL: It is, Your Honor. And I'm
19 not saying that those would be the absolute
20 bellwether, but there has to be a basis for it,
21 and that is how courts have found the basis in
22 other circumstances.

23 And I use class actions as an example
24 because, as I'm sure the Court is aware, there's
25 a lot of analysis of what attorneys' fees are

1 Ms. Dean and Mr. Holder had exactly the
2 same hours all on the same days. This -- and
3 the response to that was, "Well, they both
4 worked on the case together."

5 Mr. Pugh and I worked on this case
6 together, and other than the time we spent in
7 court which is the same, we did not have the
8 same amount of time, because while we both
9 worked on this case, we worked on different
10 things. We didn't work on -- some days he had
11 more to prepare than I did. Some days I had
12 more to prepare than he did. The -- the idea
13 that it's exactly, exactly the same is somewhat
14 concerning, and I think more inquiry needs to be
15 made into what was done on what days before any
16 fees are awarded.

17 We would -- we have a couple other points
18 we'd like to make on this. Ms. Myers made a
19 request for lost wages. Ms. Myers, you may
20 recall, is Mr. Howe's daughter who came and
21 testified. She's not a party to this case, Your
22 Honor. And I -- while I appreciate that the
23 plaintiffs wanted both of his children to come
24 testify, she's not a party to this case, and I
25 don't think that her lost wages are an

1 going to be to plaintiffs' lawyers in class
2 actions. There's a lot of analysis of what
3 attorneys' fees are going to be to prevailing
4 plaintiffs' lawyers in civil rights cases
5 because of the fee shifting statutes.

6 And those provide some guidance to the
7 Court and to the parties about what is the going
8 general, customary rate for the lawyers in South
9 Carolina representing plaintiffs in significant
10 cases. And so before -- because I think I
11 understand where this is going, before the Court
12 awards any fees, I think that that kind of
13 inquiry needs to be done. I don't think you can
14 just take a mere affirmation by a plaintiff that
15 this is it.

16 The second thing is that there was really
17 no detail provided. There was simply a
18 statement of hours, this day this many hours,
19 this day this many hours. And I understand
20 plaintiffs' lawyers don't keep time the way
21 defense lawyers do because they don't bill their
22 clients by the hour like defense lawyers do.

23 But I find it concerning that Ms. Holder
24 and Ms. Dean -- Mr. Dean -- I got that back --
25 this is not right. Sorry.

1 appropriate portion of the award, nor do I think
2 that Mr. Howe's wife Julie's wages are an
3 appropriate award for the same reason.

4 Now, Tim Howe was a party, and I think if
5 the Court is inclined to award his lost wages as
6 a party, we would obviously oppose that for the
7 various reasons set forth in our briefs. But
8 when you look at it and you look at the equity,
9 lost wages of a nonparty I don't believe is an
10 appropriate part of a sanction.

11 We would also ask that there be more
12 inquiry into the expenses. If you look at
13 Exhibit 21 which was handed out to you which is
14 Ms. Dean's affidavit, it has bills for Lyft
15 which is a car service in California. It has
16 bills for Uber plus Lyft plus rental car all in
17 the same day, which seems odd. And perhaps
18 there's a justification, but, you know, normally
19 it's kind of one or the other.

20 It has a charge for gas in Texas which is
21 where the lead plaintiffs' lawyers live. I
22 don't know how that's a -- a charge that is
23 fairly charged in travel.

24 It has a rental car in Oklahoma. And none
25 of the witnesses that came to testify in this

1 case were in Oklahoma for their depositions.

2 It has a com -- it has a charge to
3 something called Blacklane, all one word, GmbH,
4 which is a company in Berlin. I don't have any
5 idea what they do or how it can possibly relate
6 to this trial.

7 There are Uber and Lyft charges for after
8 the trial ended for the end of March. March
9 20 -- there's several charges for March 26th.
10 There are -- there's a receipt for merchandise
11 from Target, but all of this is the American
12 Express thing. It doesn't tell me what they
13 bought. And if they needed pens or paper, I
14 don't think that's a fair charge to us.

15 I mean, I had to go out and buy tape to do
16 my little demonstration, and if they had
17 something specific like that that they used --
18 maybe -- maybe that's a fair trial expense, Your
19 Honor, but my pens, my paper, my Post-It notes,
20 those are things lawyers are supposed to have.

21 They gave us -- they charged for discovery
22 deposition costs which, again, Your Honor, I
23 don't think those are appropriate in the
24 calculation.

25 Discovery was going to happen no matter

1 know, if it was a trial exhibit, why it was done
2 in a way that had to be Federal Expressed.

3 But I believe that before the Court can
4 award expenses, additional inquiry needs to be
5 had into those areas as well. Because even on a
6 sanction, there has to be some equitable --
7 equitable basis for ascribing the amount to the
8 defendant and relate it to the defendant's
9 conduct, and given what we have right now, Your
10 Honor, I don't believe that that can be done
11 even if this court is inclined to the sanctions.

12 And I need to check with my village to make
13 sure I didn't miss anything.

14 THE COURT: All right. You're good.

15 MS. O'NEILL: Okay, Your Honor, unless you
16 have some more questions for me, that's it.

17 THE COURT: Very good. One moment.

18 (Off-the-record discussion.)

19 THE COURT: Ms. McVey, your reply?

20 MS. McVEY: Just briefly in reply, a couple
21 things.

22 You asked a really good question about
23 whether or not these index cards would be
24 encompassed in discovery requests. Actually
25 they absolutely were. We know that because you

1 what. They charged for their general trial
2 exhibit -- and I'm talking about expenses. I
3 mean, this may also be in the time when you
4 delve into it, but there -- there's a charge for
5 their general trial exhibit preparation. It's
6 not just for Cleaver-Brooks, and it's dated
7 before we started trial. So up until -- the
8 Court recalls -- you know, trial started on
9 Monday. Up until Sunday there was more than one
10 defendant left in the case. So it's reasonable
11 to believe that there are charges in there for
12 trial exhibits which apply to those other
13 defendants, and that's not a fair expense to put
14 on my client even as a sanction.

15 There are general charges -- I'm sorry,
16 Ms. McVey said that they would -- they agreed
17 with us that the cancellation charge due to the
18 change is not something that should come to us.

19 And then there's unspecified Federal
20 Express bills. And, again, perhaps there's
21 something that's legitimate to that, but all it
22 is is a Federal Express bill. We don't know
23 what was Federal Expressed. We don't know why
24 it was Federal Expressed. We don't know why it
25 wasn't something that could be done here or, you

1 said that's the first step -- the next part to
2 the first step, and if we had been given those
3 index cards, we would all be on the same page.
4 And we asked for them.

5 Now, what Ms. O'Neill says that
6 Mr. Tornetta on his deposition -- it's not on
7 the record whether or not we asked for those
8 index cards. Well, you heard him at trial.
9 He -- he was there at his deposition, says,
10 "Yeah, you asked me for them. You asked me for
11 them." And they gave us the same -- these
12 are -- the commercial records are better than
13 index cards. "They give you the same
14 information." That's what he said.

15 Now, us misinterpreting these documents,
16 this 43 versus 44, this is really important.
17 They told us -- and we've submitted to you a
18 million depo -- I'm teasing, but a bunch of
19 depositions in various places where
20 Mr. Tornetta, as he did on the stand in this
21 case, has said, "They way you figure out where
22 our boilers are is by the serial number, the
23 unit number. Those are Social Security numbers
24 for these boilers."

25 The commercial records says, "We know one

1 was shipped, and another different one was
2 started up at Cleaver-Brooks. That's two.
3 That's two. That's not only reasonable, it's
4 how they told us to interpret it. That's the
5 first thing.

6 I believe that their failure to produce
7 these documents is a violation of a court order.
8 So under Rule 37(d) you're entitled to go ahead
9 and grant sanctions on that.

10 They -- one of the main reasons -- we all
11 knew that the whole mention of this case -- and
12 it's clear in their arguments and our arguments
13 was whether or not the Cleaver-Brooks boilers,
14 at least one of them, was in the powerhouse. By
15 the time we got through trial, our law firm
16 said, "Hey, I found a document that showed the
17 other one was in the admin building."

18 And Bowater is really clear on this. They
19 didn't have all the documents about where
20 everything was located. So they found one
21 document, but they didn't find the other. I
22 think that's important.

23 Rule 11, let me talk about that for just a
24 second. Ms. O'Neill is the person that -- we
25 really believe the whole linchpin -- linchpin of

1 we've gone through a much more detailed analysis
2 than I think Ms. O'Neill gives us credit for,
3 but if you want more, we're happy to give you
4 more. I'm happy to use -- use your discretion.
5 Happy for you to use Mr. Pugh's or Ms. O'Neill's
6 hourly rate, whatever you think is -- is
7 sufficient and we'll abide by that.

8 MR. PUGH: Be careful what you ask for.

9 MS. McVEY: Yeah, I know. Better than my
10 hourly rate.

11 Let me also address this idea of Jonathan
12 Holder and Jessica Dean working the exact same
13 hours. Jonathan is an associate on trial with a
14 named partner of a law firm. As long as
15 Jessica's up doing work and doing stuff, Jess --
16 Jonathan is right there doing it with her in the
17 war room. That's how this works on the
18 plaintiffs' side.

19 My hours were different. My job is a
20 little bit different. So some nights I worked a
21 whole lot longer and some nights I didn't.

22 As to the actual expenses, if you want
23 clarity on these, my expectation is that the
24 Uber to and from was for experts or other trial
25 personnel to get to and from, but I'm happy to

1 this case was that there were two boilers there.
2 We really believed it. And what she's saying by
3 Rule 11 our ethical duty would have been to stop
4 the trial and say, "Nope, we were wrong after
5 all. They should win." That's what she's
6 saying.

7 I want to push back on that because I want
8 to remind you when we got those midnight
9 documents, we could not have been more
10 surprised. And you remember the next day I
11 showed up in my wet hair in the courthouse. For
12 the first time in my entire professional life I
13 overslept. We were speeding to the courthouse.
14 We actually got pulled over by the police.

15 It was a rough night. It was a rough night
16 because we didn't know what they had known.
17 And, Your Honor, that's prejudicial and it makes
18 a big difference. We cannot -- we have an
19 ethical duty to our client to keep going
20 forward. We're in the middle of trial. What
21 were we going to do? We don't have -- our only
22 choice was to go forward, try to keep the
23 records out and do the best that we could. So I
24 want to push back a lot on that Rule 11 issue.

25 In terms of hourly rates, Ms. O'Neill --

1 give you clarification on anything you want, or
2 if you want to discount them, I understand that
3 as well. But I'm happy to give you any more
4 clarity for what you need. I'm happy to answer
5 any questions.

6 THE COURT: Ms. McVey, with respect to
7 the -- the legal fees, were these hours from --
8 were these hours spent in the actual trial of
9 the case?

10 MS. McVEY: Yes, ma'am. So what we did
11 was --

12 THE COURT: In other words -- here's what
13 I'm asking. Until midnight on Sunday -- or
14 sometime Sunday the day before you were to begin
15 trial, you still had other defendants in the
16 case?

17 MS. McVEY: Yes, ma'am.

18 THE COURT: So I understand -- I am under
19 the understanding that the hours you are
20 requesting in the three lawyers' affidavits deal
21 with hours spent after all the other defendants
22 were out of the case.

23 MS. McVEY: That's --

24 THE COURT: Am I correct?

25 MS. McVEY: Absolutely.

1 THE COURT: All right. That's the first
2 one.
3 The second thing is you say with respect to
4 the similarity between Mr. Holder's hours and
5 Ms. Dean's hours that they were together in the
6 courtroom always together or he was out of the
7 courtroom working on things, and when you
8 finished the day's work, they worked together
9 until they both took some time to go to sleep
10 and refresh themselves.
11 MS. McVEY: Until the work was done, you
12 know, and sometimes all three of us were doing
13 the same exact hours.
14 THE COURT: Yeah.
15 MS. McVEY: Sometimes it was just the two
16 of them. It just varied.
17 THE COURT: But you are saying these are
18 all in-trial hours?
19 MS. McVEY: Yes, ma'am.
20 THE COURT: All right.
21 MS. McVEY: And we stop it, you know, when
22 the verdict comes in --
23 THE COURT: Right.
24 MS. McVEY: -- not even this posttrial
25 stuff that we've been doing. We stopped it

1 THE COURT: Yes.
2 MS. McVEY: -- and I was given a variety of
3 those. Nobody wanted to give me an affidavit
4 about their hourly rate which I understand. But
5 I have not done more than that. I'm happy to do
6 more if you want, or my -- my guess is you know
7 better than anyone what a reasonable hourly
8 rate --
9 THE COURT: None of these rates are outside
10 of what I have heard in other cases, but I want
11 to be sure that it is more than just something
12 that I don't have any records reviewed by
13 someone else.
14 MS. McVEY: And we have given -- in our
15 briefing and the exhibits, we have given you
16 examples in other ways --
17 THE COURT: Right. Exactly.
18 MS. McVEY: -- to analyze that.
19 THE COURT: I -- I think that's all the
20 questions I have.
21 MS. McVEY: Okay. Thank you.
22 THE COURT: All right. Mr. Pugh and
23 Ms. O'Neill, I don't want you to -- I'm not
24 asking you to reveal your own rates and would
25 not do that, but what do you know about

1 then.
2 Any -- let me just -- one other point. She
3 talked about discovery depositions. The only
4 thing we've requested for that are the Tornetta
5 depositions. We believe that goes to this
6 issue because of the index card issue, so we
7 didn't bill for any other discovery depositions.
8 We did bill for Dr. Oury's deposition which was
9 on the Sunday before trial at the request of
10 Cleaver-Brooks. So that bill was in there as
11 well.
12 THE COURT: Okay. And I'm going to turn
13 back again for a minute and talk more about
14 these hourly rates, but have you got anything
15 else you would like to advise me about in terms
16 of the hourly rate you've selected for this?
17 MS. McVEY: No, Your Honor. The only thing
18 I would do is we did attach in our briefing an
19 exhibit where other plaintiffs' lawyers have
20 gotten hourly rates.
21 THE COURT: Yes.
22 MS. McVEY: You know, I didn't have any --
23 I asked informally my friends in the defense bar
24 who I know get hourly rates about the ranges of
25 rates --

1 prevailing rates in South Carolina that you can
2 share with me about what you think is a more
3 reasonable range of rates?
4 I mean, the top rate for the main partner
5 who's the lead counsel in the case was 550, the
6 lead South Carolina counsel was the same, and
7 the associate was 400?
8 MS. McVEY: Yes, ma'am.
9 THE COURT: All right. I mean, is that way
10 beyond the range of what the experience would --
11 of these two lawyers and their standing --
12 Ms. McVey is the president of the Association
13 for Justice which is the leading plaintiffs'
14 organization in South Carolina, and Ms. Dean is
15 someone who tries cases from all over the
16 country, just as your co-counsel does.
17 Mr. Holder is an associate of Ms. Dean's.
18 I certainly don't want to make a mistake
19 that could be corrected, but I don't want to
20 string this thing out forever either. So help
21 me out a little bit with how I can ascertain
22 this if you say that it is not reasonable.
23 MR. PUGH: Well, I guess I'll start with
24 this. I don't disagree with you with regard to
25 Theile being, you know, a high ranking member of

1 the plaintiffs' bar in South Carolina --

2 THE COURT: Right.

3 MR. PUGH: -- is well respected. Jessica
4 Dean tries cases all over the place. Jonathan
5 Holder tags along with her and obviously does a
6 lot of the important work, either behind the
7 scenes, or if you'll recall, I think we got to
8 see him take his first witness on the case.

9 THE COURT: Yes, and his mom was there when
10 he examined his first witness.

11 MR. PUGH: Which was great.

12 You know, you asked for me not to reveal my
13 rate. I don't mind doing it, but I won't do it,
14 but I will tell you, it's certainly south of
15 where these rates are. I'm not suggesting that
16 that should be the plaintiffs' problem. Perhaps
17 that's my problem, and -- but I will tell you I
18 think --

19 THE COURT: I did a lot of defense work. I
20 know the difference. I understand what you're
21 saying. I would have been overjoyed to be able
22 to bill what even defense lawyers can bill in
23 this day and age.

24 MR. PUGH: Although I will tell you, Your
25 Honor, in my other life -- as you know, I'm

1 had -- you know, I would just say you've had the
2 opportunity to view them in relation to their
3 peers in the asbestos bar on the other side, and
4 so --

5 THE COURT: And I can't think of two
6 lawyers that are more -- represent to the
7 highest degree of professionalism that is
8 present in the asbestos bar than you and you
9 Ms. O'Neill.

10 MR. PUGH: Well, I appreciate --

11 THE COURT: Both of you are of the highest
12 rank and highest ability as far as I'm
13 concerned.

14 MR. PUGH: So I -- you know, I can't sit
15 here and tell you that I would have some, you
16 know, number to give you and say, "This is what
17 it ought to be cut to." I think -- I think
18 perhaps it ought to be cut to a certain extent,
19 but, you know, that's certainly within your
20 discretion and I'll leave that to you --

21 THE COURT: Okay.

22 MR. PUGH: -- with the comments I've made.

23 THE COURT: All right. Anything further?

24 MS. McVEY: No, ma'am.

25 THE COURT: All right. I am persuaded that

1 doing some work for a utility company around
2 here --

3 THE COURT: Yes.

4 MR. PUGH: -- and I see some rates that
5 lawyers from other places are charging, and my
6 criticism is borne out of jealousy. You know,
7 I -- I think you could certainly adjust the
8 rates. I don't particularly have a criticism of
9 saying, "Oh, that's 50 percent too high," or --

10 THE COURT: Yeah.

11 MR. PUGH: -- you know, but I think there's
12 certainly some adjustment to be made, but do I
13 think that if the lawyers on the other side did
14 not bring value to the case, that would be an
15 absurd statement to make.

16 THE COURT: Okay.

17 MR. PUGH: So I -- I would say that I think
18 that some adjustment could be made, but -- but
19 I'm not going to offer to you that it ought to
20 be cut in half or by, you know, some particular
21 measure --

22 THE COURT: All right.

23 MR. PUGH: -- because you, of anyone, have
24 had experience with these lawyers both in the
25 courtroom, in motions hearings and -- and you've

1 this case might not have been tried had these
2 records been available, but at the same time I
3 am very sympathetic to the observations by
4 Ms. O'Neill on behalf of Cleaver-Brooks that
5 plaintiffs had several different approaches to
6 these things and they got very creative about
7 the approaches they took as they were presented
8 with the disaster that there were other records
9 that suddenly became available that attacked the
10 very premise of their case. The whole case was
11 about product identification.

12 There was really no dispute about the
13 damages that the plaintiff suffered. The
14 dispute was simply and solely about whether this
15 particular supplier had a product at the places
16 he -- the place he worked that caused injury.
17 And I am very troubled by what the defendant's
18 representative did with respect to disclosing
19 this matter.

20 I don't criticize the plaintiff for
21 observing that there were records that had been
22 produced that had two different unit numbers on
23 them, and assuming that that might mean there
24 were two different boilers, but deliberately not
25 asking directly about that but rather asking for

1 more documents that would track that down since
2 Mr. Tornetta said that the index cards are the
3 place you start, and was really much more a
4 problem with the defendant Cleaver-Brooks and
5 its failure to bring these materials forward.

6 Mr. Tornetta left everybody with the
7 understanding that the records he did produce
8 were better than the index cards and that those
9 records could be completely relied upon to
10 identify the product, and the records that were
11 produced showed two different products, both
12 present at Bowater.

13 They did not say exactly where the products
14 were installed, but there were two -- there were
15 documents in the 25 pages that were produced,
16 some from Cleaver-Brooks directly and some from
17 their suppliers or intermediary and some from
18 the mechanics that worked on starting up the
19 machines, and they showed two different unit
20 numbers which their corporate representative
21 indicated are like Social Security numbers and
22 therefore would indicate two different sets of
23 equipment.

24 I think that sloppiness or whatever on the
25 part of the corporate representative and the

1 to me now is that these hours that are projected
2 in the affidavits from the lawyers are only
3 in-trial hours. I want to take a little closer
4 look at those and at my own notes where I try to
5 record from what my part in it is in terms of
6 length of time, but understand that most
7 preparation's been before and after I commence
8 court and adjourn court or recess court. I want
9 to look at those a little bit more, and I want
10 to look at these expenses.

11 I do not think it's necessary for anybody
12 to submit anything more to me. I don't intend
13 to make a full award of what has been requested,
14 but I want to look at these requests in a little
15 more detail, and I will give you before the end
16 of this week my decision as to exactly what will
17 be awarded. And when I do that, I will then
18 direct that Ms. McVey prepare an order that
19 reflects these rulings, including the amount and
20 send it to Ms. O'Neill and Mr. Pugh for their
21 review and then get it back to me.

22 I'm not going to put any type of time
23 limits on y'all, but I know y'all would like to
24 conclude this matter, so you think you need to
25 go before any further relief in the matter. So

1 30(b)(6) witness extended this trial and caused
2 much more expense in trying the case that in all
3 probability would not have been tried if those
4 index cards had been produced before they were.

5 I trust in the honesty of the lawyers on
6 both sides in terms of the representations they
7 sincerely made that what they knew about this,
8 but I think the defendant Cleaver-Brooks who had
9 already been criticized by me with its failure
10 to honor discovery requests is the reason that
11 this matter went to trial and was in trial the
12 length of time it was, and therefore I -- as a
13 sanction for its failure to obey the rules of
14 discovery and my directives in the various
15 hearings that I have on this matter, some of
16 which do not result in separate orders, but all
17 of which result in oral orders and directives by
18 me for the defendant to produce their records,
19 but as a sanction for Cleaver-Brooks' failure to
20 honor those directives and failure to obey the
21 rules of discovery, I think an award of
22 attorneys' fees and expenses is appropriate.

23 And my inclination is to take a little bit
24 further look at the hours that have been
25 projected in this matter, and what's been told

1 I want to get it concluded as well. So I will
2 try to get that to you all -- dispatched with
3 the hope that you will then be able to go back
4 and forth amongst yourself and come up with not
5 an order you love but one that you think
6 accurately reflects what I'm trying to direct by
7 way of a ruling.

8 So the net result is on this record right
9 now I am granting the request for sanctions, but
10 the mandate of the order and the amounts await a
11 little further review on my important part and
12 will be communicated to you very shortly.

13 Anything further?

14 MS. McVEY: No, ma'am. Thank you.

15 MS. O'NEILL: We would ask -- we would
16 gratefully ask that the Court do two things.
17 One, enter -- direct the clerk to enter the
18 judgment and, two, that the Court will recall we
19 have given at the Court's instruction our
20 affidavit of net worth to the plaintiffs in
21 anticipation of the punitive damages phase.

22 The Court required them to hold it in
23 absolute confidence until we got to that. We
24 are obviously not in any of it. We would ask
25 that the Court as part of its posttrial motions

1 require the plaintiffs to either give it back to
2 us and/or certify that all copies of it have
3 been destroyed and not disseminated any further.

4 THE COURT: Well, I'll make that directive
5 right now and I would ask Ms. McVey before the
6 close of business today to give you an affidavit
7 that says it's been held in absolute confidence
8 and to give you the copy she received of the
9 matter and destroy any other copies that she may
10 have in her files with respect to the matter --

11 MS. O'NEILL: Thank you.

12 THE COURT: -- so that --

13 MS. McVEY: Just for clarity, there was
14 only one copy --

15 MS. O'NEILL: Yes.

16 MS. McVEY: -- and it was destroyed -- I'm
17 pretty sure it was destroyed. I did not destroy
18 it, but I'll confirm.

19 MS. O'NEILL: That's fine.

20 MS. McVEY: I don't have it, so --

21 MS. O'NEILL: As long as we can get that so
22 that will close the loop.

23 THE COURT: The biggest thing you don't
24 want to have happen, Ms. McVey -- and I want you
25 to represent on the record right now what I

1 sequentially.

2 And, you know, if I've done something that
3 y'all disagree with, you are certainly free to
4 pursue that, but I did some consultation before
5 I made that directive after I was asked a
6 question by the clerk of court. But it's on me.
7 I -- I made that decision, not the clerk's
8 office or anybody else. They asked me. I made
9 some inquiries, and then I directed them to hold
10 the entry of judgment until we had this hearing.

11 Very good. Thank you very much.

12 (The hearing was concluded at 12:16 p.m.)

1 think -- here's the fact that I think -- they
2 don't want this to be floating out with respect
3 to any other cases they have or shown to any
4 other plaintiff counsel and everything.

5 Can you represent to me that it was held in
6 absolute confidence and that its amounts will
7 not be shared by you or anyone else in your
8 firm?

9 MS. McVEY: Yes, ma'am, I can represent
10 that it is not -- to my knowledge -- and I'll
11 double check with the other people. It has not
12 been shared by anyone, certainly by me, took --
13 all of us who were at this trial took your
14 directive not to share with even our expert when
15 it was given --

16 THE COURT: Great. And that -- so if you
17 would just give Ms. O'Neill an affidavit to that
18 effect, then I think that will close the loop on
19 that for her client.

20 MS. O'NEILL: Thank you.

21 THE COURT: And with respect to the entry
22 of judgment, I will end -- I will direct that
23 the judgment be entered when I file this order.

24 MS. O'NEILL: Thank you, Your Honor.

25 THE COURT: And they will be run

1 CERTIFICATE OF REPORTER

2 I, Yvonne R. Thurston-Bohannon, Registered
3 Merit Reporter, Certified Realtime Reporter, and Notary
4 Public for the State of South Carolina at Large, do
5 hereby certify:

6 That the foregoing transcript was taken
7 before me on the date and at the time and location
8 stated on page 1 of this transcript; that all statements
9 made on the record at the time of the proceeding were
10 recorded stenographically by me and were thereafter
11 transcribed; that the foregoing proceeding as typed is a
12 true, accurate and complete record of the proceeding to
13 the best of my ability.

14 I further certify that I am neither related
15 to nor counsel for any party to the cause pending or
16 interested in the events thereof.

17 Witness my hand, I have hereunto affixed my
18 official seal October 23, 2018, at Columbia, RFD
19 County, South Carolina.

20 Yvonne R. Thurston-Bohannon
21 Registered Merit
22 Reporter, CRR
23 My Commission expires
24 May 6, 2025
25



		Page 77	
1	I N D E X		
2			
		Page	
3	STATEMENT BY THE COURT	3	
4			
5	ARGUMENT BY:		
	MS. McVEY	4	
6	MS. O'NEILL	18	
	MR. PUGH	41	
7	MS. O'NEILL	44	
	MS. McVEY	55	
8	MR. PUGH	64	
9			
	RULING BY THE COURT	67	
10			
11	ARGUMENT BY:		
	MS. O'NEILL	72	
12			
13	CERTIFICATE OF REPORTER	76	
14			
15	E X H I B I T S		
16	(None marked.)		
17			
18			
19			
20			
21			
22			
23			
24			
25			



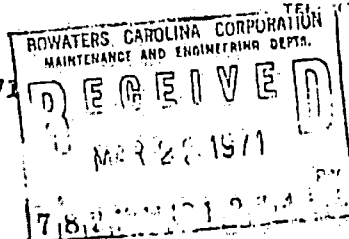
FACTORY INSURANCE ASSOCIATION

HARTFORD · CHICAGO · SAN FRANCISCO

COPY

FIELD OFFICE
131 PROVIDENCE ROAD
CHARLOTTE, NORTH CAROLINA 28207
TEL. (704) ED 3-1100

March 18, 1971



Gas Heat Engineering Corporation
2150 Hawkins Street
Charlotte, North Carolina 28203

Attention: Mr. Chandler Arndt, Vice President

Gentlemen:

ROWATERS CAROLINA CORPORATION
CATAMBA, SOUTH CAROLINA
FIA FILE NO. F-14788-W

I acknowledge receipt in this office of your Drawing 171-D showing the piping schematic and basic wiring layout for conversion of two boilers at Rowaters Carolina Corporation in Catamba, South Carolina. The boilers in question are:

1. A 30 HP Cleaver-Brooks gas-fired boiler in the Administration Building.
2. A 37.5 HP Kewanee gas-fired boiler in the new Office Building.

I understand you plan to use Minneapolis Honeywell R-4150 flame safeguards on each boiler. The drawings appear to be acceptable to us as shown and are approved without comment.

We are retaining our usual two (2) copies and returning the remaining three (3) to you marked with our stamp of approval subject, of course, to final inspection and tests by a representative of this Association.

Sincerely,

Sammy G. Blackburn
Engineer



SGB/ja

cc: Irby-Adams-Cates Co., 125 Fulton Fed. Bldg., Atlanta, Ga. 30303
Mr. James G. Cate, Jr., Rowaters Southern Paper Corp. Calhoun, Tenn. 37309
Mr. H. W. Bates, Rowaters, Box 351, Catamba, S. C.

111 1216

BOWATERS-CAROLINA CORPORATION 15A
CATAWBA, SOUTH CAROLINA PT 23-105
SO-P-1170 0-19313
CD-2023-220

FILED
NUMERICAL

BPM 000001

Rec. 678



Darryl Syfrett

P723-30

#0-18343

Come to #2-goo w/FIA

Basic — 625.

FIA — 1425

2050.00

FIA

COBS — 50

Timer — 80

RABO — 300

M-RHCP — 50

Bill — 50

GAS LINE — 895

1425

6-7-73

BPM 000002

Danny Syfrett

P723-30

#0-18343

Conv to Comb #2-gas
Extra F.M.

Basic — 625.00

F.M — 690.00
\$1315.00

F.M

HCGPS	—	125
L Plug	—	40
Hyd line dia	—	125
COPS	—	50
MR-HKPC	—	50
RA890	—	300
		<u>690</u>

6-6-73

BPM 000003

Danny Sijfrett

P 723-30 S
0-18343

\$ 1055.⁰⁰

12-1-70

BPM 000004

Cleaver Brooks

REMITTANCE REQUEST

REFERENCE Invoice No. 2-196-58	PAYABLE	DATE MAR 5 1958
PAY TO: Applied Engineering Co., Inc. 468 Carolina Avenue, N. P. O. Box 506 Orangeburg, S. C.		3 SIGNATURES REQUIRED
Description		Amount
Job Reference: Carolina Bowaters Corporation Catawba, S. C.		Unit Size P 723-30 S
Unit No(s) 0-18314		
Shipped 11/5/57		
Substantiating paper and/or work involved: For starting service per field report of Mr. Robert Tiner, dated 2/11/50		
2% of \$2620.00		\$52.40
Accounting Department Code To: 931-682		

ACCOUNT	DISTRIBUTION

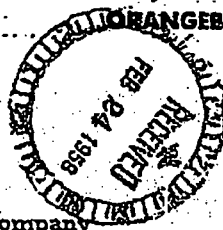
DISTRIBUTION
WHITE - ACCOUNTING DEPT.
PINK - CUSTOMER'S FILE
YELLOW - PAYEE'S COPY
GREEN - SERVICE - PARTS COPY

C21-195A

BPM 000005

APPLIED ENGINEERING COMPANY

ORANGEBURG, S. C.



SOLD TO Cleaver-Brooks Company
326 E. Keefe Avenue
Milwaukee 12, Wisconsin

INVOICE NO.

2-196-58

INVOICE DATE

February 20, 1958

SHIPPED TO

Job:
Daniel Construction
% Carolina Bowaters Corp.
Catawba, S. C.

From: Orangeburg

OUR ORDER NO.	YOUR ORDER NO.	SERVICEMAN	TERMS	SHIPPED VIA	PPH OR CPH
Service	Verbal		Labor: Net 10 days	Our Serviceman	
QUANTITY	DESCRIPTION			PRICE	AMOUNT
	Starting service by our Engineer, R. M. Tiner on Cleaver-Brooks Boiler Model P723-30S; Unit #0-18344 on February 10 & 11, 1958 located at Carolina Bowaters Corp. in Catawba, S. C.				
	2% of \$2,620.00				\$52.40
	Report Attached				
	order Complete				

BPM 000006

Cleaver-Brooks Company
326 East Keefe Avenue
Milwaukee 12, Wisconsin

FIELD REPORT

Date 2-11-58

Name Carolina Battered Corp
Address _____
City & State Calverha S.C.
Telephone Number _____
Name and initials of owner, or General Manager, or General Superintendent, (one only) _____

Unit started for Daniel Construction Co.

Model No. <u>P-223-30S</u>	REASON FOR CALL - (check one only)
Serial No. <u>0-19344</u>	Starting Service <u>✓</u>
Pressure <u>154</u> Max. W. P. <u>44</u>	Recheck on Starting _____
If oil operation - state grade of _____	Customer Request _____
Oil _____	Agent Request _____
If gas operation - state B.T.U. content _____	Milw. Request _____
of gas <u>2300 Btu</u>	Conversion _____

All dimensions for the following to represent inches above lowest visible portion of gauge glass.

	Master Control	Auxiliary
Pump Off	<u>1 1/4"</u>	
Pump On	<u>3/4"</u>	
Low Whistle Alarm		
Low Water Cut-off	<u>1/2"</u>	
Mfg. <u>M. M. #42 CB</u>		

Combustion Test Results	Settings
Fire <u>10.670</u> CO ₂ <u>10.670</u> O ₂ <u>10.670</u> CO <u>10.670</u> Stack Temp. <u>10.670</u>	Oper. Steam Press. <u>44</u>
	Relay Safety Timing _____ Sec.
	Safety Valve Setting <u>154</u>

SERVICE CHECK LIST

Flow down Valves - Shell _____
Flow down Valves - Columns _____
Operating Manual - Given to (initial & name) Mr. J. M. (Daniel Const. Co.)
Verbal operating & maintenance instructions to Mr. J. M. (Daniel Const. Co.)
Boiler water treatment discussed with (initial & name) Mr. J. M. (Daniel Const. Co.)

FORM NO. 217

C10-2654 (1)

BPM 000007

Cleaver-Brooks Company
326 East Keefe Avenue
Milwaukee 12, Wisconsin

TIME AND TRAVEL

Date	From	To	Miles	Travel Time	Job Time
2-10-58	ORR	CATAWA RIVER	122	2 1/2	4
2-11-58					1 08 1/2

Is call to be paid for by customer? No
If call is to be paid for by customer, Form No. 216 must accompany this report.

Accepted:

By:

R.M. Hines
Field Representative

Note to Field Representative:

Because signatures are seldom legible, PRINT, on following line, name and initial of person signing report.

Note to Customer:

The following comments are a part of this report. Cleaver-Brooks Company suggest you initial the end of this report indicating comments have been read.

If customer desires copy of this report, so state here and give us initials, name, and title of person to whom same should be mailed.

Please Print:

Initials

Name

Title

If new starting job, Supplemental form must accompany this report. In event unit is combination, use both oil and gas forms.

Comments, material changes, instructions to Milwaukee, etc., to be noted on following pages.

C16-255A (2)

BPM 000008

Cleaver-Brooks Company
326 East Keefe Avenue
Milwaukee 12, Wisconsin

Checked out all Gas lines and
regulators from L.P. tanks to Boiler.
Set pressures & checked Pressure & off &
Low Water cutoff switches. Started
unit and let heat up slowly. Set
pressure controls and put heat on
plant load. Found it to perform very
nicely. Unit is being slightly over fire
as main tank regulator will not cut pressure
low enough.

Lock up on Gas at wastel regulator & 1/2 lb.
When unit is running pressure is 3 1/2 lb.
(B) Piping 1/2

This unit will be properly fired on natural
Gas 1000 BTU in about 2 or 3 weeks.

C10-255 (9)

BPM 000009

SUPPLEMENTAL FIELD REPORT

CB-15 - 150 UNITS,

Job Name Carolina Brewster Corp. Date 2-10-58
Model P-723-30S Unit No. 0-18344 Pressure 150

Complete all items, if for any reason, readings of any one or more items cannot be taken, fill in after each item reason for non-completion.

1. Oil Suction Line Size _____ 2. Oil Return Line Size _____
3. Length of Horizontal Suction Line Run _____ 4. Length of Vertical Lift of Suction Line _____
5. Type of Check Valve Used _____
6. Where is Check Valve Located _____
7. Inches of Vacuum at Terminal Block with Unit Running _____
8. How Fast Does Fuel Oil Pressure Come Up to Running Pressure?
a. CB15-40 _____ No. of Seconds b. CB50-150 _____ No. of Seconds
9. Is Fuel Supply Tank Above or Below Level of Boiler _____
10. Is There a Day Storage Tank or Any Other _____
11. Means of Oil Storage Installed to Aid in Starting Light(s)? _____
12. Was Operator Shown How to Adjust Belts _____ (Burner Motor to Fuel and Air Pumps)
13. Was Burner Removed Before Firing _____
14. Indicate Number and Sizes of Nozzles Installed in Burner _____
a. Nozzle Installed in Burner _____ b. Air Purge Nozzle (CB50-150) _____
15. Was Strainer (Fuel Oil) Removed from Body _____ In Case of Strainer Built-In Fuel Pump Was
and Customer Shown How to Clean _____ 15. Operator Told How to Remove and Clean _____
16. Was Ignition (Straight Electric) Explained to Operator with Burner Removed from unit _____
Shown How to Clean and Set Properly _____
17. Did Operator Remove Burner and Clean and Adjust Same _____
18. Was the Proper Positioning of Electrodes Explained to Operator _____ Give Dimensions
a. From Nozzle Face to Electrode _____ b. From Center (Orifice Hole) to Electrode _____
19. Air (Clear) Gap _____
20. In Case of Gas or Oil-Fired Pilots, Was Front Door Opened (By Operator) and Pilot Removed _____
a. Electrode Cleaned and Set _____ b. Nozzles (Gas or Oil) Cleaned _____
21. Bonnet Tightened _____ d. Size of Air Inlet Orifice _____
22. Were Inserts of Relief Terminals Tightened _____
23. While the Front Door was Open, Did you Explain or Show the Following: Also Give Dimensions.
a. Burner Nozzle, Position to Diffuser Plate _____ b. Plate, Diffuser, Position to Gas Ring _____
24. Orifice, Cleaner, Cleaning for Good Sight of Flame _____ c. Wash Coating Brick _____
25. Gaskets, Importance of Sealing _____
26. Was Scanner Removed and Functions of Same Explained to Operator _____ Importance of Keeping Clean _____
27. Is Scanner Properly Aligned? _____

24. When Starting Unit Was Selector Switch Turned to Manual Position and Potentiometer in Closed Position? _____
a. At What Steam Pressure or Temperature Was Burner Turned to Automatic Position? _____

25. What CO₂ Is Obtained on:
a. CB15-40 Lo Fire _____ Hi Fire _____
b. CB50-150 _____

Was Air Filter and Importance of Oil Level Explained to Operator? _____ Was Atomizing Air Pressure Adjustment Explained to Operator and Its Effect on Lighting and Combustion? _____

Has Secondary Air Adjustment Been Explained to Operator and Effect on Lighting and Combustion? _____ Was Lube Oil Strainer Removed and Importance of Being Clean Explained? _____

30. Was Lube Oil Level - Max. and Min. Explained? _____

31. Was Operation of Metering Oil Valve and Cam Explained to Operator? _____

a. Adjustment Screws in Cam for More or Less Oil _____ b. Tightening Packing Screw on Metering Valve _____

Was Air Switch and Its Interlocking with Fuel Oil Valve Explained? _____ 33. Air Pressure Control Set at _____

34. Oil Pressure at Burner Set at Lo Fire _____ Hi Fire _____

35. Air Pressure (Atomizing): Lo Fire _____ Hi Fire _____

36. Gas Pressure for Pilot: a. Closed Solenoid Valve _____ b. Open Solenoid Valve _____

37. Light Oil Pilot Pressure Set at _____ lbs. _____

38. Was Operation and Care of Cleaning of Firebox Explained and Demonstrated to Operator? _____

Firebox Model No. _____ Serial No. _____ Code _____

Safety Timing (Firebox) of Relay Drops Out (Flame Failure) _____ Sec. _____ Latchout (Safety Switch Works Out) _____ Sec. _____

40. In Boiler Operation _____ 41. Water Level at 0° Glass of Water in Gauge Glass _____ There is _____ of Water Over Tubes _____

42. Blower Motor Voltage _____ Blower Motor Current Draw _____

a. Tubes Used: Type _____ Size _____

43. Control Circuit Voltage _____

44. Load on Unit (Circle One) Moderate _____ Heavy _____ Light _____ Extremely Light _____ Extremely Heavy _____

45. Is Relief Door Tight? _____ 46. Are Safety Valves Properly Piped and Provided with Proper Drains? _____

Are Column and Low Water Cutoff Blowdown Valves Tight? _____ 48. Is Boiler Level? _____

49. Are Proper Blowdown Valves Provided on Boiler Shell? Front _____ Rear _____

50. Feedwater Inlet Temperature _____ 51. Have All Handholes Been Tightened? _____

52. Do Any Handholes Leak? _____ 53. Has Unit Been Boiled Out? _____

54. If More Than One Unit, Does Each Unit Have Individual Suction Line or Is It Common to Both? _____

Have Low Water Readings Been Taken Under Pressure As Well as Cold? _____ Are They Noted on Page One of Field Report? _____

If Dry-Rite Control Is Installed, Have They Been Set According to Customer's Requirements? _____ 57. Type of Return System Used _____

58. Pressure Control Settings: Low Fire _____ Cut-In _____ Cut-Out _____

High Fire _____ Cut-In _____ Cut-Out _____

C10-280A(2)

BPM 000011

COMBINATION GAS AND OIL OR STRAIGHT GAS

59. Was Customer Shown how to engage clutch in center of motor for oil operation? yes
and disengage clutch for gas operation? no so compressor and oil pump will not run.

60. Does Gas Valve Close Tight on Shutdown? yes

61. Is there Combustion Noise on Gas Fire? no

62. General Information:

1. Name of gas company Unit Fuel or Boston Gas

2. B.T.U. value of gas 2300

3. Pressure in gas main 10"

63. Gas Piping System

1. Gas Meter

Name Fisher

Size 1000

Capacity 1000 cu. ft. per hr.

Gas Pressure Entering Meter none

Does meter furnish gas for any equipment other than this unit? no

If so, describe briefly no

2. Gas Piping

Length and Size of pipe from meter to regulator no meter

Length and Size of pipe from regulator to boiler 2" about 20'

Is gas line provided with filter? no

Size of Cleaver-Brooks piping 1 1/2"

64. Gas Regulator

1. Name Fisher LP Regulator Reg.

2. Size 1"

3. Capacity 1000

4. Type 1"

5. Regulator furnished and specified by 1"

6. Is regulator properly piped? yes

7. If more than one unit, does each unit have individual regulators? no

8. Gas pressure upstream of regulator 10"

9. Gas pressure downstream of regulator 10"

10. Is operation of regulator satisfactory? yes

65. Gas Boosters

1. Name none

2. Size 1"

3. Capacity 1000

4. Booster furnished and specified by 1"

5. Pressure at booster discharge 10"

6. Does booster operate continuously or with starting and stopping of boiler? 1"

7. Is operation of booster satisfactory? yes

66. Operating Gas Pressures

1. Gas pressure at boiler - Low Fire 10"

2. Gas pressure at boiler - High Fire 10"

3. Gas pressure at boiler - Lock-up 10"

4. Gas pressure at boiler - On Pilot 10"

5. Gas consumption - Low Fire 10"

6. Gas consumption - High Fire 10"

67. Operating Characteristics

1. Is pilot adjustment critical? yes

2. Ignition gas in pipe yes

Rec. 690

FORM A-20
REV. 5-57

126 EAST KEEFE AVENUE

Cleaver Brooks

TELEPHONE WO-4-1100

MILWAUKEE 12, WISCONSIN

CP

SALES ORDER NO. 11784

CUSTOMER'S ORDER NO.

16390

CREDIT MEMO

DATE

5-9-58

CREDIT NO.

58-83875

CREDIT

TO

APPLIED ENGINEERING COMPANY
P. O. BOX 506
ORANGEBURG, SOUTH CAROLINA

SHIP

TO

DANIEL CONSTRUCTION COMPANY
C/O LEOWATERS PLANT
CATAWBA, SOUTH CAROLINA

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
	WE CREDIT YOUR ACCOUNT TO CANCEL INVOICE #20044 DATED 2-5-58, COVERING REPLACEMENT PARTS FOR STEAM BOILER MODEL P723-30S, UNIT #0-18343 IN ITS ENTIRETY, FOR MATERIALS RETURNED ON R. R. 3076 OF 3-18-58		66.05
		LESS 25-15%	23.94
		CREDIT DUE	\$42.11

CUSTOMER FILE

BPM 000014

CUSTOMER'S FILE

Cleaver Brooks

116 EAST KEEFE AVENUE

TELEPHONE WO 63411 2-6163

DW

COMPANY

MILWAUKEE 12 WISCONSIN

INVOICE NO. 30044

CUSTOMER'S ORDER NO.	DATE ENTERED	APPROXIMATE DELIVERY	AGENT	DATE SHIPPED	INVOICE DATE	SALES ORDER NO.
16390	1-28-58		F.P. 2515	1-28-58	2-5-58	11784

A 227 U

SOLD TO APPLIED ENGINEERING COMPANY
P. O. BOX 506
ORANGEBURG, SOUTH CAROLINA

SHIP TO DANIEL CONSTRUCTION COMPANY
BOWATERS PLANT
CATAWBA, SOUTH CAROLINA

TERMS: N/30 - DATE OF INV.

P. O. D. 511 MC 101A

FOREST PARK, ILLINOIS

VIA

AIR EXPRESS

PAID ☐COLLECT ☒

ITEM NO.	QUANTITY ORDERED	DESCRIPTION	PART NO.	QUANTITY SALE OUT	UNIT PRICE	AMOUNT
		FOR: STEAM BOILER				
1	1	CONTROL, PUMP AND LOW WATER CUT-OFF MC N, 42-CB	817-401	1	66.05	66.05
					LESS 25-15%	23.97
						\$42.08

PLEASE PAY BY INVOICE. MONTHLY STATEMENTS ARE NOT FURNISHED. INTEREST CHARGED ON OVERDUE ACCOUNTS.
SELLER REPRESENTS THAT WITH RESPECT TO THE PRODUCTION OF THE ARTICLES AND/OR THE PERFORMANCE OF THE SERVICES COVERED
BY THIS INVOICE, IT HAS FULLY COMPLIED WITH SECTION 12 (A) OF THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED.

COMMISSION DUE	AMOUNT

BPM 000015

CUSTOMER'S FILE

125 EAST KEEFE AVENUE

Cleaver Brooks

TELEPHONE 90 edraft 2-0100

COMPANY **EMK****MILWAUKEE 12, WISCONSIN**INVOICE NO. **P-24598**

CUSTOMER'S ORDER NO.	DATE ENTERED	APPROXIMATE DELIVERY	AGENT	DATE SHIPPED	INVOICE DATE	SALES ORDER NO.
2023-220 9-3-57	9-23-57 (10-14-57)		APPLIED ENG. CO.	11-5-57	11-11-57	P-1170

SOLD TO **CRANE COMPANY**
836 SOUTH MICHIGAN AVE.
CHICAGO 5, ILLINOIS

SHIP TO **BOWATERS-CAROLINA CORP.**
C/O DANIEL CONSTRUCTION CORP.
CATANBA, SOUTH CAROLINA

TERMS: 2 1/2 MONTHS 10% DISCOUNT F.O.B. SHIPPED TO POINT OF DELIVERY MILWAUKEE, WIS.

2 1/2 months discount and 10% discount if paid by 15th day of the month following month of invoice. If paid on or before 10th of following month.

VIA **FRED OLSON TO CHICAGO**
C/O MC LEAN TRUCK LINE

PREPAID ☒ COLLECT ☐

QTY	QUANTITY ORDERED	DESCRIPTION	PART NO.	QUANTITY	UNIT PRICE	AMOUNT
				ORDERED	SHIPPED	
1	1	P-700-305 CLEAVER-BROOKS PROGRESS BOILER, UNIT #0-18243, 15# DESIGN PRESSURE, INCLUDING GAS BURNING EQUIPMENT, INSULATED AND LAGGED; ELECTRIC CURRENT: 440 VOLT, 3 PHASE, 60 CYCLE PRICE F.O.B. MILWAUKEE, WISCONSIN	0-18243	1	2,628.00	2,628.00
		EXTRA FOR 440/3/60			LESS 10% S 15%	206.30
					55.02	
					LESS 10% S 15%	42.07
						\$2,046.57
		PLUS PREPAID FREIGHT 3.2507 @ \$2.79/100#			89.38	
		TAX			2.68	
						\$2,138.63
		SEE ATTACHED COPY OF FREIGHT BILL				
		CRANE CO.				
		221 N. MC REE AVE.				
		GREENVILLE, SOUTH CAROLINA				

INVOICE IN DUPLICATE

PLEASE PAY BY INVOICE. MONTHLY STATEMENTS ARE NOT FURNISHED. INTEREST CHARGED ON OVERDUE ACCOUNTS. SELLER REPRESENTS THAT WITH RESPECT TO THE PRODUCTION OF THE ARTICLES AND/OR THE PERFORMANCE OF THE SERVICES COVERED BY THIS INVOICE, IT HAS FULLY COMPLIED WITH SECTION 12 (A) OF THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED.

COMMISSION DUE	AMOUNT
12% OF \$2,046.57	\$245.56

BPM 000016

Escalator 2033-220
9/2/57
S.O. WP-1170

Ship: TO BE ADVISED
Date: 9/23/57

PRICE WORK SHEET

Sold To: Crane Company
836 South Michigan Avenue
Chicago 5, Illinois

Ship To: Bowaters-Carolina Corp.
40 DANIEL CONSTRUCTION CORP.
Catawba, South Carolina

1 261 260 -305 15" NAT GAS 2620" LEGS 10" 15" ←
440/3/60 INSUL Y LAG
EXTRA FOR 440/3/60 55" LESS 10" 15" ←

Crane Co.
223 W. Mc Bee Ave
Greenville, South Carolina

Terms: PROGRESS

Freight: MAJOR FREIGHT PREPAID

Commission: APPLIED ENGINEERING (ALL)

Clear: I-2

By: Britt Thom 1/3/67

BPM 000017

INTER-OFFICE CORRESPONDENCE

Cleaver-Brooks

COMPANY



MILWAUKEE 12, WISCONSIN

RECEIVED
SEP 21 1957
504 P 1170
11920

TO Cleaver-Brooks Company Milwaukee, Wisconsin

ATTENTION Elmer Follbow

FROM Applied Engineering Company Oranburg, S. C.

DATE September 19, 1957

SUBJECT Crane Company
Order #2023-220
Daniel Construction Co.
C/o Bowater Carolina Corp.
Catawba, S. C.

Dear Elmer:

Enclosed please find purchase order and boiler data sheet covering one Progress P-700-30S, 30 HP, 15# steam, for 440 Volt 3 phase, 60 cycle operation.

We have forwarded the contractor standard progress prints and winding diagrams for approval.

We believe that the gas will be bottle gas since this is a new job site and natural gas is not yet available.

Do not ship until approval is received.

Yours very truly,

APPLIED ENGINEERING COMPANY

George K. Moss

GKM/ea

Enclosure

[Handwritten signature and scribbles]

BPM 000018

FOUNDED BY R. T. CRANE, 1885

CRANE CO.

223 W. MCBEE AVE.

GREENVILLE, S. C.

PURCHASE ORDER

N^o 2023-220

DATE: September 3, 1957

TO:

Cleaver Brooks Co.,
Milwaukee 12, Wisconsin

SHIP TO:

Daniel Construction Co.,
c/o Bowaters-Carolina Corporation
Catawba, South Carolina

MARK PACKAGES:

Order 10,016

SHIP VIA: (Cheapest way unless otherwise specified herein:)

Motor Freight

This purchase is to be charged to and will be paid by—

CRANE CO., 836 S. Michigan Ave., Chicago 5, Ill.

Please prepare invoice in duplicate and mail as follows:

CRANE CO., 836 S. Michigan Ave., Chicago 5, Ill.

Original Invoice

CRANE CO., 223 W. McBee Ave., Greenville, South Carolina

Duplicate Invoice with Shipping Memorandum and
Original Bill of Lading.

Please observe the following when shipment is subject to:

Full Freight Allowance—ship PREPAIDPartial Freight Allowance—ship PREPAIDItemize on invoice transportation charge and allowance
showing weight, rates and name of carrier, or attach
paid freight bill.No Freight Allowance—ship COLLECT unless otherwise
specified.

Show on invoice whether shipment was prepaid or collect.

The following material purchased for resale unless otherwise specified

QUANTITY

PRICE

- 1 - Cleaver-Brooks Progress P700-30S, 30 HP boiler, 15 lb. steam, gas fired to be of four pass construction, guaranteed 80% efficiency, insulation and insulation and lagging with metal jacket, forced draft, complete with main gas regulator piped and assembled as in integral part of the boiler. One day starting service included with this order. Unit for 440 volt, 3 phase, 60 cycle current.

SUBMITTED BY G.K. MOSS

Please submit six (6) copies of certified prints,
parts list, operating maintenance instructions.**RECEIVED**

SEP 7 1957

APPLIED ENGINEERING CO.
ORANGEBURG, S. C.

By acceptance of this order, Seller agrees to and shall be bound by the terms and conditions appearing on the back hereof.

☒ SOLD ORDERS
CUSTOMER☐ STOCK
ORDER NO.

Register 46253-220

CRANE CO.*George B. Reed*

BPM 000019

BOILER ORDER DATA

Cleaver-Brooks
Progress
Packaged Boiler

Cleaver-Brooks
AGENCY

Applied Engineering Co.

Signed by (for Agent)

George D. Doss

Date

Sept 10, 1957

Approved by (Wholesaler)

George D. Doss

Title

Note to Agent: Send white copy to Cleaver-Brooks Co., Milwaukee, Wis., return yellow copy to wholesaler after checking and countersigning, and retain blue copy for your files.

WHOLESALE & SHIPPING DATA

Purchased by Crane Co.

(Wholesaler)

on Purchase Order No. 2023-220

Street Address 223 W. Eads Avenue

City

Greenville

State

S. C.

Ship to Swaters-Carolina Corp.

(Name of Job)

c/o Daniel Construction Co.

(Name of Heating Contractor)

Address

Greenville

City

State

S. C.

Type of Building

Paper Mill

Delivery Carrier Specify "best way" unless contractor advises otherwise. In all cases specify delivery carrier.
(Check access doors to see that they will pass boiler.)

Prepaid ☒

or Collect ☐

Earliest Date

Delivery Acceptable not

Del. Date Desired

BOILER DATA

1. Size and Type

Quantity 1

Model P- 700-30-S

☒ 15 psi steam

☐ 30 psi water

(Check one)

Altitude (feet above sea level) * To be installed in State of

* Standard boilers are for altitudes from 0 to 3000'. For others, contact your agent.

2. Type of Fuel

Light oil is understood to conform with specifications of Commercial Standard No. 12-48.

(Check which applies)

Light Oil No. 2

Gas Type

BTU/cubic feet

Specific Gravity

Gas Pressure at Point of Service Connection to Burner

Note: Where pressure at burner is below the minimum pressure required, the customer must furnish a booster. Check with local Gas Company.

BPM 000020

3. Current Characteristics

Standard current is 230 volt, single phase, 60 cycle for motor. If other than standard, see current price sheet for addition and indicate.

115 Volts 3 Phase 60 Cycle

Control circuit is 115 volt, single phase, 60 cycle.

4. Optional Trim

Must be specified if required. See current price sheet for addition and indicate.

a. Steam Boiler

☒ Fixed pump control* McDonnell-Miller No. 42CB in place of standard No. 64CB Low water cutoff.

* 42CB includes low water cutoff.

☐ Water feeder McDonnell-Miller No. 247 in addition to standard No. 64CB Low water cutoff.

b. Hot Water Boiler

☐ Low water cutoff McDonnell-Miller No. 64CB.

5. General Data

Name of Fire Insurance Company (Fire Insurance does not refer to Boiler, but to Building including Boiler Room.)

Important: Boilers insured by companies affiliated with Factory Mutual or Fire Insurance Association require special unit approval prior to shipment.

Is it known that building openings are adequate or will be provided to move boiler into boiler room?

Yes ☐ No ☐

Has provision been made for future tube removal and cleaning and adequate aisle space around boiler?

Yes ☐ No ☐

In sizing boiler have possible customer plans for future plant expansion been taken into consideration?

Yes ☐ No ☐

Has piping, loss, pickup load, and hot water load been added to radiation load?

Yes ☐ No ☐

6. Miscellaneous (for Cleaver-Brooks office use)

2-1884

BPM 000021

Bowaters-Carolina Corp.
Catawba, South Carolina

Unit No. Q-18343

S.O. No. P-1170

Kehoss

30, 15 lb Steam
30 lb Water

FORM P-2 MANUFACTURERS' DATA REPORT - ALL TYPES OF BOILERS EXCEPT WATER-TUBE
As Required by the Provisions of the A.S.M.E. Code Rules and National Board

524-556 (D)

C18-3114(1)

1. Manufactured by Cleaver-Brooks Company, Milwaukee, Wisconsin
2. Manufactured for _____
3. Type Internally Fired Boiler No. 10509 Year Built 1957
(H.R. or L.R. Compact Marine) (Mfr. Serial No.) (State and State No.) Natl. Board No.

4. The chemical and physical properties of all parts meet the requirements of material specifications of the ASME Boiler Code. The design, construction, and workmanship conform to ASME Rules Section IV (I, II, III, IV, or V)

Remarks: Manufacturer's Data Records properly identified and signed by Commissioned Inspectors, have been furnished for the following

Items of this report: None
(Name of item, number, manufacturer's name, and identifying stamp)

We certify the statement in this data report to be correct.

Date October 22, 19 57 Signed Cleaver-Brooks Co. By [Signature]
(Manufacturer) (Representative)

Certificate of Authorization Expires December 31, 19 58

CERTIFICATE OF BOILER SHOP INSPECTION
H.S.B. 10509
Insurance Companies' Serial Number _____
BOILER WORKS OF Cleaver-Brooks Company at Milwaukee, Wisconsin
By the undersigned, inspector of steam boilers employed by Hartford Steam Boiler Inspection & Insurance Co.
at Hartford, Conn. inspected the boiler referred to as data items I-9, 11, 16, & 19-24 incl.
and have examined manufacturer's data for items None
and certify that the material, construction, and workmanship are in accordance with ASME Boiler Code Rules.
DATE October 22, 19 57 H. E. Mussett Commissioner NB
Inspector State or Natl. Board and No.

CERTIFICATE OF FIELD ASSEMBLY INSPECTION
I, the undersigned, inspector of steam boilers employed by _____
_____, have compared the statement in this manufacturer's data report with the com-
pleted boiler and certify that parts referred to as data items _____
_____, not included in certificate of shop inspection, are in accordance with the requirements of the ASME Boiler
Code. The completed boiler was inspected and subjected to a hydrostatic test of _____ psi
DATE _____, 19 _____ Inspector _____ Commissioner _____
State or Natl. Board and No. _____

BPM 000022

3. Bolt or Shell or Drum No. 1 Dia. 36" Length Ft. 70-7/8" In. Dia. Length Ft. 0

4. Shell Plates Flange SA-285C 3/8" (For each drum, specify Steel Manufacturer's Brand, Material Specification Number, Thickness)

5. (a) Longitudinal Joint Fusion double welded butt (Seamless, Fusion or Forge Welded, Riveted-Lap or Butt-Single, Double, Triple or Quadruple)

6. (a) Tube Sheet (Brand, Mat. Spec. No., Thickness) Reinforcement (Dia. and Thickness of Straps) Rivets (No., Rows, Mat. Spec. No., Hole Dia. and Pitch) Fillet weld

7. (a) Tube Holes (Diameter) 2.020" (Longitudinal and Girth) Eff. of Tube Ligament (Compared to shell plate)

8. Girth Joints (Seamless, Fusion or Forge Welded, Riveted-Lap or Butt) Rivet Holes (No., Rows - Dia. and Pitch) No. of Courses 1

9. Header SA-178A, 44, Straight Dia. 2" Length 71-3/8" Cor. 095"

10. Header (Mat. Spec. No., Straight or Bent)

11. Header No. SA-178A, 44, Straight Dia. 2" Length 71-3/8" Cor. 095"

12. Headers No. Headers or Ends Hydro. Test

13. Tube Holes (a) Waterwall Headers No. Headers or Ends Hydro. Test

14. Tube Holes (b) Tube Holes Headers or Ends Hydro. Test

15. (a) Superheater Headers No. Headers or Ends Hydro. Test

16. Tube Holes (b) Tube Holes Headers or Ends Hydro. Test

Location	Material Spec. No.	Type	No.	Size	Welded or Bolted	Joint	Pressure	Design Temp.	Remarks	Notes
(a) F.H. above tubes			0					10-3/16"	0	15# S.
(b) F.H. above tubes			0					10-3/16"	0	30# W.
(c) F.H. below tubes										
(d) F.H. below tubes										
(e) Through below tubes										
(f) Drain pipes										

17. (a) Cover Dia. Longitudinal Seam Eff. % How secured in shell

18. (b) Opening in shell Head

19. (a) Flange No. 12-3/4" OD (Reg. Dia. or L x B x H) Length, each Section, ft. In. Total 71-1/8" Type Plain (Plate, Addition, or Extra)

20. SA-53, 330" (a) Seamless Seamless (Seamless Fusion or Forge W. Riveted, Lap, or Butt) Location (Draw)

21. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

22. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

23. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

24. (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)

BPM 000023

MASTER SHEET

SALES ORDER P-1170 SHIPPING DATE REQUIRED W.A. DATE 9/25.

FIRM NAME BOWATERS-CAROLINA CORP. SHIP TO CATAWBA, SOUTH CAROLINA

Routing

QUANTITY 1 MODEL P710-30 S H.P. 30

DATE _____ CHANGE ORDER _____

DES. PRESS. 15 OPER. PRESS. _____ POPS _____

DESIGNED FOR S.C. STATE ALTITUDE _____

FUEL OIL and ~~gas~~ ^{BOTTLE} GAS BTU _____ W.C. _____

CURRENT 440/3/60 COLUMN: LEFT _____ RIGHT ✓

BOTTLER FEED: PUMP CONT. _____ WATER FEED _____

WATER PRESSURE _____ INS. & LAG. _____

DAY-NITE SYSTEM: YES _____ NO _____

PRINTS: _____

LOW OPER. PRESS. _____ HEAT LOAD _____

DIMENSION _____ FEED PUMP _____

INSURANCE: _____

WIRING _____ RECEIVER _____

RETURN SYSTEM: YES _____ NO _____

OIL PUMP _____

PUMP ASSY. _____ H.P. _____ PSI

RECEIVER ASSY. _____ FOR _____ H.P.

	NO.	SIZE	MAKE	FIG.
QUICK OPENING B.O. VALVE	_____	_____	_____	_____
SLOW OPENING B.O. VALVE	_____	_____	_____	_____
MAIN STEAM VALVE	_____	_____	_____	_____
NON RETURN VALVE	_____	_____	_____	_____
FEED VALVE GLOBE	_____	_____	_____	_____
FEED VALVE CHECK	_____	_____	_____	_____

MISCELLANEOUS _____

Witness Test _____

Don Buchanan
SALES DEPARTMENT

BPM 000024

Cleaver-Brooks
COMPANY

971-19
ASSEMBLY CHECK SHEET

MODEL P 723-30 DP 15-4 DATE 11-1-57
CURRENT
CHARACTERISTICS: VOLTS 440 PHASE 3 CY 60 NAME Brown, Carol
CONTROL CIRCUIT: VOLTS 115 PHASE 1 CY 60 ADDRESS Santa Fe, N. Mex.
WIRING DIAGRAM NO. 630-202 (Rev. 1)
BOILER UNIT NO. 0-18343 JOB NO. 8770 SALES ORDER NO. P-1170
(P. 1170)

ITEM	DESCRIPTION
MOTOR, BLOWER	MAKE <u>Monitrol</u> A.P. <u>3/4</u> VOLT <u>220/240</u> PH. <u>3</u> CY. <u>60/50</u> AMPS. <u>2.1/1.4</u> RPM. <u>3450/2850</u> SERIAL
CONTROL, M.H.	TYPE <u>M. H.</u> MODEL <u>PAF00C</u> CODE SERIAL
HEATER COILS	(BLOWER STARTER) <u>#1021 A P. H.</u>
RELAY, MOTOR	MAKE <u>P. H.</u> TYPE <u>440</u> VOLTAGE <u>110-1550</u>
PUMP, OIL	MAKE MODEL SERIAL
CABLE, IGNITION	QTY. <u>1</u> LENGTH <u>19'-20"</u>
VALVE, SAFETY	QTY. <u>one</u> MAKE <u>Kumble</u> SIZE <u>1 1/2"</u> FIG. <u>34</u> CAPACITY: <u>1036</u> LBS/HR. <u>cut at 154</u> BTU/HR.
	QTY. MAKE SIZE FIG. CAPACITY: LBS/HR. BTU/HR.
VALVE, GAS	MAKE <u>M. H.</u> TYPE <u>440A</u> SIZE <u>1 1/2"</u> SERIAL
REGULATOR, GAS	MAKE <u>Trinitrol</u> TYPE <u>RV 81</u> SIZE <u>1 1/2"</u>
OIL PUMP, (AUX.)	MAKE MODEL SERIAL
MOTOR, OIL PUMP	MAKE H.P. VOLT PH. CY. AMPS. RPM SERIAL FRAME
FEED PUMP	MAKE MODEL SERIAL
MOTOR, FEED PUMP	MAKE H.P. VOLT PH. CY. AMPS. RPM FRAME SERIAL

REMARKS

80-8770
0-18343

CHECKED BY E. F.

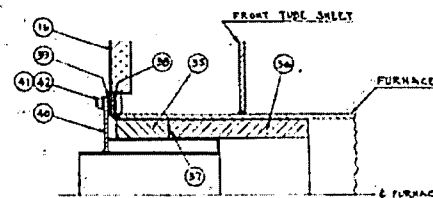
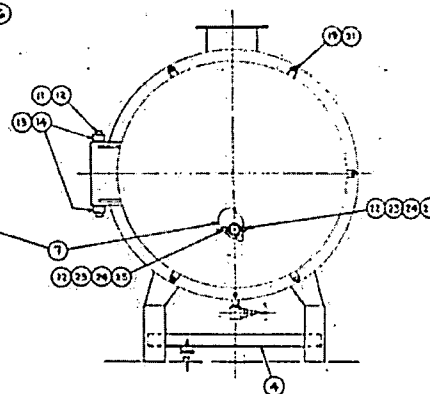
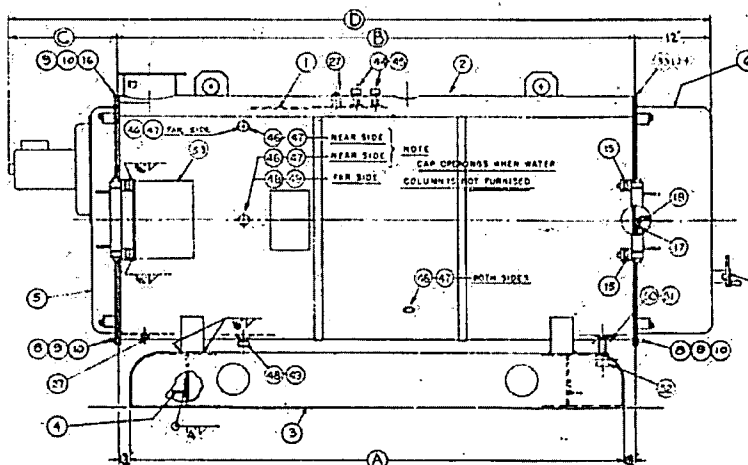
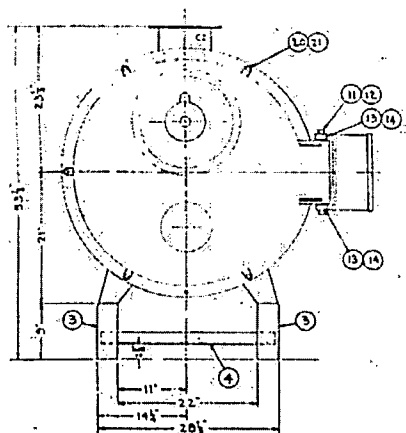
25-118A

BPM 000025

ITEM	REF	PART NO.	DESCRIPTION
1		801-215	SHELL-DOILER
2		801-216	INSULATION & LAGGING
3		801-217	BASE-DOILER
4		801-218	TIE ROD-CASE FRAME
5		801-219	HEAD-DOILER ASSEMBLY
6		801-220	HEAD-DOILER INSULATED
7		801-221	WINDOW-OBSERVATION ASSEMBLY
8		801-222	WIN. DOOR GUIDE
9		801-223	WASHER-STD. 1/2"
10		801-224	NUT-HEN. 3/4-10
11		801-225	WASHER-STD. 1/2"
12		801-226	NUT-HEN. 3/4-10
13		801-227	EYE BOLT - DOOR HINGE
14		801-228	WASHER-FLAT. 1/2" X 1/2" X 1/2" (1.05 THICK)
15		801-229	NUT-HEN. 3/4-10
16		801-230	PLATE-HEAD-FRONT-INSULATED
17		801-231	GASKET-ADDED TO ROPE 5/8" DIA. (S. 801-231)
18		801-232	CEMENT-ADDED TO JIM # 450 (S. 801-232)
19		801-233	CAP-STEEL-HEM. HD. 3/4" X 1/2" X 1/2"
20		801-234	CAP-STEEL-HEM. HD. 3/4" X 1/2" X 1/2"
21		801-235	WASHER-STD. 1/2"
22		801-236	NUT-HEN. 3/4-10
23		801-237	WASHER-STD. 1/2"
24		801-238	NUT-HEN. 3/4-10
25		801-239	WASHER-STD. 1/2"
26		801-240	NUT-HEN. 3/4-10
27		801-241	WASHER-STD. 1/2"
28		801-242	NUT-HEN. 3/4-10
29		801-243	WASHER-STD. 1/2"
30		801-244	NUT-HEN. 3/4-10
31		801-245	WASHER-STD. 1/2"
32		801-246	NUT-HEN. 3/4-10
33		801-247	WASHER-STD. 1/2"
34		801-248	NUT-HEN. 3/4-10
35		801-249	WASHER-STD. 1/2"
36		801-250	NUT-HEN. 3/4-10
37		801-251	WASHER-STD. 1/2"
38		801-252	NUT-HEN. 3/4-10
39		801-253	WASHER-STD. 1/2"
40		801-254	NUT-HEN. 3/4-10
41		801-255	WASHER-STD. 1/2"
42		801-256	NUT-HEN. 3/4-10
43		801-257	WASHER-STD. 1/2"
44		801-258	NUT-HEN. 3/4-10
45		801-259	WASHER-STD. 1/2"
46		801-260	NUT-HEN. 3/4-10
47		801-261	WASHER-STD. 1/2"
48		801-262	NUT-HEN. 3/4-10
49		801-263	WASHER-STD. 1/2"
50		801-264	NUT-HEN. 3/4-10
51		801-265	WASHER-STD. 1/2"
52		801-266	NUT-HEN. 3/4-10
53		801-267	WASHER-STD. 1/2"
54		801-268	NUT-HEN. 3/4-10
55		801-269	WASHER-STD. 1/2"
56		801-270	NUT-HEN. 3/4-10
57		801-271	WASHER-STD. 1/2"
58		801-272	NUT-HEN. 3/4-10
59		801-273	WASHER-STD. 1/2"
60		801-274	NUT-HEN. 3/4-10
61		801-275	WASHER-STD. 1/2"
62		801-276	NUT-HEN. 3/4-10
63		801-277	WASHER-STD. 1/2"
64		801-278	NUT-HEN. 3/4-10
65		801-279	WASHER-STD. 1/2"
66		801-280	NUT-HEN. 3/4-10
67		801-281	WASHER-STD. 1/2"
68		801-282	NUT-HEN. 3/4-10
69		801-283	WASHER-STD. 1/2"
70		801-284	NUT-HEN. 3/4-10
71		801-285	WASHER-STD. 1/2"
72		801-286	NUT-HEN. 3/4-10
73		801-287	WASHER-STD. 1/2"
74		801-288	NUT-HEN. 3/4-10
75		801-289	WASHER-STD. 1/2"
76		801-290	NUT-HEN. 3/4-10
77		801-291	WASHER-STD. 1/2"
78		801-292	NUT-HEN. 3/4-10
79		801-293	WASHER-STD. 1/2"
80		801-294	NUT-HEN. 3/4-10
81		801-295	WASHER-STD. 1/2"
82		801-296	NUT-HEN. 3/4-10
83		801-297	WASHER-STD. 1/2"
84		801-298	NUT-HEN. 3/4-10
85		801-299	WASHER-STD. 1/2"
86		801-300	NUT-HEN. 3/4-10
87		801-301	WASHER-STD. 1/2"
88		801-302	NUT-HEN. 3/4-10
89		801-303	WASHER-STD. 1/2"
90		801-304	NUT-HEN. 3/4-10
91		801-305	WASHER-STD. 1/2"
92		801-306	NUT-HEN. 3/4-10
93		801-307	WASHER-STD. 1/2"
94		801-308	NUT-HEN. 3/4-10
95		801-309	WASHER-STD. 1/2"
96		801-310	NUT-HEN. 3/4-10
97		801-311	WASHER-STD. 1/2"
98		801-312	NUT-HEN. 3/4-10
99		801-313	WASHER-STD. 1/2"
100		801-314	NUT-HEN. 3/4-10

ITEMS 85 & 29 ARE VARIABLE.
REFER TO DATA OR SPEC. SHEET FOR SELECTION.

DOILER	SHELL	INSULATION	BASE	A	D	C	D
P. 15	514-215	MAINE AM	3-167	55	615W	16W	31
P. 20	514-215	MAINE AM	3-167	55	615W	16W	31
P. 25	514-215	MAINE AM	3-167	55	615W	16W	31
P. 30	514-215	MAINE AM	3-167	55	615W	16W	31
P. 40	514-215	MAINE AM	3-167	55	615W	16W	31



SECTION AT FRONT END OF FURNACE
SCALE - 3" = 1'-0"

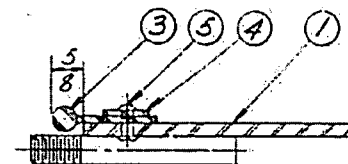
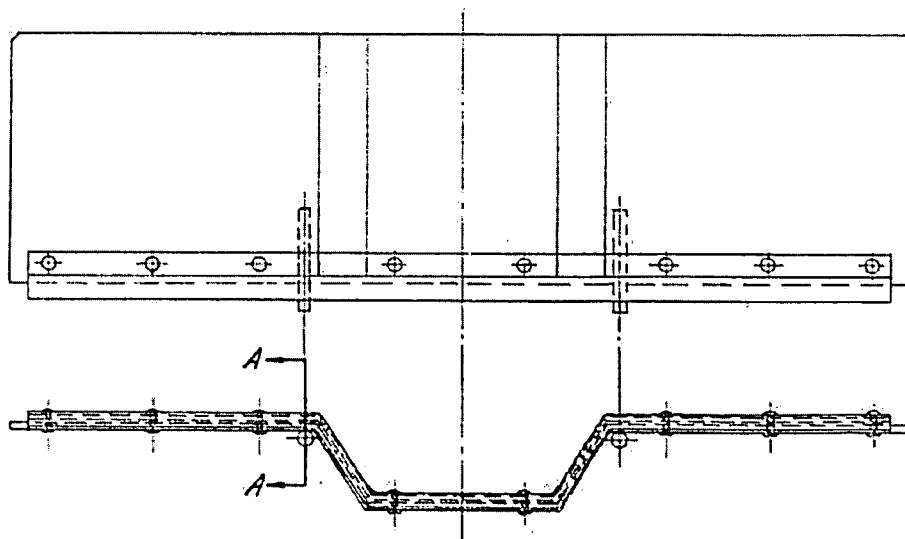
SUPERSEDED

CLAYTON-BROOKS CO.
DOILER & BASE FRAME
P. 15-40 L.P. GAY ONLY
WMS. NO. 807-275 / P. 1

THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY
IT IS HEREBY REQUESTED THAT YOU RETURN IT TO THE COMPANY WHEN IT IS NO LONGER REQUIRED

ITEM	REQ.	PART NO.	DESCRIPTION
1	1	9-126 B	BAFFLE - FRONT EXTENSION
2	~~2~~	~~51-45 A~~	~~STUD - FRONT HEAD PLATE~~
3	1	853-394	GASKET - 2X38 LG. - IN TADPOLE - STYLE 123 SIZE 7
4	1	65-25 A	RETAINER - FRONT BAFFLE GASKET
5	8	841-551	RIVET - SPLIT - 1/4 DIA. X 7/8 LG.

TOLERANCE
UNLESS OTHERWISE SPECIFIED:
FRACTIONAL ± DECIMAL ±



SECTION "A-A"
6" = 1'-0"

REVISIONS	DATE	BY	DESCRIPTION
1	10-17-56	2	12-5-56
2	11-17-56	3	11-17-56
3	11-17-56	4	11-17-56
4	11-17-56	5	11-17-56

NOTE REMOVED
FMS 777
12-5-56 (3)

261-35

SCALE
1/4" = 1'-0"
DATE
6-28-56
BY
JH
CHECKED
JH
APPROVED
JH

CLEAVER-BROOKS CO.
MILWAUKEE, WISCONSIN
BAFFLE ASSEMBLY
FRONT EXTENSION
P15 To 40
DRWG. NO. 261-35

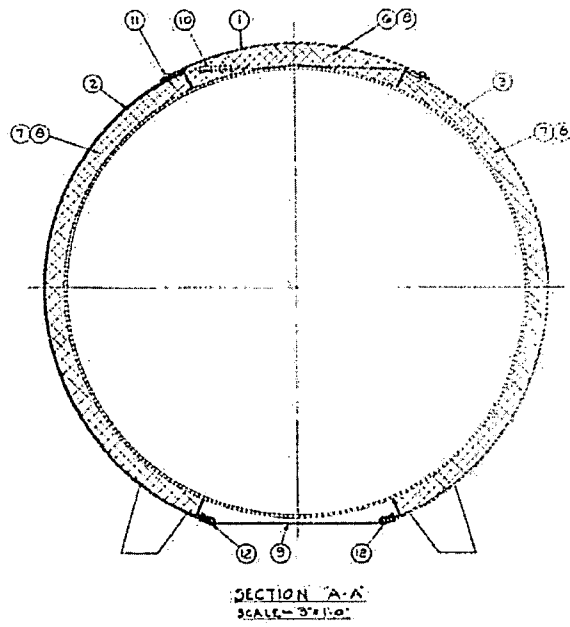
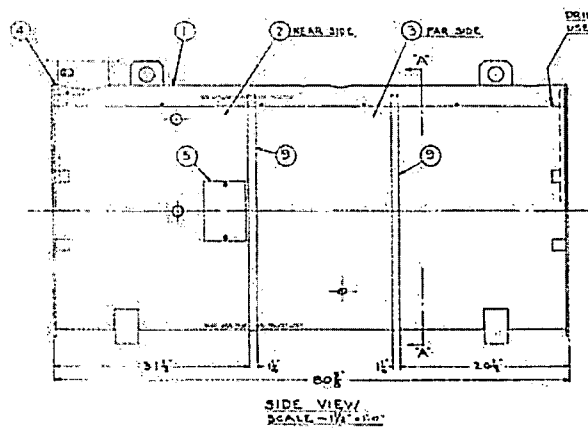
SEE AT 0000 11/11/56

BPM 000028

Rec. 705

B TABLE			
ITEM NO.	PART NO. MODEL P.	PART NO. MODEL M.	
1	107-154	107-160	5
2	107-155	107-163	5
3	107-154	107-170	5

ITEM NO.	PART NO.	DESCRIPTION
1	1	LADDING - TOP
2	1	LADDING - RIGHT SIDE
3	1	LADDING - LEFT SIDE
4	107-158	LADDING - VENT
5	107-171	COVER - INSPECTOR'S STAMPING
6	871-148	INSPECTOR'S ELEMENT MOUNTING ON 3/4" x 3/4" x 3/4" x 3/4"
7	871-148	INSPECTOR'S ELEMENT MOUNTING ON 3/4" x 3/4" x 3/4" x 3/4"
8	518-81	ADHESIVE MOUNTING ON 3/4" x 3/4" x 3/4" x 3/4"
9	518-81	BANDING 1800 - 1/4" WIDE - 0.015" THICK
10	518-81	SEAL BANDING - 1/4" WIDE - 0.015" THICK
11	841-571	SCREW SHEET METAL BANDING NO. 10 - 1/4" x 1/4" x 1/4"
12	841-571	SCREW SHEET METAL BANDING NO. 10 - 1/4" x 1/4" x 1/4"
13	841-571	SCREW SHEET METAL BANDING NO. 10 - 1/4" x 1/4" x 1/4"
14		
15		

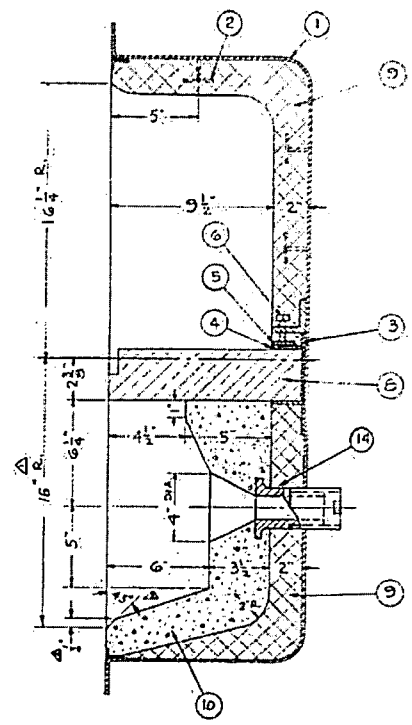
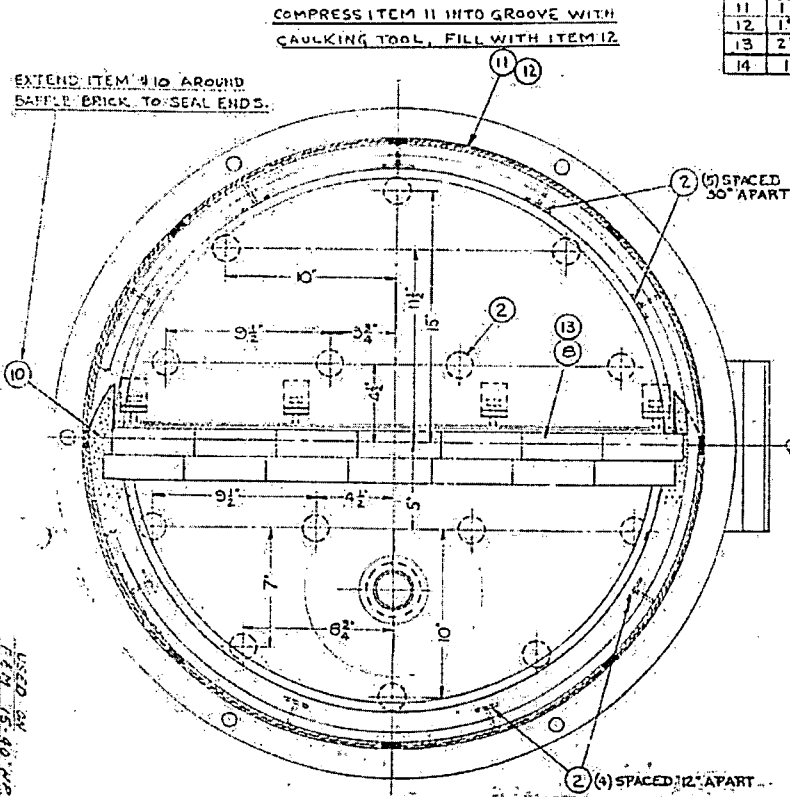


107-154	107-155	107-158	107-160	107-163	107-170	107-171	871-148	518-81	841-571
1	2	4	1	2	3	5	6	7	11
107-154	107-155	107-158	107-160	107-163	107-170	107-171	871-148	518-81	841-571
1	2	4	1	2	3	5	6	7	11

107-154	107-155	107-158	107-160	107-163	107-170	107-171	871-148	518-81	841-571
1	2	4	1	2	3	5	6	7	11
107-154	107-155	107-158	107-160	107-163	107-170	107-171	871-148	518-81	841-571
1	2	4	1	2	3	5	6	7	11

THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY.
IT IS LOANED TO YOUR OFFICE FOR YOUR INFORMATION AND USE ONLY. IT IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE CLEAVER-BROOKS COMPANY.

ITEM	REQD	PART NO.	DESCRIPTION
1	1	132-185	HEAD-REAR
2	23	963-137	PIN-INSULATION RETAINER - 1/4" LG. CUP SHAPED HEAD
3	1	872-61	BOARD-ASBESTOS - 1/4" x 4" x 34" J.M. #106
4	1	872-61	BOARD-ASBESTOS - 1/4" x 2" x 33" J.M. #106
5	1	871-53	BAR - 1/4" x 1/2" x 33" LG. H.R.
6	4	868-157	CAP SCREW-HEV. HD. 3/8" - 16 x 1 1/4" LG.
7	1	94-115	TILE
8	60	872-162	VEE-BLOCK MIX. (ASBESTOS)
9	150	872-96	REFRACTORY-CASTABLE-BAFFLECRETE (MEX-R CO)
10	1	853-348	ROPE-ASBESTOS 3PLY 1/4" x 105" LG. J.M. #4202
11	1	872-105	CEMENT ASBESTOS FURNACE
12	2	872-29	CEMENT, REFRACTORY FIREFRAX #1
13	1	94-143	CERAMIC SLEEVE



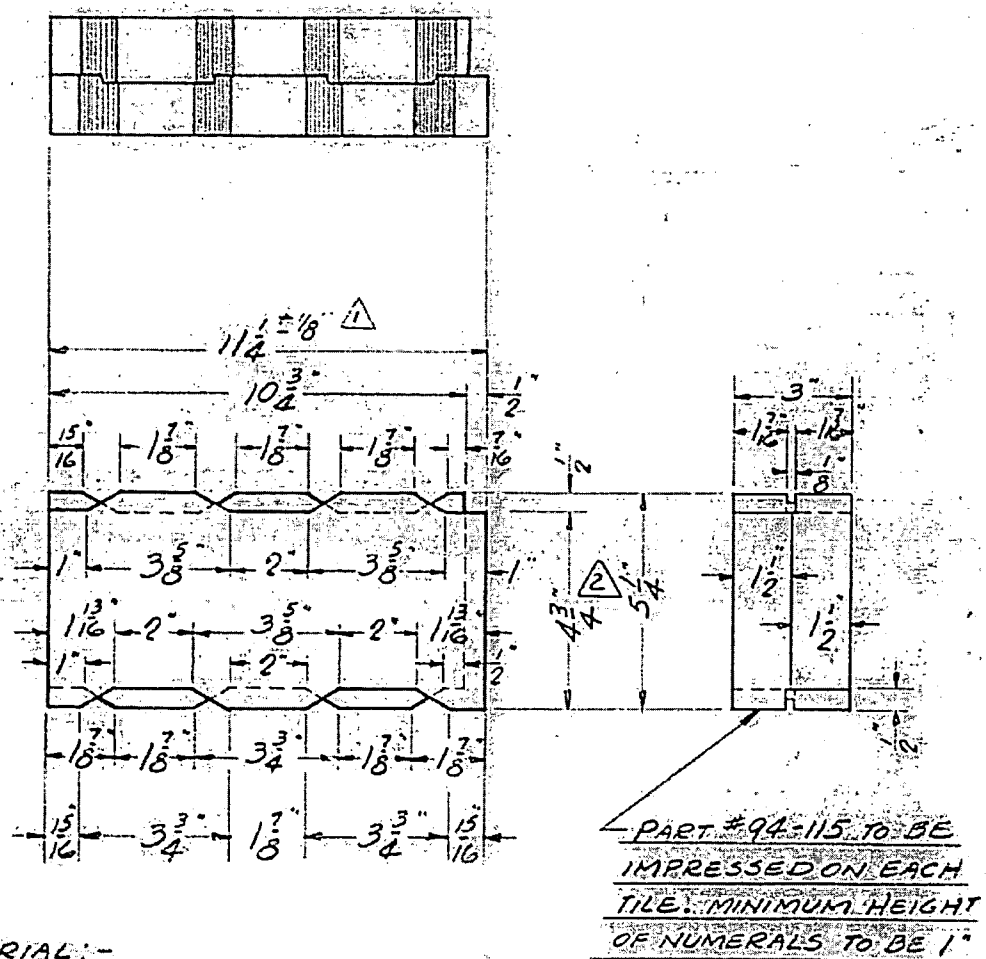
Rec. 707

BPM 000030

94-A115-2
 40 Sept 63

THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY
 IT IS SUBJECT TO CHANGE WITHOUT NOTICE, AND IS NOT TO BE COPIED OR USED IN ANY WAY DETRIMENTAL TO THE COMPANY.

NOTE:-
ALL TILE MUST BE UNIFORM IN SHAPE & DIMENSIONS.
THE TILE IN A SHIPMENT MUST MATE THE OTHER TILE
OF THE SHIPMENT & OF PRECEDING SHIPMENTS.



MATERIAL:-
SUPER DUTY REFRACTORY P.C.E. 34, # 872-97
REF.:- LACLEDE-CHRISTY CO., DWG. # 10498-BX
REF.:- MEXICO REFRACTORIES CO., DWG. # CL-192

REVISIONS	1	2-17-54	2	8-30-54	SCALE 1/4"	USED ON 465-68-D	
	REDRAWN & REVISED EN 4183/8/54		TOLERANCE ADDED		DATE 2-17-54	CLEAVER-BROOKS CO. MILWAUKEE, WISCONSIN	
	EN 4339E 9-30-54		DIM'S W/RE 3/8"		DRAWN RLS	TILE, REAR HEAD	
	EN 4628 12-27-54				CHECKED CGR	GB 15-40 INCL	
					SERIAL NO.	DWG. NO. 94A115-2	

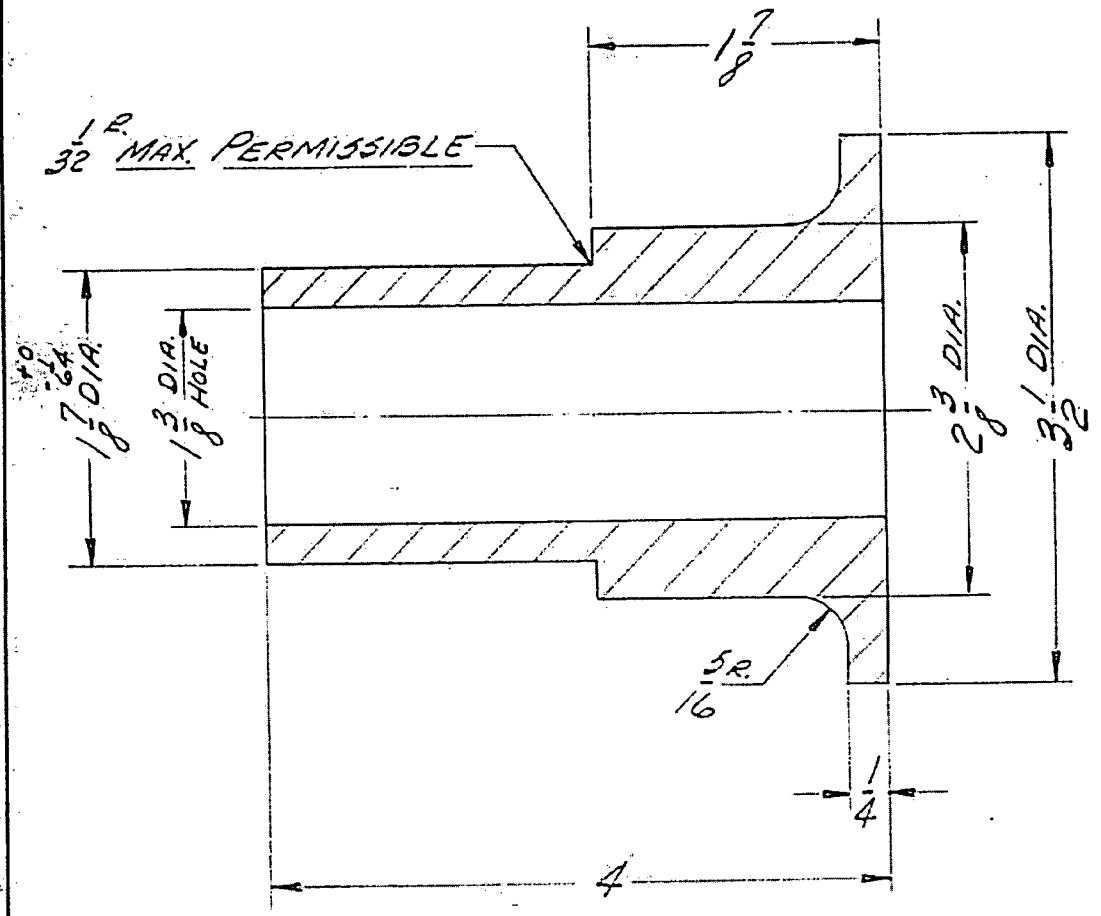
SUPERSEDES 94-115 7/18/54

94A143
 (M) Sept 63

THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY

IT IS SUBJECT TO CHANGE WITHOUT NOTICE, AND IS NOT TO BE COPIED OR USED IN ANY WAY DETRIMENTAL TO THE COMPANY.

TOLERANCE
 UNLESS OTHERWISE SPECIFIED:
 FRACTIONAL $\pm$ DECIMAL $\pm$



DU-CO CERAMICS CO.
 SAXONBURG PA.
 - FIREBRICK ENGINEERS
 MILWAUKEE

MATERIAL -
MOLDED CERAMIC
TO WITHSTAND 2500°F.

94A143

REVISIONS 10-12-56 10-29-56 (M)	SCALE FULL	CLEAVER-BROOKS CO. MILWAUKEE, WISCONSIN CERAMIC SLEEVE FOR LIGHT HOLE DRWG. NO. 94A143
	DATE 10-12-56	
	DRAWN D.G.D.	
	CHECKED V	
	APPROVED D.T.	

Rec. 710

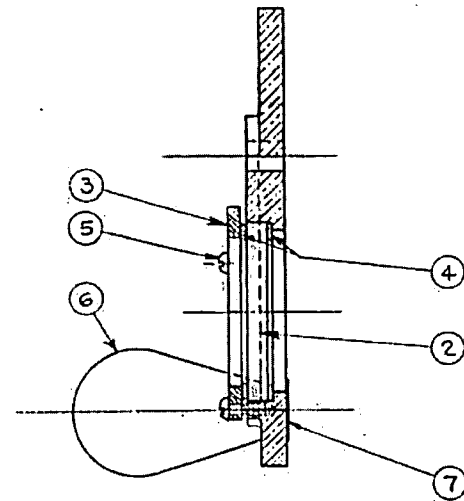
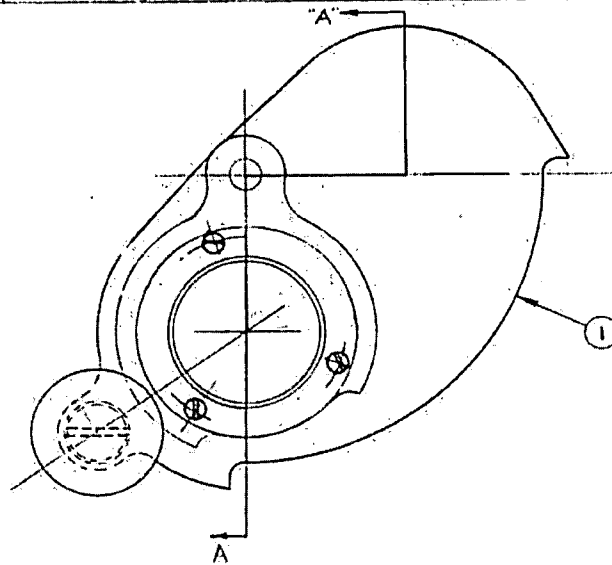
BPM 000033

① 10-13-53

THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY

IT IS TO BE KEPT IN THE OFFICE OF THE DESIGNER AND NOT TO BE LOANED, REPRODUCED, COPIED, OR IN ANY MANNER DISSEMINATED TO THE PUBLIC.

ITEM	REQD	PART N°	DESCRIPTION	WEIGHT RGM	FIN.	ITEM	REQD	PART N°	DESCRIPTION	WEIGHT RGM	FIN.
1	1	59-379	PLATE, PIVOT			6	1	865-18	HANDLE, PLASTIC, HARRY DAVIS Molding Co. "70"		
2	1	851-26	GLASS - PYREX 1 3/4" DIA. X 3/16 TH.			7	1	860-139	SCREW, MACH, RD. HD. 3/8-16 X 1" LG. STL.		
3	1	80-17	RING, RETAINER								
4	2	853-213	GASKET, ASBESTOS SHEET 1 3/4 O.D. X 1 7/8 I.D. X 1/16 TH.								
5	3	860-59	SCREW, MACH, RD. HD. #6-32 NC X 3/8" LG.								



SUPERSEDED
 BY DWG. 550-21
 DATE 10-7-63
 EN 9910

1 10-13-53 3-18-53 WAS 66-4321 2 12-1-53 WAS 20-16-8089 EN 4803 14-11-55	3 6-9-58 WAS 1/2" LG. EN 7487 6-12-58

550-24

SCALE 12" = 1'-0" DATE 7-30-53 DRAWN W.G. CHECKED W.G.	CLEAVER-BROOKS CO. MILWAUKEE, WISCONSIN OBSERVATION WINDOW ASSEMBLY C.B. BOILERS SERIAL NO. 350-24

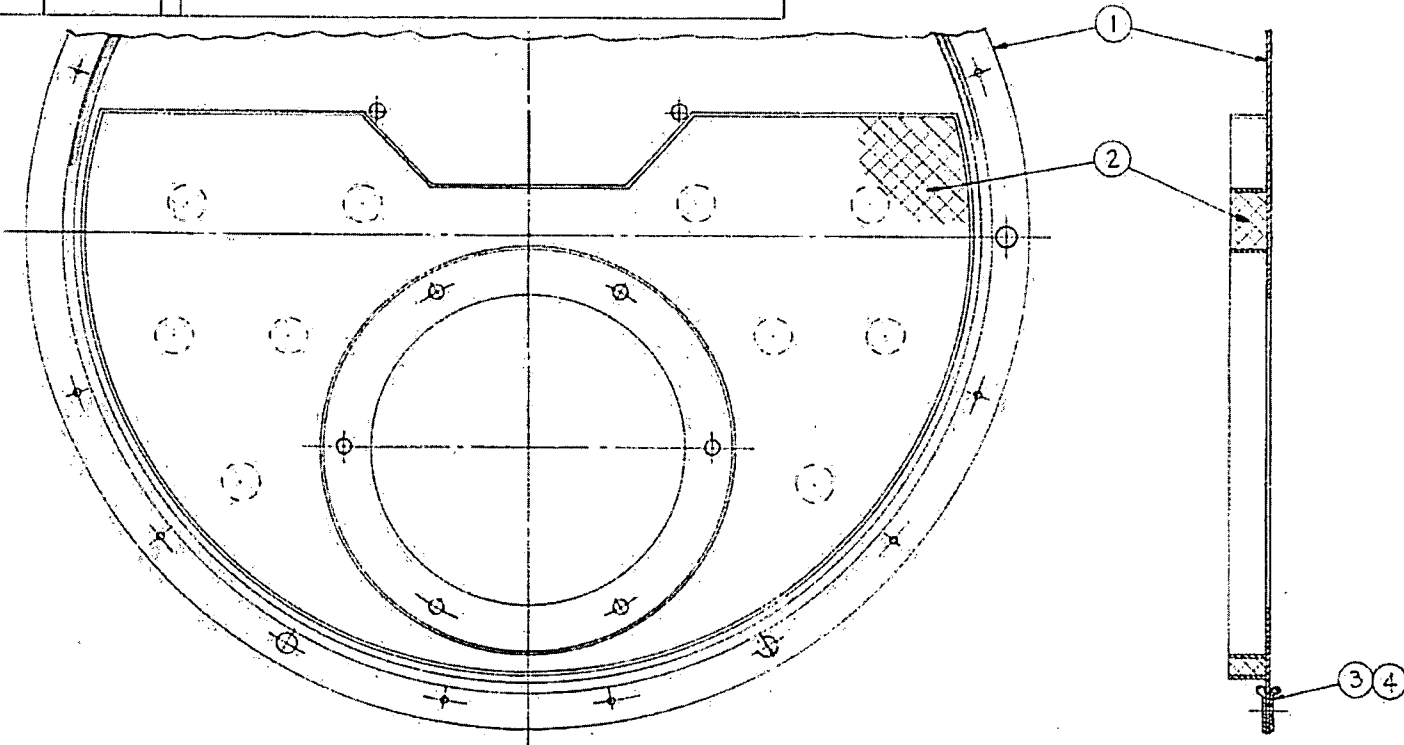
Rec. 711

BPM 000034

THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY
IT IS SUBJECT TO CHANGE WITHOUT NOTICE, AND IS NOT TO BE COPIED OR USED IN ANY WAY INFRINGING TO THE COMPANY.

ITEM	REQD.	PART NO.	DESCRIPTION
1	1	132-194	C PLATE HEAD FRONT
2	.50 $\frac{3}{4}$ "	872-162	V-BLOCK MIX (ASBESTOS)
3	12	841-494	RIVET-SPLIT- $\frac{3}{16}$ " DIA. x $\frac{3}{4}$ " LG.
4	2	32-442	A GASKET - HEAD
5			

TOLERANCE
UNLESS OTHERWISE SPECIFIED:
FRACTIONAL : DECIMAL :



REVISIONS	1. 7-24-57 2. ADDED REF TO MODEL M EN 7015 7-29-57

465-103

SCALE	3"=1'-0"
DATE	2-16-56
BY	M.E.G.
CHECKED	2/1
APPROVED	[Signature]

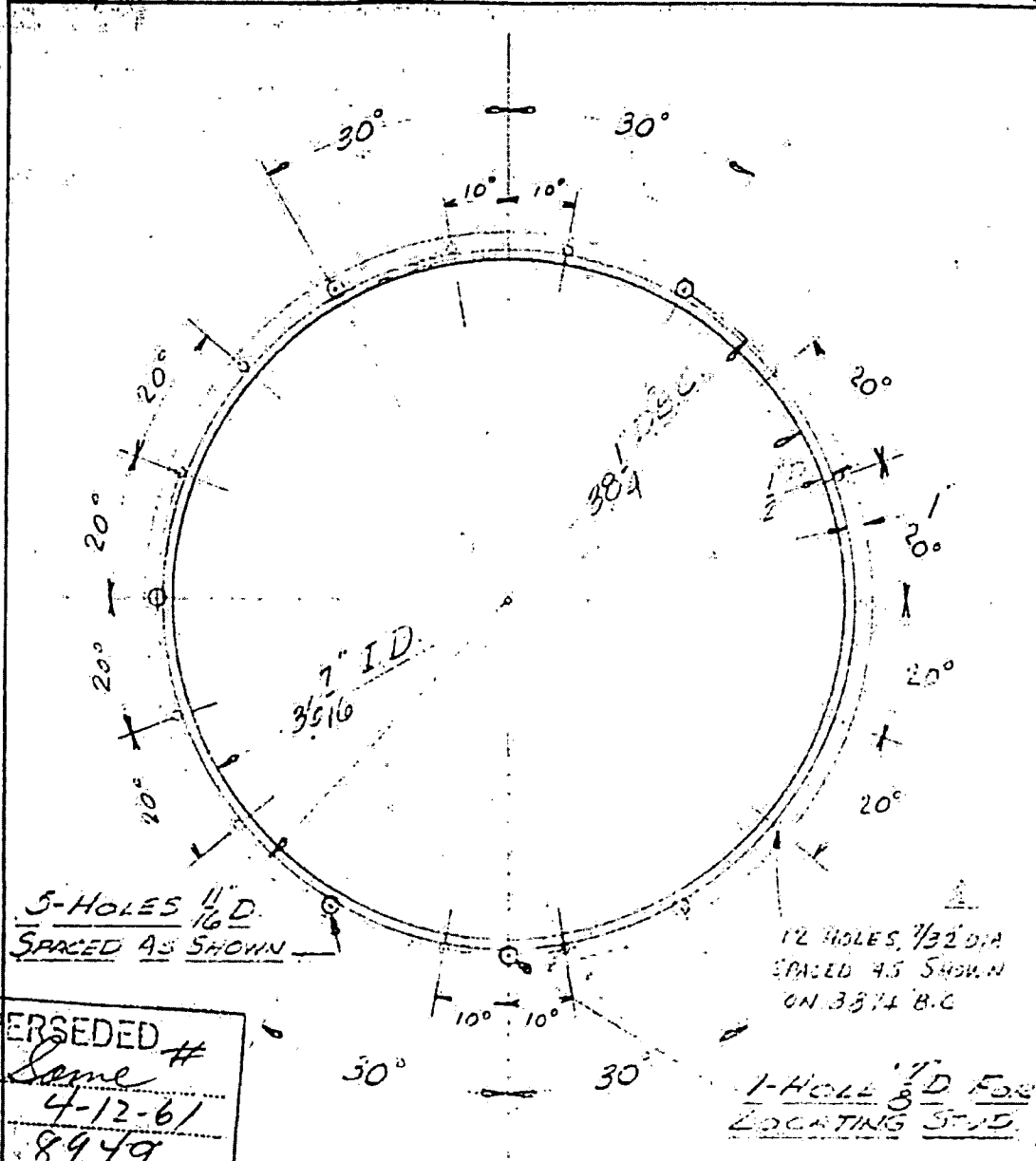
CLEAVER-BROOKS CO.
MILWAUKEE, WISCONSIN

PLATE-HEAD-FRONT-INSULATED

P4M 15 to 40 A

DRWG. NO. 465-103

THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY
IT IS SUBJECT TO CHANGE WITHOUT NOTICE, AND IS NOT TO BE COPIED OR USED IN ANY WAY DETRIMENTAL TO THE COMPANY.



5-HOLES $\frac{11}{16}$ \"/>

12 HOLES, $\frac{7}{32}$ \"/>

1-HOLE $\frac{7}{8}$ \"/>

RESEDED
Same #
4-12-61
8949

MATERIAL: J-M TADPOLE STYLE 112-125
SIZE NR. 3 - 451-325

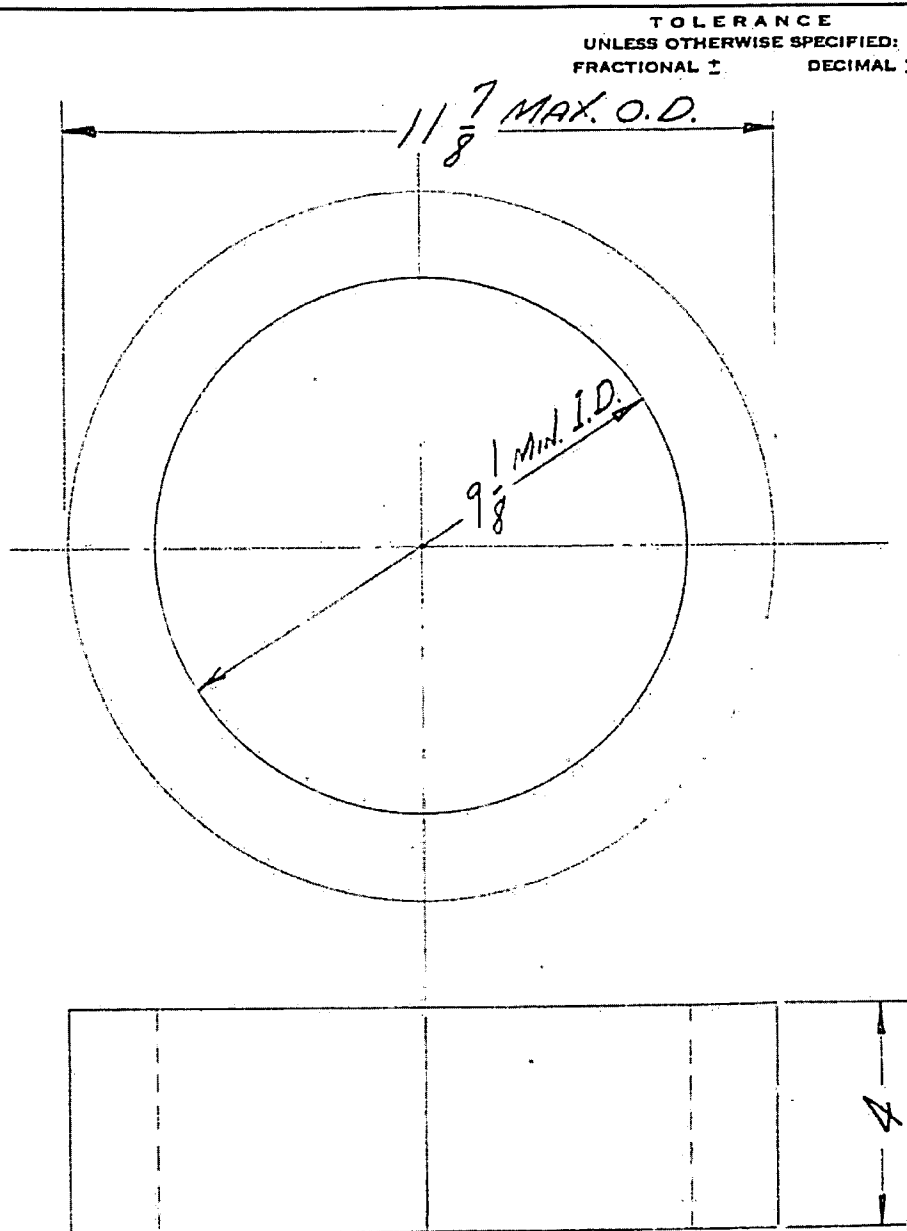
△ FURNISH WITH GRAPHITE IN GASKET BULB

USE W.T. 465-60 1557-115

REVISIONS	15-25-54	SCALE 1\"/>

THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY

IT IS SUBJECT TO CHANGE WITHOUT NOTICE AND IS NOT TO BE COPIED OR USED IN ANY WAY DETRIMENTAL TO THE COMPANY.



MATERIAL -
INSULATING REFRACTORY
2300 °F.

94-134

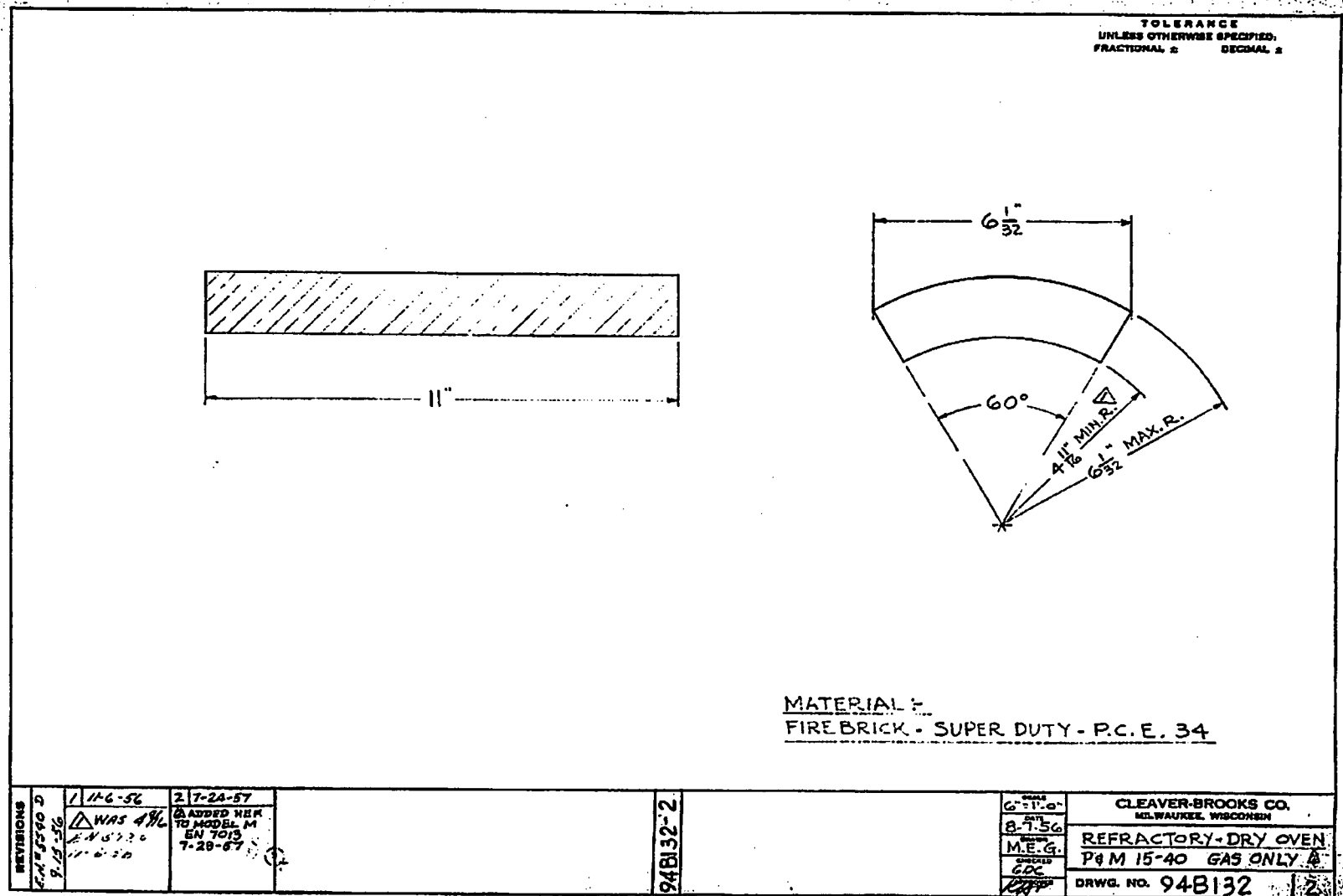
REVISIONS EN #5540 D 9-15-56	1. 7-24-57 ADDED REF. TO MODEL M EN 7013 7-29-57 (MM)	SCALE 3/8" = 1" DATE 8-6-56 DRAWN D.G.O. CHECKED GDC APPROVED DGP	CLEAVER-BROOKS CO. MILWAUKEE, WISCONSIN REFRACTORY, INSULATING P4 M-15 TO 40- GAS ONLY D DRWG. NO. 94-134

Rec. 714

BPM 000037

94B132

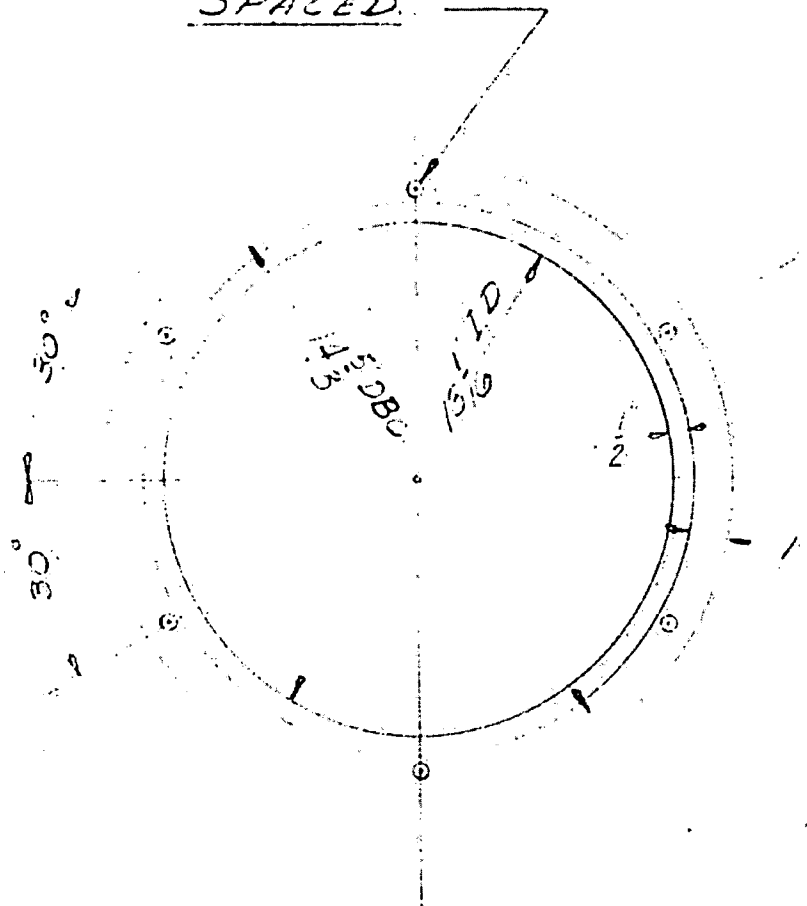
THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY
IT IS TO BE KEPT IN THE OFFICE OF THE ENGINEER IN CHARGE OF THE PROJECT AND NOT TO BE LOANED OR REPRODUCED WITHOUT THE WRITTEN PERMISSION OF THE COMPANY.



SEPA AT CECO, INDIANAPOLIS

THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY
IT IS SUBJECT TO CHANGE WITHOUT NOTICE, AND IS NOT TO BE COPIED OR USED IN ANY WAY DETRIMENTAL TO THE COMPANY.

6 HOLES $\frac{7}{16}$ " DIA. EQUALLY SPACED



MATERIAL: J-M TADPOLE-STYLE N#123
SIZE N# 3
853-365

SUPERSEDED

FURNISH WITH GRAPHITE ON GASKET BULB

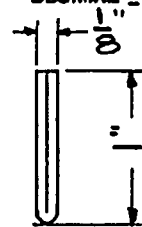
BY DWG. # Line # 1
DATE 4-12-61
EN 8949

REVISIONS	ISSUED 11/9/53	1 5-25-54	SCALE 3"=1'-0"	CLEAVER-BROOKS CO. MILWAUKEE, WISCONSIN	
	EN 4026	NOTE ADDED	DATE 7-24-55		
		EN 4026	DRAWN 5-25-54		GASKET- DRY OVEN GB-15 TO 40
		6-17-55	CHECKED 7-24-55		
			SERIAL NO.	DWG. NO. 32-443	

THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY

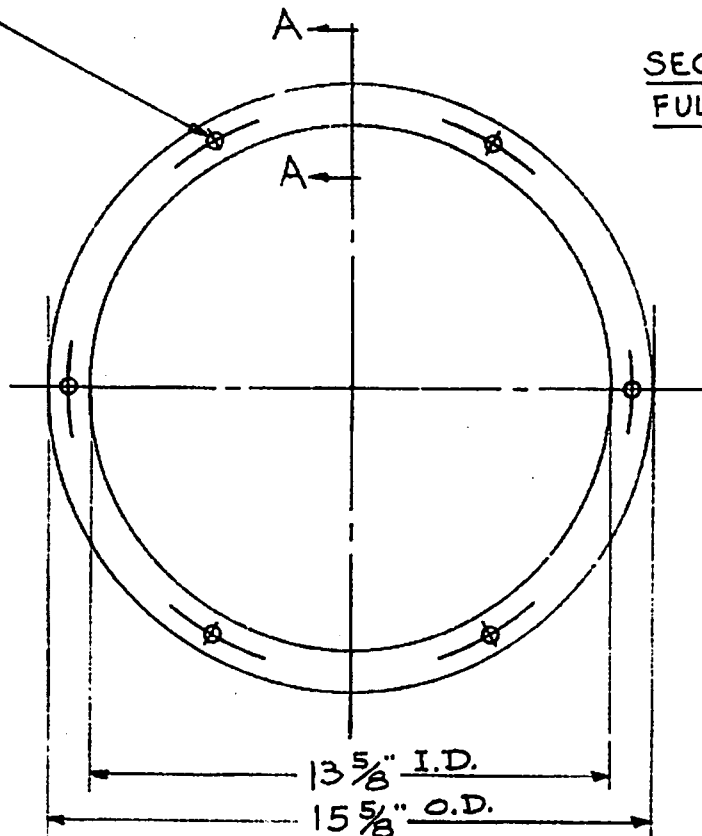
IT IS SUBJECT TO CHANGE WITHOUT NOTICE, AND IS NOT TO BE COPIED OR USED IN ANY WAY DETRIMENTAL TO THE COMPANY.

TOLERANCE
UNLESS OTHERWISE SPECIFIED:
FRACTIONAL $\pm$ DECIMAL $\pm$



6 HOLES $\frac{1}{16}$ " DIA. - 60° O.C.
ON $14\frac{5}{8}$ " DIA. B.C.

SECTION "A-A"
FULL SIZE

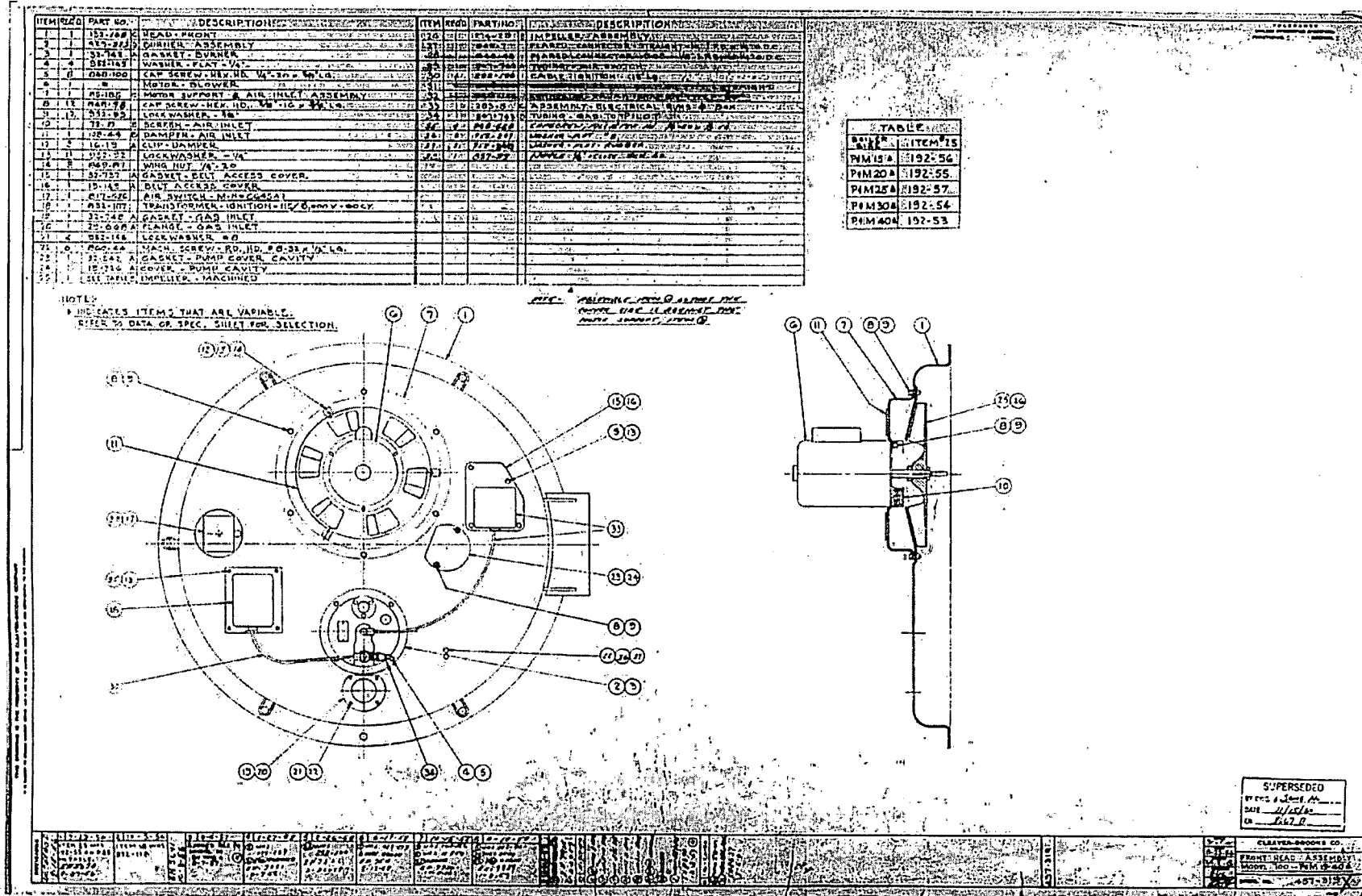


MATERIAL:- (AMERICAN GASKET)
KEARSARGE - WIRE INSERTED GASKET CLOTH
 $\frac{1}{16}$ " THK. - STYLE #656 RAYBESTOS MANHATTAN

REVISIONS	ENG 408 8-11-56	7-24-57 ADDED REF TO MODEL M EN 7013 7-20-57		SCALE 3"=1'-0"	CLEAVER-BROOKS CO. MILWAUKEE, WISCONSIN
				DATE 8-7-56	
				DRAWN M.E.G.	
				CHECKED JIA	
				APPROVED RFP	P&M 15-40
					DRWG. NO. 32-746

PE-20

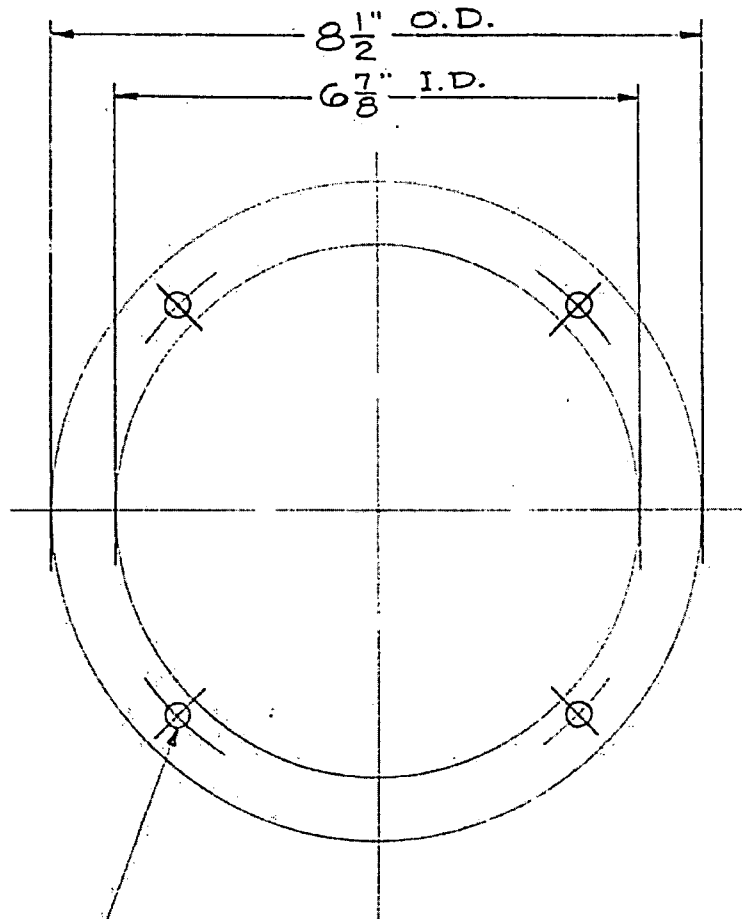
BPM 000039



THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY

IT IS SUBJECT TO CHANGE WITHOUT NOTICE, AND IS NOT TO BE COPIED OR USED IN ANY WAY DETRIMENTAL TO THE COMPANY.

TOLERANCE
UNLESS OTHERWISE SPECIFIED:
FRACTIONAL $\pm$ DECIMAL $\pm$



4 HOLES $\frac{5}{16}$ " DIA. - 90° O.C.
ON $7\frac{1}{2}$ " DIA. B.C.

MATERIAL:-

$\frac{1}{16}$ " THK. x $8\frac{1}{2}$ " O.D. x $6\frac{7}{8}$ " I.D. - JM STYLE 60

REVISIONS ENG 3/10/56 8-17-56	1 8-6-57	SCALE 6" = 1'-0"	CLEAVER-BROOKS CO. MILWAUKEE, WISCONSIN GASKET - BURNER PJM 15-40 A DRWG. NO. 32-742
	ADDED REF. TO MODEL M	DATE 7-10-56	
	EN TO 13 A	DRAWN M.E.G.	
	8-7-57	CHECKED 21A	
		APPROVED RJA	

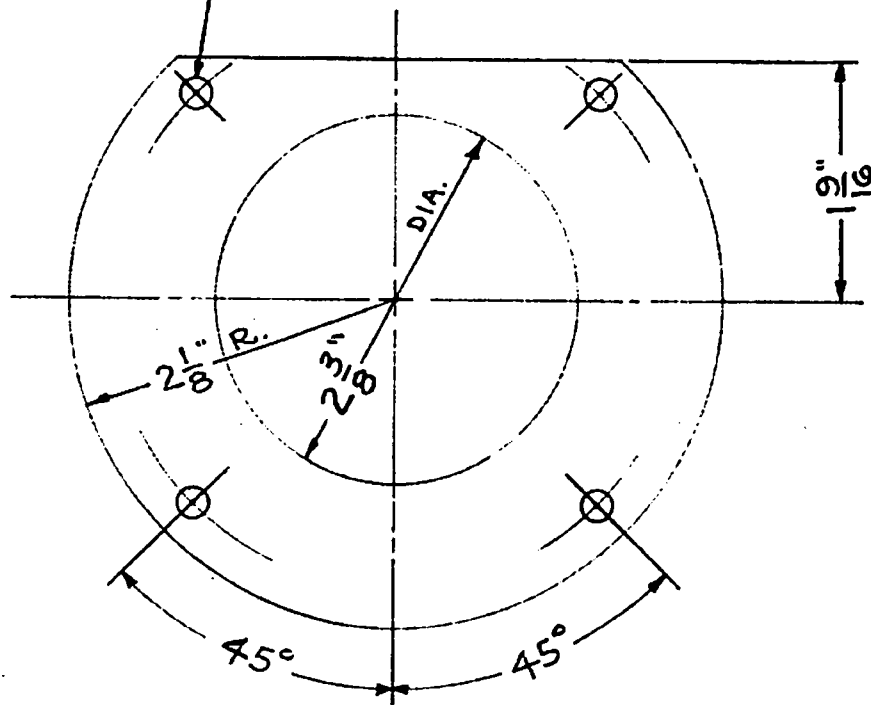
PC-20

THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY

IT IS SUBJECT TO CHANGE WITHOUT NOTICE AND IS NOT TO BE COPIED OR USED IN ANY WAY DETRIMENTAL TO THE COMPANY.

TOLERANCE
UNLESS OTHERWISE SPECIFIED:
FRACTIONAL $\pm$ DECIMAL $\pm$

4 HOLES $\frac{3}{16}$ " DIA. - 90° O.C.
ON $3\frac{3}{4}$ " DIA. B.C.



MATERIAL:-

1/8" THICK RAINBOW RED RUBBER #853-266

REVISIONS EN 3590 D 9-15-56	8-5-57 ADDED REF TO MOORE M EN 703A 8-7-57	SCALE FULL DATE 8-16-56 DRAWN M.E.G. CHECKED 8-23-56 APPROVED [Signature]	CLEAVER-BROOKS CO. MILWAUKEE, WISCONSIN GASKET- GAS INLET P&M 15-40A DRWG. NO. 32-748

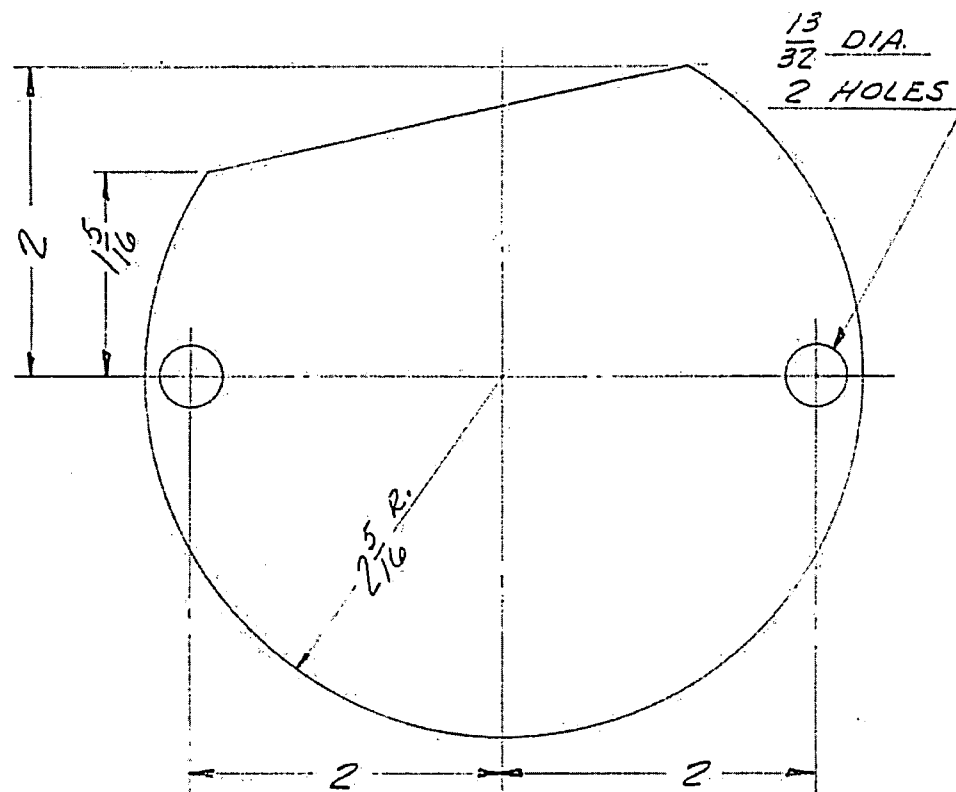
PZ-20

BPM 000043

32A542

2-19-54

THIS DRAWING IS THE PROPERTY OF THE CLEAVER-BROOKS COMPANY
IT IS SUBJECT TO CHANGE WITHOUT NOTICE, AND IS NOT TO BE COPIED OR USED IN ANY WAY DETRIMENTAL TO THE COMPANY.



MATERIAL
1/16 VELLUMOID GASKET

NOTE-
TO BE USED ON CAST FRONT HEAD 132-97(6)

W/L 22433

REVISIONS EN 4163 (M) 2-19-54	SCALE F.S.	CLEAVER-BROOKS CO. MILWAUKEE, WISCONSIN	
	DATE 2-15-54	GASKET COVER PUMP	
	DRAWN L.W.K.	Cavity - CB 15-40 - GAS ONLY	
	APPROVED EIR	SERIAL NO.	DRWG. NO. 32A5420

BPM 000044

855-177 GASKET, Hatchcock, 1/2" x 1/2" x 1/2"
3-1/2" chromid, 5/16" wide, 175
or 3/16" tk. Zn Pl. carbon stl. w/
abs. filler, 0-499 PSI, Phoenix
style F, Garlock Ty. SE, J-M 914 (70)

653-213 GASKET, Sight Hole Glass, 1/16
in. x 1-3/4 in. OD x 1-7/16 in. ID, JX
450 Service Sheet Packing, Graphited
U.S. Albion Asbestos Packings, Ltd.
Can. SP. Dep. 532-152-A

863-249 ROPE, ASBESTOS, Twisted,
5/8" dia. (Bulk Casket Matl.)
(144 per 100') J-M Thermo-Pac.
300 U.E., Albion Asbestos Packing
Ltd., CANADA 9/15/69

853-266 GASKET-PASTE, Rubber
sheet, 1/8" thk. x 72" wide x 200'
roll ASTM-D-735 Cl. A-205 standard
Durometer Hardness 75-85, temp. to
300°F. or equal 10/1/53

353-348 ROPE, 1/4" DIA., HIGH DENSITY,
600°F. MIN. TEMP. LIMIT, FIBERGLASS,
FILTEC HP 250, BENTLEY HARRIS 1/4"
ROPE 10-2-52

050-055 GACHES, Tedpole, S-15
Auto Graphite Coater, 1-1/2" O.D.
x .501" I.D., Garlock ThermoSil or
Sapco Fiberglass 10-22-80

53-395 GASKET, Papco 10-3-15
5lb Graphite Coated or Equal, 2" O.D.,
50' coil; Garlock Thermosil or
Sepco Fiberglass

872-26 CEMENT, Insulating.
Webers super 45 Alt. Eagle-Picher
Super #65

5/20/71.

272-29 CEMENT, Refractory, (Alumina)
(Application Range, 60° to 3000°)
Bulk (350# Drum) Firefrax #1 Alternate
Kaiser H169

572-47 - CEMENT, Refractory, Plastic
(Application Range, 600° to 3000°) 45#
Dunn, KAISER # H169 DENSE
(FOR PARTS USE ONLY) 4/21/82

672-51 INSULATION, 1/4 in. X 40 in.
X 48 in. LG. 13# CU. FT
DENSITY,
EAGLE RICHER SUPER GLASS BOARD
3-17-80

72-55 REFRACTORY, Furnas-Greco
Coarse Grade Mex-R-Co (100# bags)
P-314 A

7/15/64

872-97 TILE, Minitis, 3" x
5" x 11-1/4" Toledo-Christy

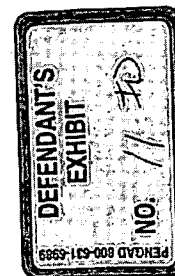
372-105 CEMENT, Asbestos
Furnace, Bulk (220/ Drum)
J-M Firite

372-144 INSULATION Blanket 2in
Thick x 36in Wide (100 ft. Wide)
1/2lb./Cu. Ft. Density Microlite
No. B305 Alt: Ultrafine Gulton
Bacon Type No. 501

872-145 I. ISOLATION Blanket 2in
Thick x 48in Wide (100ft. Rolls)
1/2lb./Cu. Ft. Density, MicroLite
No. B305. Alt: Ultrafine Guston
Sagca Type No. 501

872-162 REFRACTORY; Yco-Block Mix
Kaiser (50# Bags)

7/15/64



Name BOWATERS-CAROLINA CORPORATION

Street Address _____

City CATAWABA

State SOUTH CAROLINA

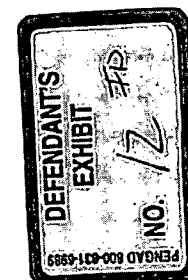
Model Number P-723-30S

Unit Number 0-18343

S. O. Number P-1170

C 10-689A

Rec. 739



Name: NATIONAL PROTEIN CORP.

Street Address: _____

City: CHAMPAIGN,

State: IL

Formerly:
American Milling & Refin'g.

Model Number: CB223-80, 150#

Unit Number: 0-18344

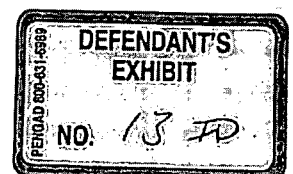
S. O. Number: 5549 Nov. 14, 1957

C-10-C87A

NATIONAL PROTEIN CORP. 1504
CHAMPAIGN, IL CR223-80
80-5549 0-18344

FILED CHAMPAIGN, ILL. JAN 10 1981

FILED
NUMERICALLY



From

FORM C21-624A

Date

Cleaver & Brooks

MILWAUKEE, WIS. 53201

Printed in U.S.A.

Attention of

Subject

*Enclosure**W/D 1030-1153**CR 773-80 D-18344*

MESSAGE

*1607 S. Neil St**Chicago 22**Enclosure per your request to our Service
Facility CR 773-80 Chicago**S. Don*

Signed

ANSWER

Signed

Date

SENDER—Keep Yellow part—Send White and Pink parts with carbon
Intact. If folded at Blue marks proper address will fit window envelope.

ANSWERGRAM

RECIPIENT—Detach stub and carbon. Keep White part. Return Pink
part. If folded at Red marks proper address will fit window envelope.

SPEED LETTER®

FROM

SYD SNOW

TO

CBBS

CB 223-80

SUBJECT

O-18344

FOLD

MESSAGE

DATE

1-4-78

19

PLEASE SEND 3 COPIES OF WIRING DIAGRAM TO

FRANK WALTERS

RELIABLE PLB & HTG

1607 S. NIEL ST.

CHAMPAIGN, IL

61820

SIGNED

THANKS,

Dann

REPLY

DATE

19

1630-1155

FOLD

SIGNED

CopyLine "SNAP-A-WAY" FORM 34-902 3-PARTY
WILSON JONES COMPANY • © 1961 • PRINTED IN U.S.A.

RETAIN WHITE COPY, RETURN PINK COPY. TURN OVER FOR USE WITH WINDOW ENVELOPE.

Cleaver & Brooks' DIVISION / aqua-chem, inc.

Inter-Organization Correspondence

To: File

Date: October 4, 1977

From: John Ilen

Subject: CB223-80
0-18344

The subject boiler/s is now located at National Protein Corporation, Champaign, Illinois.

Please change our Unit Book, customer file label, and Territorial Listing from American Milling & Refining Co., Monmouth, Illinois (Warren County), to read NATIONAL PROTEIN CORP., CHAMPAIGN, IL (Champaign County).

A 4" x 6" alphabetical cross-reference card will be required for:

National Protein Corp.
Champaign, Illinois

Fred W. Kramer & Assoc., Territory # 18 will remain the agent.

This file has been cleared of all superfluous papers by the writer and can be found filed numerically under the Unit number.


John Ilen

cc: L. Gelbert

B. Edwards

Fred W. Kramer & Assoc.

Cleaver & Brooks

DIVISION OF AQUA-CHEM, INC.

P.O. BOX 421, MILWAUKEE, WISCONSIN 53201

To: Milwaukee
Attention: Mr. John Iler
From: Fred H. Krimer & Associates, Inc.

Date: October 3, 1977
Subject: Ralph Wells & Company
National Protein Corporation
Champaign, Illinois
1 - CB290-80, 150#
Unit No. 0-18344

Gentlemen:

This is to advise that the subject boiler is now installed at
National Protein Corporation, 3004 N. Oak Street, Champaign,

Illinois.

Very truly yours,

RICHARD W. RIETZ Jr.
am
cc: Mr. Darrel Becker

KRIMER

January 16, 1974

WELLS Division of
National Pet Food Corp.
617 South O Street
Monmouth, Illinois 60007

Attention: Mr. Charles White

Gentlemen:

Subject: Cleaver-Brooks Boiler

CB223-80, 0-18344

P. O. 07974

FILE

We acknowledge and thank you for your order covering replacement parts for your Cleaver-Brooks boiler.

Your order has been forwarded to:

C-B Boiler Service Company
30 Hays Hill Road
Elk Grove Village, IL 60007

This company is our representative in your area and maintains complete parts stock and service. Future requests for quotations or orders should be forwarded to them for handling.

Very truly yours,

CLEAVER-BROOKS

Michael B. Wiken

MBW/ad

Cc: C-B Boiler Service
Harvey Fleischmann



DIVISION/NATIONAL PET FOOD CORPORATION

PURCHASE ORDER

617 SOUTH D STREET, MONMOUTH, ILLINOIS 61462

(309) 734-3121

PURCHASE ORDER NUMBER

07974

THIS NUMBER MUST APPEAR ON
ALL INVOICES, PACKAGES, PACK-
ING LISTS AND BILLS OF LADING.

CLEAVER BROOKS SERVICE DEPT.

P. O. BOX 421

Milwaukee, Wisconsin 53201

SHIP TO

Wells Division-Ingredient Plant
Monmouth, Illinois

INVOICE TO: SEE BELOW

DATE OF ORDER	SHIPPING DATE	SHIP VIA	R.F.A. NO.	F.O.B.
12/11/73	ASAP	Best Way		
REQUISITION NUMBERS		DEPARTMENT	TERMS	
313231		3rd St.		

QUANTITY	UNIT	ITEM DESCRIPTION	PRICE	UNIT	CHARGE NUMBER
1		#295-2 Valve Oil metering ass'y.			
2		24-38 Stem, metering valve #1			
3		908-113 Packing Kit, metering valve			
3		853-1 "O" ring metering valve, ass'y			
For 80hp boiler Model CB 223-80 Ser. No. 0-18344 Date 11-13-57					
THIS PURCHASE ORDER IS VOID AND INEFFECTIVE UN- LESS THE SELLER IS COMPLYING WITH EXECUTIVE ORDER NO. 11246 INCLUDING SECTION 202 (1) TO (7) (EQUAL OPPORTUNITY EMPLOYMENT UNDER FEDERAL CONTRACTS) AT THE TIME OF ACCEPTANCE OF THIS ORDER.					

☐ Not Confirming: Please Fill Order As Specified Above.☐ Confirming Only

For information concerning this order, please contact

IMPORTANT

All Invoices MUST Be Rendered In Duplicate To

All Taxes Must Be Shown Separately

Packing List Must Accompany All Shipments

This Order Must Be Acknowledged Immediately
Confirming Price And Delivery.

(See other conditions on reverse side)

INVOICE TO:

WELLS DIV./NATIONAL PET FOOD CORP.
617 SOUTH D STREET
MONMOUTH, ILLINOIS 61462PLEASE ENTER OUR ORDER FOR THE ABOVE MATERIALS SUBJECT
TO THE TERMS AND CONDITIONS PRINTED AND WRITTEN UPON THE
FACE HEREOF AND THE REVERSE SIDE TO WHICH YOU AGREE BY
YOUR ACCEPTANCE OF THIS ORDER.

WELLS DIVISION/NATIONAL PET FOOD CORPORATION

BY

Cleaver-Brooks Company
326 East Keefe Avenue
Milwaukee 12, Wisconsin

FIELD REPORT

Date JAN 7, 1958

Name RALPH WELLS & CO. (AMERICAN MILLING)
Address 6171 S. D. STREET
City & State MONMOUTH, ILL.
Telephone Number 615

Name and initials of owner, or General Manager, or General Superintendent, (one only) ADRIAN WELLS, RALPH (OWNER)

Model No. <u>CB-223-80</u>	REASON FOR CALL - (check one only)
Serial No. <u>0-18344</u>	Starting Service ☒
Pressure <u>HIGH</u> Max. W. P. <u>150</u>	Recheck on Starting ☐
If oil operation - state grade of oil <u>#2</u>	Customer Request ☐
If gas operation - state B. T. U. content of gas <u>1000 B.T.U.</u>	Agent Request ☐
	Milw. Request ☐
	Conversion ☐

All dimensions for the following to represent inches above lowest visible portion of gauge glass.

	Master Control	NEW GAUGE WATER	Auxiliary
Pump Off	<u>2 1/8"</u>	<u>1 7/8"</u>	
Pump On	<u>1 1/8"</u>	<u>1 1/8"</u>	
Low Whistle Alarm	<u>1 1/4"</u>	<u>3/4"</u>	
Low Water Cut-off	<u>1 1/4"</u>	<u>3/4"</u>	<u>3 1/4"</u> <u>1 1/4"</u>
Mfg.	<u>M. & M.</u>		

Combustion Test Results	Settings
Fire <u>CO2</u> <u>9.8</u> <u>13.6</u> <u>305 F</u>	Oper. Steam Press. <u>75</u>
<u>LOW</u> <u>9.8</u> <u>13.6</u> <u>305 F</u>	Relay Safety Timing <u>12</u> Sec
<u>HIGH</u> <u>9.7</u> <u>13.4</u> <u>305 F</u>	Safety Valve Setting
<u>GAS</u> <u>0.12</u>	

SERVICE CHECK LIST	
Blow down Valves - Shell	<u>1 REAR</u>
Blow down Valves - Columns	<u>1 EACH</u>
Operating Manual - Given to (initial & name)	<u>ADRIAN WELLS</u>
Verbal operating & maintenance instructions to	<u>R. GARNER, A. WELLS</u>
Boiler water treatment discussed with (initial & name)	<u>A. WELL</u>

Cleaver-Brooks Company
326 East Keefe Avenue
Milwaukee 12, Wisconsin

TIME AND TRAVEL

Date	From	To	Miles	Travel Time	Job Time
9/6	HOME	JOB	208	6 HRS.	
9/7	MOTEL	JOB	4	1/2 HR.	9
9/8	MOTEL	JOB	4	1/2 HR.	5
9/9	MOTEL	JOB	224	5 HR.	7

Is call to be paid for by customer?

If call is to be paid for by customer, Form No. 216 must accompany this report.

Accepted: Ralph Wells & Co.

By: Robert D. Wells

Ray B. Johnson
Field Representative

Note to Field Representative:

Because signatures are seldom legible, PRINT, on following line, name and initial of person signing report. A. R. WELLS

Note to Customer:

The following comments are a part of this report. Cleaver-Brooks Company suggest you initial the end of this report indicating comments have been read.

If customer desires copy of this report, so state here and give us initials, name, and title of person to whom same should be mailed.

Please Print: A. R. Initials WELLS Name PLANT ENG. Title

If new starting job, Supplemental form must accompany this report. In event unit is combination, use both oil and gas forms.

Comments, material changes, instructions to Milwaukee, etc., to be noted on following pages:

OMIT ALL - USE STARTING PAGE
WATER GAUGE GLASS COCK VALVE HOLDER
LEAKING AT JOINT, REPAIRED SAME, BUT
FEEL CUSTOMER SHOULD BE SENT A NEW ONE

Cleaver-Brooks Company
326 East Keefe Avenue
Milwaukee 12, Wisconsin

AS THIS ONE IS BADLY BEAT UP BY WORKING
ON IT. MICRO-SWITCH STICKING. TOO MUCH
PAINT!! REMOVED SAME. ^{PAINT} SWITCH WORKS FINE.

1-8-57 1-9-57

MODULATING MOTOR STICKING. WATER
GAUGE GLASS COCK LEAKING AGAIN.

INSTALLED M904F MOTOR & 927C RELAY
IN PLACE M904E MOTOR. ALSO REPLACED
GAUGE COCKS WITH SET OF HEAVY DUTY
COCKS.

SUPPLEMENTAL FIELD REPORT

CB-15 - 150 UNITS

Job Name RALPH WELLS & CO. (AMERICAN MILLING) Date JAN. 7, 1958
Model CB 223-80 Unit No. 0-18344 Pressure HIGH

Complete all items. If for any reason, readings of any one or more items cannot be taken, fill in after each item reason for non-completion.

1. Oil Suction Line Size 3/4"
2. Oil Return Line Size 3/4"
3. Length of Horizontal Suction Line Run 5.0'
4. Length of Vertical Lift of Suction Line EVEN
5. Type of Check Valve Used SWING CHECK
6. Where is Check Valve Located BETWEEN TERMINAL BLOCK & STRAINER AT BOILER
7. Inches of Vacuum at Terminal Block with Unit Running _____
8. How Fast Does Fuel Oil Pressure Come up to Running Pressure?
a. CB15-40 _____ No. of Seconds b. CB50-150 2 No. of Seconds
9. Is Fuel Supply Tank Above or Below Level of Boiler EVEN - WITH BOILER
10. Is There a Day Storage Tank or Any Other Means of Oil Storage Installed to Aid in Fuel Lighting? NO
11. Was Operator Shown How to Adjust Belts YES (Burner Motor to Fuel and Air Pumps)
12. Was Burner Removed Before Firing YES
13. Indicate Number and Sizes of
a. Nozzles Installed in Burner 2 1/4" b. Air Piping Nozzle (CB50-150) _____
14. Was Strainer (Fuel Oil) Removed from Body and Customer Shown How to Clean EXPLAINED
15. In Case of Strainer Built-in Fuel Pump Was Operator Told How to Remove and Clean _____
16. Was Ignition (Straight Electric) Explained to Operator with Burner Removed from Unit Shown How to Clean and Set Properly _____
17. Did Operator Remove Burner and Clean and Adjust Same YES (CHECKED WITH SERVICE MAN)
18. Was the Positive Positioning of Electrodes Explained to Operator Give Dimensions
a. From Nozzle Face to Electrode _____ b. From Center (Orifice Hole) to Electrode _____
19. In case of Gas or Oil-Fired Pilots, Was Front Door Opened (By Operator) and Pilot Removed CHECKED
a. Electrode Cleaned and Set YES b. Nozzles (Gas or Oil) Cleaned YES
c. Burner Tightened YES d. Size of Air Inlet Orifice FILLES IN PIPE
20. Were Inserts of Rajah Terminals Tightened YES
21. While the Front Door was Open, Did you Explain or Show the Following: Also Give Dimensions.
a. Burner Nozzle Position to Diffuser Plate YES 1/4" b. Plate, Diffuser, Position to Gas Ring FLUSH
c. Orifice, Scanner, Cleanliness for Good Sight of Flame YES
d. Gaskets, Importance of Sealing YES e. Wash Coaming Bracket YES
22. Was Scanner Removed and Functions of Same Explained to Operator YES Importance of Keeping Clean YES
23. Is Scanner Properly Aligned? YES

24. When Starting Unit Was Selector Switch Turned to Manual Position and Potentiometer in Closed Position? YES
a. At What Steam Pressure or Temperature Was Burner Turned to Automatic Position? 200° F. STACK

25. What CO₂ is Obtained on:
a. CB45-46 Lo Fire 13.6 = OIL 9.8 = GAS Hi Fire 13.4 = OIL 9.7 = GAS
b. CB50-150 1 2 3 4 5 6 7
8 9 10 11

26. Was Air Filter and Importance of Oil Level Explained to Operator? YES 27. Was Atomizing Air Pressure Adjustment Explained to Operator and its Effect on Lighting and Combustion? YES
28. Has Secondary Air Adjustment Been Explained to Operator and Effect on Lighting and Combustion? YES 29. Was Lube Oil Strainer Removed and Importance of Being Clean Explained? YES

30. Was Lube Oil Level - Max. and Min. - Explained? YES

31. Was Operation of Metering Oil Valve and Cam Explained to Operator? YES
a. Adjustment Screws in Cam for More or Less Oil YES b. Tightening Packing Screw on Metering Valve YES

32. Was Air Switch and its Interlocking with Fuel Oil Valve Explained? YES 33. Air Pressure Set at 6 #

34. Oil Pressure at Burner Set at Lo Fire 45 # Hi Fire 42 #

35. Air Pressure (Atomizing) Lo Fire 15 # Hi Fire 23 #

36. Gas Pressure for Pilot - a. Closed Solenoid Valve 7' b. Open Solenoid Valve 1"

37. Light Oil Pilot Pressure Set at _____ lbs.

38. Was Operation and Contact Cleaning of Fireys Explained and Demonstrated to Operator? YES
Fire Model No. 1008 Serial No. 57096378 Code 8

39. Safety Timing (Fireys) of Relay Drops Out (Flame Failure) _____ Sec. Latchout (Safety Switch Warps Out) _____ Sec.

40. Injector Operation YES 41. Water Level at 0" Glass of Water in Gauge Glass, There is _____" of Water Over Tubes.

42. Blower Motor Voltage 255 Blower Motor Current Draw 8 8 1/2 9 Amps
a. Fuses Used: Type OLD BOX Size 4 FUSES

43. Control Circuit Voltage 125 V.

44. Load on Unit (Circle One) Moderate Heavy Light 0 Extremely Light Extremely Heavy

45. Is Relief Door Tight? YES 46. Are Safety Valves Properly Piped and Provided with Proper Drains? NO

47. Are Column and Low Water Cutoff Blowdown Valves Tight? YES 48. Is Boiler Level? YES

49. Are Proper Blowdown Valves Provided on Jailer Shell? Front NO Rear YES

50. Feedwater Inlet Temperature 150° 51. Have All Handholes Been Tightened? CHECKED

52. Do Any Handholes Leak? NO 53. Has Unit Been Boiled Out? NO

54. If More Than One Unit, Does Each Unit Have Individual Section Line or Is it Common to Both? ONE UNIT

55. Have Low Water Readings Been Taken Under Pressure As Well as Cold? YES Are They Noted on Page One of Field Report? YES

56. If Day-Nite Control is Installed, Have They Been Set According to Customer's Requirements? NONE 57. Type of Return System Used RECEIVER + PUMP

58. Pressure Settings - Low Fire _____ Cut-In _____ Cut-Out _____
High Fire _____ Cut-In 72 # Cut-Out 80 #

COMBINATION GAS AND OIL OR STRAIGHT GAS

59. Was Customer Shown how to engage clutch in center of motor for oil operation? YES
and disengage clutch for gas operation? YES so compressor and oil pump will not run;

60. Does Gas Valve Close Tight on Shutdown? YES

61. Is there Combustion Noise on Gas Fire? NO

62. General Information:

1. Name of gas company ILLINOIS POWER CO.
2. B.T.U. value of gas 1000
3. Pressure in gas main 6"

63. Gas Piping System:

1. Gas Meter
 - Name AMERICAN METER CO. INC. (BASE PRESS. INDEX)
 - Size 80 B IRON CASE
 - Capacity 2500 CU. FT. @ 7" DIFF.
 - Gas Pressure Entering Meter 6"
 - Does meter furnish gas for any equipment other than this unit? NO
 - If so, describe briefly _____

2. Gas Piping
 - Length and Size of pipe from meter to regulator TWO REGULATORS
 - Length and Size of pipe from regulator to boiler 2"
 - Is gas line provided with filter? NO
 - Size of Cleaver-Brooks piping 2"

64. Gas Regulator:

1. Name EMCO SECOND REG.
2. Size 2" DELIVERS
3. Capacity 8" - 16"
4. Type 3 B BOILER
5. Regulator furnished and specified by _____
6. Is regulator properly piped? YES
7. If more than one unit, does each unit have individual regulators? YES
8. Gas pressure upstream of regulator 6"
9. Gas pressure downstream of regulator 1 1/2"
10. Is operation of regulator satisfactory? YES

65. Gas Booster:

1. Name _____
2. Size _____
3. Capacity _____
4. Booster furnished and specified by _____
5. Pressure at booster discharge _____
6. Does booster operate continuously or with starting and stopping of boiler? NO
7. Is operation of booster satisfactory? NO

66. Operating Gas Pressures:

1. Gas pressure at boiler - Low Fire _____
2. Gas pressure at boiler - High Fire 2"
3. Gas pressure at boiler - Lock-up _____
4. Gas pressure at boiler - On Pilot 8" PROPANE
5. Gas consumption - Low Fire 1220 C.F.P.H.
6. Gas consumption - High Fire 3340 C.F.P.H.

67. Operating Characteristics:

1. Is pilot adjustment critical? NO
2. Ignition gas impilot YES

February 7, 1958

Ralph Wells & Co.
617 S. D. Street
Pannouth, Illinois

Attention: Mr. Ralph Wells

Subject: Cleaver-Brooks Boiler Model CB 223-80
0-18300

Dear Mr. Wells:

We have recently received the field reports from field representative, Mr. Ray Behrens, covering the starting service on the subject boiler.

The purpose of rendering such starting service is to acquaint new owners or operators with the proper maintenance, function, and adjustment to their new equipment. We trust that matters have been handled to the satisfaction of all concerned and express our appreciation for the cooperation given Mr. Ray Behrens.

We are attaching copies of the field and supplemental field reports, covering the starting service on the subject boiler.

An operating and instruction manual has been left with Mr. Adrien Wells. It is most important for operators or supervisors to study this manual now, so that they learn the correct methods of handling this new equipment. The manual should also be reviewed regularly since it contains detailed information on many phases of boiler operation and maintenance which operators may refer from time to time.

I know you are well aware of the importance of the proper treatment of feedwater for your boiler; however, in attaching a copy of our printed comments regarding the treatment of boiler feedwater with the thought in mind that you might possibly wish to pass these comments on to the men to whom we have assigned the operation of your Cleaver-Brooks Boiler.

May I take this opportunity to thank you for again being able to serve you and to assure you of our continued interest in the operation of your Cleaver-Brooks Boilers.

With best personal regards to both yourself and Adrien, we remain

Very truly yours,

Respectfully,
Attn: (410-2639)
cc: Fred S. Kramer & Associates
Barrel Becker

CLEAVER-BROOKS COMPANY
Harold Probandt

CUSTOMER'S FILE

328 EAST KEEFE AVENUE

Cleaver Brooks

TELEPHONE WO 0878-2-0100

CABLE ADDRESS: CIEBRO

COMPANY

Abstract

INVOICE NO.

MILWAUKEE 12. WISCONSIN

71957

CUSTOMER'S ORDER NO.	DATE ENTERED	APPROXIMATE DELIVERY	AGENT	DATE SHIPPED	INVOICE DATE	SALES ORDER
A. R. WELLS	3/9/60			3/9/60	3/24/60	FP-8026

SOLD
TO

RALPH WELLS AND COMPANY
539 SOUTH THIRD STREET
MONTICELLO, IDAHO

SHI
TO

◎ 俗文化語彙

AMERICAN MILLING & BAKING CO.
VIA

TERMS: N/30 DATE OF INV

VIA

WINTER PARCEL SERVICE

TEMPERING POINT

FOREST PARK, ILLINOIS

PREPARE

ALP

ITEM NO.	QUANTITY ORDERED	DESCRIPTION	PART NO.	QUANTITY BACK ORDERED	QUANTITY SHIPPED	UNIT PRICE	AMOUNT
		FOR STEAM BOILER MODEL ER 223-89 UNIT 0-18344					
1	1	RELAY (EXCHANGE)	033-812ER		1	99.00	99.00
		MATERIAL RETURNED ON R.R. NO. 50422					
							2.97
							\$10.97

COMMISSION

326 EAST KEEFE AVENUE

Cleaver Brooks

MILWAUKEE 12, WISCONSIN

TELEPHONE Woodruff 2-0190

DZ

SALES ORDER NO. 25661

CUSTOMER'S ORDER NO.

ADRIAN WELLS

CREDIT MEMO

DATE

1-26-59

CREDIT NO.

59-82449

CREDIT TO

RALPH WELLS COMPANY
530 S. 3RD. STREET
MONMOUTH, ILLINOIS

SHIP TO

American Milling Co.
PET FOOD DIV.
RALPH WELLS CO.
617 S. D. STREET
MONMOUTH, ILLINOIS

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
WE CREDIT YOUR ACCOUNT TO ADJUST INVOICE #47991 DATED 1-20-59 AS FOLLOWS:			
WE BILLED YOU:			
ITEM 1	2 HOSE, METAL, 5/16" X 32" @10.20EA.	20.40	
	PLUS 2 1/2% ILLINOIS USE TAX	.51	
	PLUS PREPAID CHARGES	.94	
			31.85
SHOULD BE:			
ITEM 1	2 HOSE, METAL, 5/16" X 32" @10.20EA.	20.40	
	PLUS 2 1/2% ILLINOIS USE TAX	.51	
	PLUS PREPAID CHARGES	.94	
			21.85
	CREDIT DUE.....		\$10.00
FOR: STEAM BOILER MODEL CR223-80 UNIT NO. 0-18344			

Cleaver Brooks

TELEPHONE WO edraH 2-8100

32

MILWAUKEE 12, WISCONSIN

INVOICE NO. 47991

CUSTOMER'S ORDER NO.	DATE ENTERED	APPROXIMATE DELIVERY	AGENT	DATE SHIPPED	INVOICE DATE	SALES ORDER
ADRIAN WELLS	1-15-59	1-15-59	KRAHER	1-15-59	1-20-59	25661

SOLD TO RALPH WELLS COMPANY
520 S. 3RD STREET
NORTHMOUTH ILLINOIS

SHIP
TO:

PET FOOD DIV.
RALPH WELLS CO.
617 S. D. STREET
MONTGOMERY, ALABAMA

TERMS: N/30 - DATE OF INV

VIA

PARCEL POST SPECIAL DELIVERY

F.O.B. SHIPPING POINT						☒ PREPAID	☐ COLLECT
ITEM NO.	QUANTITY ORDERED	DESCRIPTION	PART NO.	QUANTITY		UNIT PRICE	AMOUNT \$
				BACK ORDERED	SHIPPED		
		FIRE STEAM BOILER MODEL C8223-BO UNIT # D-1836A			0		V ✓
1	2	HOSE, METAL, 5/16" X 22"	961-210		2	10.20	20.40
		PLUS TAX (ILLINOIS USE TAX)					.51
							20.91
		PLUS PREPAID CHARGES					.97
							\$21.88

COMMISSION

5% OF \$20.40

\$1.02

Recycling

THE "STANDARD CONDITIONS OF SALE" ON
REVERSE SIDE ARE PART OF THIS INVOICE

326 EAST KEEFE AVENUE

CUSTOMER'S FILE

Cleaver Brooks

TELEPHONE WD 0400 2-0100

CABLE ADDRESS: CLEBRO

COMPANY

MILWAUKEE 12, WISCONSIN

82

INVOICE NO. 57113

CUSTOMER'S ORDER NO.

2010

DATE ENTERED

12/21/59

APPROXIMATE DELIVERY

AGENT

DATE SHIPPED

12/22/59

INVOICE DATE

1-7-60

SALES ORDER

FP-1252

SOLD TO

RALPH BELLS AND COMPANY
530-600 S. THIRD ST. P.O. BOX 315
MONMOUTH, ILLINOIS

SHIP TO

RALPH BELLS AND COMPANY
PET FOOD DIVISION
617 SOUTH 10TH STREET
MONMOUTH, ILLINOIS

American Milling & Refining

TERMS: N/30 DATE OF INV

VIA

UNITED PARCEL SERVICE

SHIPPING POINT

FOREST PARK, ILLINOIS

PREPAID

COLLECT

ITEM NO.	QUANTITY ORDERED	DESCRIPTION	PART NO.	QUANTITY BACK ORDERED	QUANTITY SHIPPED	UNIT PRICE	AMOUNT
		FOR STEAM BOILER					
		MODEL CB 22310					
		UNIT C-1634					
1	12	HANDHOLE GASKETS	853-191	12		.60	7.20
		PLUS 3% ILLINOIS STATE TAX					.22
							7.42
		PLUS PREPAID CHARGES					.37
							7.79

COMMISSION

CUSTOMER'S FILE

Cleaver Brooks *02*

325 EAST KEEFE AVENUE

TELEPHONE WP edraft 2-0100

COMPANY

MILWAUKEE 12, WISCONSIN

INVOICE NO. **54463**

DS

CUSTOMER'S ORDER NO.

DATE ENTERED

APPROXIMATE DELIVERY

AGENT

DATE SHIPPED

INVOICE DATE

SALES ORDER

1487**4-28-59****KRAMER****4-28-59****5-6-59****FP 5533**

SOLD TO

**RALPH BELLS AND COMPANY
530 S. THIRD ST.
MOMMOUTH, ILLINOIS**

SHIP TO

SAME

TERMS: N/30 DATE OF INV.

VIA

UNITED PARCELSHIP TO
SHIPPING POINT**FOREST PARK, ILLINOIS**

PREPAID

COLLECT

ITEM NO.	QUANTITY ORDERED	DESCRIPTION	PART NO.	QUANTITY BACKS ORDERED	QUANTITY SHIPPED	UNIT PRICE	AMOUNT
		FOR: STEAM BOILER CB 223-80 UNIT D-1834					
		THERMOMETER STACK	937-28			18.95	18.95
						PLUS PREPAID CHARGES	17
							19.32
						PLUS 2% ILLINOIS USE TAX OF \$18.95	47
							\$19.73

COMMISSION

5% OF \$18.95**\$0.95**

CUSTOMER'S FILE

315 EAST KEEFE AVENUE

Cleaver Brooks

TELEPHONE WD adraft 2-0100

MILWAUKEE 12, WISCONSIN

INVOICE NO. 25079

CUSTOMER'S ORDER NO.	DATE ENTERED	APPROXIMATE DELIVERY	AGENT	DATE SHIPPED	INVOICE DATE	SALES ORDER NO.
1095 10-15-57	10-15-57 (10-29-57)		KRAMER & ASSOC.	11-14-57	11-19-57	5549

SOLD TO
RALPH WELLS & COMPANY
P. O. BOX 555
MONMOUTH, ILLINOIS

SHIPPED TO
AMERICAN MILLING & REFINING COMPANY
617 SOUTH 1ST ST.
MONMOUTH, ILLINOIS

TERMS: 2/10 - DATE OF INV.

F. O. B. SHIPPING POINT

MILWAUKEE, WIS.

VIA

CUSTOMER PICK UP

CS 223-80

150 H

6-18-57

PREPAID ☐COLLECT ☐

ITEM NO.	QUANTITY ORDERED	DESCRIPTION	PART NO.	QUANTITY		UNIT PRICE	AMOUNT
				BACK ORDERED	SHIPPED		
1	1	CB200-80 CLEAVER-BROOKS STEAM BOILER, UNIT NO. 0-18344, 2760# OF STEAM PER HOUR CAPACITY, 80 B.H.P., CONFORM TO THE ASME CODE FOR 150# DESIGN PRESSURE, WITH LIGHT OIL BURNING EQUIPMENT FOR OPERATION WITH #2 COMMERCIAL STANDARD CS12-58, HAVING A MAXIMUM VISCOSITY OF 50 SSU AT 100° F., INCLUDING GAS BURNING EQUIPMENT AND FULLY AUTOMATIC IGNITION, INSULATED AND LAGGED, ELECTRIC CURRENT, 220 VOLT, 3 PHASE, 60 CYCLE, AUXILIARY LOW WATER CUTOFF INJECTOR.			1	LOT	
		GAS PRESSURE REGULATOR, BY F.M. KRAMER & ASSOC.					
		PRICE F.O.B. MILWAUKEE, WISCONSIN				6,230.00	\$6,230.00

INVOICE IN DUPLICATE

PLEASE PAY BY INVOICE. MONTHLY STATEMENTS ARE NOT FURNISHED. INTEREST CHARGED ON OVERDUE ACCOUNTS. SELLER REPRESENTS THAT WITH RESPECT TO THE PRODUCTION OF THE ARTICLES AND/OR THE PERFORMANCE OF THE SERVICES COVERED BY THIS INVOICE IT HAS FULLY COMPLIED WITH SECTION 12 (A) OF THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED.

COMMISSION DUE	AMOUNT

326 EAST CEEFE AVENUE

Cleaver Brooks

MILWAUKEE 12, WISCONSIN

TELEPHONE Woodruff 2-0100

SALES ORDER NO.

CUSTOMER'S ORDER NO.

CREDIT MEMO

DATE
11-19-57

CREDIT NO.
57-79535

CREDIT
TO

FRED W. KRAMER & ASSOC.
128-138 S. PAULINA ST.
CHICAGO 12, ILLINOIS

SOLD
THRU
TO

RALPH WELLS & CO.
MORRIS, ILLINOIS

Quantity

DESCRIPTION

UNIT PRICE

AMOUNT

WE CREDIT YOUR ACCOUNT FOR COMMISSION ON ITEMS LISTED
ON INVOICE #25079, DATED 11-19-57, AS FOLLOWS:

1	CB200-80, 150# D.P., LIGHT OIL, GAS FIRED, INSULATED & LAGGED.	6,030.00	COMM. 15%	904.50
1	AUX. LOW WATER CUTOFF; 1- INJECTOR.	225.00	COMM. 15%	33.75
1	GAS PRESSURE REGULATOR TO BE PROVIDED BY YOU.	50.00		50.00
		<u>6,305.00</u>		<u>988.25</u>
	ACTUAL SELLING PRICE	6,305.00		
	PRICE TO CUSTOMER	6,230.00		
	SHORTAGE	75.00	YOU TO ABSORB 1/2 C-B TO ABSORB 1/2	37.50
				<u>\$950.75</u>

CUSTOMER FILE

Rec-762

INTER-OFFICE CORRESPONDENCE

Cleaver Brooks

COMPANY
MILWAUKEE 12, WISCONSIN

TO Milwaukee
ATTENTION Mr. E. D. Langley
FROM Fred W. Kramer & Associates

DATE October 18, 1957

SUBJECT
American Milling & Refining Co.
Monmouth, Illinois
1-GB-200-80, 150#

Dear Ed:

We are enclosing Purchase Order No. 1095 which we received from Ralph Wells & Company for the subject job for which we have previously sent you the Purchase Order Supplement.

The price breakdown is as follows:

1 - GB-200-80, 150# d.p. Cleaver-Brooks Steam Boiler - \$6,030.00
Injector - - - - - 130.00
Auxiliary low water cutoff - - - - - 95.00
Gas pressure regulating (by K&A) - - - - - 50.00
6,305.00
Order received F.O.B. Milwaukee - - - - - 6,230.00
Shortage - - - - - 75.00

Mr. Fred Kramer will discuss this shortage with you in the near future.

You will note that our office will furnish the gas pressure regulator. We would appreciate it if you will kindly acknowledge and invoice the customer for this item and credit our commission accordingly.

Very truly yours,

HR/eb
Enc.

R. RIETZ

MASTER SHEET

SALES ORDER 5349 SHIPPING DATE REQUIRED 11/11 APPROX DATE 10/17/57

FIRM NAME AMERICAN MILLING & REFINING CO. SHIP TO 11

MONMOUTH, ILLINOIS

Routing _____

QUANTITY 1 MODEL CB 200-80 H.P. 80

DATE _____ CHANGE ORDER _____

DES. PRESS. 150 OPER. PRESS. 125 POPS 150

DESIGNED FOR ILLINOIS STATE ALTITUDE 700 ft.

FUEL 2 OIL and 1 NAT. GAS BTU 0 W.C. 0

CURRENT 220/3/60 COLUMN: LEFT RIGHT

BOILER FEED: PUMP CONT. X WATER FEED _____

WATER PRESSURE _____ INS. & LAG. YES.

DR. WTE SYSTEM: YES _____ NO X

LOW OPER. PRESS. _____ HEAT LOAD _____

INSURANCE: HARTFORD FIRE INS. CO.

RETURN SYSTEM: YES _____ NO X

PUMP ASSY. _____ H.P. 0 PSI

RECEIVER ASSY. _____ FOR _____ H.P.

PRINTS 5

DIMENSION 1/8 FEED PUMP

WELDING 1 RECEIVER _____

OIL PUMP _____

QUICK OPENING B.O. VALVE	NO. _____	SIZE _____	MAKE _____	FIG. _____
SLOW OPENING B.O. VALVE	NO. _____	SIZE _____	MAKE _____	FIG. _____
MAIN STEAM VALVE	NO. _____	SIZE _____	MAKE _____	FIG. _____
NON RETURN VALVE	NO. _____	SIZE _____	MAKE _____	FIG. _____
FEED VALVE, GLOBE	NO. _____	SIZE _____	MAKE _____	FIG. _____
FEED VALVE, CHECK	NO. _____	SIZE _____	MAKE _____	FIG. _____

MISCELLANEOUS: FURNISH Full Size Water Column Blowoff Valve. FURNISH Intermediate Pressure Kneader Valve. FURNISH Blower L.W.C.O.

Witness Test _____

CO. 9A _____

Rec 764

Don E. Smith
SALES DEPARTMENT

PURCHASE ORDER

REC'D OCT 18 1957

Ralph Wells & Company

No. 1095

530-600 South Third Street / P.O. Box 555

Monmouth, Illinois

Telephones 615 - 616 - 617

October 15, 1957

Cleaver-Brooks Company

Kramer & Associates

128 South Paulina St.

Chicago 12, Illinois

Attn: Mr. J. E. McKeegan

Ship To: Will Call

Via

Delivery: November 4, 1957

Quan.	Article No.	Description
1	CB-200-80	Cleaver Brooks Steam Boiler and accessories as described on Proposal CB-4193 dated October 15, 1957

References: National Bank of Monmouth
Second National Bank of Monmouth
Monmouth Trust & Savings Bank
Rock Co. National Bank, Janesville, Wis.
Capital and Surplus: \$350,000.00

RALPH WELLS & CO.

by

Alvin R. Wells

Rec 765

PROPOSAL

Cleaver-Brooks

MILWAUKEE 12, WISCONSIN • • • CABLE ADDRESS - CLEBRO

Page 1 of 1 Pages

To Ralph Wells & Company, Attention: Mr. Adrian Wells Proposal No. CB-4193
 Address 530 S. Third Street, Monmouth, Illinois Date October 15, 1957
 SUBJECT: Ralph Wells & Co.
AMERICAN MILLING & REFINING COMPANY Your Reference No. Fred W. Kramer & Associates
128 S. Paulina Street
Chicago 12, Illinois

1 CB-200-80

Cleaver-Brooks Steam Boiler, to operate on No. 2 or lighter fuel oil and gas. To develop a maximum of 2,760 pounds of steam per hour, from and at 212° F., or approximately 80 H.P. Boiler to be of 4-pass construction and have a total of 405 square feet of heating surface. Built to conform to A.S.M.E. Code for 150 pounds design pressure. Boiler shell insulation consisting of 2" fibre glass blanket covered by a sheet metal lagging is included. An oil pump with capacity of twice the maximum burning rate of the burner will be mounted on the boiler front head. Boiler to be furnished in accordance with Specification Sheet No. 2326 attached and also including an injector, gas pressure regulating valve, and auxiliary low water cutoff.

PRICE: F.O.B. MILWAUKEE, WISCONSIN. - - - - - \$5,230.00

Shipping	<u>Will call</u>	Current	<u>220/3/60 (motors)</u>	Approximate	
Terms		Characteristics	<u>110/1/60 (controls)</u>	Shipping Weight	<u>8,500 lbs.</u>
Payment			Approximate Shipment after Receipt		
Terms	<u>Net 30 days</u>		of Order and Complete Details		<u>November 4, 1957</u>

THE TERMS AND CONDITIONS OF SALE PRINTED ON THE REVERSE SIDE OF THIS SHEET, UNLESS EXPRESSLY EXCEPTED HEREIN, ARE PART OF THIS PROPOSAL.

THIS PROPOSAL IS SUBJECT TO CHANGE OR WITHDRAWAL WITHOUT NOTICE. PRICES QUOTED SHALL BE FIRM FOR THIRTY (30) DAYS FROM DATE OF PROPOSAL UNLESS OTHERWISE SPECIFIED. ANY EXTENSION OF TIME IS SUBJECT TO APPROVAL OF COMPANY. IF ACCEPTED BY THE PURCHASER IT SHALL BECOME A CONTRACT WHEN APPROVED AT MILWAUKEE, WISCONSIN, BY AN AUTHORIZED COMPANY REPRESENTATIVE AND MAY THEN BE MODIFIED BY WRITTEN AGREEMENT ONLY. NO STATEMENTS OR UNDERSTANDINGS RELATING TO THE SUBJECT MATTER, OTHER THAN THOSE SET FORTH HEREIN, SHALL BE BINDING ON CLEAVER-BROOKS COMPANY HEREINAFTER REFERRED TO AS THE "COMPANY".

PROPOSAL FURNISHED BY:

FRED W. KRAMER & ASSOCIATES

J. E. McKegay
J. E. MCKEGAY

RR/eb

Date ACCEPTED: October 12, 1957Milwaukee, Wis. 1957Ralph Wells & Co.

APPROVED FOR CLEAVER-BROOKS COMPANY

By Adrian R. Wells

PURCHASER

Rec. 766

CB-4193

PURCHASE ORDER SUPPLEMENT FOR CLEAVER-BROOKS BOILERS

Agency: Fred W. Kramm &
Associates
Salesman: J. E. McKeegan

To Purchaser:

The information on this form will be used by the Cleaver-Brooks Company to construct the boiler you have ordered. Please check the data to be sure that all information is correct. Later revisions may require rework and necessitate extra charges.

1. JOB NAME American Milling & Refining Company
2. SHIP TO Same
617 South "D", Monmouth, Illinois
3. INVOICE TO Ralph Wells & Company
4. ORDER NO. 1095 SHIP VIA Rail ☒ Truck ☒ Prepaid Collect
(If none shown, shipment will be made best way, collect)
5. SHIPPING DATE At once (Earliest Acceptable) DATE DESIRED 10/28/57 TYPE OF INDUSTRY Feed Mill
6. BOILER SELECTION: Quantity 1 Model CB-200-80 Design Pressure 150^{PSI} H.P. 80
7. Type of Fuel: No. 2 Oil (100 Series) ☒ No. 2 Oil and Gas (200 Series)
(Check One) No. 5 Oil (500 Series) No. 5 Oil and Gas (300 Series)
No. 6 Oil (600 Series) No. 6 Oil and Gas (400 Series)
Gas (700 Series) Type of Gas: ☒ Natural Mfg. LP
8. Steam or Hot Water: ☒ Steam 125^{PSI} Max. Operating Pressure Hot Water Max. Temperature
9. Safety or Relief Valve Setting: 150
10. Current Characteristics: 220 Volts 3 Phase 60 Cycle Wire Altitude: 700 ft.
Note: Control Circuit on CB Boilers is 115/1/60
11. Water Column Position: CB Boilers Right Side Only, LR Boilers Right Left
12. Construct To: Illinois State or Provincial Code, and Hartford Fire Insurance Company
Note: Above affects Boiler Shell only - Local Codes affecting Burner or Trim must be noted under Miscellaneous

13. DRAWING REQUIREMENTS: Are Drawings Required ☒ Yes ☐ No
If "Yes" State: 1 Quantity ☒ Dimension ☒ Wiring ☐ Oil Pump ☐ Boiler Feed System
14. Are Drawings Required for Approval ☐ Yes ☒ No
Note: If approval is required, units will not be placed into production until approved prints have been received.

15. EXTRA PRICE EQUIPMENT: Boiler Feed Water Control: ☒ Pump Control ☐ Water Feeder (15 pound Units Only)
(See Price Sheet)
16. Day-Night Control: ☐ Yes ☐ No Auxiliary Low Water Cutoff: ☒ Yes ☐ No
17. Alarm Bell: ☐ Low Water ☐ Flame Failure ☐ Mounted ☐ Loose
18. Indicating Lights: ☐ Yes ☐ No (Describe Function) _____
19. Control Circuit Transformer:(Applies only to CB Boilers): ☐ Yes ☐ No ☐ Mounted ☐ Loose
20. High Pressure Boiler for Low Pressure Operation: ☐ Yes ☐ No
If Checked "Yes," is Steam Outlet ☐ 150 pounds or ☐ 300 pounds.
is Injector Required ☐ Yes ☐ No
Steam Gauge and Pressure Controls for ☐ 15 pounds or ☐ 150 pounds

21. Insulation and Metal Jacket: ☒ Yes ☐ No. Future Gas Conversion: ☐ Yes ☐ No
22. Boiler Feed System: ☐ Pump Model ☐ Motor HP for ☐ PSI.
23. ☐ Receiver Size for ☐ Boiler Horsepower.
24. Accessory Valves: ☐ Yes ☐ No ☐ Shipped Loose ☐ Mounted
- | | | | | |
|--------------------------|------------|------------|------------|------------|
| Quick Opening B.O. Valve | Qty. _____ | Size _____ | Make _____ | Fig. _____ |
| Slow Opening B.O. Valve | Qty. _____ | Size _____ | Make _____ | Fig. _____ |
| Main Steam Valve | Qty. _____ | Size _____ | Make _____ | Fig. _____ |
| Non Return Valve | Qty. _____ | Size _____ | Make _____ | Fig. _____ |
| Feed Valve, Globe | Qty. _____ | Size _____ | Make _____ | Fig. _____ |
| Feed Valve, Check | Qty. _____ | Size _____ | Make _____ | Fig. _____ |

25. MISCELLANEOUS:
1. Attach Fred W. Kramer & Associates nameplate.
 2. Three (3) copies of Manufacturers' Data Report.
 3. Full size water column blowoff valve.
 4. Injector.

A. R. K.

(Agent's Signature)

(Customer's Signature)

Escalator

1095

10/15/57

Ship:

APPROX. NOV. 4

S.O. #5519

Date:

10/15/57

PRICE WORK SHEET

Sold To:

Ralph Wells Company

P.O. Box 551
Monmouth, Illinois

Ship To:

American Milling & Refining Company

617 South "D"
Monmouth, Illinois

1 CB 300-80 150# #2 OIL & NAT GAS

220/3/160 INSOL & LAG

6030

1 AUXILIARY LOW WATER CUT OFF

95

1 INJECTOR

130

1 GAS PRESSURE REGULATOR 134

F. W. KRAMER & ASSOCIATES

50

ACTUAL SELLING PRICE

1.230

SHORTAGE 75

FOB incl
plus freight

K SHORTAGE 12 CB 60 #2 OIL AGENT

add to agents company

Terms NET 30 DAYS

Freight T. ROCK (PREPAID)

Commission KRAMER (ACD)

Clause

F-2

By Burt H. H. 10/21/57

C-1492

REC-769

S.O. 5549
Unit Q-18344

American Oil & Refining Co.
Monmouth, Illinois 414

CB 80
150# W.P.

FORM P-2 MANUFACTURERS' DATA REPORT FOR ALL TYPES OF BOILERS EXCEPT WATER-TUBE
As Required by the Provisions of the ASME Code Rules 524-234

C18-71A

1. Manufactured by Cleaver-Brooks Company, Milwaukee, Wisconsin
2. Manufactured for Stock
3. Type Internally Fired Boiler No. 10,028 5331 Year Built 1957
(H.R.T., Loco., Compact, Marine) (Mfr. Serial No.) (State and State No.) Natl. Board No.
4. The chemical and physical properties of all parts meet the requirements of material specifications of the ASME Boiler Code. The design, construction, and workmanship conform to ASME Rules, Section I (I, II, III, or V)
- Remarks: Manufacturer's Data Records properly identified and signed by Commissioned Inspectors, have been furnished for the following items of this report:

(Name of Part—Item number, manufacturer's name, and identifying stamp)

We certify the statement in this data report to be correct.

Date June 18 1957 Signed Cleaver-Brooks Co. (By E. J. Rissman)
(Manufacturer) (Representative)

Certificate of Authorization Expires December 31 1958

CERTIFICATE OF BOILER SHOP INSPECTION

H.S.B. 10,028

Insurance Companies' Serial Number

BOILER WORKS OF Cleaver-Brooks Company at Milwaukee, Wisconsin

I, the undersigned, inspector of steam boilers employed by Hartford Steam Boiler Inspection & Insurance Co.

of Hartford, Conn., have inspected the boiler referred to as data items 1-11 incl. & 19-24 incl. A 18

and have examined manufacturer's data for items None
and certify that the material, construction, and workmanship are in accordance with the ASME Boiler Code Rules.

DATE June 18 1957 H. G. Bennett Commissioned NB 1268
H. G. Bennett State or Natl. Board and No.

CERTIFICATE OF FIELD ASSEMBLY INSPECTION

I, the undersigned, inspector of steam boilers employed by _____
of _____, have compared the statement in this manufacturer's data report with the completed boiler and certify that parts referred to as data items _____

not included in certificate of shop inspection, are in accordance with the requirements of the ASME Boiler Code. The completed boiler was inspected and subjected to a hydrostatic test of _____ psi.

DATE June 18 1957 Commissioned _____ State or Natl. Board and No. _____

1 48 10 1

5. Boiler Shells or Drums: No. _____ Dia. _____ Length _____ Ft. _____ (In. Dia. _____ Length _____ Ft. _____)

SA-272C Flange Steel 5/16" Inland

6. Shell Plates: _____ (For each Drum, state Steel Manufacturer's Brand; Material Specification Number; Thickness)

7. (a) Longitudinal Joint: Fusion double welded butt _____ (Seamless, Fusion or Forge Welded, Riveted-Lap or Butt-Single, Double, Triple or Quadruple)

90

(b) Rivets: _____ Rivet Holes: _____ Eff. of Long. Joint: _____ (As compared to shell plates)

SA285C F.B. 1/2"

8. (a) Tube Sheet: _____ Reinforcement: _____ Rivets: _____ Fillet weld: _____ (No. Rows: Max. Spec. No.; Hole Diam. and Pitch)

2.520"

(b) Tube Holes: _____ Pitch: _____ (Longitudinal and Girth) _____ Eff. of Tube Ligament: _____ (Compared to shell plates)

9. Girth Joints: Fusion double welded butt _____ Rivet Holes: _____ No. of Courses: _____ (Seamless, Fusion or Forge Welded, Riveted-Lap or Butt)

10. Heads: SA-178A, 57, Str. 2-1/2" 10'-1-5/8" 105"

11. Boiler Tubes: No. _____ Dia. _____ Length _____ Gage _____ (Max. Spec. No.; Straight or Bent) (Of various, give maximum and minimum lengths) (or thickness)

12. Handways: No. _____ Heads or Ends: _____ Hydro. Test: _____

13. Mid Drums: No. _____ Heads or Ends: _____ Hydro. Test: _____

14. (a) Waterwall Bundles: No. _____ Heads or Ends: _____ Hydro. Test: _____

(b) Tube Holes: _____ Tubes: _____ Gage: _____ Heating Surface: _____

15. (a) Superheater Headers: No. _____ Heads or Ends: _____ Hydro. Test: _____

(b) Tube Holes: _____ Tubes: _____ Gage: _____

Shape or Name	Material Spec. No.	Type	No.	Size	Welded or Seamless	Total Net Area	Flg. R-28 L-1	Dia. Tubes in Shell	Area to be Stayed	Max. S.V.P.
(a) F.H. above tubes	SA 31	Disc	2	1-1/4	Weldless	3.50		15	170	100.7
(b) R.H. above tubes	SA 31	Disc	2	1-1/4	Weldless	3.50		15	170	100.7
(c) F.H. below tubes										
(d) R.H. below tubes										
(e) Through below tubes										
(f) Down tubes										

17. Staybolts: _____ Pitch: _____ Name S.V.P.: _____

18. (a) Dimple Disc: _____ Longitudinal Seam: _____ Eff.: _____ How secured to shell: _____

(b) Dimple for shell: _____ Head: _____

19. (a) Forweld: No. _____ Size: _____ Length, each Section, feet: _____ In. row: _____ In. Total: _____ Plain _____ (No. Dia. or L x V x H) (Plate, Addition, or Cor.)

1. 13 13/16"

SA55 595"

Seamless

(b) Section: _____ Location: _____ (Brand, Max. Spec. No.; Thickness) (Seamless, Fusion or Forge W., Riveted, Lap or Butt) (Seam)

1 @ 3" half coupling

1 @ 2" welding flange

20. Openings: (a) _____ (b) Safety Valve _____ (c) Feed _____ (d) Blowoff _____ (e) Return Connections _____ (f) Manholes _____ (g) Handholes _____ (h) Relief Valve _____ (i) _____ (j) _____ (k) _____ (l) _____ (m) _____ (n) _____ (o) _____ (p) _____ (q) _____ (r) _____ (s) _____ (t) _____ (u) _____ (v) _____ (w) _____ (x) _____ (y) _____ (z) _____ (aa) _____ (ab) _____ (ac) _____ (ad) _____ (ae) _____ (af) _____ (ag) _____ (ah) _____ (ai) _____ (aj) _____ (ak) _____ (al) _____ (am) _____ (an) _____ (ao) _____ (ap) _____ (aq) _____ (ar) _____ (as) _____ (at) _____ (au) _____ (av) _____ (aw) _____ (ax) _____ (ay) _____ (az) _____ (ba) _____ (bb) _____ (bc) _____ (bd) _____ (be) _____ (bf) _____ (bg) _____ (bh) _____ (bi) _____ (bj) _____ (bk) _____ (bl) _____ (bm) _____ (bn) _____ (bo) _____ (bp) _____ (bq) _____ (br) _____ (bs) _____ (bt) _____ (bu) _____ (bv) _____ (bw) _____ (bx) _____ (by) _____ (bz) _____ (ca) _____ (cb) _____ (cc) _____ (cd) _____ (ce) _____ (cf) _____ (cg) _____ (ch) _____ (ci) _____ (cj) _____ (ck) _____ (cl) _____ (cm) _____ (cn) _____ (co) _____ (cp) _____ (cq) _____ (cr) _____ (cs) _____ (ct) _____ (cu) _____ (cv) _____ (cw) _____ (cx) _____ (cy) _____ (cz) _____ (da) _____ (db) _____ (dc) _____ (dd) _____ (de) _____ (df) _____ (dg) _____ (dh) _____ (di) _____ (dj) _____ (dk) _____ (dl) _____ (dm) _____ (dn) _____ (do) _____ (dp) _____ (dq) _____ (dr) _____ (ds) _____ (dt) _____ (du) _____ (dv) _____ (dw) _____ (dx) _____ (dy) _____ (dz) _____ (ea) _____ (eb) _____ (ec) _____ (ed) _____ (ee) _____ (ef) _____ (eg) _____ (eh) _____ (ei) _____ (ej) _____ (ek) _____ (el) _____ (em) _____ (en) _____ (eo) _____ (ep) _____ (eq) _____ (er) _____ (es) _____ (et) _____ (eu) _____ (ev) _____ (ew) _____ (ex) _____ (ey) _____ (ez) _____ (fa) _____ (fb) _____ (fc) _____ (fd) _____ (fe) _____ (ff) _____ (fg) _____ (fh) _____ (fi) _____ (fj) _____ (fk) _____ (fl) _____ (fm) _____ (fn) _____ (fo) _____ (fp) _____ (fq) _____ (fr) _____ (fs) _____ (ft) _____ (fu) _____ (fv) _____ (fw) _____ (fx) _____ (fy) _____ (fz) _____ (ga) _____ (gb) _____ (gc) _____ (gd) _____ (ge) _____ (gf) _____ (gg) _____ (gh) _____ (gi) _____ (gj) _____ (gk) _____ (gl) _____ (gm) _____ (gn) _____ (go) _____ (gp) _____ (gq) _____ (gr) _____ (gs) _____ (gt) _____ (gu) _____ (gv) _____ (gw) _____ (gx) _____ (gy) _____ (gz) _____ (ha) _____ (hb) _____ (hc) _____ (hd) _____ (he) _____ (hf) _____ (hg) _____ (hh) _____ (hi) _____ (hj) _____ (hk) _____ (hl) _____ (hm) _____ (hn) _____ (ho) _____ (hp) _____ (hq) _____ (hr) _____ (hs) _____ (ht) _____ (hu) _____ (hv) _____ (hw) _____ (hx) _____ (hy) _____ (hz) _____ (ia) _____ (ib) _____ (ic) _____ (id) _____ (ie) _____ (if) _____ (ig) _____ (ih) _____ (ii) _____ (ij) _____ (ik) _____ (il) _____ (im) _____ (in) _____ (io) _____ (ip) _____ (iq) _____ (ir) _____ (is) _____ (it) _____ (iu) _____ (iv) _____ (iw) _____ (ix) _____ (iy) _____ (iz) _____ (ja) _____ (jb) _____ (jc) _____ (jd) _____ (je) _____ (jf) _____ (jg) _____ (jh) _____ (ji) _____ (jj) _____ (jk) _____ (jl) _____ (jm) _____ (jn) _____ (jo) _____ (jp) _____ (jq) _____ (jr) _____ (js) _____ (jt) _____ (ju) _____ (jv) _____ (jw) _____ (jx) _____ (jy) _____ (jz) _____ (ka) _____ (kb) _____ (kc) _____ (kd) _____ (ke) _____ (kf) _____ (kg) _____ (kh) _____ (ki) _____ (kj) _____ (kk) _____ (kl) _____ (km) _____ (kn) _____ (ko) _____ (kp) _____ (kq) _____ (kr) _____ (ks) _____ (kt) _____ (ku) _____ (kv) _____ (kw) _____ (kx) _____ (ky) _____ (kz) _____ (la) _____ (lb) _____ (lc) _____ (ld) _____ (le) _____ (lf) _____ (lg) _____ (lh) _____ (li) _____ (lj) _____ (lk) _____ (ll) _____ (lm) _____ (ln) _____ (lo) _____ (lp) _____ (lq) _____ (lr) _____ (ls) _____ (lt) _____ (lu) _____ (lv) _____ (lw) _____ (lx) _____ (ly) _____ (lz) _____ (ma) _____ (mb) _____ (mc) _____ (md) _____ (me) _____ (mf) _____ (mg) _____ (mh) _____ (mi) _____ (mj) _____ (mk) _____ (ml) _____ (mm) _____ (mn) _____ (mo) _____ (mp) _____ (mq) _____ (mr) _____ (ms) _____ (mt) _____ (mu) _____ (mv) _____ (mw) _____ (mx) _____ (my) _____ (mz) _____ (na) _____ (nb) _____ (nc) _____ (nd) _____ (ne) _____ (nf) _____ (ng) _____ (nh) _____ (ni) _____ (nj) _____ (nk) _____ (nl) _____ (nm) _____ (nn) _____ (no) _____ (np) _____ (nq) _____ (nr) _____ (ns) _____ (nt) _____ (nu) _____ (nv) _____ (nw) _____ (nx) _____ (ny) _____ (nz) _____ (oa) _____ (ob) _____ (oc) _____ (od) _____ (oe) _____ (of) _____ (og) _____ (oh) _____ (oi) _____ (oj) _____ (ok) _____ (ol) _____ (om) _____ (on) _____ (oo) _____ (op) _____ (oq) _____ (or) _____ (os) _____ (ot) _____ (ou) _____ (ov) _____ (ow) _____ (ox) _____ (oy) _____ (oz) _____ (pa) _____ (pb) _____ (pc) _____ (pd) _____ (pe) _____ (pf) _____ (pg) _____ (ph) _____ (pi) _____ (pj) _____ (pk) _____ (pl) _____ (pm) _____ (pn) _____ (po) _____ (pp) _____ (pq) _____ (pr) _____ (ps) _____ (pt) _____ (pu) _____ (pv) _____ (pw) _____ (px) _____ (py) _____ (pz) _____ (qa) _____ (qb) _____ (qc) _____ (qd) _____ (qe) _____ (qf) _____ (qg) _____ (qh) _____ (qi) _____ (qj) _____ (qk) _____ (ql) _____ (qm) _____ (qn) _____ (qo) _____ (qp) _____ (qq) _____ (qr) _____ (qs) _____ (qt) _____ (qu) _____ (qv) _____ (qw) _____ (qx) _____ (qy) _____ (qz) _____ (ra) _____ (rb) _____ (rc) _____ (rd) _____ (re) _____ (rf) _____ (rg) _____ (rh) _____ (ri) _____ (rj) _____ (rk) _____ (rl) _____ (rm) _____ (rn) _____ (ro) _____ (rp) _____ (rq) _____ (rr) _____ (rs) _____ (rt) _____ (ru) _____ (rv) _____ (rw) _____ (rx) _____ (ry) _____ (rz) _____ (sa) _____ (sb) _____ (sc) _____ (sd) _____ (se) _____ (sf) _____ (sg) _____ (sh) _____ (si) _____ (sj) _____ (sk) _____ (sl) _____ (sm) _____ (sn) _____ (so) _____ (sp) _____ (sq) _____ (sr) _____ (ss) _____ (st) _____ (su) _____ (sv) _____ (sw) _____ (sx) _____ (sy) _____ (sz) _____ (ta) _____ (tb) _____ (tc) _____ (td) _____ (te) _____ (tf) _____ (tg) _____ (th) _____ (ti) _____ (tj) _____ (tk) _____ (tl) _____ (tm) _____ (tn) _____ (to) _____ (tp) _____ (tq) _____ (tr) _____ (ts) _____ (tt) _____ (tu) _____ (tv) _____ (tw) _____ (tx) _____ (ty) _____ (tz) _____ (ua) _____ (ub) _____ (uc) _____ (ud) _____ (ue) _____ (uf) _____ (ug) _____ (uh) _____ (ui) _____ (uj) _____ (uk) _____ (ul) _____ (um) _____ (un) _____ (uo) _____ (up) _____ (uq) _____ (ur) _____ (us) _____ (ut) _____ (uu) _____ (uv) _____ (uw) _____ (ux) _____ (uy) _____ (uz) _____ (va) _____ (vb) _____ (vc) _____ (vd) _____ (ve) _____ (vf) _____ (vg) _____ (vh) _____ (vi) _____ (vj) _____ (vk) _____ (vl) _____ (vm) _____ (vn) _____ (vo) _____ (vp) _____ (vq) _____ (vr) _____ (vs) _____ (vt) _____ (vu) _____ (vv) _____ (vw) _____ (vx) _____ (vy) _____ (vz) _____ (wa) _____ (wb) _____ (wc) _____ (wd) _____ (we) _____ (wf) _____ (wg) _____ (wh) _____ (wi) _____ (wj) _____ (wk) _____ (wl) _____ (wm) _____ (wn) _____ (wo) _____ (wp) _____ (wq) _____ (wr) _____ (ws) _____ (wt) _____ (wu) _____ (wv) _____ (ww) _____ (wx) _____ (wy) _____ (wz) _____ (xa) _____ (xb) _____ (xc) _____ (xd) _____ (xe) _____ (xf) _____ (xg) _____ (xh) _____ (xi) _____ (xj) _____ (xk) _____ (xl) _____ (xm) _____ (xn) _____ (xo) _____ (xp) _____ (xq) _____ (xr) _____ (xs) _____ (xt) _____ (xu) _____ (xv) _____ (xw) _____ (xx) _____ (xy) _____ (xz) _____ (ya) _____ (yb) _____ (yc) _____ (yd) _____ (ye) _____ (yf) _____ (yg) _____ (yh) _____ (yi) _____ (yj) _____ (yk) _____ (yl) _____ (ym) _____ (yn) _____ (yo) _____ (yp) _____ (yq) _____ (yr) _____ (ys) _____ (yt) _____ (yu) _____ (yv) _____ (yw) _____ (yx) _____ (yy) _____ (yz) _____ (za) _____ (zb) _____ (zc) _____ (zd) _____ (ze) _____ (zf) _____ (zg) _____ (zh) _____ (zi) _____ (zj) _____ (zk) _____ (zl) _____ (zm) _____ (zn) _____ (zo) _____ (zp) _____ (zq) _____ (zr) _____ (zs) _____ (zt) _____ (zu) _____ (zv) _____ (zw) _____ (zx) _____ (zy) _____ (zz)

(c) Blowoff

(d) Feed

Injector

2 @ 1-1/4" welding flange

(e) Return Connections

(f) Relief Valve

1 @ 1" welding flange

(g) Manholes: No. _____ Size: _____ Location: _____ (How Reinforced)

3-1/4" x 4-1/8"

(h) Handholes: No. _____ Size: _____ Location: _____ (How Reinforced)

21. Fusing Plug (if Used): _____ (No. Dia., Location, etc., Stamp) _____ Boiler Supports: No. _____ (Riveted or Welded)

F-101 thru 105, 108 thru 111, 115, 186-C, 253-C, 259, 268

22. Fused Welding Coefficient With Paragraph: _____

BR

150%

5.43

405

23. Operating Pressure: _____ (Indicate Vacuum Part) _____ (Indicate S.V.P.) _____ (Indicate F.S.) _____ (Indicate Heating Surface) _____ (Indicate Area)

225

24. Hydrostatic Test: (a) _____ (b) _____ (c) _____ (d) _____ (e) _____ (f) _____ (g) _____ (h) _____ (i) _____ (j) _____ (k) _____ (l) _____ (m) _____ (n) _____ (o) _____ (p) _____ (q) _____ (r) _____ (s) _____ (t) _____ (u) _____ (v) _____ (w) _____ (x) _____ (y) _____ (z) _____ (aa) _____ (ab) _____ (ac) _____ (ad) _____ (ae) _____ (af) _____ (ag) _____ (ah) _____ (ai) _____ (aj) _____ (ak) _____ (al) _____ (am) _____ (an) _____ (ao) _____ (ap) _____ (aq) _____ (ar) _____ (as) _____ (at) _____ (au) _____ (av) _____ (aw) _____ (ax) _____ (ay) _____ (az) _____ (ba) _____ (bb) _____ (bc) _____ (bd) _____ (be) _____ (bf) _____ (bg) _____ (bh) _____ (bi) _____ (bj) _____ (bk) _____ (bl) _____ (bm) _____ (bn) _____ (bo) _____ (bp) _____ (bq) _____ (br) _____ (bs) _____ (bt) _____ (bu) _____ (bv) _____ (bw) _____ (bx) _____ (by) _____ (bz) _____ (ca) _____ (cb) _____ (cc) _____ (cd) _____ (ce) _____ (cf) _____ (cg) _____ (ch) _____ (ci) _____ (cj) _____ (ck) _____ (cl) _____ (cm) _____ (cn) _____ (co) _____ (cp) _____ (cq) _____ (cr) _____ (cs) _____ (ct) _____ (cu) _____ (cv) _____ (cw) _____ (cx) _____ (cy) _____ (cz) _____ (da) _____ (db) _____ (dc) _____ (dd) _____ (de) _____ (df) _____ (dg) _____ (dh) _____ (di) _____ (dj) _____ (dk) _____ (dl) _____ (dm) _____ (dn) _____ (do) _____ (dp) _____ (dq) _____ (dr) _____ (ds) _____ (dt) _____ (du) _____ (dv) _____ (dw) _____ (dx) _____ (dy) _____ (dz) _____ (ea) _____ (eb) _____ (ec) _____ (ed) _____ (ee) _____ (ef) _____ (eg) _____ (eh) _____ (ei) _____ (ej) _____ (ek) _____ (el) _____ (em) _____ (en) _____ (eo) _____ (ep) _____ (eq) _____ (er) _____ (es) _____ (et) _____ (eu) _____ (ev) _____ (ew) _____ (ex) _____ (ey) _____ (ez) _____ (fa) _____ (fb) _____ (fc) _____ (fd) _____ (fe) _____ (ff) _____ (fg) _____ (fh) _____ (fi) _____ (fj) _____ (fk) _____ (fl) _____ (fm) _____ (fn) _____ (fo) _____ (fp) _____ (fq) _____ (fr) _____ (fs) _____ (ft) _____ (fu) _____ (fv) _____ (fw) _____ (fx) _____ (fy) _____ (fz) _____ (ga) _____ (gb) _____ (gc) _____ (gd) _____ (ge) _____ (gf) _____ (gg) _____ (gh) _____ (gi) _____ (gj) _____ (gk) _____ (gl) _____ (gm) _____ (gn) _____ (go) _____ (gp) _____ (gq) _____ (gr) _____ (gs) _____ (gt) _____ (gu) _____ (gv) _____ (gw) _____ (gx) _____ (gy) _____ (gz) _____ (ha) _____ (hb) _____ (hc) _____ (hd) _____ (he) _____ (hf) _____ (hg) _____ (hh) _____ (hi) _____ (hj) _____ (hk) _____ (hl) _____ (hm) _____ (hn) _____ (ho) _____ (hp) _____ (hq) _____ (hr) _____ (hs) _____ (ht) _____ (hu) _____ (hv) _____ (hw) _____ (hx) _____ (hy) _____ (hz) _____ (ia) _____ (ib) _____ (ic) _____ (id) _____ (ie) _____ (if) _____ (ig) _____ (ih) _____ (ii) _____ (ij) _____ (ik) _____ (il) _____ (im) _____ (in) _____ (io) _____ (ip) _____ (iq) _____ (ir) _____ (is) _____ (it) _____ (iu) _____ (iv) _____ (iw) _____ (ix) _____ (iy) _____ (iz) _____ (ja) _____ (jb) _____ (jc) _____ (jd) _____ (je) _____ (jf) _____ (jg) _____ (jh) _____ (ji) _____ (jj) _____ (jk) _____ (jl) _____ (jm) _____ (jn) _____ (jo) _____ (jp) _____ (jq) _____ (jr) _____ (js) _____ (jt) _____ (ju) _____ (jv) _____ (jw) _____ (jx) _____ (jy) _____ (jz) _____ (ka) _____ (kb) _____ (kc) _____ (kd) _____ (ke) _____ (kf) _____ (kg) _____ (kh) _____ (ki) _____ (kj) _____ (kk) _____ (kl) _____ (km) _____ (kn) _____ (ko) _____ (kp) _____ (kq) _____ (kr) _____ (ks) _____ (kt) _____ (ku) _____ (kv) _____ (kw) _____ (kx) _____ (ky) _____ (kz) _____ (la) _____ (lb) _____ (lc) _____ (ld) _____ (le) _____ (lf) _____ (lg) _____ (lh) _____ (li) _____ (lj) _____ (lk) _____ (ll) _____ (lm) _____ (ln) _____ (lo) _____ (lp) _____ (lq) _____ (lr) _____ (ls) _____ (lt) _____ (lu) _____ (lv) _____ (lw) _____ (lx) _____ (ly) _____ (lz) _____ (ma) _____ (mb) _____ (mc) _____ (md) _____ (me) _____ (mf) _____ (mg) _____ (mh) _____ (mi) _____ (mj) _____ (mk) _____ (ml) _____ (mm) _____ (mn) _____ (mo) _____ (mp) _____ (mq) _____ (mr) _____ (ms) _____ (mt) _____ (mu) _____ (mv) _____ (mw) _____ (mx) _____ (my) _____ (mz) _____ (na) _____ (nb) _____ (nc) _____ (nd) _____ (ne) _____ (nf) _____ (ng) _____ (nh) _____ (ni) _____ (nj) _____ (nk) _____ (nl) _____ (nm) _____ (nn) _____ (no) _____ (np) _____ (nq) _____ (nr) _____ (ns) _____ (nt) _____ (nu) _____ (nv) _____ (nw) _____ (nx) _____ (ny) _____ (nz) _____ (oa) _____ (ob) _____ (oc) _____ (od) _____ (oe) _____ (of) _____ (og) _____ (oh) _____ (oi) _____ (oj) _____ (ok) _____ (ol) _____ (om) _____ (on) _____ (oo) _____ (op) _____ (oq) _____ (or) _____ (os) _____ (ot) _____ (ou) _____ (ov) _____ (ow) _____ (ox) _____ (oy) _____ (oz) _____ (pa) _____ (pb) _____ (pc) _____ (pd) _____ (pe) _____ (pf) _____ (pg) _____ (ph) _____ (pi) _____ (pj) _____ (pk) _____ (pl) _____ (pm) _____ (pn) _____ (po) _____ (pp) _____ (pq) _____ (pr) _____ (ps) _____ (pt) _____ (pu) _____ (pv) _____ (pw) _____ (px) _____ (py) _____ (pz) _____ (qa) _____ (qb) _____ (qc) _____ (qd) _____ (qe) _____ (qf) _____ (qg) _____ (qh) _____ (qi) _____ (qj) _____ (qk) _____ (ql) _____ (qm) _____ (qn) _____ (qo) _____ (qp) _____ (qq) _____ (qr) _____ (qs) _____ (qt) _____ (qu) _____ (qv) _____ (qw) _____ (qx) _____ (qy) _____ (qz) _____ (ra) _____ (rb) _____ (rc) _____ (rd) _____ (re) _____ (rf) _____ (rg) _____ (rh) _____ (ri) _____ (rj) _____ (rk) _____ (rl) _____ (rm) _____ (rn) _____ (ro) _____ (rp) _____ (rq) _____ (rr) _____ (rs) _____ (rt) _____ (ru) _____ (rv) _____ (rw) _____ (rx) _____ (ry) _____ (rz) _____ (sa) _____ (sb) _____ (sc) _____ (sd) _____ (se) _____ (sf) _____ (sg) _____ (sh) _____ (si) _____ (sj) _____ (sk) _____ (sl) _____ (sm) _____ (sn) _____ (so) _____ (sp) _____ (sq) _____ (sr) _____ (ss) _____ (st) _____ (su) _____ (sv) _____ (sw) _____ (sx) _____ (sy) _____ (sz) _____ (ta) _____ (tb) _____ (tc) _____ (td) _____ (te) _____ (tf) _____ (tg) _____ (th) _____ (ti) _____ (tj) _____ (tk) _____ (tl) _____ (tm) _____ (tn) _____ (to) _____ (tp) _____ (tq) _____ (tr) _____ (ts) _____ (tu) _____ (tv) _____ (tw) _____ (tx) _____ (ty) _____ (tz) _____ (ua) _____ (ub) _____ (uc) _____ (ud) _____ (ue) _____ (uf) _____ (ug) _____ (uh) _____ (ui) _____ (uj) _____ (uk) _____ (ul) _____ (um) _____ (un) _____ (uo) _____ (up) _____ (uq) _____ (ur) _____ (us) _____ (ut) _____ (uu) _____ (uv) _____ (uw) _____ (ux) _____ (uy) _____ (uz) _____ (va) _____ (vb) _____ (vc) _____ (vd) _____ (ve) _____ (vf) _____ (vg) _____ (vh) _____ (vi) _____ (vj) _____ (vk) _____ (vl) _____ (vm) _____ (vn) _____ (vo) _____ (vp) _____ (vq) _____ (vr) _____ (vs) _____ (vt) _____ (vu) _____ (vv) _____ (vw) _____ (vx) _____ (vy) _____ (vz) _____ (wa) _____ (wb) _____ (wc) _____ (wd) _____ (we) _____ (wf) _____ (wg) _____ (wh) _____ (wi) _____ (wj) _____ (wk) _____ (wl) _____ (wm) _____ (wn) _____ (wo) _____ (wp) _____ (wq) _____ (wr) _____ (ws) _____ (wt) _____ (wu) _____ (wv) _____ (ww) _____ (wx) _____ (wy) _____ (wz) _____ (xa) _____ (xb) _____ (xc) _____ (xd) _____ (xe) _____ (xf) _____ (xg) _____ (xh) _____ (xi) _____ (xj) _____ (xk) _____ (xl) _____ (xm) _____ (xn) _____ (xo) _____ (xp) _____ (xq) _____ (xr) _____ (xs) _____ (xt) _____ (xu) _____ (xv) _____ (xw) _____ (xx) _____ (xy) _____ (xz) _____ (ya) _____ (yb) _____ (yc) _____ (yd) _____ (ye) _____ (yf) _____ (yg) _____ (yh) _____ (yi) _____ (yj) _____ (yk) _____ (yl) _____ (ym) _____ (yn) _____ (yo) _____ (yp) _____ (yq) _____ (yr) _____ (ys) _____ (yt) _____ (yu) _____ (yv) _____ (yw) _____ (yx) _____ (yy) _____ (yz) _____ (za) _____ (zb) _____ (zc) _____ (zd) _____ (ze) _____ (zf) _____ (zg) _____ (zh) _____ (zi) _____ (zj) _____ (zk) _____ (zl) _____ (zm) _____ (zn) _____ (zo) _____ (zp) _____ (zq) _____ (zr) _____ (zs) _____ (zt) _____ (zu) _____ (zv) _____ (zw) _____ (zx) _____ (zy) _____ (zz)

BR

225

C18-384A

C9-16A

ENGINEERING SPECIFICATIONS

S.O. 5549 Customer American Milling & Refining Company, Mornmouth, IllinoisModel 1-03223-80 150% (Code 598-2) ASME Code _____Wiring Diagram 1630-1155 Spec. Features See Attached Sheet Dated 10-18-57Current Characteristics 220/3/60 115 V. CCWater Column Position Right Boiler Feed Pump ControlType of Unit #2 Oil & Natural Gas Fired

Pop Valve Setting _____

(1) Fabrication Required _____	(5) Operating Char. _____
(2) Mech. Assembly Required _____	(6) Return System _____
(3) Electrical Required _____	(7) Loose Spare Parts _____
(4) Elevation Required _____	(8) _____

Index		Index	
1472-1	Variable Items		
1201-3	Front Head Assembly		
1227-1	Floor Assembly		
1287-1	Light Oil Fittings		
1581	Control Panel		
1237-1	Fuse Protection		
1354	Burner Assembly		
1144-1	Water Column Assembly		
1276	Pressure Controls		
1289-2	Gas Line, Gas Pilot Line		
1184	Spare Parts		

Ins. & Lag Yes PRODUCTION CONTROL DEPARTMENT Witness Test NoMfg. Order No. 80-8749 Date Rec'd 10-24-57Unit No. 0-18344 Date Issued _____

Drawings No. _____ Date Completed _____

Rec. 772

ENGINEERING SPECIFICATION SHEET
REQUEST FOR SPECIAL PARTS

Customer - American Milling & Refining Company
Monmouth, Illinois

Sales Order - 5549

Shipping Date - 11/4

Model - 1 - CS225-80 150%

10-18-57

1144 Water Column Assembly

Add (1) B17-97 Aux. LHCO, McD & M #150-M

Add (1) 941-39 Valve, Globe, 1", Link #407

Add Withdrawal List #236 Injector, CC-332, 1"

Add Krzner Nameplates

Claver & Brooks

COMPANY

ASSEMBLY CHECK SHEET

MODEL CB 223-80 DP 150
 CURRENT
 CHARACTERISTICS: VOLTS 220 PHASE 3 CY 60 NAME American Milling & Refining Co
 CONTROL CIRCUIT: VOLTS 115 PHASE 1 CY 60 ADDRESS Monmouth, Ill.
 WIRING DIAGRAM NO. 1630-1155
 BOILER UNIT NO. 0-18344 JOB NO. 8749 SALES ORDER NO. 5549

	DESCRIPTION
MOTOR, S	MAKE <u>V.S.</u> H.P. <u>5</u> VOLT <u>220</u> PH. <u>3</u> CY <u>60</u> AMPS <u>14</u> RPM <u>3600</u> SERIAL <u>2702570</u>
CONTROL, FIREYE	TYPE <u>RTJ8</u> MODEL <u>1008</u> CODE <u>8</u> SERIAL <u>51096378</u>
HEATER COILS	(BLOWER STARTER) <u>S.D. B22</u>
PUMP, AIR	MAKE <u>C.B. Co</u> SIZE <u>2X4</u> SERIAL <u>F 3267A</u>
PUMP, OIL	MAKE _____ MODEL _____ SERIAL _____
HEATER, OIL	MAKE _____ TYPE _____ VOLT _____
CABLE, IGNITION	QTY. <u>1</u> LENGTH <u>31</u> Eyelet
VALVE, SAFETY <u>B.O.</u>	MAKE <u>Ronkle</u> SIZE <u>1 1/2</u> FIG. <u>83</u> CAPACITY: <u>150</u> LBS/HR. <u>400</u> BTU/HR.
	MAKE _____ SIZE _____ FIG. _____ CAPACITY: _____ LBS/HR. _____ BTU/HR.
VALVE, GAS, HYDRAMOTOR	MAKE <u>Gen Control</u> TYPE <u>H-2</u> SIZE <u>2"</u> SERIAL <u>H 7920SK</u>
OIL PUMP (AUX)	MAKE _____ MODEL _____ SERIAL _____
MOTOR, OIL PUMP	MAKE _____ H.P. _____ VOLT _____ PH. _____ CY _____ AMPS _____ RPM _____ SERIAL _____ FRAME _____
FEED PUMP	MAKE _____ MODEL _____ SERIAL _____
MOTOR, FEED PUMP	MAKE _____ H.P. _____ VOLT _____ PH. _____ CY _____ AMPS _____ RPM _____ FRAME _____ SERIAL _____

C75343A

CHECKED BY AW

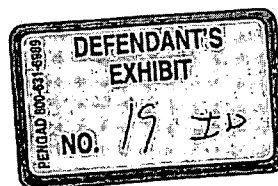
) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT

) ASBESTOS TRIAL DOCKET
) AMENDED GENERAL
) SCHEDULING ORDER

FILED-77 FOR CP COURT
GREEN, J. & CO. INC.
PAID BY GREENSBACHER
2015 JUN 5 PM 8 59

1. The court may set a date certain trial date to begin approximately every six weeks for an asbestos trial. Groups of at least four (4) but no more than six (6) cases (hereinafter "Group") shall be tried. The Group shall be listed in order of priority for trial. The court shall contemporaneously notify Plaintiff and Defense counsel and the asbestos bar of the trial date. The court will endeavor to give at least 120 days notice of the trial date. Within ten (10) days of notification, the Plaintiff and Defense bar shall submit a list of at least four (4) but no more than six (6) individual cases that comprise the Group and could potentially be tried on that date certain. It is presumed the cases in the Group shall be tried individually as part of a trailing docket; however, nothing in the order prohibits a party from seeking consolidation for trial purposes pursuant to Rule 42, SCRCF. Any such consolidation motion must be filed within 45 days of the trial date notification.

918

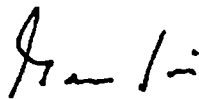


Rec. 775

2. No case shall be placed in a proposed Group by the parties or the court for a date certain trial unless (1) the Defense has been provided appropriate pathology material (or B-Reader x-rays), or been given authorization to obtain such; (2) Defendants have had an opportunity to depose the Plaintiff or Plaintiffs' representative; and (3) Plaintiffs have disclosed any co-worker witnesses they may call and provided their contact information, if known.
3. In the event Plaintiff and Defense counsel cannot agree on the cases to be included within a Group, the court shall select the Group. In making the selection, the court will generally give great weight to the date of the filing, but may also consider the state of discovery, trial preparation, commonality of factual issues, commonality of counsel, common worksite, common occupation, type of disease, and any other factor the court deems appropriate.
4. Cases in which an Expedited Trial Order has been granted shall be given the priority accorded by the Asbestos and Silica Claims Procedure Act of 2006, S.C. Code § 44-135-10 et. seq., but must still meet the criteria in paragraph 2 above before being set for a date certain.
5. In the event the lead case in a Group resolves after a trial block begins, the next case in the Group shall be tried, but such trial shall not begin sooner than 10 business days after the date of settlement of the previous case.
6. This court shall retain the discretion to modify this order or suspend any of its terms.

IT IS SO ORDERED.

March 5, 2015
Greenville, SC



D. Garrison Hill
Circuit Judge

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)
200 OCT 13) 9:42
IN RE:)
) MASTER
) DISCOVERY/SCHEDULING ORDER
) ASBESTOS LITIGATION
) COORDINATED DOCKET
) _____)

Counsel for the plaintiffs and for the defendants in this litigation, referred to as "asbestos litigation," have agreed that a standard discovery procedure should be utilized in all pending and future asbestos related personal injury cases assigned by the South Carolina Supreme Court to Judge D. Garrison Hill, as Administrative Judge for asbestos litigation in the Circuit Courts for the State of South Carolina. It further appearing to the Court that these procedures have been used successfully in prior years by both South Carolina state courts and federal courts, and that certain parties have suggested that this Court adopt this procedure and execute this Order making this agreed upon discovery practice applicable to all pending and future Circuit Court asbestos cases.

NOW, THEREFORE, IT IS ORDERED that the discovery practices and procedures to be utilized by the parties to this litigation shall consist of the following:

I. Coordinated Docket and Administrative Procedures.

(a) Judge Hill will manage all personal injury asbestos cases filed in the Circuit Courts for South Carolina as a Coordinated Docket. This coordinated docket will be managed as a single asbestos docket, although each case will be handled by the parties and the Court on an individual basis.

(b) In filing asbestos personal injury complaints, plaintiff's counsel shall

GH

Indicate on the face of the complaint (i) the occupation of the plaintiff/decedent, and (ii) the specific disease allegedly contracted.

(c) Pleadings filed in the Circuit Courts for South Carolina which apply to the entire asbestos docket, as discussed supra, shall contain the notation:

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Those pleadings that are anticipated to apply to the Coordinated Docket are subject to the mandatory Master Discovery as set forth infra, Master Scheduling Orders, Standing Orders for the Release of Pathology, and Orders the Court may promulgate to the entire asbestos bar. In the Court's discretion, pleadings improperly filed in the Coordinated Docket may be returned to the filer for re-filing in specific case(s) as may be appropriate.

(d) The Court shall convene, at least quarterly, a status conference, which all counsel in this litigation are invited to attend, to address issues relating to the entire asbestos docket, including scheduling and case management.

II. Interrogatories and Requests for Production.

(a) Standard – The Standard Interrogatories and Requests for Production to be used by the plaintiffs and defendants in these cases shall be those attached to this Order as Exhibits 1,2,3, and 4. These four (4) sets of Interrogatories are hereby deemed served by both parties in any pending or future asbestos related personal injury cases on the asbestos litigation coordinated docket.

With respect to Exhibits 1 ("Plaintiff's First Set of Interrogatories") and 2 ("Defendant's Master Set of Interrogatories and Requests for Production of Documents"), all parties who have not yet responded to these Interrogatories shall do within sixty (60) days.

With respect to Exhibit 3 ("Defendant's Standard Interrogatories to Plaintiffs"), the plaintiff shall respond within sixty (60) days from the date of the filing of the case.

With respect to Exhibit 4 ("Plaintiff's Standard Interrogatories and Requests for Production of Documents"), the defendants shall be deemed to have been served with these interrogatories. The defendants shall respond to Exhibit 4 within thirty (30) days of receipt of a written response to Exhibit 3 (Defendants' Standard Interrogatories to Plaintiffs). If there are conflicts between these due dates and those specified in a scheduling order applicable to an individual case, the scheduling order in that case shall control.

(b) Additional Interrogatories:

(1) Plaintiff's attorneys may serve (a) no more than five (5) additional Interrogatories, including sub-parts, in an individual plaintiff's case, dealing with matters specifically related to that case, and (b) no more than five (5) additional general interrogatories, including sub-parts, directed to all or some of the defendants regarding additional general liability matters which arise in the course of the litigation and shall be designated by defendant involved; e.g., "Number 1 Set of Supplemental Interrogatories to John~~s~~ Manville" in order that each defendant can determine which set of Interrogatories is being addressed.

(2) Defendants may serve no more than ten (10) additional Interrogatories, including sub-parts, in an individual case dealing with specifics involved in that case; all defendants who have made an appearance in the case

shall coordinate in drafting these ten (10) additional Interrogatories. All parties retain the right to request leave of court to serve additional Interrogatories for good cause shown.

(3) With regard to any set of Interrogatories, the parties shall type both the questions and the answers in responding to the same.

(4) Any ruling that this Court shall make in connection with any Interrogatories outlined herein shall be governed by the laws of South Carolina, including the South Carolina Rules of Civil Procedure.

III. Depositions.

(a) Depositions of critically ill plaintiffs – Prior to plaintiffs' attorneys taking a deposition of a critically ill plaintiff, they must provide to defendants (1) a medical statement indicating that the plaintiff is physically capable of giving a deposition, (2) the functional equivalent of the information regarding jobsites and exposures as requested in the Standard Interrogatories attached as Exhibit 3 hereto, at least five (5) days prior to the deposition, (3) a time for a defendants' discovery deposition for the plaintiff at least 24 hours in advance of plaintiffs' deposition.

(b) The deadline above, in section III (a) of this Order, may be varied by consent of all counsel affected, without leave of Court.

IV. General Discovery.

(a) Plaintiff – Within sixty (60) days of filing of a suit, counsel for the plaintiff shall provide to the defendants (1) a medical authorization from the plaintiff enabling

hjt

defendants to gather medical records and documentation about the plaintiff, (2) a Social Security authorization in order to secure a Social Security printout on the plaintiff, (3) a military medical and employment record authorization, if applicable, (4) a Veteran's Administration authorization for medical records, if applicable, and (5) those medical data, records, or reports, which are in the plaintiff's attorney's possession at that time.

(b) Defendants – Defendant shall provide to counsel for plaintiff, as they are received, copies of all medicals, military records, Social Security information, claims information, and VA information gathered pursuant to utilization of authorizations provided. Likewise, the plaintiffs shall provide the defendants all medical records, names of physicians, Social Security information, and VA information as that information is received by plaintiffs' attorneys.

(c) Court – The Court shall issue, at the time of the filing in this State of a Complaint for asbestos personal injury, a standard Order compelling the release of pathology materials. A copy of that standard Order is attached hereto as Exhibit 5. It is the responsibility of counsel to advise the court of the filing and to request issuance of the Order.

V. Standard Scheduling Order – As soon as a case is set for trial, the Standard Scheduling Order, attached hereto as Exhibit 6, shall be issued by the Court, and all due dates, including discovery, motions practice, mandatory mediation, and pre-trial matters, shall be controlled by that issued Order.

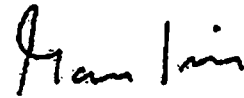
VI. Mandatory Mediation – All asbestos cases set for trial in the Circuit Courts of this State shall be subject to mandatory mediation, by a mediator appointed by the Court.

9/14

VII. Sanctions.

The parties acknowledge that this Court has the power to impose such sanctions pursuant to its inherent power and the South Carolina Rules of Civil Procedure and common law as it deems appropriate in the event of any failure of any party to comply with the provisions of this Order.

IT IS SO ORDERED at Greenville, South Carolina this 30th day of September, 2010.



D. Garrison Hill
Circuit Judge
S.C. Asbestos Master Docket

EXHIBIT 1

EXHIBIT "1"

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
IN RE:)
)
ASBESTOS LITIGATION)
COORDINATED DOCKET)

PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: ALL DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 33 of the South Carolina Rules of Civil Procedure you are hereby directed to file answers to the following Interrogatories within thirty (30) days of service hereof unless further extension is granted by the Court. These Interrogatories shall be deemed continuing in the sense of Rule 26 of the South Carolina Rules of Civil Procedure so as to require supplemental answers a reasonable time prior to trial if additional information with respect to these Interrogatories is obtained by you or your counsel.

INSTRUCTIONS AND/OR DEFINITIONS

1. Whenever it is requested that a person or persons be identified, the full name and current address of the person should be stated and the relationship with the answering defendant. In any instance where the defendant is unable to identify all persons requested to be identified, the Interrogatories should be answered to the fullest extent possible by the defendant.

2. When used in these Interrogatories, the term "defendant" or any synonym thereof, whether singular or plural, is intended to and shall embrace and include counsel for the defendant, all agents, servants, employees, representatives and others who are in possession of or may have obtained information for or on behalf of the defendant, and shall include all

subsidiaries, predecessors and/or affiliates presently or in the past which would have information requested by the Interrogatory.

3. Reference to the term "you" or "your" means the defendant or any agent, representative, employee, servant, affiliate, subsidiary or predecessor.

4. Use of the term "document" is to include any form of writing or communication whether it be by paper, film, microfilm, microfiche, computer print-out, reports, records, lists, memoranda, correspondence, telegrams, schedules, photographs, drawings, charts and other form of information preservation. Any request concerning a document is to be considered a continuing request as defendant becomes aware of such document.

5. Reference to the term "identify" or "identity" when used in reference to an individual person, company or other entity, means to state the full name, present address, in the case of a person his or her business affiliation. When these terms are used in reference to a document, it includes a description of the document, including the nature and content thereof, the date thereof, the name and address of the author and recipients thereof and the present location of the person or entity having custody thereof.

6. Please note that these interrogatories when referring to the word "product" are intended to include all asbestos or asbestos-containing products mined, milled, manufactured or distributed by you which were intended for thermal insulation use or were cloth or spray products containing asbestos.

7. State the full name, present business address, present residence and capacity or title of the individual signing these interrogatories answered provided the name of the person supplying the information to answer that interrogatory or identify the document referred to in answering that interrogatory.

8. Please note that in these interrogatories the word "co-defendant" means any of the following companies:

Johns-Manville Sales Corporation
Owens-Illinois, Inc.
Owens-Corning Fiberglass Corporation
The Celotex Corporation
Raybestos-Manhattan, Inc.
National Gypsum Company
Unarco Industries, Inc.
Fibreboard Corporation
Armstrong World Industries, Inc.
Nicolet, Inc.
Forty-Eight Insulation, Inc.
Eagle-Picher Industries, Inc.
Covil Corporation
Keene Corporation
GAF Corporation
Rock Wool Manufacturing Co., Inc.
North Brothers, Inc.
Carey Canada, Inc.
Combustion Engineering, Inc.
Pittsburgh Corning Corporation
AC&S, Inc.
Amatex Corporation, Inc.
Amchem, Inc.
Vimasco Corporation
Johns-Manville Amiante Canada, Inc.
C. E. Thurston & Sons, Inc.

SECTION A

1. Identify the registered name of the answering defendant as well as all prior names or predecessor entities by which the defendant has existed.

(a) For each give the current address and the state of incorporation and whether or not it is an active corporation.

2. Set forth the full and correct name, the principal place of business and the state and date of incorporation of the answering defendant.

3. Identify all divisions, subsidiaries or affiliated companies of the answering defendant.

4. For each entity or division listed in response to #3, state whether it ever has or presently engages in any phase or mining, manufacturing, sale, supply, distribution, or design of asbestos or asbestos-containing products.

5. With respect to each division, subsidiary or company listed in #4, identify the nature and extent of its function during the period of time it was in existence.

6. Has this answering defendant been sued under its correct name? If no, please state the correct legal name of the defendant and provide the information requested in Interrogatory #1 above concerning the defendant as correctly named.

7. Please state whether or not you have ever held a certificate of authority to do business in this state and the address for your registered agent for service in this state.

PRODUCT IDENTIFICATION

8. Have you ever mined asbestos?

9. If the answer to the previous interrogatory is "yes", please state the dates in which you were involved in mining of asbestos, and the locations of your mines.

10. Have you ever sold raw asbestos fiber to any of the co-defendants? If so, in what years and in what quantities did you make such sales.

11. As to any product containing asbestos in any form or quantity, has this defendant ever:

- (a) designed such a product;
- (b) manufactured such a product;
- (c) processed such a product;

- (d) sold such a product;
- (e) distributed such a product;
- (f) relabeled such a product manufactured or designed by another;
- (g) held a patent for such a product.

12. If the answer to the previous interrogatory or any subpart thereof was in the affirmative, please state the following information about each product:

- (a) the manufacturer of the product;
- (b) the designer of the product;
- (c) the supplier of the raw asbestos fiber used in the product;
- (d) the dates of its manufacture or sale by the answering defendant;
- (e) the percentage of asbestos content of the product;
- (f) the type of asbestos used in the manufacture of the product;

13. In what year did the answering defendant first begin selling or distributing asbestos-containing products? Please be specific for each asbestos-containing product manufactured, sold or distributed by you.

14. In what year did the answering defendant last sell, distribute or manufacture an asbestos-containing product? Please be specific for each asbestos-containing product.

15. For each asbestos-containing product manufactured and/or distributed by you, state:

- (a) the brand name of the product and the inclusive years of its manufacture and/or distribution;
- (b) the asbestos content by weight of each product for each year;
- (c) the type of asbestos fiber used in each product;

- (d) the application for which such product was advertised or sold;
 - (e) the temperature ranges for the products used;
 - (f) whether the product was a cement, a pipe covering, a cloth or other type of thermal insulation product;
16. Describe each product as to its color and physical characteristics and appearances.
17. As to each product, state how such product was packaged or supplied.
18. Does the answering defendant claim that any patent would cover any product listed in response to the interrogatories above? If so, give the number of the patent, the date same was issued and the number of each patent application that is pending.
19. For such asbestos-containing product manufactured or designed by you, please state the specific batching requirements for that product.
20. State the time period each particular batching requirement was followed and any changes that were made.
21. For each asbestos-containing product that you manufactured, please set forth the supplier of the raw asbestos fiber used for that product.
22. As to each product mentioned above, identify the following:
- (a) any pertinent trademark that was applicable to the product during any time of its sale;
 - (b) the label on the packaging of that particular product for each year of its manufacture;
 - (c) all sales brochures, specification sheets, performance data or other promotional material, as well as any and all installation materials, data or brochures which would have accompanied or been distributed in

connection with the installation, application or use of each of the products listed above.

- (d) The advertised use of the product (as to this interrogatory, you may provide a copy of the document in lieu of describing the same.)

23. For each document listed or described above, please indicate the name or the names of the individuals having custody of said documents or copies thereof, and where they are located.

24. Please describe in detail the method for disbursement and sale of each asbestos-containing product manufactured, designed or distributed by the answering defendant.

25. Have any of the products listed in the answer to Interrogatories Nos. 12, 13 and 16 above been altered in chemical composition or asbestos type or content since their first being marketed?

26. If so, please state:

- (a) the trade name of each such product;
- (b) the date such product was altered;
- (c) the nature of that alteration;
- (d) the reason for the alteration;
- (e) what person has knowledge concerning the alterations.

27. Identify all sales literature including brochures, advertisements, pamphlets or other material describing each asbestos-containing product manufactured by you beginning in 1925 and coming forward to date.

28. Prior to 1960, did you conduct any tests concerning the health consequences of the use of your asbestos-containing product?

29. Prior to 1960, did you conduct any tests concerning the health consequences related to the manufacture of your asbestos-containing product?

30. Do any written memoranda, specifications, recommendations or other written materials of any kind or character related to the testing of said products exist?

31. If so, please state:

- (a) identify each such written material or document;
- (b) who presently has possession of each such document and where is it located?

32. Have you conducted any tests concerning the health consequences of the use of your product between 1960 and 1975 or the date that the asbestos content was removed from the product, whichever is the later.

33. If so, please state:

- (a) what tests were done;
- (b) who was responsible for conducting the tests;
- (c) what the results of the tests were;
- (d) identify any documents concerning the tests.

34. When did the asbestos-containing products manufactured by you first contain any warning or caution concerning the health consequences of the use of the product or the breathing of asbestos dust?

35. For each such product, please state:

- (a) the wording of each warning or caution;
- (b) the description of each such printed warning or caution;

- (c) the method used to distribute the warning to persons who were likely to use the products;
- (d) the date each such warning was issued;
- (e) the name, address and job classification of each person who presently has possession of the above-described warning or caution;
- (f) identify the warning or caution by date and content;
- (g) state whether any industrial psychologist or human factors engineers were consulted prior to utilizing such warnings, or cautions;
- (h) identify any special instructions provided with each product regarding its use or safety procedures to be employed by persons handling such product.

36. For any warning ever provided on an asbestos-containing product manufactured or distributed by you, please state:

- (a) when the warning first appeared;
- (b) what was the precise wording of the warning when it first appeared;
- (c) was the warning ever altered, amended or changed in any manner and, if so, how and when;
- (d) where was the warning located on the product or packaging;

37. When did you first become aware that warnings were placed on products distributed by other defendants?

38. State the manner in which each of your products was shipped and the type of container it was shipped in to the retailers.

39. When, if ever, did you specifically inform the purchaser or user of your products that contained asbestos that the use of that product or exposure to asbestos dust could cause cancer, asbestosis or other serious diseases? Please identify the document containing this information by date and location.

40. Identify any and all labeling or relabeling agreements in existence since 1925 between you and any other person including co-defendants.

41. Did you sell any of your products containing asbestos fibers or any raw fiber to any of the companies named as co-defendants in this suit?

42. If so, please state:

- (a) the name, address and job classification of each individual who currently has possession of such knowledge, either by documents or records;
- (b) please list the names of each co-defendant to whom your products have been sold;
- (c) please state the dates of each such sale and the amount and kind of materials sold;

43. State whether your company manufactured asbestos-containing insulation products for a co-defendant and placed the co-defendant's labels, logos or insignia on said products and list each such co-defendant.

44. Has this defendant ever acquired another corporation, company or business which manufactured, sold, processed, distributed or contracted to apply insulation products containing asbestos.

45. If the answer to the above interrogatory is yes, please state the following concerning such other entity:

- (a) the full and correct name;
- (b) the principal place of business;
- (c) the state of incorporation;
- (d) the date of its acquisition by you;
- (e) the products that the other entity manufactured, distributed, sold or used.

46. Did you ever stamp or imprint the name of your company, its initials or any identifying logo on any of your asbestos-containing products? If so, please describe the identifying logo or initials and the dates of its inclusion on the product and the product on which it was included.

47. As of the date of your answers to these interrogatories, is your company still manufacturing, selling or distributing any asbestos-containing products? If so, give the brand names of each such product.

48. For each product identified as being manufactured, sold or distributed by you in interrogatories No. 12, 13, or 16, state whether:

- (a) you have actual containers or photographs of containers in which said products were sold or distributed;
- (b) who is the custodian or keeper of said containers or photographs including their address and telephone number.

49. From what source or sources did you obtain raw asbestos fiber beginning in 1940 and going to date, on a yearly basis?

50. State whether or not any warnings, cautions, caveats, or directions accompanied the raw asbestos fiber referred to in the previous interrogatory and identify the nature and extent of said warnings, cautions, caveats or directions accompanying said fiber.

51. State what date said warnings, cautions, caveats or directions first appeared on the mined asbestos fiber.

52. If you have discontinued manufacturing and/or selling asbestos products, please state the reason or reasons.

NOTICE

53. When was the first time that you received notice that any person was claiming an injury as the result of using asbestos-containing products manufactured and/or sold by your company?

54. For each such injury that you received notice of or a claim for prior to 1970, please list:

- (a) the name and address of each claimant;
- (b) the date of the notice of each claim;
- (c) a description of the claim (i.e. workmen's compensation or a third party liability action);
- (d) the type of injury allegedly sustained;
- (e) the name and address of each attorney who represents individuals making such claims;
- (f) the style and the court number of each claim;
- (g) the resolution of each claim that has been disposed of;
- (h) the custodian of the records that relate to the claim (in lieu of answering the above question, you may attach copies of any and all claims).

55. Do you contend that insulation products containing asbestos can be manufactured or treated so as to eliminate all potential health hazards to workers installing the same? If so, please explain in detail what your contentions are and the basis for each contention.

56. Did you receive any reports or communications from your workmen's compensation insurance carrier or products liability insurance carrier with regard to the hazards incident to the use of asbestos-containing insulation products? If so, please state who has possession of the contents of such reports, the location of such reports and the substance of the contents of such reports, listing for each such report the respective insurance company, its address, the agents signing such correspondence and the date of such notice or report.

57. Have any of the co-defendants named in this litigation ever furnished you with any information as to the state of the medical knowledge regarding the connection between asbestos dust exposure and the contracting of pulmonary diseases including asbestosis and cancer?

58. If the answer to the proceeding interrogatory is in the affirmative, please identify:

- (a) what information you were furnished;
- (b) who furnished that information;
- (c) when that information was furnished.

59. Have you at any time since 1930 interchanged results of research tests, medical studies or experiments regarding the state of the medical knowledge regarding the connection between asbestos exposure and the contracting of pulmonary diseases including lung cancer and asbestosis with any other person, including any co-defendants in this action?

60. If the answer to the proceeding interrogatory is in the affirmative, please state:

- (a) when this interchange took place;

- (b) who participated in these interchanges;
- (c) summarize the content of these interchanges or studies.

61. Please state if you or anyone on your behalf ever conducted, sponsored or contributed financially to any studies or research to determine if the inhalation of asbestos fibers may be harmful.

62. If the answer to the above question is in the affirmative, please state:

- (a) by whom the research was conducted, giving complete names and addresses;
- (b) the dates that each such research project or test was conducted;
- (c) the complete results of each test or study;
- (d) identify all documents that refer, reflect or related to the test or study;
- (e) supply copies of the reports of the research department pertaining to the use of the use by the corporation of asbestos in their manufacture of insulation products.

63. Please state the names and addresses of your chief medical officers employed by defendant in that capacity. If you did not have a medical officer, please indicate what persons or persons performed that function.

64. Please state the names and addresses of all physicians who were employed, retained or otherwise engaged by you at any of your facilities from the years 1930 until the present.

65. Please state the names and addresses of all persons employed by you from 1930 until the present time who functioned as industrial hygienists. As used in this interrogatory, an

Industrial hygienist is one who performs engineering or health studies to identify and evaluate potential health hazards and suggests methods of dealing with the same.

66. For each industrial hygienist listed above, please state:

- (a) the facility or office to which that individual was assigned;
- (b) the complete and precise duties and responsibilities.

67. Did anyone ever make any recommendations and/or suggests to you pertaining to the risks and hazards associated with the manufacturing or use of insulation products containing asbestos?

68. If the answer to the above question is yes, please state:

- (a) where such recommendations or suggestions were made;
- (b) who made such recommendations or suggestions;
- (c) to whom were these recommendations or suggestions made;
- (d) the substance of the recommendations or suggestions;
- (e) what actions did you take as the result of those recommendations and suggestions?

69. Do you agree that there is a causal connection between the asbestos dust exposure and

- (a) asbestosis?
- (b) lung cancer?
- (c) mesothelioma?
- (d) other cancers?

70. If your answer to the previous Interrogatory is yes as to any or all subparts, please identify the following as to each disease process listed above:

- (a) when and how you first learned of such connection;
- (b) if the knowledge was obtained by the attendance of any conference, lecture, convention, symposium, or meeting, identify such event and provide the name of the person attending or the documents obtained from that meeting;
- (c) if knowledge was obtained from a medical or scientific study or any other published works, identify the same;
- (d) if the knowledge was otherwise obtained, identify the manner of receipt of the document or communication.

71. With regard to any knowledge obtained subsequent to that identified in the previous Interrogatory, please identify:

- (a) all documents or other communications, oral or written concerning the causal connection between exposure to asbestos dust or asbestos products and the disease processes identified in question No. 60 above;
- (b) identify the person communicating the information.

72. When and by what manner were you first aware of the hazards of asbestos or asbestos-containing products to the users of those products?

73. Identify any medical examination programs offered or sponsored by your or your insurance carrier for employees handling or otherwise exposed to asbestos and asbestos products.

With respect to each such program, please state:

- (a) the manner of communicating with employees about such program;
- (b) whether examination was mandatory or optional;

- (c) what percentage of workers permitted to undergo such examination actually participated;
- (d) what percentage of workers were found to have asbestosis or mesothelioma or bronchogenic carcinoma;
- (e) with respect to (d), what percentage of such workers were paid disability, workmen's compensation benefits or for whose benefit medical expenses were paid to undergo treatment for such conditions.

74. Identify all trade organizations, associations or other entities including but not limited to ATI, IHF, NAIMA, AIA, NICA, TIMA, QAMA, PICA QAPA, to which you belonged or in which you have participated since 1925 and the years of your participation.

75. Identify all persons attending on your behalf any meetings held by any trade organization listed in the Interrogatory stated above.

76. Identify the names or nature of all asbestos notes, report studies or other writings submitted by you or received by you at meeting identified in the Interrogatory stated above.

77. Identify all documents you received from or submitted to the trade organizations, associations or other entities identified in Interrogatory relating to the relationship between asbestos exposure and disease.

78. Did you direct to be performed, sponsor, finance or receive the results of any studies or tests performed by the Saranac Lake Laboratory or the Trudeau Foundation relating to asbestos exposure and its effect on human life? If so, identify:

- (a) all documents summarizing findings or results of those studies or tests which you have in your possession or control;

- (b) all communications, oral or written, between answering defendant and Saranac personnel, including but not limited to Gerrit W. H. Schiepers, M.D.;
- (c) all documents relating to Saranac studies received or submitted by you, either directly, through associated or predecessor companies, through other companies, or through any trade associations, organizations or entities;
- (d) all recommendations or findings of such studies in relating to:
 - (1) adequacy or inadequacy of the threshold limit values;
 - (2) the substitution of materials other than asbestos to be used in insulation process;
- (e) where the documents and/or communications identified in this Interrogatory are presently maintained.

79. Identify all persons who have testified on your behalf and all documents presented to or utilized in preparation of testimony before the Occupational Safety and Health Administration, the National Institute of Occupational Safety and Health, any U.S. Congressional committee or subcommittee or governmental hearing or investigative proceeding on the subjects of biological effects on human life from exposure to asbestos and the setting, modification, feasibility and acceptance of allegedly safe or proper levels of such exposure to asbestos and asbestos products.

80. For all testimony set forth above, please identify:

- (a) the dates and descriptions of the proceedings;
- (b) the relationship between the person who testified or responded and you;

- (c) all studies, test results or other scientific or medical documents relied upon by said person as a basis for any recommendations made or testimony given;
- (d) whether at any time prior to or following such testimony you possessed knowledge of documents suggesting that existing or proposed threshold limit values were not safe or proper or that lower threshold limit values were necessary in order to prevent disease; as to this response, please identify the origin of the knowledge and all documents relating thereto;
- (e) whether at any time prior to or following such testimony you were aware that the proper method for determination of safe levels of asbestos dust was to test concentrations of fibers in the air rather than the total number of particles. If your answer is in the affirmative, identify the origin of said knowledge and all documents relating thereto.

81. What do you understand "threshold limit value" to mean?

82. What do you understand "dose response relationship" to mean?

83. What is being measured when you take the measurement of threshold limit value as you define it?

84. Did you advertise any of your asbestos-containing products for use on ships or navy vessels?

85. If the response to Interrogatory No. 84 was yes, please state

- (a) the name of the product;
- (b) in what years you advertised the product;
- (c) the intended purpose of the product.

86. Did you design any asbestos-containing products for use on ships or navy vessels?

If so, please state

- (a) the name of the products;
- (b) the year of their design;
- (c) the manufacturer;
- (d) the intended use.

87. Did you sell any asbestos-containing materials to the:

- (a) United States government?
- (b) General Services Agency?
- (c) United States Navy?
- (d) any naval shipyard?
- (e) any shipyard?

88. Do you ever conduct any dust studies in any of your asbestos product manufacturing facilities? If so, please state:

- (a) the data of each such study;
- (b) the person conducting the study;
- (c) the result or conclusion;
- (d) who presently has possession of the report or study

How / in

D. Garrison Hill
Circuit Judge
S.C. Asbestos Master Docket

Greenville, S. C.

September 30, 2010.

EXHIBIT 2

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN RE:

ASBESTOS LITIGATION
COORDINATED DOCKET

**DEFENDANTS' MASTER SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendants hereby request that you answer separately and fully, in writing under oath, each of the following interrogatories in accordance with Rule 33 of the South Carolina Rules of Civil Procedure. These interrogatories are continuing in character and require you to file supplementary answers in accordance with Rule 26(e) of the South Carolina Rules if you obtain further or different information after your initial answers and before trial, including in such supplemental answers the date upon and the manner in which such further or different information came to your attention.

1. Identify all documents of which plaintiffs have knowledge that relate to the allegations that plaintiffs are entitled receive punitive or exemplary damages.
2. Identify all persons that plaintiffs believe have knowledge of facts or opinions that relate to the allegations that plaintiffs are entitled to receive punitive or exemplary damages.
3. If plaintiffs contend that there is prior testimony relates to the claim for punitive or exemplary damages, please state the following:
 - (a) Date and place of the prior testimony and identity of cause in which it was taken;
 - (b) Identify the person making the prior testimony;

- (c) Describe the form in which the prior testimony exists. (i.e., written, typed, recorded, etc.);
- (d) Identify the custodian of the prior testimony; and
- (e) Identify the person who obtained the prior testimony.

4. Identify all documents of which plaintiffs have knowledge, including but not limited to medical articles, medical journals, case reports, textbooks, abstracts, or synopses, which plaintiffs believe relate to their position on the "state-of-the-art" defense.

5. Identify all persons whom plaintiffs expect to call as witnesses at trial, including a summary of the testimony that each witness is expected to give.

6. Identify all documents which plaintiffs expect to offer as evidence at trial.

7. Identify all persons whom plaintiffs expect to call as expert witnesses at trial, and as to each such person, provide a summary of the testimony each witness is expected to give.

8. Identify all persons whom plaintiffs have retained or employed in anticipation of litigation or for trial preparation purpose whom the plaintiffs do not expect to call as expert witnesses at trial.

9. State all facts and opinions on which plaintiffs rely in alleging that plaintiffs are entitled to punitive or exemplary damages, include in your response a detailed description of all activities of each named defendant which plaintiff allege justify the imposition of punitive damages

10. Identify all documents of which plaintiffs have knowledge including but not limited to sales literature, promotion material technical or education literature, or intra-corporate memoranda, which were produced, distributed or maintained by any defendant which plaintiffs believe relate to any matter at issue in this litigation.

11. Identify and describe with particularity each written express warranty or guaranty, if any, which plaintiffs believe they received in connection with the use of any products sold or distributed by defendant.

12. Identify and describe with particularity each oral or express warranty or guaranty, if any, which plaintiffs believe they received in connection with the use of any products sold or distributed by defendant.

13. Identify and describe with particularity every implied warranty or guaranty, if any, which plaintiffs believe they received in connection with the use of any products sold or distributed by defendant.

14. Identify all documents which relate to plaintiffs allegations that any defendant has breached any warranties given in connection with the sale or distribution of any asbestos products used by any plaintiff.

15. State all facts and opinions on which plaintiffs rely in alleging that defendants breached any warranties which may have been given in connection with the sale or distribution of any asbestos products used by any plaintiff.

16. State all facts and opinions on which plaintiffs rely in alleging that defendants acted negligently with respect to the plaintiffs.

17. Identify all documents of which plaintiffs have knowledge which relate to plaintiffs claim that defendants acted negligently with respect to the plaintiffs.

18. State all facts or opinions upon which plaintiffs rely in alleging that defendants are strictly liable in tort for injuries that may have been suffered by plaintiffs.

19. Identify all documents of which plaintiffs have knowledge which relate to plaintiffs claim that defendants are strictly liable in tort for injuries which may have been suffered by plaintiffs.

20. State all facts and opinions upon which plaintiffs rely in claiming that products sold by defendants and used by plaintiffs were "unreasonably dangerous."

21. Identify all documents of which plaintiffs have knowledge which relate to plaintiffs claim that products sold by defendants and used by plaintiffs were "unreasonably dangerous."

22. If plaintiffs contend that there is prior testimony that relates to plaintiffs' claim that defendants' products used by plaintiffs were "unreasonably dangerous," please state the following:

- (a) Date, location, jurisdiction and title of cause of said prior testimony;
- (b) Identify the person making the prior testimony;
- (c) Describe the form in which the prior testimony exists, (i.e., written, typed, recorded, etc.);
- (d) Identify the custodian of the prior testimony; and
- (e) Identify the person who obtained the prior testimony.

23. Identify all written statements or transcriptions of oral statements of any defendant to this action, or agent, employee, representative, former agent, former employee, or former representative of any defendant that plaintiffs contend are relevant to the subject matter of these lawsuits.

24. Identify all photographs, charts, drawings, diagrams, or other graphic representations or documents made by or on behalf of plaintiffs which relate to the illnesses,

relevant working conditions, or other circumstances complained of in these actions or related to the subject matter of these actions.

25. Identify all written statements which plaintiffs have made that relate to the facts of these lawsuits and the damages claimed, including but not limited to statements made to any police or law officer, insurance company representative, investigator, state or federal agents, representative or employee of any kind.

26. Identify all investigations or other reports that have been prepared, compiled, submitted, conducted, or made by plaintiffs or anyone acting in their behalf which relate to the subject matter action.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Defendants hereby request, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that plaintiffs produce for inspection and copying the following writings or documents within your possession, custody or control:

1. All documents identified in response to the foregoing interrogatories.
2. All documents referred to in preparing the answers to the foregoing interrogatories.
3. Each plaintiffs' Federal and State income tax returns for the past three (3) years.
4. All damage studies, damage reports or damage analyses, or any and all other documents containing any mention of facts or opinions which relate to plaintiffs' claims for damages suffered as a result of acts of any of the defendants.
5. All correspondence between any defendants and any other person which plaintiffs contend relate to any matter at issue in this litigation.

6. All documents which relate to or identify insulation projects or jobs upon which each plaintiff worked.

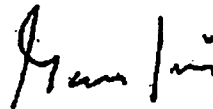
7. All documents which relate to or identify asbestos-containing materials with which each plaintiff may have worked.

8. All packaging materials which plaintiffs allege were used in packaging asbestos containing materials.

9. All medical, doctor or hospital reports, summaries, test results, or other records of any type which relate to each plaintiffs medical history and/or current medical condition.

10. All x-rays which have ever been taken of each plaintiff's chest.

11. Each plaintiff's Social Security Administration printout and work record.



D. Garrison Hill
Circuit Judge
S.C. Asbestos Master Docket

Greenville, S. C.

September 30, 2010.

EXHIBIT 3

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
IN RE:)
ASBESTOS LITIGATION)
COORDINATED DOCKET)
_____)

DEFENDANTS' STANDARD INTERROGATORIES TO PLAINTIFFS

1. State your full name, address and telephone number, date of birth, educational background and Social Security number.
2. State the complete address of all places you have resided in the past twenty years giving the inclusive dates of residence for each place named.
3. If you are now or have ever been a member of a trade labor union, provide the following information:
 - (a) the name of the union or unions to which you belonged;
 - (b) the inclusive dates of your membership in each;
 - (c) the numbers and complete address of the local unions to which you have belonged; and
 - (d) all officers or other positions which you have held in each union, identifying the office, position, and union in which held and inclusive dates the position or office was held.
4. Identify all jobs and projects on which you worked or around asbestos or materials containing asbestos and state separately as to each job or project the following:

- (a) the name and location of each job (stating the job site, city, county and state);
- (b) the name and address of each employer for whom you worked;
- (c) the beginning and ending dates of each job or project;
- (d) the name and manufacturer of each and every product containing asbestos with which you worked or to which you were exposed on each particular job or project and a general description of each such product;
- (e) the identity of your immediate superior or job superintendent on each such job or project;
- (f) the identity of all persons with whom you worked on each such job or project;
- (g) the length of time that you worked on each such job or project;
- (h) whether or not you wore a respirator or mask on each such job or project; and
- (i) your specific duties on each job.

5. Identify all jobs you have had during your lifetime that are not listed in No. 4 above. As to each, state:

- (a) the general nature of the work you performed (i.e., coal miner, textile worker, etc.)
- (b) the name and location of each job (stating the job site, city, county and state);
- (c) the name and address of each employer for whom you worked;
- (d) the beginning and ending dates of each job or project.

- (a) the name and address of each hospital, clinic or other medical facility at which you were treated or admitted;
- (b) the dates on which said treatment or treatments were rendered including the dates of entry into and discharge from said hospitals, clinics or other medical facility;
- (c) an itemization of the charges rendered by each hospital, clinic or other medical facility; and
- (d) the expenses of examination or treatment by any doctors who have examined or treated you.

11. Identify each physician or other practitioner of the healing arts not previously identified herein who has examined or treated you for any reason, and for each such individual so identified provide the following information:

- (a) the reason for such examination or treatment;
- (b) the date of each examination or treatment; and
- (c) the diagnosis resulting from each such examination or treatment.

12. Identify each hospital, clinic or other medical facility not previously identified herein at which you had been examined or received medical treatment, and for each such facility identified provide the following information:

- (a) the reason for such examination or treatment;
- (b) the date of each such examination or treatment;
- (c) if you were an in—patient, the dates of admission to and discharge from such hospital, clinic or medical facility; and
- (d) the diagnosis resulting from each such examination or treatment.

13. If you are currently receiving medical services or treatment of any nature whatsoever, state:

- (a) the name or names of the person or persons attending you;
- (b) the approximate frequency of said treatment or services; and
- (c) the date you last received said treatment or services.

14. If you have ever had x-rays taken of your chest, provide the following information for each set of x-rays taken:

- (a) the name and addresses of the office or hospital where the x-rays were taken;
- (b) the reason why such x-rays were taken;
- (c) the date or dates on which the x-rays were taken;
- (d) the information reported to you as being the x-ray diagnosis; and
- (e) the identity of the person or persons who took the x-ray and the person or persons who made the diagnosis.

15. If you have made any Workers' Compensation claim as a result of any injuries or diseases, provide the following information:

- (a) the date you first reported to your employer the incident of your injury or disease;
- (b) the date and name of the agency with which you filed a claim for workers' Compensation benefits;
- (c) the date upon which you first received any Workers' Compensation benefits, either for disability or medical treatment;

- (d) the name and address of the employer against whom you made said claim;
and
- (e) the nature of the injury or disease for which a claim was made.

16. If you have filed any claim with the Social Security administration as a result of any injuries or disease, provide the following information:

- (a) the date you filed said claim;
- (b) the nature of such claim;
- (c) the date upon which you first received any benefits, either for disability or for medical treatment; and
- (d) the amount of benefits you are receiving and the frequency with which you receive these benefits.

17. If you have ever been involved in any other legal action, including criminal charges against you, provide the following information:

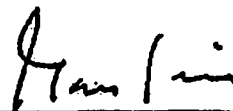
- (a) whether you were a plaintiff or defendant;
- (b) the nature of the claim made by or against you, including the nature of any criminal charge made against you;
- (c) the date and place each such action was filed, giving the name of the Court, the name of the other party or parties involved, the number of such action or actions and the names of the attorneys representing each party;
and
- (d) the result of each such action, whether there was an appeal and the result of the appeal, and whether such case was reported, and the name, volume number and page citation of the report.

18. Do you or your counsel have written reports from any physician or practitioner of the healing arts respecting any injuries or diseases that you have identified in your response to these interrogatories? If so, please attach a copy of said report or reports to your answers to these interrogatories.

19. As to any job or jobs on which you allege you were injuriously exposed to asbestos-containing materials, was there any company other than your employer installing or handling asbestos-containing materials at the same job site? If so, please identify each job, its location, the approximate dates on which you worked on that job and the other company alleged to be installing or handling asbestos-containing materials at that site.

20. Do you now, or have you ever, chewed, smoked, consumed, or otherwise used tobacco or tobacco products? If so, please state:

- (a) the type or types of products (i.e., cigarettes, cigars, etc.);
- (b) the brand name of each product listed above;
- (c) the inclusive dates of use of each product listed above; and
- (d) the frequency of use or amount of use (i.e., one pack a day, etc.).



D. Garrison Hill
Circuit Judge
S.C. Asbestos Master Docket

Greenville, S. C.

September 20, 2010.

EXHIBIT 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
IN RE:)
)
ASBESTOS LITIGATION)
COORDINATED DOCKET)
_____)

**PLAINTIFF'S STANDARD INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: ALL DEFENDANTS IN EACH OF THE ABOVE-NAMED CASES:

PLEASE TAKE NOTICE that pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the defendant is hereby directed to file answers to the following Interrogatories within thirty (30) days after service. These Interrogatories shall be deemed continuing in the sense of Rule 26(e) of the South Carolina Rules of Civil Procedure so as to require supplemental answers a reasonable time prior to trial if additional information with respect to these Interrogatories is obtained by the defendant or its counsel.

1. Did you sell and/or distribute products containing asbestos to the employers and job sites of plaintiff as listed in the Answer to Defendant Interrogatory No. 4 attached during the time listed or one year prior thereto? Please note that this Interrogatory includes thermal insulation asbestos products or cloth or spray products containing asbestos.

2. Did you sell and/or distribute products containing asbestos to job sites at which plaintiff was employed as described in Exhibit A for the time periods that plaintiff was at each job site?

3. If the answer to Interrogatory #1 or #2 is in the affirmative, please state:

- (a) The names of the products sold;
- (b) To whom the product was sold and shipped;
- (c) As to each of the above-mentioned products, please include the quantities of each shipped to each company during the applicable time period; the site to which each product was shipped; and the date of shipment;
- (d) As to each of the products mentioned above, will you provide without a Motion to Produce copies of:
 - (1) Any pertinent trademark, copy of such trademark, and the trademark registration number;
 - (2) The label, or copy of the label, used in the packaging of the particular product;
 - (3) A photograph of the product itself; -
 - (4) Sales brochures, specification sheets, performance data, or other promotional material as well as any and all installation materials, data or brochures which would have accompanied or been distributed in connection with the installation, application or use of each of the above-mentioned products;
 - (5) Copies of any invoices, sales receipts or other documents which show sales referred to in Interrogatories #1 and #2 above.
- (e) If you cannot provide all of the above documents, please indicate the name or names of the individuals having custody of said documents or copies thereof.

4. Have you consulted with any expert whom you expect to call as an expert witness at the trial of this case? If so, please give:

- (a) The name and address of each such person so consulted;
- (b) When the person was consulted and what did the person do as a result;
- (c) The subject matter on which the expert is expected to testify;
- (d) State the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds of each opinion of the expert.

5. State the names and addresses of all witnesses the defendant intends to call to testify and give a brief statement of the substance of the testimony of each such witness.

6. With regard to the preceding Interrogatory, state whether or not a written or recorded statement or deposition or testimony has been given by such witness and indicate who has possession of such statement, deposition or testimony.

7. Set forth a list of photographs, plats, sketches, or other documents relating to the individual plaintiff in this case in the possession of the party or its attorneys that will potentially be used as an exhibit at the trial of this case by you.

8. Did you provide instructions and/or warnings concerning the potential health hazards of asbestos exposure to plaintiff's employers during the time period during which plaintiff was employed by each of his employers as listed in Answer to Defendant Interrogatory No. 4?

If so, please state:

- (a) Whether the employer was expected or requested to transfer the instructions and/or warnings to its employees such as plaintiff;

- (b) The date(s) you provided instructions and/or warnings to plaintiff's employer;
- (c) Who prepared the instructions and/or warnings;
- (d) To whom the instructions and/or warnings were addressed;
- (e) The manner in which the instructions and/or warnings were transmitted to plaintiff's employers (i.e., orally, printed, pamphlets, printed on carton, etc.);
- (f) The precise wording used in the instructions and/or warnings or in lieu thereof attach an authenticated copy of the instructions and/or warnings.

9. Did you provide instructions and/or warnings concerning the potential health hazards of asbestos exposure to plaintiff and/or his co—workers at each of the job sites listed in Answer to Defendant Interrogatory No. 4?

If so, please state:

- (a) The date(s) you provided instructions and/or warnings to plaintiff and/or co—workers;
- (b) Who prepared the instructions and/or warnings;
- (c) To whom the instructions and/or warnings were addressed;
- (d) The manner in which the instructions and/or warnings were transmitted to plaintiff and/or his co-workers (i.e., orally, printed pamphlets, printed on carton, etc.);
- (e) The precise wording used in the instructions and/or warnings or in lieu thereof attached an authenticated copy of the instructions and/or warnings.

10. Did you provide instructions and/or warnings concerning the potential health hazards of asbestos exposure to any persons at plaintiff's job sites during the time period during which plaintiff was employed at each job site as listed in Answer to Defendant Interrogatory No. 4?

If so, please state:

- (a) Whether the employer was expected or requested to transfer the instructions or warnings to persons at plaintiff's job sites;
- (b) The date(s) you provided instructions and/or warnings to persons at plaintiff's job sites;
- (c) Who prepared the instructions and/or warnings;
- (d) To whom the instructions and/or warnings were addressed;
- (e) The manner in which the instructions and/or warnings were transmitted to persons at plaintiff's job sites (i.e., orally, printed pamphlets, printed on carton, etc.);
- (f) The precise wording used in the instructions and/or warnings or in lieu thereof attach an authenticated copy of the instructions and/or warnings.

11. Did you provide respirators to plaintiff, plaintiff's employers or persons at plaintiff's job sites during the time period plaintiff was employed at each as listed in Answer to Defendant Interrogatory No. 4?

If so, please state:

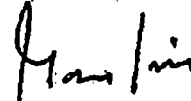
- (a) The dates respirators were provided;
- (b) To whom the respirators were provided;
- (c) The type of respirators provided;

(d) The instructions and/or warnings provided with the respirators, if any.

12. Did you receive any comments or complaints concerning asbestos dust and/or asbestos health hazards from any persons who were co—employees or employed at plaintiff's job sites during the time period plaintiff was employed as described in Answer to Defendant Interrogatory No. 4?

If so, please state:

- (a) The name and address of the person commenting or complaining;
- (b) The precise wording of the comment and/or complaint;
- (c) The date the comment and/or complaint was received by you;
- (d) What action, if any, was taken in response to the comment and/or complaint?



D. Garrison Hill
Circuit Judge
S.C. Asbestos Master Docket

Greenville, S. C.

September 30, 2010.

EXHIBIT 5

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENVILLE) CIVIL ACTION NO.

Plaintiffs,

vs.

Defendants.

ORDER FOR RELEASE OF
PATHOLOGY MATERIALS

This matter comes before the Court pursuant to the parties standing request for the Release of Pathology Materials in asbestos cases in South Carolina. In the above-captioned case, this Court finds that the request is proper and should be granted.

Further, this Court respectfully requests that the courts of any other state within whose borders such pathology materials may be located, honor this Order and domesticate it as if originally issued in that jurisdiction

**D. GARRISON HILL
CIRCUIT COURT JUDGE
13TH JUDICIAL CIRCUIT**

Rec. 827

EXHIBIT 6

**AMENDED EXHIBIT 6 TO OCT. 13, 2010 ASBESTOS MASTER
DISCOVERY/SCHEDULING ORDER**

In light of other asbestos trial settings, counsel is expected to cooperate in scheduling the various events, particularly depositions, addressed in this Order. The parties may modify these deadlines by agreement, and the court may suspend any of these deadlines in cases with a living mesothelioma Plaintiff or other appropriate circumstances.

45 days after filing Complaint

- (a) Plaintiff shall answer Master Discovery. Plaintiff shall be under a continuing duty to supplement discovery responses as necessary.
- (b) Plaintiff shall provide copies of all medical records in Plaintiff's possession, custody or control. Plaintiff shall provide defendants with the necessary authorizations to gather medical records.

75 days after filing Complaint

- (a) Plaintiff deposition to be completed, if health permits.
- (b) If Plaintiff's deposition occurs before Master Discovery responses are due, or have been provided to defendants, Plaintiff must provide defendants a work history sheet, any known testimony or discovery from Plaintiff in a previous asbestos related case, and all available medical and social security records at least two business days prior to deposition.
- (c) Plaintiff shall provide all pathology materials already available to Plaintiff to the defense liaison as well as authorizations for pathology. No alteration or destruction of any pathology materials may occur without agreement of all parties or a court order. Pathology must be returned to Plaintiff within 60 days of receipt. In the event any defendant receives pathology before the Plaintiff, it should be produced to Plaintiff's counsel within the week it is received. Plaintiff must return the pathology to the defense liaison within 60 days of receipt.

45 days after Defendant's Answer is filed

- (a) Defendant shall answer Master Discovery. Defendant shall be under a continuing duty to supplement discovery responses as necessary.

105 days after filing Complaint

- (a) Plaintiff shall designate all fact witnesses expected to be called at trial. The designation should include a brief summary of expected testimony, whether the witness is a co-worker, family member, treating physician, or other fact witness. This list may be supplemented up to five days before the deadline to depose all Plaintiff's fact witnesses.

2015 JUN 25 PM 4:00
CLERK OF COURT
SOUTH CAROLINA
AUL D. BRYANT, CLERK

- 7
- (b) Plaintiff shall designate all expert witnesses expected to be called at trial. The designation should include a brief summary of the anticipated testimony. This list may be supplemented up to five days before the deadline to depose all Plaintiff's expert witnesses.

125 days after filing Complaint

- (a) Counsel for Defendants shall designate all fact witnesses expected to be called at trial. The designation should include a brief summary of expected testimony, whether the witness is a co-worker, family member, treating physician, or other fact witness. This list may be supplemented up to five days before the deadline to depose Defendant's fact witnesses.
- (b) Counsel for Defendants shall designate all expert witnesses and any of the Plaintiff's treating physicians expected to be called at trial. The designation should include a brief summary of the anticipated testimony. This list may be supplemented up to five days before the deadline to depose all Defendant's expert witnesses.

The following deadlines must be followed and met once the Court has assigned a trial date:

70 days before trial

- (a) Depositions of Plaintiff's fact witnesses with the exception of family members who do not have product identification testimony who may be deposed up until the close of discovery or later if by agreement.
- (b) Deposition of Defendants' fact witnesses completed, with the exception of Defendant's 30(b)(6) witnesses.

55 days before trial

- (a) Defendants to file and serve dispositive motions.

45 days before trial

- (a) Depositions of Plaintiff's expert witnesses completed.
- (b) Depositions of Defendants' 30(b)(6) witnesses completed. This deadline can be extended by agreement with counsel for Plaintiff and the counsel for deponent.

30 days before trial

- (a) Plaintiffs to file and serve response to Defendants' dispositive motions.
- (b) Depositions of Defendants' expert witnesses completed.

(c) Mediation completed. Each party shall have a person with final settlement authority present at the deposition, or accessible at all times by phone during the entire mediation.

(d) All discovery completed.

20 days before trial

(a) Defendants to file and serve Reply to Plaintiff's Response to Defendants' dispositive motions.

14 days before trial

(a) Parties to exchange final list of all witnesses to be called at trial.

7 days before trial

(a) Parties to exchange final exhibit lists. Exhibits are to be made available for exchange electronically on this date, upon request.

(b) Parties are to file Motions in Limine.

(c) Page/Line designations to be exchanged.

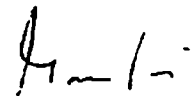
3 days before trial

(a) Parties to exchange any objections and counter page/line designations of depositions to be read at trial.

1 day before trial

(a) Parties to exchange any objections to counter page/line designations and any final counter-designations.

IT IS SO ORDERED.



D. Garrison Hill
Circuit Judge

June 25, 2015
Greenville, SC

Couch, Ashley L.

From: Steve Pugh <SPugh@RichardsonPlowden.com>
Sent: Sunday, March 18, 2018 12:47 PM
To: Couch, Ashley L.
Subject: FW: HOWE CHARTS
Attachments: Howe Charts-Mcvey.pdf; ATT00001.htm

EXTERNAL EMAIL: Open Attachments and Links With Caution.

From: Theile McVey [<mailto:TMcVey@kassellaw.com>]
Sent: Wednesday, March 14, 2018 4:13 PM
To: Steve Pugh; Elizabeth.ONeill@wbd-us.com; idean@dobllp.com; jholder@dobllp.com; rtravis@thetrialgroup.com
Subject: Fwd: HOWE CHARTS

As promised, here is the updated numbers from Oliver Wood. Thanks, Theile

Sent from my iPhone

Begin forwarded message:

From: Ena Hagon <enaatogwecon@yahoo.com>
Date: March 14, 2018 at 12:00:39 PM EDT
To: Theile McVey <tmcvey@kassellaw.com>, Jonathan Holder <jholder@dobllp.com>
Cc: Belinda Jolivet <bjolivet@dobllp.com>, Elizabeth Moultrie <emoultrie@kassellaw.com>
Subject: HOWE CHARTS

Hello

As requested, attached are the Howe charts for your info.

See you tomorrow at 0900.

Ena

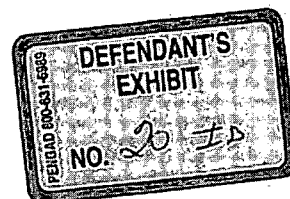


CHART 1
ELEMENTS OF LIFE CARE PLAN

Elements	Frequency	Average Current Periodic or Annual Cost	Duration
A. HOME CARE			
1. PCA	annual	183,960	2018 - husband's le
2. LPN	annual	8,320	2018 - husband's le
3. RN/CM	annual	1,080	2018 - husband's le
OR			
B. FACILITY CARE			
1. Assisted Living Facility	annual	79,188	2018 - husband's le.
Less: Estimated Normal Living Exp.		(15,676)	
Equals: Net Assisted Living Facility		63,512	

Source: Ms. Sarah Lustig, RN, LNC, CLCP, CNCLP.

CHART 2
VALUE OF CARE FOR MS. JEANETTE HOWE
(FROM THE DATE OF HUSBAND'S DEATH ON 3/8/16 TO THE
DATE OF TRIAL - 03/12/18)

VALUE OF CARE FOR MS. JEANETTE HOWE
AS MEASURED BY HOME CARE ELEMENTS
IN THE LIFE CARE PLAN:

1. PCA

2016	(03/08 - 12/31)	\$150,847	
2017		183,960	
2018	(01/01 - 03/12)	36,792	
Subtotal PCA			\$371,599

2. LPN

2016	(03/08 - 12/31)	6,822	
2017		8,320	
2018	(01/01 - 03/12)	1,664	
Subtotal LPN			16,806

3. RN/CM

2016	(03/08 - 12/31)	886	
2017		1,080	
2018	(01/01 - 03/12)	216	
Subtotal RN/CM			2,182

TOTAL VALUE OF CARE 3/6/16 - 3/12/18			\$390,587

CHART 3
PRESENT VALUE OF AFTER-TRIAL COST OF
HOME CARE: PCA
(03/13/18 TO HUSBAND'S LIFE EXPECTANCY
ON 2028.84 = 10.64 YEARS)

Year Ending	Annual Amount	Discounted to Present Value
2019.20	\$183,960	\$175,200
2020.20	188,320	170,812
2021.20	192,783	166,533
2022.20	197,352	162,362
2023.20	202,029	158,295
2024.20	206,817	154,330
2025.20	211,719	150,465
2026.20	216,737	146,696
2027.20	221,873	143,021
2028.20	227,132	139,439
2028.84	148,809	88,547
Totals	\$2,197,531	\$1,655,700

CHART 4
PRESENT VALUE OF AFTER-TRIAL LIFE CARE PLAN COSTS
(03/13/18 - HUSBAND'S LIFE EXPECTANCY ON 2028.84)

Elements	Present Value
A. HOME CARE	
1. PCA	\$1,655,700
2. LPN	74,883
3. RN/CM	9,721
Total Home Care Costs	\$1,740,304
OR	
B. FACILITY CARE	
1. Net Assisted Living Facility	\$571,629

CHART 5
PRESENT VALUE OF TOTAL FINANCIAL LOSS
(AS MEASURED BY THE VALUE/COST OF CARE)

	Before-Trial Value of Care	Present Value of After-Trial Cost of Care	Total Value/Cost of Care
Home Care: Total Care Value/Cost (Total Financial Loss)	\$390,587	\$1,740,304	\$2,130,891
OR			
Facility Care: Total Care Value/Cost (Total Financial Loss)	\$390,587	\$571,629	\$962,216

Couch, Ashley L.

From: Kennaday, Tom <TKennaday@TurnerPadget.com>
Sent: Friday, March 09, 2018 5:50 PM
To: Jessica Dean; O'Neill, Elizabeth
Cc: S. Pugh; Trey Branham; tmcvey@kassellaw.com; Jonathan Holder (jholder@dobllp.com); Reeg, Kurtis B.
Subject: Bowater - package boiler questions
Attachments: CTE-37ML-1.PDF; D-10-517-PROG.PDF; CTE-10C-3 ca 1958 annotated afw 030618.pdf; CTE-36CC-3001 Annotated afw 030618.pdf; CTE-10C-2.PDF; D-10-62.PDF

EXTERNAL EMAIL: Open Attachments and Links With Caution.

Jessica and Elizabeth,

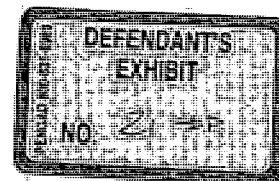
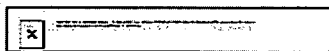
Pursuant to informal questions I was asked after depositions of my client, Resolute FP US, Inc., (one taken in the Smith and Sizemore cases and one taken in Howe,) I followed up with Mr. Art Welker. What I was asked about relates largely to the dispute you are having about where at the Bowater Catawba mill a Cleaver Brooks package boiler may have been located and when. I've already relayed information Art gave me to Trey and Theile and I think to Jonathan during the mediation, and to Elizabeth after today's hearing. With this e-mail I am passing on documents that Art used to support his conclusions so that if you ask Art at trial about the information I passed on and he says he knows something based on a document he looked at after the depositions, you will not be surprised and you will have the document. I believe the red, or red highlighted notes on the documents are Art's notes.

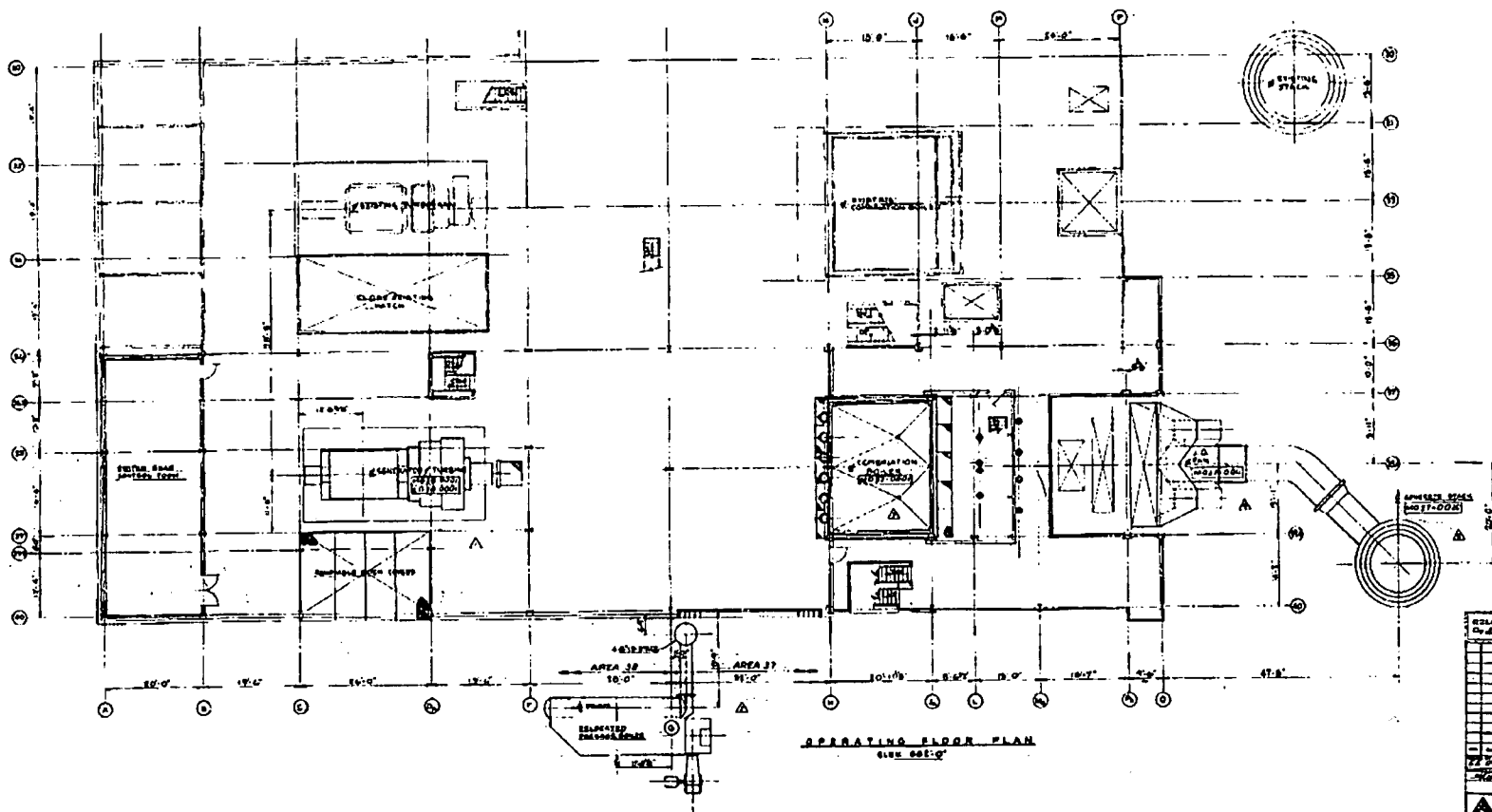
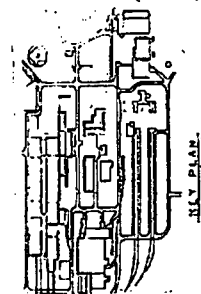
I am waiving any work product protection that Resolute may have to the notes on these documents, but only as to these notes, because you have an urgent need for the documents with trial starting Monday, and because you arguably have a substantial need for the notes. I am not passing on the actual e-mail from Mr. Welker because it is protected by attorney client privilege and the work product doctrine and I was able to give you the information without giving you the e-mail.

If you have any questions, please give me a call. My cell is 803-206-7283.

Tom.

Tom Kennaday
Attorney
PO Box 1473 | Columbia, SC 29202
1901 Main Street, Suite 1700 | Columbia, SC 29201
803-227-4290 | Fax 803-400-1553
tkennaday@turnerpadget.com
[Bio](#) | [vCard](#) | [Location](#)

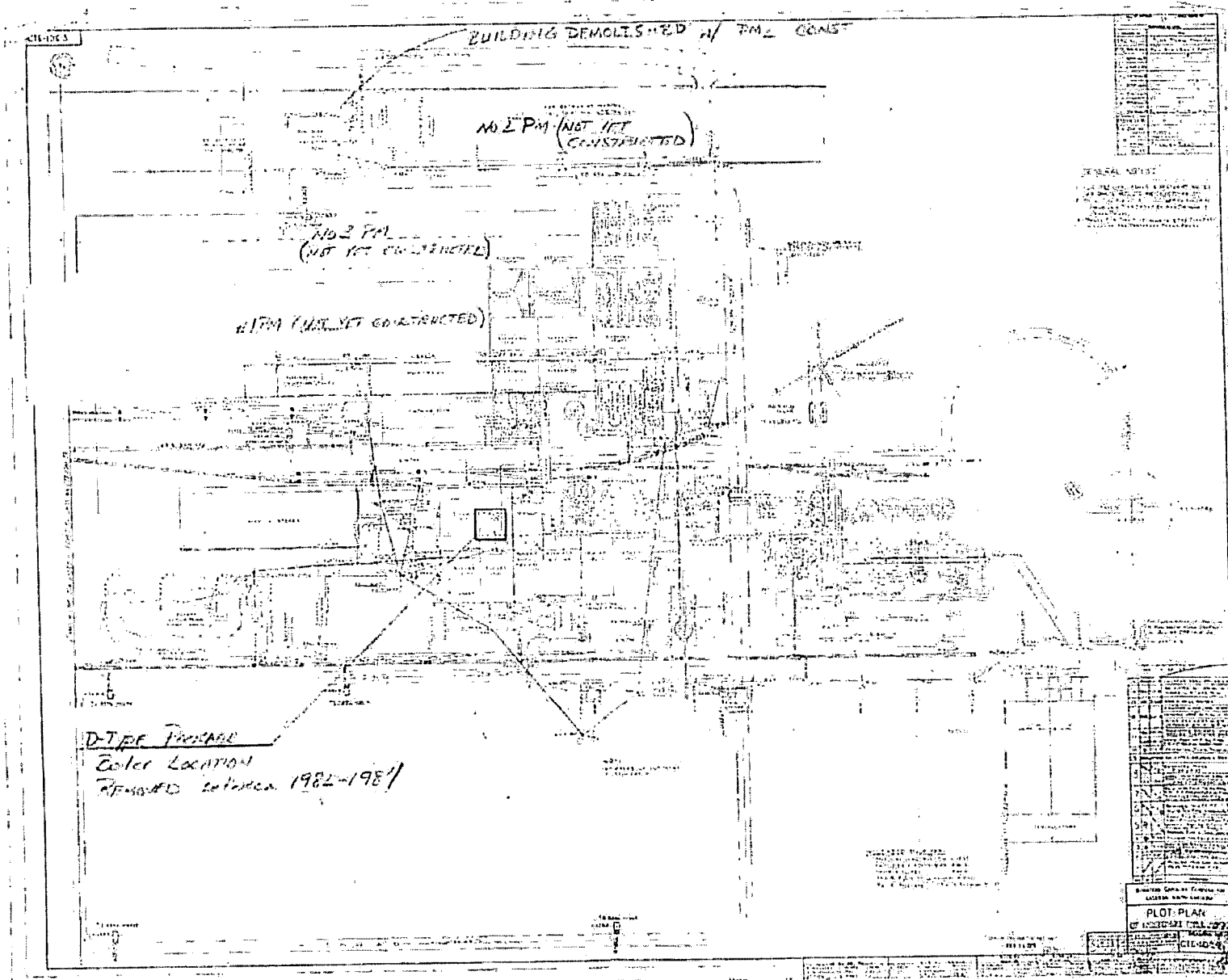


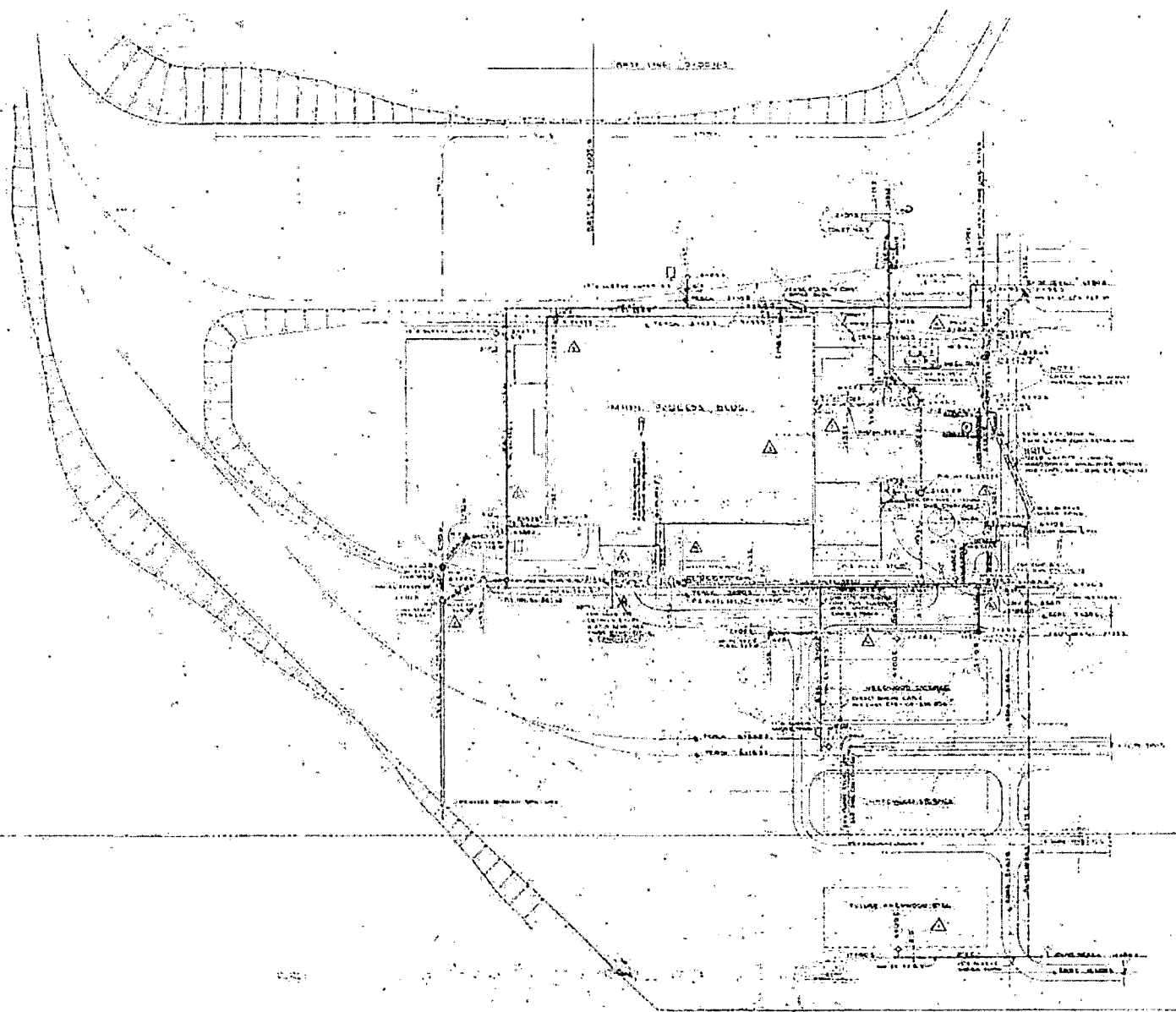


OPERATING FLOOR PLAN
SIZE 665'-0"



REVISIONS	
NO.	DESCRIPTION
1	AS SHOWN
THE PLAN ENGINEERING CO. COMMERCIAL, ALABAMA	
FOR THE CLIENT'S INFORMATION THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE PLAN ENGINEERING CO.	
DATE	PROJECT NO.
10-1-57	9678
GENERAL ARRANGEMENT CONVENTION CENTER	
SCALE	CTE-37VL-1





6-11 146 2-252-2

715

14000. 22000. 24000. 26000.

24-6-1945

LEGEND

PAGE 1
 DATE
 100-100000

40353-

[illegible]

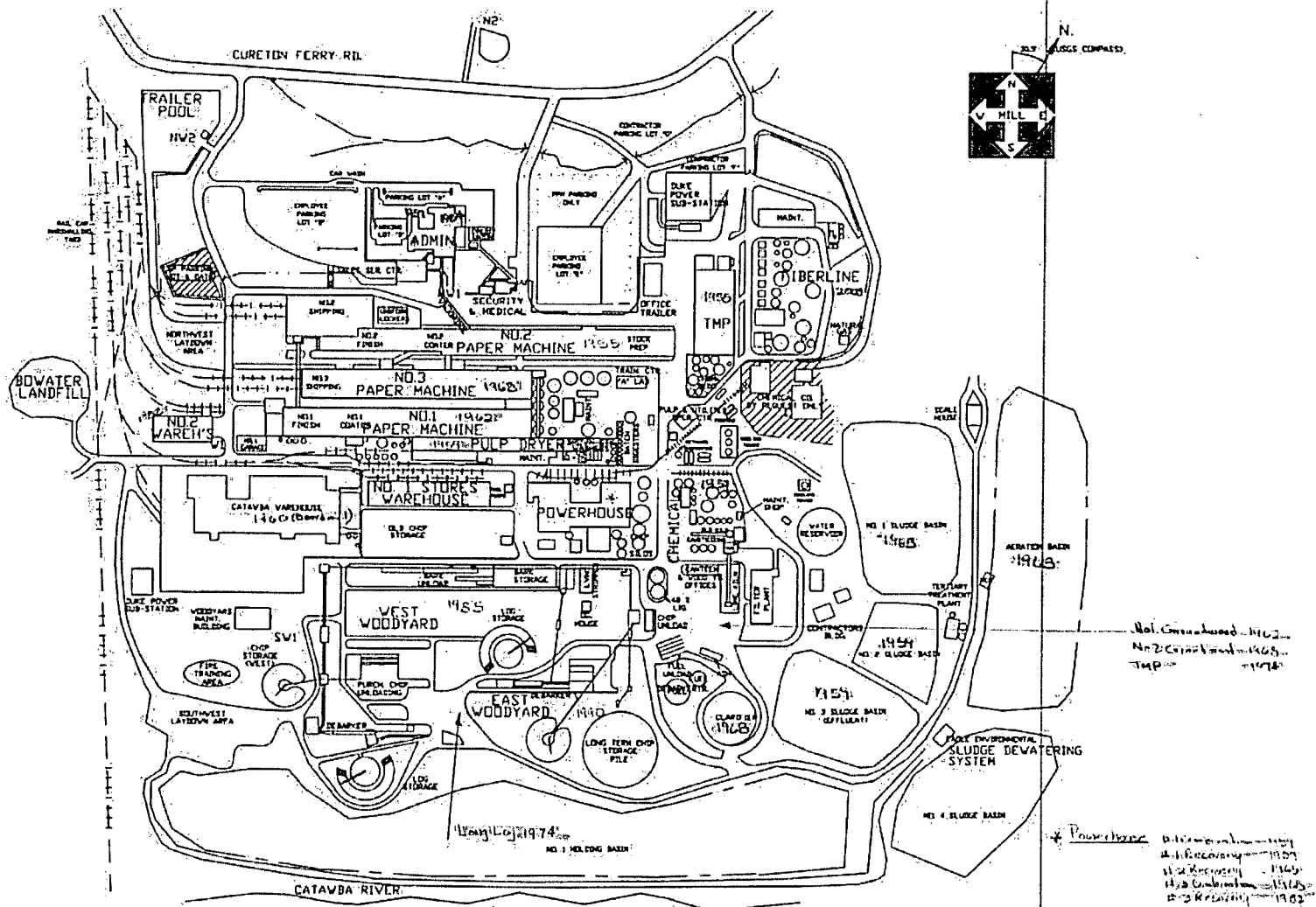
1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]
21. [REDACTED]
22. [REDACTED]
23. [REDACTED]
24. [REDACTED]
25. [REDACTED]
26. [REDACTED]
27. [REDACTED]
28. [REDACTED]
29. [REDACTED]
30. [REDACTED]
31. [REDACTED]
32. [REDACTED]
33. [REDACTED]
34. [REDACTED]
35. [REDACTED]
36. [REDACTED]
37. [REDACTED]
38. [REDACTED]
39. [REDACTED]
40. [REDACTED]
41. [REDACTED]
42. [REDACTED]
43. [REDACTED]
44. [REDACTED]
45. [REDACTED]
46. [REDACTED]
47. [REDACTED]
48. [REDACTED]
49. [REDACTED]
50. [REDACTED]
51. [REDACTED]
52. [REDACTED]
53. [REDACTED]
54. [REDACTED]
55. [REDACTED]
56. [REDACTED]
57. [REDACTED]
58. [REDACTED]
59. [REDACTED]
60. [REDACTED]
61. [REDACTED]
62. [REDACTED]
63. [REDACTED]
64. [REDACTED]
65. [REDACTED]
66. [REDACTED]
67. [REDACTED]
68. [REDACTED]
69. [REDACTED]
70. [REDACTED]
71. [REDACTED]
72. [REDACTED]
73. [REDACTED]
74. [REDACTED]
75. [REDACTED]
76. [REDACTED]
77. [REDACTED]
78. [REDACTED]
79. [REDACTED]
80. [REDACTED]
81. [REDACTED]
82. [REDACTED]
83. [REDACTED]
84. [REDACTED]
85. [REDACTED]
86. [REDACTED]
87. [REDACTED]
88. [REDACTED]
89. [REDACTED]
90. [REDACTED]
91. [REDACTED]
92. [REDACTED]
93. [REDACTED]
94. [REDACTED]
95. [REDACTED]
96. [REDACTED]
97. [REDACTED]
98. [REDACTED]
99. [REDACTED]
100. [REDACTED]

RELEASED FOR
CONSTRUCTION

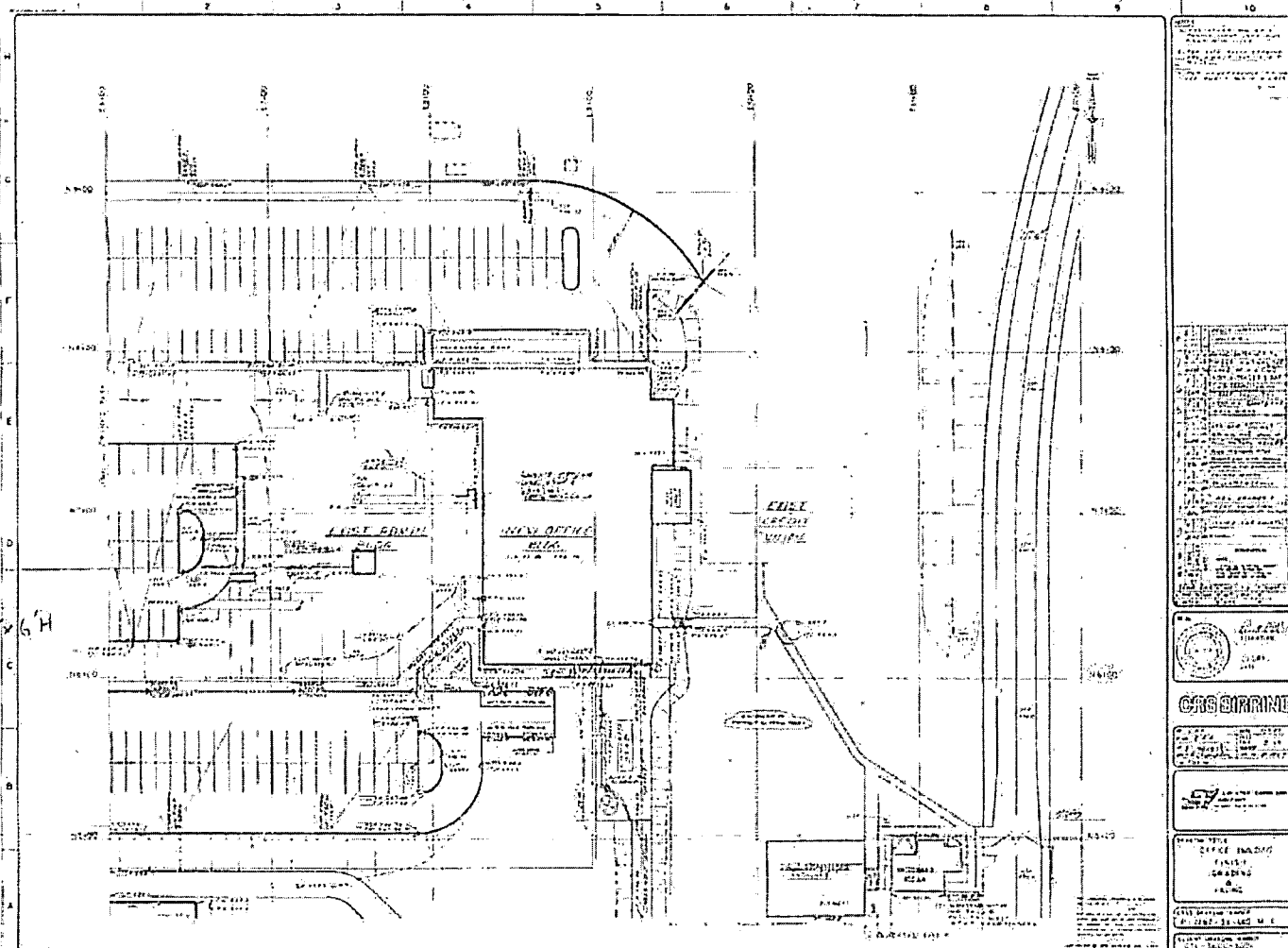
INWATIDE

Amesbury & Southwestern Railroad

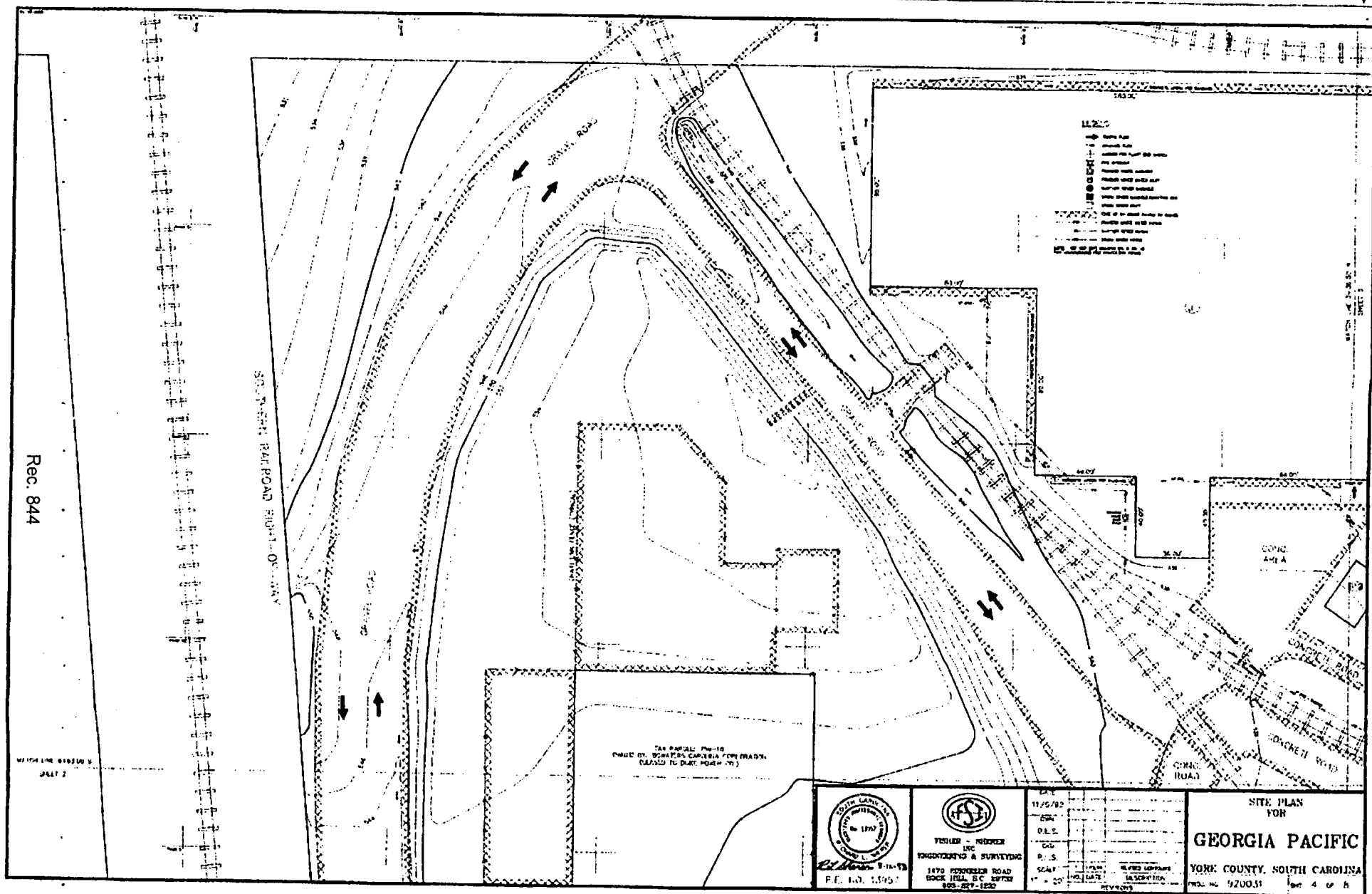
Calverton, Maryland



APPROX. LOCATION
FOR ALUMINUM BORDER
ROUGH SIZE 4'x8'x6'H



WITNESSES
JAMES J.

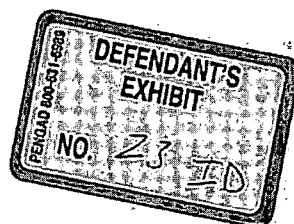


Couch, Ashley L.

From: Kennaday, Tom <TKennaday@TurnerPadget.com>
Sent: Monday, March 12, 2018 9:08 AM
To: O'Neill, Elizabeth; jdean@dobllp.com
Subject: - ResoluteFP Catawba - C-E Package Boiler
Attachments: Combustion Engineering - Shipment Confirmation 091664.pdf; Combustion Engineering - Engineering Drawing Package Cover 090164.pdf; CTE-37ML-1.PDF

EXTERNAL EMAIL: Open Attachments and Links With Caution.

Jessica and Elizabeth,
Attached are documents I received from Art this morning.
Tom





COMBUSTION ENGINEERING, INC.

1000 PROSPECT HILL ROAD
WINDSOR, CONNECTICUT

Address Reply to
CHARLOTTE OFFICE
222 SOUTH CHURCH STREET
CHARLOTTE 2, NORTH CAROLINA

September 1, 1964

Bowaters Carolina Corporation
Catawba,
South Carolina

*ma
JP 16-26*
BOWATERS CAROLINA CORPORATION
CATAWBA, S. C.

SEP 4 1964

Attention: Mr. C. H. Hornsby
Chief Engineer

C. H. Hornsby

Subject: Shop Assembled, Water Tube Boiler
East Highlands Purchase Order EH-1307
Our Contract 15764

Gentlemen:

We enclose herewith ten (10) prints each of the following contract drawings:

COMBUSTION ENGINEERING, INC.

D-382-105-0	Arrangement of Boiler and F.D. Fan
E-896-659-0	Pressure Parts Arrangement
D-895-011-3	Arrangement of Purge Air Piping
D-895-017-1	Arrangement of Blow-Off Piping
A-141-782-2A	Approved Installation of Safety Valve Discharge Piping
Revision 3	Equipment Summary Sheet

PEABODY ENGINEERING CORPORATION

B-52474	MT-28 Non-Insulated Register
B-48522-A	Type "FPM" Ignitor
B-52475	Oil-Steam & Ignitor Piping
A-52473	Package Burner

COMBUSTION ENGINEERING, INC.
Charlotte, North Carolina

Bowaters Carolina Corporation

-2-

September 1, 1964

Drawing A-52473 is in the process of being revised based upon red pencil dimension notations shown on the enclosed prints. Revised drawings incorporating red pencil notations will be forwarded to you as soon as these are received from Peabody Engineering Corporation and checked by our Engineering Department.

Details of the forced draft fan and arrangement of the Bailey pneumatic positioning combustion control system will be forwarded to you as soon as drawings are received from the Clarage Fan Company and Bailey Meter Company.

We also confirm telephone conversation with Mr. M. W. Bates on August 18, 1964 wherein we were advised a 10" steam line schedule 80 with 300 pound flanges will be furnished by the Purchaser.

We acknowledge receipt of your letter of August 28, 1964 with attendant prints of your drawing E-26-21-Piping Arrangement For Package Boiler.

With reference to the writer's telephone conversation with Mr. M. W. Bates on August 31, 1964, we confirm herewith our request for layout prints from you showing the proposed location of the self-supporting stack to be furnished by the Purchaser in relation to lateral tie in from adjacent building steel. Upon receipt of the requested prints, we will forward these prints to our Engineering Department for engineering contract coordination.

Very truly yours,

COMBUSTION ENGINEERING, INC.


Orville E. Heckman, Jr.
District Engineer

OEHJR:DD

Enclosures (As Stated)

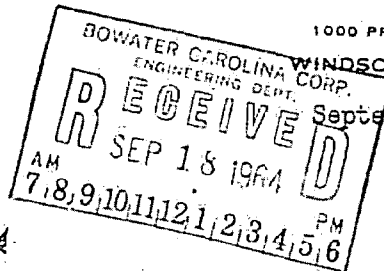
cc: Mr. R. B. Red
General Purchasing Agent
Bowaters Southern Paper Corporation
Calhoun, Tennessee

Mr. L. W. Camplong
Purchasing Agent
Bowaters Carolina Corporation
Catawba, South Carolina



COMBUSTION ENGINEERING, INC.

1000 PROSPECT HILL ROAD
WINDSOR, CONNECTICUT



September 15, 1964

Address Reply to
BIRMINGHAM OFFICE
14 OFFICE PARK
BIRMINGHAM 13, ALABAMA
P. O. BOX 7586



mult 16-26
JF

East Highlands Company
Calhoun, Tennessee

Attention: Mr. R. B. Reid

Subject: Bowaters Carolina Corporation
Shop Assembled Package Boiler
Your Purchase Order No. EH-1307-R
Our Contract 15764

Gentlemen:

Confirming our teletype of last week to you, we herein tabulate the detailed shipping schedule for the equipment and material included in this contract as received in an interoffice communication dated September 9 from our Production Planning Department.

<u>Order No.</u>	<u>Vendor</u>	<u>Material</u>	<u>Expected Ship Date</u>
3452025	Chattanooga Div.	(A) one 25 VPLZWR PBA	10-30-64
3452025	Chattanooga Div.	(M) Boiler Base	10-30-64
3452392	Chattanooga Div.	(M) Casing Parts	10-30-64
3452392	Chattanooga Div.	(M) Misc. Parts	10-30-64
3452026	St. Louis Div.	(M) Upper Drum Separators	10-2-64
1402795	Peabody Engr. Co.	(M) Burner & Controls	10-16-64
1402795	Peabody Engr. Co.	(M) Burner Tile	9-18-64
1403010	Clarage Fan Co.	(D) F. D. Fan	10-30-64
1403010	Clarage Fan Co.	(D) F. D. Fan Coupling	9-25-64
1403110	Reliance Elec. & Engr.	(D) F. D. Fan Motor	10-30-64
		(D) Air Duct	10-30-64

The Boiler marked (A) will ship assembled from Chattanooga with those items marked (M) required at our shop for mounting on the Boiler. Items marked (D) will ship direct to the job site in line with the boiler date for field assembly.

M. W. DATES
COPIES TO
Messrs. Hair
Hornsby
Nichols
Camplong

-2-

All Engineering is complete except Air Ducts which will be released September 18 and arrangements have been made to assure that this item will be completed in time to meet the required shipping date.

Yours very truly,

COMBUSTION ENGINEERING, INC.

Paul D. Chaffee

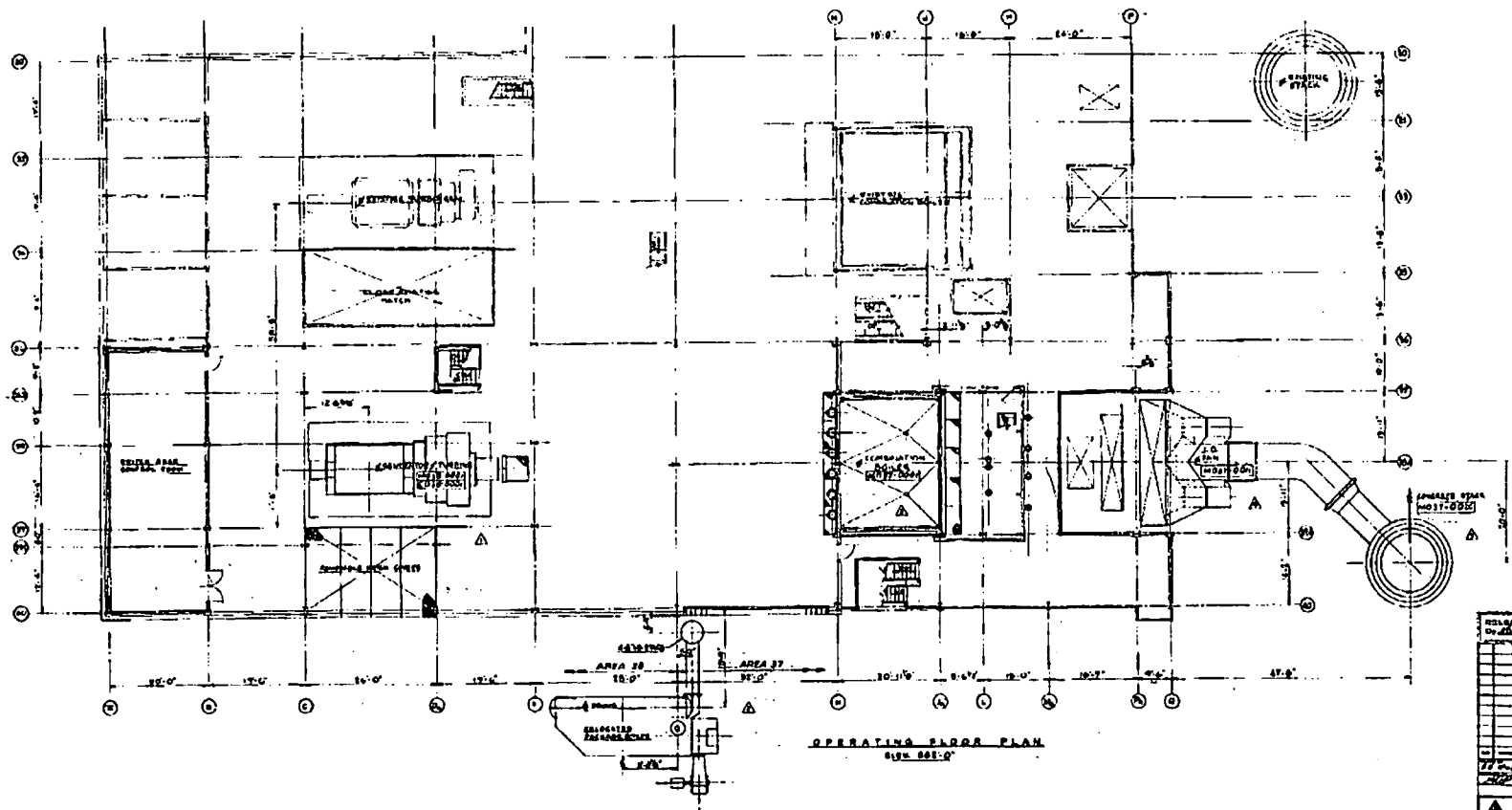
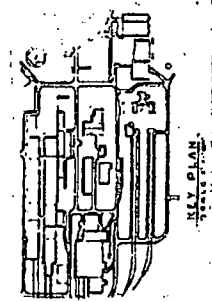
Paul D. Chaffee
Sales Engineer

CC: Mr. L. W. Camplong
Bowaters Carolina Corporation
Catawba, South Carolina

PDC/kh

R. B. REID	
Copy To	Date
<i>M. W. Bates</i> ←	

9/10/64



OPERATING FLOOR PLAN
SHEET 001-0



NO.	DESCRIPTION	DATE	BY	CHECKED	APPROVED	REVISIONS	DATE	BY	CHECKED	APPROVED
1	ISSUED FOR CONSTRUCTION	10/1/67	J. H. B.	J. H. B.	J. H. B.					
2	REVISION									
3	REVISION									
4	REVISION									
5	REVISION									
6	REVISION									
7	REVISION									
8	REVISION									
9	REVISION									
10	REVISION									

REVISIONS NOT CHECKED BY J. H. B. 10/1/67

NO.	DESCRIPTION	DATE	BY	CHECKED	APPROVED
1	ISSUED FOR CONSTRUCTION	10/1/67	J. H. B.	J. H. B.	J. H. B.
2	REVISION				
3	REVISION				
4	REVISION				
5	REVISION				
6	REVISION				
7	REVISION				
8	REVISION				
9	REVISION				
10	REVISION				

THE HUNT ENGINEERING CO.
MEMPHIS, ALABAMA

LOCATION: GENERAL ARRANGEMENT
GENERAL ARRANGEMENT
COMBINATION BOILER

NO. OF SHEETS 9878 CTE-37M-1

Couch, Ashley L.

From: Kennaday, Tom <TKennaday@TurnerPadget.com>
Sent: Monday, March 12, 2018 8:07 PM
To: O'Neill, Elizabeth; Jessica Dean
Subject: Fwd: Resolute Catawba Confidential - Attorney-Client Privilege- Additional Information
Attachments: Office Building Fire Tube Boiler Purch Order 1961.pdf; kewanee boiler.PDF; Fire Insurance Assoc 031872.pdf; ctd-36M-1100.PDF

EXTERNAL EMAIL: Open Attachments and Links With Caution.

Art found more documents. Call me with your questions.

Tom Kennaday

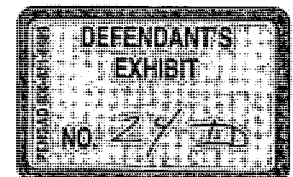
----- Original Message -----

Subject: Resolute Catawba Confidential - Attorney-Client Privilege- Additional Information

From: Art.Welker@resoluteftp.com

Date: Mar 12, 2018, 7:59 PM

To: "Kennaday, Tom" <TKennaday@TurnerPadget.com>



2 BOWATERS CAROLINA CORPORATION

A MEMBER OF THE  BOWATER ORGANIZATION

PURCHASE ORDER

NO 0507
ALL INVOICES AND PACKAGES
MUST SHOW THIS NUMBER

CATAWBA, SOUTH CAROLINA

SHIP TO

Gas Heat Engineering Corporation
P. O. Box 3064
Charlotte 3, North Carolina

BOWATERS CAROLINA CORPORATION
Bowaters Construction Store
CATAWBA, SOUTH CAROLINA

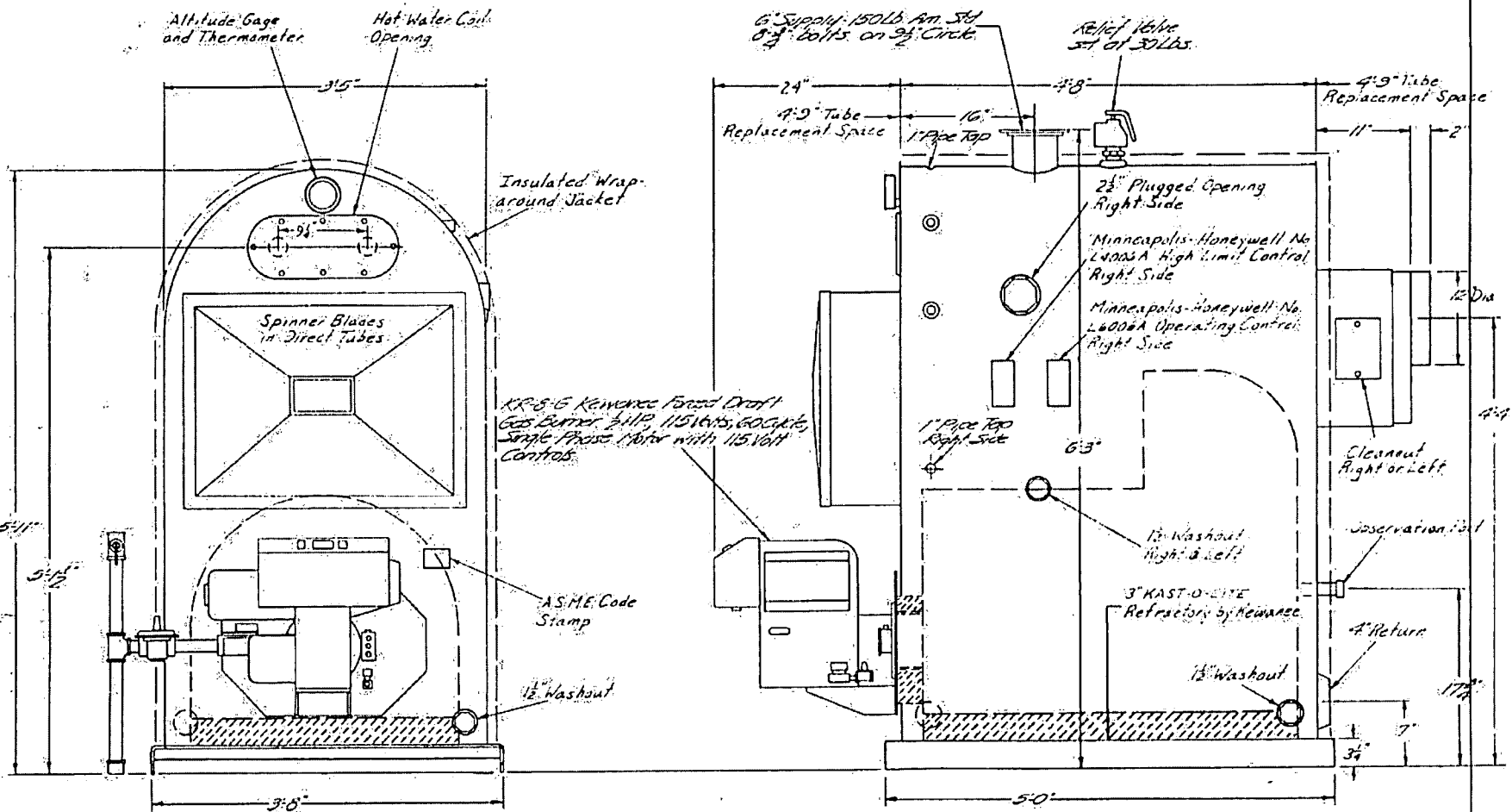
INVOICE AND ADDRESS CORRESPONDENCE TO:
BOWATERS CAROLINA CORPORATION
ATTENTION PURCHASING DEPARTMENT
CALHOUN, TENNESSEE

Please furnish the Material Specified Below Subject to the Conditions and Instructions Set Forth on the Face and Reverse Side Hereof.

See below	Motor Freight	DATE OF ORDER
Net 30 days	Shipping point, F/A to Catawba, S.C.	Nov. 9/61
CLG/mg	20015-36-334.2-0001-03	20015-36-3, (P)
		Nov. 8/61
1	ADMINISTRATION BUILDING BOILER - M36-0001	
1	Kewanee Boiler-Burner Unit #TR9-F-G with standard catalog list of equipment and controls, Water trim, low water cut-off, Factory Mutual approved gas safety shut-off valve (automatic reset type). Burner to have capacity to burn 1,575,000 B.T.U.H. but adjusted to burn 800,000 B.T.U.H.	\$2,310.00 ea.
2	Preliminary and certified drawings, instruction manuals and stiff back parts books are to be furnished in accordance with attached ED-26.	Firm Price
3	Drawing schedule ED-24 to be completed and returned immediately.	No charge.
4	A quotation on your recommendation of spare parts to be maintained in our storeroom is to be submitted within one month, per attached form letter.	No charge.
	Please note and reply promptly to attached form letter concerning shipping weights, etc.	
	Material required at Catawba, South Carolina, November 30, 1961.	

RECEIVED VIA	FREIGHT BILL NO.	CAR NO.	COLLECT CHARGES	PREPAID CHARGES	DATE RECEIVED
	Accounts	Catawba, S.C.	\$		12/61
(ABOVE MATERIAL RECEIVED IN GOOD CONDITION, RECEIPT AS NOTED HERE)					
DISCREPANCY REPORT ATTACHED ☐			RECEIVED BY		
CLAIM FOR LOSS OR DAMAGE REPORT ATTACHED ☐					

G. I. Cobble



Note: McDonnell & Miller No. 63-B Low Water Fuel Cut-off and Alarm Switch furnished but not piped to boiler by Kewanee.

Specifications

ASME Code Construction	Welded
Maximum Working Pressure-Water	30 Psi
S.B.E. Net Rating-Water	245 MBH
Gross Output	260 MBH
Heating Surface	205 Sq. Ft.
Furnace Volume	31.8 Cu. Ft.

SCALE	NO.	DESIGN	DATE	BY	CHKD.	APPD.
ALL DIMENSIONS TO HAVE A TOLERANCE OF .010 UNLESS OTHERWISE SPECIFIED						
DO NOT USE FOR CONSTRUCTION UNLESS PRINT IS REPRODUCED IN FULL AND MODIFICATION - USE DIMENSIONS ONLY						
THIS DOCUMENT CONTAINS MATERIAL AND/OR INFORMATION WHICH IS THE PROPERTY OF AMERICAN RADIATOR AND STANDARD SANITARY CORPORATION AND SUPPLIED ONLY ON A CONFIDENTIAL BASIS. NO REPRODUCTION OR DISCLOSURE SHALL BE MADE TO ANY PERSON FIRM OR CORPORATION WITHOUT THE PRIOR WRITTEN APPROVAL OF AMERICAN RADIATOR AND STANDARD SANITARY CORPORATION THROUGH ITS INDUSTRIAL DIVISION.						
						CHARGE
						BY
						BY
						BY
						DATE
						PRINT
						CODE

AMERICAN-Standard	
INDUSTRIAL DIVISION	
KEWANEE BOILER PRODUCTS	
KEWANEE, ILLINOIS	
DRAWING NO. MB-22441	
DRAWING BY No. 385 E.E. Kewanee Co. Inc.	
Draft Package Unit for Hot Water	
Gas Fired	
Administration Building 11-30-2001	



FACTORY INSURANCE ASSOCIATION

HARTFORD • CHICAGO • SAN FRANCISCO

COPY

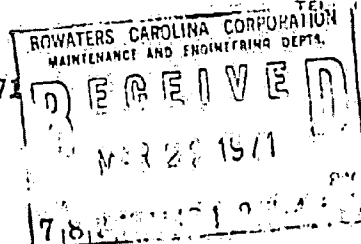
FIELD OFFICE

131 PROVIDENCE ROAD

CHARLOTTE, NORTH CAROLINA 28207

TEL. (704) ED 3-1108

March 18, 1971



Gas Heat Engineering Corporation
2150 Hawkins Street
Charlotte, North Carolina 28203

Attention: Mr. Chandler Arndt, Vice President

Gentlemen:

ROWATERS CAROLINA CORPORATION
CATAMBA, SOUTH CAROLINA
FIA FILE NO. F-14788-W

I acknowledge receipt in this office of your Drawing 171-D showing the piping schematic and basic wiring layout for conversion of two boilers at Rowaters Carolina Corporation in Catawba, South Carolina. The boilers in question are:

1. A 30 HP Cleaver-Brooks gas-fired boiler in the Administration Building.
2. A 37.5 HP Kewanee gas-fired boiler in the new Office Building.

I understand you plan to use Minneapolis Honeywell R-4150 flame safeguards on each boiler. The drawings appear to be acceptable to us as shown and are approved without comment.

We are retaining our usual two (2) copies and returning the remaining three (3) to you marked with our stamp of approval subject, of course, to final inspection and tests by a representative of this Association.

Sincerely,

Sammy G. Blackburn
Engineer

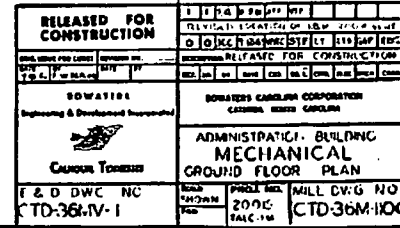
SGB/ja

cc: Irby-Adams-Cates Co., 125 Fulton Fed. Bldg., Atlanta, Ga. 30303
Mr. James G. Cate, Jr., Rowaters Southern Paper Corp. Calhoun, Tenn. 37309
Mr. M. W. Bates, Rowaters, Box 351, Catawba, S. C.



HA 12/16

Rec. 854



Couch, Ashley L.

From: Theile McVey <TMcVey@kassellaw.com>
Sent: Thursday, March 15, 2018 9:43 PM
To: Steve Pugh
Cc: O'Neill, Elizabeth; Jessica Dean; Jonathan Holder; Ryan Travis

EXTERNAL EMAIL: Open Attachments and Links With Caution.

If you have any documents that show what was or was not at the Bowater location, please confirm that we already have them and that they have been bates numbered.

Joe previously confirmed that, but with all the craziness of the Bowater production, I want to make sure we have everything. Please confirm. Thanks.

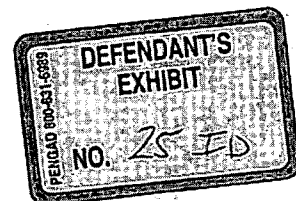
Theile McVey
Kassel McVey
Post Office Box 1476
1330 Laurel Street
Columbia, South Carolina 29202
803.256.4242
tmcvey@kassellaw.com
www.kasselmvcvey.com

From: Steve Pugh <SPugh@RichardsonPlowden.com>
Sent: Thursday, March 15, 2018 8:21 PM
To: Theile McVey <TMcVey@kassellaw.com>
Cc: O'Neill, Elizabeth (Elizabeth.ONEill@wbd-us.com) <Elizabeth.ONEill@wbd-us.com>; Jessica Dean <jdean@dobllp.com>; Jonathan Holder <jholder@dobllp.com>; Ryan Travis <rtravis@thetrialgroup.com>
Subject: Re: Wayne Grant Page Lines

I don't have the video, so I guess we'll read him in. I'll have updated excerpts in a few minutes. Probably some duplication of yours. I'll make sure what we put together is clean and easy to follow.

HOME VCARD BIO LOCATION

	Steven J. Pugh Attorney at Law SPugh@RichardsonPlowden.com Richardson, Plowden & Robinson, P.A. <u>1900 Barnwell Street</u> <u>Columbia, SC 29201</u> Tel: <u>803.576.3721</u> Fax: <u>803.779.0016</u> www.RichardsonPlowden.com



The information contained in this e-mail message may be attorney-client privileged, attorney work product, or strictly confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this

communication in error, please immediately notify us by telephone at (803) 771-4400 and permanently delete this e-mail.

On Mar 15, 2018, at 8:00 PM, Theile McVey <TMcVey@kassellaw.com> wrote:

I am going ahead and sending you the page line designations of Wayne Grant. Since he is video, I thought you may want to use him tomorrow.

Pg 89 ln 19 to pg 90 ln 4
Pg 97 ln 10 to pg 98 ln 23
Pg 99 ln 5 to pg 100 ln 6
Pg 105 ln 12 to ln 25
Pg 109 ln 6 to ln 14
Pg 118 ln 12 to pg 122 ln 7
Pg 246 ln 17 to pg 247 ln 21
Pg 251 ln 8 to pg 252 ln 5
Pg 255 ln 20 to pg 256 ln 9
Pg 267 ln 23 to pg 268 ln 13
Pg 353 ln 17 to pg 354 ln 20

Theile McVey
Kassel McVey
Post Office Box 1476
1330 Laurel Street
Columbia, South Carolina 29202
803.256.4242
tmcvey@kassellaw.com
www.kasselmvey.com

Couch, Ashley L.

From: O'Neill, Elizabeth
Sent: Thursday, March 15, 2018 11:35 PM
To: Jessica Dean; Theile McVey; Jonathan Holder
Cc: Spardone, Stephanie L; Couch, Ashley L.
Attachments: 2094_001.pdf; 2093_001.pdf

Although we believe that we are not obligated to produce this given that it is evidence obtained directly in response to the arguments in court today regarding unit number O-18344, Ashley will forward you a link to the documents shortly. They are too big to email.

We would likewise ask you, that if you have any documents that show what was or was not at the Bowater location, please produce them to us tonight.

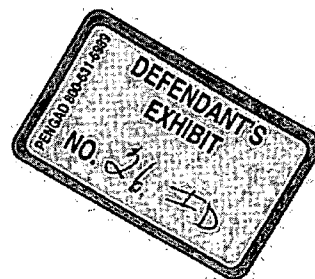
Elizabeth O'Neill
Partner
Womble Bond Dickinson (US) LLP

d: 704-350-6310
e: Elizabeth.ONeill@wbd-us.com

One Wells Fargo Center
Suite 3500
301 South College Street
Charlotte, NC 28202-6037



womblebonddickinson.com



Name BOWATERS-CAROLINA CORPORATION

Street Address _____

City CATAWABA

State SOUTH CAROLINA

Model Number P-723-30S

Unit Number 0-18343

S. O. Number P-1170

C 10-689 A

Rec. 859

Name NATIONAL PROTEIN CORP.

Street Address _____

City CHAMPAIGN,

State IL.

Formerally:
American Milling & Refin'g.

Model Number CB223-80, 150#

Unit Number 0-18344

S. O. Number 5549 Nov. 14, 1957

C 10-682 A

Couch, Ashley L.

From: Couch, Ashley L.
Sent: Thursday, March 15, 2018 11:49 PM
To: O'Neill, Elizabeth
Subject: Howe v. Cleaver Brooks

Hello,

This is a secure message sent to you from Womble Bond Dickinson (US), LLP. To access your secure message, please click the link below.

If this is the first time receiving a secure message from WBD (US), you will be asked to create a password to access this and future secure messages from WBD (US). Your user name will be your email address.

Please note that this secure message and any enclosed attachments will expire 30 days from the date this message is received. If this secure message contains attachments, you will want to download them promptly.

If you have any questions, please contact the sender of this message.

Thank you,

Womble Bond Dickinson (US), LLP

Sender : Ashley.Couch@wbd-us.com

Link : <https://download.wbd-us.com/bds/Login.do?id=A0533333277&p1=na127fcsbgeeeediilcccjehj20>

Sent To : elizabeth.oneill@wbd-us.com; idean@dobllp.com; jholder@dobllp.com; Stephanie spardone;
tmcvey@kassellaw.com Expires : 4/14/18 11:59:59 PM EDT

CONFIDENTIALITY NOTICE: This electronic mail transmission may have been sent on behalf of a lawyer. It may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. The sender of this electronic mail transmission is not authorized to practice law and all information and materials included herewith are under the supervision of and subject to the review of counsel and should not be relied upon until such review has occurred. Thank you for your cooperation.

Ashley Couch
Paralegal
Womble Bond Dickinson (US) LLP

550 South Main Street
Suite 400
Greenville, SC 29601
d: 864-255-5467
m: 864-906-5459



Couch, Ashley L.

From: O'Neill, Elizabeth
Sent: Thursday, March 15, 2018 11:57 PM
To: Jessica Dean; Theile McVey; Jonathan Holder
Cc: Couch, Ashley L.; Steve Pugh
Subject: RE:

Re-sending to include Pugh. Damn auto-fill.
Please confirm you have received the bizcom link.

From: O'Neill, Elizabeth
Sent: Thursday, March 15, 2018 11:35 PM
To: Jessica Dean; Theile McVey; Jonathan Holder
Cc: Spardone, Stephanie L.; Couch, Ashley L.
Subject:

Although we believe that we are not obligated to produce this given that it is evidence obtained directly in response to the arguments in court today regarding unit number 0-18344, Ashley will forward you a link to the documents shortly. They are too big to email.
We would likewise ask you, that if you have any documents that show what was or was not at the Bowater location, please produce them to us tonight.

Elizabeth O'Neill
Partner
Womble Bond Dickinson (US) LLP

d: 704-350-6310
e: Elizabeth.ONeill@wbd-us.com

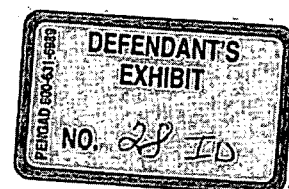
One Wells Fargo Center
Suite 3500
301 South College Street
Charlotte, NC 28202-6037



womblebond dickinson.com



This email is sent for and on behalf of Womble Bond Dickinson (US) LLP. Womble Bond Dickinson (US) LLP is a member of Womble Bond Dickinson (International) Limited, which consists of independent and autonomous law firms providing services in the US, the UK, and elsewhere around the world. Each Womble Bond Dickinson entity is a separate legal entity and is not responsible for the acts or omissions of, nor can bind or obligate, another Womble Bond Dickinson entity. Womble Bond Dickinson (International) Limited does not practice law. Please see www.womblebond dickinson.com/us/legal-notice for further details.



Couch, Ashley L.

From: noreply@wbd-us.com
Sent: Friday, March 16, 2018 12:07 AM
To: Couch, Ashley L.
Subject: tmcvey@kassellaw.com viewed delivery 'Howe v. Cleaver Brooks'

User tmcvey@kassellaw.com <tmcvey@kassellaw.com> performed the following actions:

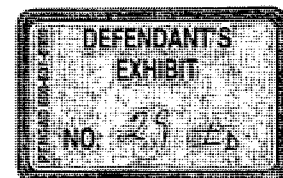
Viewed delivery : Howe v. Cleaver Brooks

Viewed on : 3/16/18 12:06:44 AM EDT

Delivery sent on : 3/15/18 11:49:00 PM EDT

Package : Howe v. Cleaver Brooks

History : <https://download.wbd-us.com/bds/Login.do?did=25700&p1=z9j18uudgibblcbeckkg20>



Couch, Ashley L.

From: Jonathan Holder <jholder@dobllp.com>
Sent: Monday, March 19, 2018 2:32 AM
To: O'Neill, Elizabeth; Steve Pugh; Couch, Ashley L.; Gould, Winona
Cc: Theile McVey; Jessica Dean; Ryan Travis (rtravis@thetrialgroup.com); Alex Travis (atravis@thetrialgroup.com)
Subject: Re: Howe v. CB - Revised Howe Designations

EXTERNAL EMAIL: Open Attachments and Links With Caution.

Please find below Plaintiffs' Objections and Counter designations to Cleaver Brooks untimely Fourth Supplemental and Additional Page-Line Designations of Wayne Howe, Vol. 1-3:

VOL. 1 - OBJECTIONS:

- 72:9-19: Misleading;

VOL. 1 - COUNTER DESIGNATIONS:

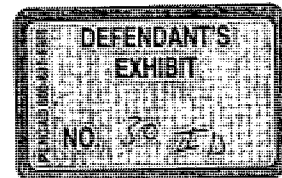
- 72:20 – 75:11;
- 75:14 – 16;
- 76:23 – 25;
- 81:02 – 04;

VOL. 2 – OBJECTIONS:

- 40:15 – Improper; designation should end at 40:14.

VOL. 2 – COUNTER DESIGNATIONS:

- 66:25 – 67:05.



VOL. 3 – OBJECTIONS:

- None

VOL. 3 – COUNTER DESIGNATIONS:

- 33:17 – 35:07
- 36:05 – 24 (ending at " '57.")

From: Steve Pugh <SPugh@RichardsonPlowden.com>
Date: Sunday, March 18, 2018 at 7:53 PM
To: Jessica Dean <jdean@dobllp.com>
Cc: "Couch, Ashley L." <Ashley.Couch@wbd-us.com>, "O'Neill, Elizabeth" <Elizabeth.ONEill@wbd-us.com>, Theile McVey <TMcVey@kassellaw.com>, Jonathan Holder <jholder@dobllp.com>, Ryan Travis <rtravis@thetrialgroup.com>, Alex Travis <atravis@thetrialgroup.com>, "Gould, Winona" <Winona.Gould@wbd-us.com>
Subject: Re: Howe v. CB - Revised Howe Designations

I'm happy to meet and confer about these read-ins and video (Polk, Howe, Small and Grant) tonight, or, in the morning. Please advise if you want to do so. Thanks.

Sjp

HOME VCARD BIO LOCATION

Steven J. Pugh
Attorney at Law
SPugh@RichardsonPlowden.com

Richardson, Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29201
Tel: 803.576.3721 Fax: 803.779.0016
www.RichardsonPlowden.com

The information contained in this e-mail message may be attorney-client privileged, attorney work product, or strictly confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (803) 771-4400 and permanently delete this e-mail.

On Mar 18, 2018, at 7:49 PM, Jessica Dean <jidean@dobllp.com> wrote:

Got it. Will try to digest and get objections and counters to you ASAP.

Jessica M. Dean

Dean | Omar | Branham
302 N. Market St., Suite 300
Dallas TX 75202
(214) 722.5994 (direct)
(214) 476-5210 (cell)
www.dobllp.com

From: "Couch, Ashley L." <Ashley.Couch@wbd-us.com>
Date: Sunday, March 18, 2018 at 7:40 PM
To: Jessica Dean <jidean@dobllp.com>
Cc: "O'Neill, Elizabeth" <Elizabeth.ONeill@wbd-us.com>, "Steve Pugh
(SPugh@RichardsonPlowden.com)" <SPugh@RichardsonPlowden.com>, Jessica Dean
<jidean@dobllp.com>, Theile McVey <TMcVey@kassellaw.com>, Jonathan Holder
<jholder@dobllp.com>, "Ryan Travis (rtravis@thetrialgroup.com)"
<rtravis@thetrialgroup.com>, Alex Travis <atravis@thetrialgroup.com>, "Gould, Winona"
<Winona.Gould@wbd-us.com>
Subject: Howe v. CB - Revised Howe Designations

Counsel- see below Cleaver Brooks Revised Deposition Designations:

VOLUME 1- JANUARY 20, 2016

7:22-24*-Re-read for context

27:15-28:8
28:12-30:6
32:2-24
33: 14-34:4
34:18-25
37:21-39:25
42:15-43:8
72:9-19*
75:17-76:22
77:1-81:1

VOLUME 2 – FEBRUARY 2, 2016

8:3 – 17
16:2 -17:3
18:21 – 19:2*
19:20 – 20:5*
20:6 – 20:15**Plaintiff designation not read at trial
21:10 – 17**
21:18 – 22:2
22:3 – 17**
23:17 – 24**
24:2 – 10
25:24 – 26:4
31:15 – 22**
31:23 – 32:2
32:7 – 33:3
33:21 – 24**
34:9 – 22**
35:3 – 22**
36:11 – 37:5**
37:6 – 38:2
38:3 – 39:18**
40:8 – 15**
55:15 – 56:6**
56:23 – 57:4**
57:19 – 58:5**
58:10 – 23**
59:2 – 6
59:7 – 25*
60:1 – 16
60:17 – 61:4**
61:5 – 17
63:9 – 24
66:2-24**
68:4-9
68:10-15**
77:10 - 16**

VOLUME 3 – FEBRUARY 3, 2016

12:5 – 11

12:22 – 13:11
13:17 – 15:9
16:10 – 12
16:16 – 17:23
18:1 – 14
19:18 – 22:18
23:15 – 22
24:6 – 27:16
28:18 – 29:17
35:8 – 17*
35:18 – 21
36:1 – 4
38:11-16
42:16 – 43:3
43:19 – 31
63:1 – 65:2
65:16 – 66:4
67:13 – 68:23
82:8 – 14
83:10 – 21
87:3 – 11
89:12 – 90:12
93:13 – 94:10
99:11 – 100:4

Ashley Couch

Paralegal

Womble Bond Dickinson (US) LLP

d: 864-255-5467

m: 864-906-5459

e: Ashley.Couch@wbd-us.com

550 South Main Street

Suite 400

Greenville, SC 29601

womblebond Dickinson.com

<image001.png>

<image002.png> <image003.png> <image004.png>

This email is sent for and on behalf of Womble Bond Dickinson (US) LLP. Womble Bond Dickinson (US) LLP is a member of Womble Bond Dickinson (International) Limited, which consists of independent and autonomous law firms providing services in the US, the UK, and elsewhere around the world. Each Womble Bond Dickinson entity is a separate legal entity and is not responsible for the acts or omissions of, nor can bind or obligate, another Womble Bond Dickinson entity. Womble Bond Dickinson (International) Limited does not practice law. Please see www.womblebond Dickinson.com/us/legal-notice for further details.