

THE STATE OF SOUTH CAROLINA
In the 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 VI

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,

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S.C. SUPREME COURT

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.,
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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
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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.

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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

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INDEX TO APPENDIX TO RECORD ON APPEAL

Portion of John Tornetta Deposition I	1612

66 1 A Correct. 2 Q In the second sentence, it says, "We have forwarded 3 the contractor standard Progress prints and winding 4 diagrams for approval"; is that fair? 5 A That's what it says. I think it's probably a typo. 6 I think he meant to say wiring diagrams, but... 7 Q Okay. No, that's fine. And would the contractor be 8 Daniel? 9 A I don't know. 10 Q If it's from Applied to Cleaver, the only other party 11 that's a contractor is Daniel; is that fair? 12 MS. SPARDONE: Object to form. 13 DEFENSE COUNSEL: Object to form. 14 A I don't know that I can say that because of the Crane 15 Co. purchase of it. So I'm not sure, you know, if -- 16 there are all sorts of scenarios, but one I can think 17 of is Daniel is a general contractor and Crane Co. is 18 a subcontractor or vice versa. I just don't know. I 19 didn't find anything in here that spelled that out. 20 BY MS. STONE: 21 Q So you don't know who Applied Engineering is telling 22 Cleaver-Brooks to wait until approval is received? 23 MS. SPARDONE: Object to form. 24 A I don't know exactly what he means here; but since 25 the customer who's purchasing the boiler from us is	68 1 A Oh, there, about a third of the way down, that 2 overall title, yes. I'm not sure what's meant by 3 wholesaler, but that's what it says, yes. 4 Q That's what it says. And it says purchased by Crane 5 Co. 6 A Correct. 7 Q And then it says shipped to Bowaters Carolina Corp., 8 correct? 9 A Correct. 10 Q And then it says care of Daniel Construction 11 Corporation? 12 A Yes. 13 Q And right under that it says name of heading 14 contractor, correct? 15 A I'm not sure if that's heading or heating. So that 16 may somewhat answer the question you asked before, 17 but -- 18 Q That's where I was going. 19 A -- again, I'm not certain. And that's the way it's 20 laid out there. Whether that was actually the case I 21 just don't know. 22 Q So when we were talking about waiting for approval 23 from the contractor and looking two pages later it's 24 saying that Daniel is the contractor, correct? 25 A Well --
67 1 Crane Company, it would actually have to be them. 2 We -- I don't think we could take approval from 3 anyone else on someone else's purchase order. But 4 I -- I honestly couldn't tell you what happened in 5 1957 specifically. 6 BY MS. STONE: 7 Q And if you can look with me on the next page, BPM19. 8 A Okay. 9 Q We're still talking about the same 15-pound steam 10 boiler, correct? 11 A Correct. 12 Q And on the second line it says, gas fired to be of 13 four pass construction. What does that mean? 14 A The gas fired means natural gas which is what we 15 talked about -- 16 Q Right. 17 A -- and, again, it was -- for some period of time it 18 was LP or propane gas. The four pass construction is 19 the arrangement of the flue gas passes through the 20 boiler where the hot gases are traveling through the 21 tubes and it's actually four different passes. 22 Q Okay. Turn with me to BPM20. 23 A Okay. 24 Q It's talking about the Wholesaler and Shipping Data, 25 right?	69 1 DEFENSE COUNSEL: Object to form. 2 A -- at least the heating contractor. Whether or not 3 Crane Company is a general contractor I just don't 4 know. 5 BY MS. STONE: 6 Q Do you know what Crane Company is? 7 MS. SPARDONE: Object to form. 8 A I don't think there's anything on that that tells me 9 much about Crane Company other than their address and 10 they were founded by R.T. Crane in 1855 or '85. I'm 11 not sure what Crane Company that would be. 12 BY MS. STONE: 13 Q Do you know Crane Co. generally makes valves? 14 MS. SPARDONE: Object to form, assumes 15 facts. 16 A I'm familiar with a Crane Co. that makes valves, yes. 17 I don't know if it's the same one or not. 18 BY MS. STONE: 19 Q And on this same page on BPM20, it says type of 20 building paper mill. 21 A Yes. 22 Q Does that indicate to you that maybe that was 23 actually in the manufacturing and not an 24 administrative building of Bowater? 25 MS. SPARDONE: Object to form.

18 (Pages 66 to 69)

70 1 A I don't think it does for me one way or the other 2 where it was. I remember looking at that and 3 wondering if it really told me anything. But I 4 believe the whole facility is a paper mill, or most 5 people I believe would refer to the whole facility as 6 a paper mill. So I just -- to me it wasn't anything 7 that gave me much information. 8 BY MS. STONE: 9 Q And then on BPM25, it says Assembly Checklist, 10 correct? 11 A Correct. 12 Q And this is basically confirming the model, the 13 pounds, that sort of thing, of the boiler that is 14 being shipped to Bowater? 15 MS. SPARDONE: Object to form. 16 A Yes. I believe this is something that someone in a 17 Cleaver-Brooks manufacturing plant filled out. 18 BY MS. STONE: 19 Q So it included a motor, heating coils, a Kunkle 20 valve; is that fair to say? 21 A Yeah, I would just correct that the -- you said 22 heating coils. They're actually heater coils, and 23 that's related to the motor starter and the overload 24 heaters which are electrical safety devices on a 25 motor starter. But, yes, it calls out a Kunkle valve	72 1 Tell me how those relate to each other. 2 A The 15 through 40 is in reference to the horsepower 3 of the boiler part of the model. And if -- what you 4 said was the Model P723-30, the 30 is the horsepower 5 part of the model number. So this is -- the drawing 6 on BPM26 is for the P boiler, meaning Progress, which 7 is the name of the model line, 15 through 40 8 horsepower, and it's LP which is low pressure meaning 9 the 15 pounds per square inch. And it says gas only 10 which that gas only fits the 700 part of the model 11 number meaning it was designed to burn natural gas. 12 Q This blueprint applies to the boiler that was sent to 13 Bowater? 14 A Correct. 15 Q So if you look with me on the top left, I think we 16 went through this a little bit, it has the insulation 17 and lagging which we just went through, correct? 18 A Yes. That's what we were talking about with the 19 invoice, the Microlite information and the sheet 20 metal lagging. And I would just point out that when 21 we use the term "lagging," it might be different than 22 the term "lagging" you're used to. We're talking 23 about sheet metal. 24 Q Right. And if you look at item 17. 25 A Correct. Yes, I am. Sorry.
71 1 for the safety valve and at least one gas valve and a 2 Maxitrol gas regulator. 3 MS. STONE: All right. Stephanie, do you 4 want to keep going? I know you said you like to do 5 an hour. I'm about to go to the next set of 6 documents. 7 MS. SPARDONE: We -- let's just go off the 8 record for a minute. 9 (Discussion off the record.) 10 BY MS. STONE: 11 Q All right. John, we're moving through. The next 12 thing I want you to look at is Exhibit 5. 13 A Okay. I have those in front of me. 14 Q And this is BPM000026 through BPM000044. And what 15 would you classify these documents from our 16 discussion earlier? Would they be the manufacturing 17 documents? 18 A Yeah. Or the manufacturing drawings. Basically they 19 were the drawings used by our manufacturing operation 20 to build the boiler. 21 Q And the first one is BPM26. 22 A Correct. 23 Q And it says this is for Model P15 through 40. 24 A Correct. 25 Q Our model number we have here is P723 or 700-30S.	73 1 Q And it says -- it says gasket asbestos rope 5/8th 2 inch diameter; is that correct? 3 A Yes, it does say that. I think it's 5/8th. It could 4 be 3/8ths, but I believe it's 5/8ths. 5 Q I'll go with either interpretation. It's a little 6 hard to read. So an asbestos rope gasket went to 7 Bowater from Cleaver-Brooks, correct? 8 A Yes. That was used, if you look at the drawing, it 9 was used across what we call the baffle of the rear 10 door between the baffle and the tube sheet internally 11 to the boiler. 12 Q So to get into the boiler to do work inside the 13 boiler, that gasket would have to be removed and 14 replaced, correct? 15 MS. SPARDONE: Object to form. 16 A It certainly would be -- the seal between it and the 17 tube sheet would be broken when the rear door was 18 opened. 19 BY MS. STONE: 20 Q So that gasket would have to be replaced? 21 A Fairly normal that someone would. But I certainly 22 can't say that every time someone did. 23 Q Okay. And then the next line is 18, it says cement 24 asbestos JM number 40 five pounds? 25 A I think it's actually JM number 450.

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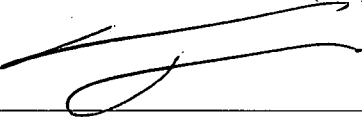
Cleaver-Brooks, Inc. is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Appendix to the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

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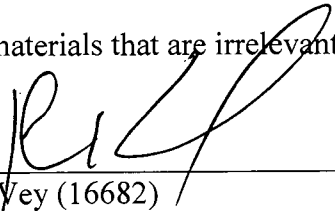
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In addition to the material designated previously by Appellant and Respondent to be included in the Record of Appeal, Respondents designate the following:

1. Portion of Dr. Arnold Brody trial testimony...1614-15
2. Portion of Dr. Edwin Holstein trial testimony...1616-24
3. Portion of Sarah Kennerly Lustig trial testimony...1625
4. Portion of Wende Howe Myers trial testimony...1626-27
5. Portion of discussion with court during trial ...1628

The undersigned, an attorney in this matter for the Respondent, certifies pursuant to Rule 209(c), SCACR, that this designation contains no materials that are irrelevant to the appeal.



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ATTORNEYS FOR RESPONDENTS

June 14, 2019

Columbia, South Carolina.

1 people would have it is not something you feel or smell and
2 that type thing.

3 Q And all three fiber types you just went over, the
4 chrysotile, amosite and crocidolite, are all of those fiber
5 types carcinogen?

6 A That right. They all have been classified by a number
7 of different agencies as complete carcinogens, so that means
8 that's all you need. And by -- I'm talking about the
9 International Agency for Research on Cancer, the
10 Environmental Protection Agency, whatever agency has looked
11 at the issue of whether or not all of the fiber types cause
12 all of the diseases, they all come down on the consensus
13 opinion that all of the asbestos varieties cause all of the
14 diseases.

15 Q So they all cause disease, but are there difference in
16 potency?

17 A Well, for the cancer mesothelioma, yes, not for
18 asbestosis, not for lung cancer. But for the cancer
19 mesothelioma the fiber types amosite and crocidolite are
20 more potent on a fiber per fiber basis for causing
21 mesothelioma. Now, that means that you -- if all you're
22 exposed to is crocidolite or amosite you don't need as much
23 to cause the mesothelioma. They all cause mesothelioma. If
24 all you're exposed to is chrysotile that can cause
25 mesothelioma. If all you are exposed to is crocidolite or

1 amosite you don't need as much, those cause mesothelioma.

2 And if you have a mixture, which a lot of people do, they're
3 exposed to different kinds of fibers through their working
4 life, they are all contributing, and by the same mechanism
5 and I am going to show you, crocidolite and chrysotile and
6 amosite all cause cancer by the same cellular pathways.

7 Q And when we talk about what diseases can be caused by
8 exposure to asbestos, what diseases are we talking about?

9 A So we're talking about asbestosis, which is scar tissue
10 in the lung from inhaling asbestos; lung cancer, which
11 typically develops in cigarette smokers. But if a person
12 smoke cigarettes and is exposed to asbestos the risk is
13 dramatically increased over cigarette smoke alone or
14 asbestos alone such that you don't just add the two effects,
15 you multiply the effects. And while how much you smoke or
16 how much you're exposed to dictates how big that
17 multiplication effect is, there still is a -- the effect is
18 greater than adding those two carcinogens, cigarette smoke
19 and asbestos. And then finally the cancer mesothelioma
20 caused by all of the asbestos fibers, but not by cigarette
21 smoke, cigarette smoking does not cause mesothelioma.

22 Q Can exposure to asbestos cause pleural plaques?

23 A So this is scarring. So asbestosis is scarring in the
24 lung, in the lung means where we're exchanging oxygen and
25 carbon dioxide. Let's say you take a breath and the oxygen

1 of years was working on boilers that involved insulated
2 material, that's the first thing I want to use, the second
3 is that they either firsthand and in addition to that were
4 around others doing the work I'm going to describe in a
5 moment. The third thing I would like you to assume is that
6 about how frequently they did this, and I want you to assume
7 that they did it every year for shut downs and in addition
8 did work every month for maintenance. Can you assume those
9 things for me?

10 A I will, yes.

11 Q Based on the studies that you've looked at about how
12 much asbestos is put in the air, if you're doing that
13 work -- and let's say we just focus on the first thing and
14 it involves putting in and taking out asbestos mud and let's
15 assume --

16 A Asbestos what?

17 Q Mud.

18 A Mud.

19 Q And that that's a chrysotile product, is that something
20 first of all that creates any risk in your mind for doing
21 dangerous work?

22 A Yes.

23 Q If you have a person like Wayne Howe who has
24 mesothelioma, and if we assume that work was done by him
25 between 1977 until at least 1981, can you tell me if that

1 was his only exposure, if nothing else would ever put him
2 around asbestos in his life, if that would be enough to
3 cause the disease mesothelioma by itself?

4 A With the schedule you said of once a year major shut
5 down or turn around and monthly maintenance on materials of
6 this sort, doing a job in the usual and customary manner and
7 doing it for four years on that schedule the answer is yes,
8 that all by itself would be enough to cause mesothelioma.
9 If I had a patient with that history and they develop
10 mesothelioma I would find absolutely nothing surprising or
11 unusual about it.

12 Q Slightly different set of facts. Same exact exposure
13 just like I did but now there are a bunch of other exposers
14 for many, many years both before and after. I want to ask
15 you a different question, would the exposure I described as
16 it related to the boilers be a substantial factor in
17 developing the disease mesothelioma if it was one of many
18 exposures?

19 A So if you start to add in other exposures it does not
20 change the scientific conclusion for the first scenario that
21 you asked me about, which is that exposure alone, the first
22 one would have been a substantial factor in causing the
23 person's mesothelioma. If you add in other exposers those
24 could be substantial factors too, maybe they are, maybe
25 they're not, it depends on the facts, the details. But the

1 conclusion about the first one from a scientific point of
2 view would still be true.

3 Q We heard a little bit about this, the concept of
4 cumulative dose. Can I ask you first, are you familiar with
5 that concept?

6 A I am.

7 Q Is asbestos related mesotheliomas cumulative dose
8 diseases?

9 A Yes.

10 Q Or disease?

11 A Yes.

12 Q Can you explain what that means?

13 A Yes. What it means is that the more exposure you get,
14 and dose and exposure mean about the same thing, we're
15 talking about breathing the dust, as the amount of dust that
16 you inhale increases -- or let me put it differently. Let's
17 imagine a group of 10,000 people, and as the amount of
18 asbestos dust that as a group they all inhale increases,
19 then the number of people who will get mesothelioma will
20 also increase. So now let's take that same concept and just
21 look at one of those 10,000 people, and of course this is
22 all hypothetical, it's all imaginary, but the principles
23 that I'm telling you are valid scientific principles, so now
24 I've talked about a group of 10,000 but let's focus on the
25 371st person in line and just that person. Unlike the

1 others there is an increasing amount of exposure of
2 asbestos, and as the amount of inhalation of asbestos
3 increases, then the odds that that particular person will be
4 one of the ones who gets mesothelioma goes up. So the risk
5 goes up for the group, it also goes up for the individual.
6 Now, does that mean that the person is fated to get
7 mesothelioma? Thank the Lord no, most of them still will
8 not get it but some will, and as the exposure goes up the
9 number who get it increases.

10 Q Instead of looking at kind of what the risk is as the
11 exposure goes up I want to ask you kind of looking at a
12 different direction. If I want to know for a person that
13 comes to the hospital and finds out that he has
14 mesothelioma, what in his life going backwards in time was
15 the cause of that, is there any question in your mind that
16 it would be related to the cumulative exposure of asbestos?

17 MS. O'NEIL: Leading.

18 THE COURT: It is leading. Rephrase.

19 Q When you're trying to evaluate a cause of the
20 mesothelioma what are you going to look at?

21 A I want to find out if that -- the first thing I want to
22 know is has this person had significant exposures to
23 asbestos in his or her life, and I also want to know how
24 long ago did it happen. Did Dr. Brody explain the latency
25 period?

1 Q Yes.

2 A So I want to know how long ago it happened, because if
3 it happened yesterday it doesn't cause a mesothelioma today.
4 But if it happened 20, 30, 40 or 50 years ago and the amount
5 of it and frequency and duration are sufficient then with
6 that set of facts there isn't any doubt about what caused
7 that mesothelioma, it was caused by those exposures to
8 asbestos that I just described to you. This is a generally
9 accepted principle in my field of medicine, it's not a
10 matter of dispute. There was for instance a group called
11 the Helsinki Consensus Group, they happened to meet in
12 Helsinki, they were people who had done research on
13 asbestos, there was a group of 17 or 18 of them. Between
14 these 17 or 18 scientists they had written over 1,000
15 research articles about the effects of asbestos and they
16 wrote what I just told you very clearly, which is that if
17 you've got a person with mesothelioma and you look into
18 their past and you find a history that they have had an
19 exposure to asbestos that's long enough in the past and that
20 it satisfies certain elements of how often and how long it
21 lasted and so on, in other words a person didn't just walk
22 past a building with asbestos in it one time, that if those
23 conditions are met and you have a patient with mesothelioma
24 then you can with scientific validity say what is the cause
25 of that mesothelioma, it was those exposers to asbestos that

1 occurred in the past. And it's the same as cigarette
2 smoking. Cigarette smoking does not cause mesothelioma but
3 I use it because it's an example known to all of us.
4 Doctors very commonly, they'll say, "Well, the person smoked
5 three packs of cigarettes per day, they did it for 30 years,
6 now they have lung cancer, what caused the lung cancer? The
7 smoking did." You don't have to prove more than that for
8 scientists and doctors to accept that as a reasonable
9 scientifically based conclusion.

10 Q Let me try to make this more concrete to Mr. Wayne
11 Howe. I want you to assume that there's information that at
12 least by 1967 he was working around gaskets and packing,
13 will you assume that for me?

14 A That he started before '67 working with gaskets and
15 packing?

16 Q Maybe earlier by at least by that date.

17 A Okay. No later than 1967.

18 Q And you reviewed his medical records in terms of when
19 he was diagnosed with this cancer?

20 A Yes.

21 Q And did his own doctors make a diagnosis?

22 A Yes.

23 Q What was it?

24 A Meso -- well, pleural plaques but also mesothelioma.

25 Q When was he diagnosed with mesothelioma?

1 A 2015.

2 Q You mentioned a concept of latency saying if it
3 happened yesterday there's not been enough time, did I hear
4 that right?

5 A Correct.

6 Q How far back do we need to go before we have given
7 enough time for it to even be something to be thinking about
8 in terms of what caused his disease?

9 A If the latency in a particular case has been less than
10 ten years, that will cast serious doubt on whether asbestos
11 caused it. If the latency period is 20 years or more,
12 there's a general acceptance that that exposure that
13 occurred 20 or more years ago to asbestos was the cause of
14 the mesothelioma. And there's no upper limit on that. If
15 the person lives long enough and it's been 60 years since
16 they were a teenager working with asbestos, if they worked
17 with it or not, now 60 years have gone by and they get
18 mesothelioma, 60 years is not too long, you still have the
19 same conclusion.

20 Q So to make this more concrete, if we're talking about
21 exposures on this time frame, and we'll kind of box from
22 1967 to the 1995 timeframe, will that be the time you would
23 want to look at to understand why Mr. Howe had mesothelioma
24 for sure?

25 A Well, apparently for Mr. Howe in 1967 is important, but

1 if I had a patient who was 1960 and had mesothelioma today
2 it would -- I would have the same conclusion. But '67 to
3 '95 we're going to be the most -- those are going to be --
4 most cases of mesothelioma that I will see today, they had
5 their exposures to asbestos in that time period that you
6 have blocked out there.

7 Q And if I have a repeated exposure involving insulation
8 and gaskets from here, right in that time frame, would that
9 be a substantial factor for the development of his disease
10 that was diagnosed later?

11 A That was what?

12 Q Diagnosed later in --

13 A Well, if it fits the description you gave me earlier
14 like a month major turn around -- I'm sorry, yearly major
15 turn around that typically lasts several weeks if not a
16 couple of months and then month smaller maintenance
17 activities, if those -- if all those hypotheticals would
18 still be true the answer is yes.

19 Q Okay. And even if we limit it to repeated exposure
20 again just to one product, I'm going to ask about gaskets in
21 a second, but the cement being done several times a year
22 over the course of years firsthand in a typical way, any
23 question that that's a substantial factor for why he got
24 here, meaning got the disease mesothelioma?

25 A So you're asking me to break it down by which

1 particular product it was.

2 Q I'm not going to say it was X boiler versus Y, you've
3 got a boiler, it has asbestos cement, it's removed in the
4 typical way, it's done several times a year over the course
5 of years firsthand and he's the one doing that. Based on
6 what you know, is that a substantial factor when it's done
7 in this period of time? And I'm pointing to the period of
8 time in the chart between '75 and '85 for Mr. Howe to have
9 gotten diagnosed with mesothelioma in 2015.

10 A So if you're talking just about the insulating
11 materials in the boiler I would have no problem saying yes,
12 that would be a substantial factor in the causation. If
13 you're asking me about the gaskets and only the gaskets I
14 would want to know a little bit more about what gaskets and
15 how often and so on, because in the turnaround maybe he does
16 one gasket or maybe he does 100 gaskets. So I would want to
17 know a little more if you're just going to ask me -- if
18 you're asking me to consider only the gasket.

19 Q There I was asking you to only consider one type of
20 insulating work, insulating cement.

21 A Insulating cement, okay.

22 Q Yeah.

23 A Well, there's a lot of insulating cement in a boiler,
24 so no, I wouldn't have any trouble reaching the conclusion I
25 already stated.

1 A Yes, that is correct.

2 Q And you prepared a preliminary life care plan on -- the
3 day was January 21st of 2018, does that sound correct?

4 A That is correct.

5 Q I'm going to put this up on the ELMO. Before I put it
6 up there, what is Mrs. Howe's chronic condition that she
7 suffers?

8 A She has moderate to severe dementia. Alzheimer's
9 dementia.

10 Q Thank you. Now, as you can see from the table, I just
11 want to back through the sections really quickly, not each
12 individual portion. Start at the top with kind of the
13 doctors visit, correct, and --

14 A That's right.

15 Q And explain how you came to those --

16 A She's going to require a primary care provider over and
17 beyond what is a normal annual visit for your health
18 conditions. For a patient with Alzheimer's they will need
19 to be seen more frequently for urinary tract infections,
20 upper respiratory infections, pain, that's not very easily
21 diagnosed. And then the neurology, of course, is to manage
22 her Alzheimer's, her neurological condition and to help with
23 the primary care provider manage the prescriptions needed to
24 help control her mood, behavior and cognition.

25 Q Could you also explain to the Court and to the jury all

- 1 A Yes, we took turns.
- 2 Q Was that important to him having his family close?
- 3 A I think it was, but of course he told us to go home and
4 get rest but we didn't want him to be by himself.
- 5 Q Was he the type of man that didn't want to put others
6 out?
- 7 A Yes.
- 8 Q Were there any follow-up visits at Duke for the
9 surgery?
- 10 A Yes. I went to the last one, I believe, with him.
- 11 Q And what did the doctors tell your father at the last
12 follow-up at Duke?
- 13 A That he needed to stay positive and to come off of some
14 of the pain medicine and move as much as he could. And the
15 doctor kind of joked around about next time we're going to
16 do a lap around this hallway and dad kind of laughed with
17 him and said, "Yeah, next time we'll do that, I'm ready for
18 a run."
- 19 Q Was there ever another follow-up?
- 20 A No.
- 21 Q Your father passed away on your mother's birthday two
22 years ago; is that correct?
- 23 A That's correct.
- 24 Q Since that time have there been moments or days or
25 events that have happened where you have felt like, "I wish

1 I had my dad here to get some advice for him?"

2 A A lot.

3 Q Can you give us an example?

4 A Just different things that happened throughout life and
5 asked for advice, or even when my husband and I, we didn't
6 go places often, I'm just used to calling and saying we made
7 it home okay.

8 Q Is he kind of the person you report to?

9 A It's like that was my last person to check-in with.

10 MR. HOLDER: Thank you very much. They may have some
11 questions for you.

12 THE COURT: Mr. Pugh?

13 MR. PUGH: Ma'am, I don't have any questions for you but I
14 am sorry for your loss.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you very much. Ms. Dean?

17 MS. DEAN: Your Honor, I think given the time constraints
18 this is it for today.

19 THE COURT: I think that Mr. Tim Howe's testimony will
20 probably be more lengthy, am I correct about that?

21 MS. DEAN: I would estimate about a half hour but I
22 wouldn't want to cut it close if people need to leave right at
23 4:30.

24 THE COURT: I understand. What we'll do is this: Ladies
25 and gentlemen of the jury, we'll let you go now, if 9:00 is

1 MS. DEAN: Two things quickly.

2 THE COURT: This is all off the subject of this proffer?

3 MS. DEAN: No, Your Honor.

4 THE COURT: I'm not going to take a whole lot of argument
5 about this proffer. I have ruled with y'all and the only
6 observation I've made is what I consider to be the pertinence
7 of tit for tat but I don't want to get into more tit for tat.

8 MS. DEAN: I do not either. Your Honor, Ms. McVey had
9 made a request on Friday that these actions were somewhat a
10 lynch pin of our case, fundamentally fact of how we approached
11 this trial. We want to seek -- I just want to make sure that
12 if we seek sanctions for costs or time after trial we haven't
13 waived anything.

14 THE COURT: You have already completely talked about how
15 fundamental it was to your case so forth and so on, that is
16 very well protected in the record as I view it.

17 MS. DEAN: And then the second thing is not related to the
18 proffer, but we seem not to be able to find a marked copy of
19 Exhibit 59, I found a second copy.

20 THE COURT: Which is that?

21 MS. DEAN: It is the internal correspondence from Johns
22 Manville on October 14th, 1975 regarding the labeling of raw
23 asbestos, I am just hoping we can remark this copy.

24 THE COURT: Just remark one of other ones you've got and
25 if you find the other one put it back there.

RECEIVED

Mar 28 2022

S.C. SUPREME COURT

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

THIRD APPENDIX TO RECORD ON APPEAL

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/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 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.

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INDEX TO THIRD APPENDIX TO RECORD ON APPEAL

October 10, 2018 Hearing Transcript	1629
Exhibit H to Plaintiffs' Supplemental Response in Opposition to Defendant Cleaver-Brooks, Inc.'s Motion for Summary Judgment and Plaintiffs' Motion for Sanctions: Portion of John Tornetta Deposition from <i>Bumgardner v. ABB, Inc.</i>	1706
Portion of Gilbert Small Deposition	1730
Portion of John Tornetta Deposition I	1747
John Tornetta Deposition II	1800

1 STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
2 COUNTY OF YORK
3 TIMOTHY W. HOWE,
Individually and as Personal
4 Representative of the Estate of
WAYNE ERVIN HOWE, deceased,
5 and JEANETTE HOWE,
6 Plaintiffs,
7 vs. C/A NO. 15-CP-46-03456
8 AIR & LIQUID SYSTEMS
CORPORATION, et al.,
9 Defendants.
10

11 H E A R I N G
12 BEFORE THE HONORABLE JEAN TOAL

13 DATE: October 10, 2018
14 TIME: 10:56 a.m.
15 LOCATION: Richland County Courthouse
1701 Main Street
16 Courtroom 3-B
Columbia, South Carolina
17 REPORTED BY: YVONNE R. THURSTON-BOHANNON
18 Registered Merit Reporter,
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41

1 PROCEEDINGS

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 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 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 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 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

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

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

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

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 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 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 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 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 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. Ternetta 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 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 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 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 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 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 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 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 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 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 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

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 --

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

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

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.

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

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

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

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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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.)

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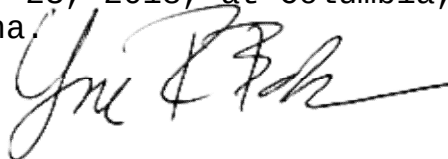
CERTIFICATE OF REPORTER

I, Yvonne R. Thurston-Bohannon, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript was taken before me on the date and at the time and location stated on page 1 of this transcript; that all statements made on the record at the time of the proceeding were recorded stenographically by me and were thereafter transcribed; that the foregoing proceeding as typed is a true, accurate and complete record of the proceeding to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal October 23, 2018, at Columbia, Richland County, South Carolina.



Yvonne R. Thurston-Bohannon
Registered Merit
Reporter, CRR
My Commission expires
May 6, 2025

1	I N D E X	
2		
3		Page
4	STATEMENT BY THE COURT	3
5	ARGUMENT BY:	
6	MS. McVEY	4
7	MS. O'NEILL	18
8	MR. PUGH	41
9	MS. O'NEILL	44
10	MS. McVEY	55
11	MR. PUGH	64
12		
13	RULING BY THE COURT	67
14		
15	ARGUMENT BY:	
16	MS. O'NEILL	72
17		
18	CERTIFICATE OF REPORTER	76

19	
20	E X H I B I T S
21	(None marked.)
22	
23	
24	
25	

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

- - - - - X

PETE BUMGARDNER and	)	
NANCYE BUMGARDNER,	)	
	)	C/A No. 10-CP-29-855
Plaintiffs,	)	
	)	
vs.	)	
	)	
ABB, INC. (sued individually	)	
and as successor-in-interest	)	
to ITE IMPERIAL CO. f/k/a	)	
ITE CIRCUIT BREAKER COMPANY,	)	
et al.,	)	
	)	
Defendants.	)	

- - - - - X

VIDEOTAPE DEPOSITION OF CLEAVER-BROOKS 30(b)(6)
JOHN TORNETTA
(Taken by Plaintiffs)
January 20, 2011

Reported by: Rebecca L. Arrison
Court Reporter
Notary Public

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20 Videotape deposition of CLEAVER-BROOKS 30(b)(6),
21 taken by the Plaintiffs, at Hyatt Regency, 220 North
22 Main Street, Greenville, South Carolina, on the 20th
23 day of January, 2011, at 10:49 a.m., before Rebecca L.
24 Arrison, Notary Public and Court Reporter.
25

1

2

CONTENTS

3

THE WITNESS: CLEAVER-BROOKS

EXAMINATION

4

BY MS. DEAN

5

BY MR. THOENSEN

6

BY MS. DEAN

7

8

INDEX OF EXHIBITS

9

Exhibit No. 1 Notice of Deposition 6

10

Exhibit No. 2 Copy of Production 6

11

Exhibit No. 3 PA Occupational Disease Act 6

12

Exhibit No. 4 Regulations 6

13

Exhibit No. 5 (Exhibit not used.) 6

14

Exhibit No. 6 Rear Door Refractory Repair 6

15

Exhibit No. 7 (Exhibit not used.) 6

16

Exhibit No. 8 (Exhibit not used.) 6

17

Exhibit No. 9 Suggested Insulation 6

18

Exhibit No. 10 Boiler Efficiency 6

19

Exhibit No. 11 Boiler Room Guide 6

20

Exhibit No. 12 Illustrated Parts List 6

21

Exhibit No. 13 Operations, Service and Parts Manual 6

22

Exhibit No. 14 CB Packaged Boilers 6

23

Exhibit No. 15 Modern CB Boilers 6

24

Exhibit No. 16 Boiler Operation Manual 6

25

Exhibit No. 17 General Installation Instructions 6

1 or from a boiler today from Cleaver-Brooks, I can be
2 assured that that is a non-asbestos type of
3 insulation?

4 A. Correct.

5 Q. And Cleaver-Brooks made sure that in using
6 their parts number to have that consistency both
7 because of the forms and so that there wouldn't be
8 confusion over --

9 A. Yeah. It certainly wasn't related to
10 whether it was or wasn't asbestos, but the material
11 itself.

12 Q. Right. Right. That's all I meant to imply.

13 A. Right.

14 Q. This subsequent search that you did on the
15 boilers that are referenced in Row D on Exhibit 31,
16 how long did that take you?

17 A. Well, I didn't actually keep track of the
18 hours, but I would say my waking hours on Monday,
19 Tuesday and Wednesday morning, that's what it took.

20 Q. Okay.

21 A. Not all of them, but a good portion.

22 Q. You were working a long day on Monday and
23 Tuesday and got --

24 A. Yes. I took stuff home to do it and I
25 worked at home.

1 Q. And then you also worked on Wednesday
2 morning before you gave the documents to
3 Cleaver-Brooks lawyers around 10?

4 A. Yes.

5 Q. Okay. Did anyone help you with that search?

6 A. No.

7 Q. And I know from reading past depositions,
8 and I apologize I don't know Lynn's last name, but
9 Lynn sometimes helps you with some of the more
10 administrative stuff. Did you have her support at
11 all in any of this?

12 A. No.

13 Q. Okay.

14 A. And it's Linda.

15 Q. Linda?

16 A. Yes.

17 Q. Tell her I'm sorry.

18 A. That's okay.

19 Q. But I had it -- I have it straight in my
20 head that she is Lynn.

21 The documents that I have marked as
22 Exhibit 2 -- 22, excuse me -- have conversion and a
23 series number and conversion again.

24 A. Yes.

25 Q. Were those documents all together in your

1 search?

2 A. They were all on the several different
3 microfiche sheets.

4 Q. I got the impression that was the boiler
5 file, for lack of a better word, to give you specific
6 information about service and work done in relation
7 to that.

8 A. I would call it the commercial records,
9 but --

10 Q. Okay. And that the commercial records might
11 extend on to more than one microfiche but they're
12 kept together?

13 A. By unit number, yes.

14 Q. Okay. Now, during the original documents
15 that I got before I got Exhibit 22, portions of that
16 have been pulled out and given to me. Do you know
17 why I would get parts of them and not others?

18 MR. THOENSEN: Object to the form.

19 BY MS. DEAN:

20 A. We were looking to provide information
21 showing the boiler that shipped, the date it shipped,
22 and then the information on the external insulation.

23 Q. Before last week, had you looked through
24 that file, other than the documents that you had
25 pulled out for Exhibit 2, and noticed, for instance,

1 you know, several dozen pounds of asbestos insulation
2 were being supplied during service of one of those
3 boilers?

4 MR. THOENSEN: Object to the form.

5 BY MS. DEAN:

6 A. I didn't see that. I didn't look through
7 each one of those files as I pulled it. I can --
8 I -- the documents I am looking for are fairly
9 distinctive on microfilm so I can go right to it.

10 Q. And how do you get a feel for what documents
11 you're supposed to be looking for?

12 MR. THOENSEN: Object to the form.

13 BY MS. DEAN:

14 A. I was looking to provide the information on
15 shipment, so I know I am going to have a purchase
16 order and an invoice, and if there is a dimension
17 diagram in there to show the overall size of the
18 boiler, basically what it looks like, I would have
19 provide that too.

20 Q. But, I mean, we have a file here that's less
21 than 200 pages in an asbestos case where a person is
22 claiming he is dying of an asbestos disease, and you
23 were never given any kind of direction to pull out
24 documents in that relatively small file that showed
25 asbestos work was being done on those boilers?

1 MR. THOENSEN: Object to be form.

2 If you're asking him what his lawyers asked him
3 to do, I am going to instruct him not to answer
4 that question.

5 BY MS. DEAN:

6 Q. And what I mean about that question is, just
7 in the parameters of what you were looking for, did
8 you not think that those documents relating to
9 asbestos components being worked on on those boilers
10 were needed?

11 MR. THOENSEN: Object to the form.

12 BY MS. DEAN:

13 A. I was strictly looking at when was the
14 boiler shipped, was it shipped to a particular place,
15 searched for the site, or for the location, and when
16 the boiler shipped and what boiler shipped. That's
17 what I was looking for.

18 Q. Were you shown the Notice of the deposition?
19 And I will represent to you we have a Notice attached
20 as Exhibit 1, which has some differences in time and
21 location, but had the exact same topics listed out.
22 Were you shown that before you searched through the
23 approximately 180 pages that are in Exhibit 22?

24 A. Before I searched through this?

25 Q. Yeah. To see what we were asking for.

1 A. Yes, I probably was. You know, I have seen
2 that Notice. I can't say exactly when. But before I
3 looked through and produced this, but, yes, I think
4 it was.

5 Q. Okay. Did you see the part that explicitly
6 asked for the asbestos content of those boilers and
7 listed out, including but not limited to, gasket,
8 insulation, rope and -- gasket, insulation and rope?

9 A. Well, that's what we provided for these
10 particular boilers.

11 Q. Okay. And again, when you originally
12 provided those documents, the information showing
13 that -- pounds, dozens of pounds of asbestos were
14 being used in the service of those boilers in the
15 '60s, wasn't provided?

16 MR. THOENSEN: Object to the form.

17 BY MS. DEAN:

18 A. I -- you're referencing something I haven't
19 seen, so I don't know what you're talking about.

20 Q. Okay. If you look to Exhibit 22 on what we
21 have marked as Pete 37.

22 A. Okay. I see it.

23 Q. It references there that 25 pounds of
24 asbestos pulp, number 450, was sold to Cleaver-Brooks
25 company, to be shipped to Springs Cotton Mills. Do

1 you see that?

2 A. That's what it says.

3 Q. And if you move on to the next page, there
4 is a field report that's three pages, and on the last
5 page, that 25 pounds of asbestos is being shown as
6 what was used from the stock. And then there is a
7 description of what work was being done.

8 A. Yes.

9 Q. And if you turn to Pete 48 to 50, do you see
10 that in a different incident, instead of 25 pounds
11 there are 50 pounds of asbestos being sold to
12 Cleaver-Brooks for the Springs Cotton Mills site?

13 A. It says that, yes.

14 Q. And if you look to Pete 55, there is an
15 instance where there is 20 pounds of JM-450 asbestos
16 being sold to Cleaver-Brooks to be shipped to the
17 Springs location.

18 A. Yes.

19 Q. And if we look to Pete 73, you see 10 pounds
20 of asbestos pulp JM-450 being sold to Cleaver-Brooks
21 to be used at the Springs location.

22 A. Yes.

23 Q. And so my representation that literally
24 dozens of pounds of asbestos was being used in the
25 service of these boilers, is something that bears out

1 when we look at Cleaver-Brooks exhibits. Right?

2 A. I guess the term asbestos catches me. I'm
3 not sure what the word asbestos, the way it's used
4 here, is that is pounds of asbestos. It's pounds of
5 a cement that contained asbestos. How much asbestos
6 was in that cement, I would have no idea.

7 Q. Okay. And it does sometimes just say
8 asbestos and other times it says asbestos pulp.

9 A. Right.

10 Q. Do you know if that was 99 percent asbestos,
11 10 percent asbestos? Have you looked at JM, the
12 supplier's information, to let you know that there is
13 more asbestos in there than anything else?

14 A. I have --

15 MR. THOENSEN: Object to the form.

16 BY MS. DEAN:

17 A. I'm sorry. I don't know. What I have is
18 what we provided in those parts descriptions for that
19 part.

20 Q. And that just brings me back to my original
21 question. Before these documents were provided me,
22 do you know why, when you see a notice asking for
23 insulating cement, why the 200 pages that is the
24 commercial records of these two boilers which has
25 several references to asbestos work being done

1 weren't produced?

2 MR. THOENSEN: Object to form.

3 BY MS. DEAN:

4 A. Again I was looking at the external of the
5 boilers, because up to that point, I believe all the
6 information I had was the person was related to the
7 outside of the boiler.

8 Q. Well, to be fair though, you did have
9 information in the Notice that you saw that came from
10 me --

11 A. Uh-huh.

12 Q. -- and it wasn't limited to the external of
13 the boilers.

14 A. Correct.

15 Q. And you never looked at Pete's testimony or
16 the co-workers' testimony to see what they actually
17 said about the work being done, whether it was inside
18 or outside. Right?

19 A. Correct.

20 Q. Sorry for pauses occasionally, but if I
21 don't take time to kind of reorganize things, in
22 about two hours it gets ugly. So I will still get
23 there.

24 A. I will do the same.

25 Q. I want to spend hopefully not too much time,

1 but some time with you, talking to you about the
2 different asbestos products that Cleaver-Brooks sold
3 with the boilers that they made and designed and sold
4 historically so that we can learn not only about the
5 boiler reflected in Row D of Exhibit 31, but have a
6 better understanding of at least what was available
7 from Cleaver-Brooks for the boilers that are also
8 referenced outside of D in Exhibit 31 for the boilers
9 that may have been at the other Springs sites and the
10 boilers that are reflected in Exhibit 34, Number 0.

11 MR. THOENSEN: Object to the form
12 of the question.

13 BY MS. DEAN:

14 Q. My --

15 MS. DEAN: I hadn't got to the
16 question yet, but the objection can still stand.

17 BY MS. DEAN:

18 Q. Are you prepared to talk about what was sold
19 historically with Cleaver-Brooks boilers?

20 A. No. I would have to look at the individual
21 boiler to see what was in it.

22 Q. Did you see that in the Notice that that was
23 something that you were asked to be prepared to do?

24 A. Yes.

25 Q. And are you aware that the Judge has ordered

1 that you be prepared to follow that Notice?

2 MR. THOENSEN: Object to the form.

3 BY MS. DEAN:

4 A. In order to do that, I would have to look at
5 files for 140,000 boilers and all the records for
6 140,000 boilers.

7 Q. I'm optimistic that without doing that, you
8 will be able to answer some of those questions today
9 just from what is in front of me.

10 Are you aware that historically,
11 Cleaver-Brooks has sold boilers that contains
12 asbestos gaskets?

13 A. On individual boilers, yes.

14 Q. And some of the places where asbestos
15 gaskets were used were to seal the doors on
16 Cleaver-Brooks package boilers?

17 A. Is that a question? I'm sorry.

18 Q. Yes.

19 A. Okay.

20 Q. And I don't do that to be aggravating, but
21 just looking for confirmation.

22 A. On certain individual boilers, yes, that's
23 where those gaskets would be used.

24 Q. Okay. And what I would like to do -- and
25 again, I'm actually going to provide this list to

1 you -- is just start creating a list of different
2 components that are historically sold with
3 Cleaver-Brooks boilers that may have had asbestos.
4 And you have been clear so far that it was on some of
5 the boilers, but without looking at many, many
6 documents, you can't say it's on all of them.

7 A. Correct.

8 Q. And that's all I am trying to find out.

9 And for the front and rear door gaskets,
10 that's something you have seen at least on some of
11 the boilers?

12 A. Correct.

13 Q. In addition, on the handhole gaskets, you
14 have seen documents in your searches in the past that
15 indicate that the handhole gaskets are
16 asbestos-containing?

17 A. Yes. If we look at the individual boilers
18 we looked at in this particular case, yes.

19 Q. And this is why I made Exhibit 31. When you
20 say the individual boilers in this case, you're
21 referencing the two boilers in Row D?

22 A. Correct.

23 Q. Okay. You have also seen asbestos was used
24 in the gaskets for the manhole covers?

25 A. Again, yes. If you look at the research I

1 states and jurisdictions in litigation efforts.

2 A. Correct.

3 Q. And you would consider yourself a loyal
4 employee?

5 A. Yes.

6 Q. All right. I'm assuming you're aware that
7 on Monday, the 24th, we're starting trial. Do you
8 have any intentions to be there?

9 A. I will do whatever our attorney asks me to
10 do.

11 Q. But today, is that a no?

12 A. I haven't been asked to be there Monday.

13 MS. DEAN: All right. Those are
14 all the questions I have right now. But I do
15 believe that I am entitled to two things that
16 you -- Joe and I can continue to talk about. And
17 it will, even if we reached agreement, likely not
18 lead to the need of more questions.

19 But they are that the Spring sites
20 that were not already identified, a site search
21 should be done. I think that they're going to
22 verify that at the rest of the Springs locations,
23 there were Cleaver-Brooks plants and that that
24 was ordered by the Court; and that, second, the
25 information that came from the site search, which

1 includes the model number, be provided.

2 I can't imagine if I get that
3 information that it would lead to the need to ask
4 more questions. But without seeing it, I -- I
5 want to reserve the possibility to come back and
6 ask those, even if it be by phone to do so. But
7 other than that, I am ready to pass the witness.

8 MR. THOENSEN: I need to clarify
9 for a second. You said -- I think your words
10 were -- and we can confirm with the court
11 reporter -- site search of Spring sites not
12 identified. What -- what do you mean by that?

13 MS. DEAN: The -- the -- not
14 identified to Mr. Tornetta by Cleaver-Brooks'
15 lawyers.

16 You said, I searched the sites of
17 the plants that I was told to. Mr. Bumgardner
18 testified that he was -- there were 13 different
19 plants. It's not entirely clear to me if only
20 five of those 13 were looked at, or six; but for
21 the ones that weren't, I think the Order in
22 Exhibit 30, indicated that every place he
23 identified should have been checked. If those
24 weren't, they should be checked.

25 MR. THOENSEN: The -- what was

1 Ordered was a search for the Springs locations
2 identified by the co-workers. That's what was
3 produced.

4 MS. DEAN: No. I think it was the
5 locations that Pete Bumgardner indicated that he
6 worked, whether it be through the work history
7 sheet or depositions. And if -- if we need to
8 show you the testimony to get there, in -- in
9 three different spots in Pete Bumgardner's
10 deposition, he said that there were 13 sites for
11 Springs and five for J.P. Stevens and that he was
12 at all of them.

13 And so for the ones that were not
14 searched, I want the site search information,
15 just to check-mark that -- that what Mr. Roddy
16 said, and that is that Cleaver-Brooks were at all
17 of the them.

18 And then I want the whole site
19 search information, which I -- I thought just had
20 a unit number, which wasn't terribly helpful for
21 me. But if there is a model number, like
22 Mr. Tordnetta said, it's already been researched.
23 I just want that presented so that I can see if I
24 have manuals that match.

25 MR. THOENSEN: Well, we'll --

1 we'll talk about that. My recollection, off the
2 top of my head -- and I am talking about e-mail
3 communication between you and I -- was that you
4 were specifically interested in whether or not a
5 boiler was shipped; and if it was shipped, the
6 year of shipment.

7 MS. DEAN: That's true.

8 MR. THOENSEN: That's precisely
9 what you were given.

10 MS. DEAN: Well, what I said is I
11 was concerned that -- that you were just going to
12 give me the site and not the information that
13 came from the site search; and that in addition
14 to knowing the location, I was very interested in
15 the date. You're right about that part of the
16 brief, and I wasn't inquiring about the model
17 searches. I misunderstood from the testimony you
18 had with Mr. Carroll and thought that that was an
19 additional step.

20 If it's not, it's on the card.
21 That's information that you would get from the
22 site search. I think that's within what the
23 judge asked for. And more importantly, you have
24 it already. Okay? It's in the card. And so it
25 can just be a list sent to me.

1 MR. THOENSEN: Okay. Well, let's
2 just clarify. You -- you want the site search
3 for the remaining Springs plants and --

4 MS. DEAN: The model numbers.

5 MR. THOENSEN: -- and the model
6 numbers for all of the Springs plants. Or just
7 the ones that have not yet been looked at?

8 MS. DEAN: Just for the ones that
9 have not yet been looked at.

10 MR. THOENSEN: Okay.

11 MS. DEAN: Because we have them
12 for the ones that are on 34, and for the two that
13 are reflected on Number 9 of Exhibit -- the
14 one -- the last that you guys had of the current
15 site search, where 9 indicates there was two
16 boilers.

17 MR. THOENSEN: Okay. Okay.

18 MS. DEAN: I don't think either of
19 these things are lengthy projects. I think they
20 were contained by the Order. And if you're
21 taking the position, which I have heard both the
22 client take and you take, that the manuals need
23 to be specific to the type of boilers, that basic
24 information goes a long way from us arguing about
25 hypotheticals and actually knowing what we're

1 talking about.

2 MR. THOENSEN: Okay. I have a few
3 questions for Mr. Tornetta. And hopefully, we'll
4 wrap up.

5 EXAMINATION

6 BY MR. THOENSEN:

7 Q. Mr. Tornetta, how long have you been an
8 employee of Cleaver-Brooks?

9 A. Since 1985.

10 Q. During your employment with Cleaver-Brooks,
11 have you had the opportunity yourself to work with
12 and work around package boilers very similar or
13 almost exactly like the ones that are at issue in
14 this case that we have identified at Springs
15 Industries?

16 A. Yes.

17 Q. Have you seen those types of boilers in
18 operation in the field?

19 A. Yes.

20 Q. Do you have -- well, let me ask you this:
21 On those types of package boilers, is it physically
22 possible for two adults to be inside one at the same
23 time?

24 A. No.

25 Q. Do those package boilers contain a device

1 known as a thermocouple?

2 A. No.

3 Q. Do those package boilers contain a device
4 known as a sending unit?

5 A. I am not certain what a sending unit is, but
6 I think it's a transmitter for some flow device in
7 the system. So I would say no.

8 And I would just clarify the two adults in a
9 boiler. On our largest fire tube, which some of
10 these are the 96-inch size, the furnace is 40 inches
11 or so in diameter. I suppose two people could be
12 laying down inside that, head to -- head to foot. So
13 I just thought I'd clarify that.

14 Q. Okay. Well, let -- let -- that's a --
15 that's a good clarification. And let me ask you this
16 question also:

17 If there is testimony in this case that the
18 plaintiff would have entered a boiler to change a
19 thermocouple or to do anything, for that matter, at
20 the same time that another worker would have been
21 inside the same boiler performing some kind of work
22 on the refractory and cement, is it possible that the
23 boiler being described was one of these
24 Cleaver-Brooks package boilers?

25 A. No.

1 Q. Do these Cleaver-Brooks package boilers that
2 are at issue and that have been identified at the
3 Spring sites contain electrical controls on the face
4 of the boiler?

5 A. Outside face we're talking?

6 Q. Right.

7 A. Yes.

8 Q. What types of controls might be found on the
9 outside face?

10 A. There would be steam pressure controls, in
11 some instances. Air pressure switches. There would
12 be gas pressure switches, but not necessarily on the
13 face.

14 Q. Okay.

15 A. There would be a flame safeguard, but that
16 could be technically an electrical control.

17 Q. All right. For all of the boilers so far
18 identified at the Springs Industries locations that
19 you have reviewed, have you found with any of them
20 that they were shipped by Cleaver-Brooks with
21 asbestos-containing insulation on the exterior?

22 A. No, I have not found that.

23 Q. With regard to these Cleaver-Brooks package
24 boilers, fire tube boilers that we're discussing, are
25 you aware of any reason for an electrician or a

STATE OF SOUTH CAROLINA

IN THE COURT OF
COMMON PLEAS

COUNTY OF YORK

C/A No. 2015-CP-46-03456

TIMOTHY W. HOWE, as Personal)
Representative of the Estate of)
WAYNE E. HOWE, deceased, and)
JEANETTE HOWE, surviving spouse,)
Plaintiffs,)

-VS-

AIR & LIQUID SYSTEMS CORP.,)
individually and as)
successor-in-interest to)
Buffalo Pumps, Inc.;)

ALBANY INTERNATIONAL CORP.;)

ASTEN-JOHNSON, INC.;)

AURORA PUMP COMPANY;)

A.W. CHESTERTON COMPANY;)

BORG WARNER MORSE TEC, INC., as)
successor to Borg-Warner)
Corporation;)

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 PRODUCTS, 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.);)

1 CLEAVER BROOKS, INC.;)
2 COVIL CORPORATION;)
3 CRANE CO.;)
4 CROWN CORK & SEAL COMPANY,)
INC.;)
5 DANIEL INTERNATIONAL)
6 CORPORATION;)
7 FLUOR ENTERPRISES, INC., f/k/a)
Fluor Daniel, Inc., f/k/a)
8 Daniel Construction Company,)
Inc.;)
9 FLUOR DANIEL SERVICES)
10 CORPORATION;)
11 FOSTER WHEELER ENERGY)
CORPORATION;)
12 GENERAL ELECTRIC COMPANY;)
13 THE GORMAN-RUPP COMPANY;)
14 GOULDS PUMPS, INCORPORATED;)
15 INGERSOLL RAND COMPANY;)
16 METROPOLITAN LIFE INSURANCE)
17 COMPANY, a wholly-owned)
subsidiary of Metlife, Inc.;)
18 PEERLESS PUMP COMPANY;)
19 PRESNELL INSULATION, INC.;)
20 RILEY POWER, INC., individually)
21 and as successor-in-interest to)
Babcock Borsig Power, Inc., and)
22 Riley Stoker Corporation,)
individually and as)
23 successor-in-interest to D.B.)
Riley;)
24 SEPCO CORPORATION;)
25)

1 STERLING FLUID SYSTEMS (USA))
 LLC;)
2)
 TRANE U.S., INC., f/k/a)
3 American Standard, Inc., f/k/a)
 American Radiator & Standard)
4 Manufacturing Company;)
)
5 UNIROYAL, INC., f/k/a United)
 States Rubber Company, Inc.;)
6)
 UNITED CONVEYOR CORPORATION;)
7)
 VELAN VALVE CORP.;)
8)
 VIKING PUMP, INC.;)
9)
 WARREN PUMPS, LLC; and)
10)
 ZURN INDUSTRIES,)
11)
 Defendants.)
12 _____

13
14
15 Deposition of GILBERT C. SMALL, JR., taken
16 on behalf of the Plaintiffs, pursuant to the
17 stipulations agreed to herein, before SANDRA
18 BERKELAND, Certified Court Reporter and Notary
19 Public, at Fairfield Inn & Suites, 578 Galleria
20 Boulevard, Rock Hill, South Carolina, on the 5th day
21 of December 2017 commencing at the hour of 8:07 a.m.

22
23
24
25 JOB NO.: 2766402

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1 bring it to the window and give it to us and
2 then -- that's what I refer to as buying.

3 Q. Okay. And this storeroom, would that be
4 on the Bowater premises?

5 A. Yes. It was at the far end of our shop.

6 Q. And is that where you would go to
7 predominantly to get any of the replacement parts
8 that you might need for overhauling this type of
9 work?

10 A. Right. Storeroom contained everything
11 we needed.

12 Q. Okay.

13 A. Storeroom and warehouse.

14 Q. Now, when you went -- got one of these
15 replacement gaskets, would these be original
16 equipment for whatever pump that was or would it just
17 be a generic or do you know?

18 DEFENSE COUNSEL: Objection to the form.

19 A. Basically generic but because they -- we
20 had so many pumps of the same variety throughout the
21 mill, different style pumps, but the gaskets --
22 eventually the gaskets were manufactured and we --
23 all we had to do was go get the gasket. Wouldn't
24 have to make it, but the gaskets did fit that
25 particular pump.

1 Q. Okay.

2 A. And that particular flange.

3 Q. Sure. Do you remember any of the
4 manufacturers of the gasket material y'all used?

5 A. No, sir. Not right off.

6 Q. Can you describe what -- what it looked
7 like, any characteristics, color of the gasket
8 material?

9 A. The ones that come to mind mostly were
10 the green material, about eighth of an inch thick,
11 and of course that thickness varied depending on the
12 application. Most of it was green.

13 Q. Okay. What other colors were there?

14 A. That was just the dominant color that I
15 remember.

16 Q. Sure.

17 A. We did use red rubber gaskets too on
18 some applications.

19 Q. Okay.

20 A. Some cases.

21 Q. Okay.

22 A. Used black rubber also.

23 Q. Sure. Sure. When you had to install
24 the new flange gasket onto the flange, you said that
25 you would use a hammer to peen it on?

1 DEFENSE COUNSEL: Object to the form.

2 Q. Go ahead.

3 A. We would take -- I would take a
4 ball-peen hammer, a ball-peen hammer and use the
5 rounded end -- not the head part of the hammer but
6 the rounded end and you'd tap it around those holes
7 and it would break that gasket --

8 Q. Okay.

9 A. -- where those holes needed to be and
10 the outer edge of it too.

11 Q. Okay. So, the facing of the flange
12 would cut through the gasket material as you hit the
13 hammer?

14 A. That's correct.

15 Q. Okay. And would that also -- that work
16 practice also release debris or dust?

17 DEFENSE COUNSEL: Objection to the form.

18 A. That's correct. It would. That was not
19 the only way also. We had what we call hole punches.

20 Q. Uh-huh.

21 A. And if you laid your gasket material up
22 on it and then took a pencil or pen and made all the
23 circles, then you could take a hammer and that hole
24 punch and you could punch it out.

25 Q. Now, when you began describing this

1 gasket work, you said that you did this type of
2 cutting your own gaskets initially. Around what
3 point in time do you believe that they changed from
4 you having to cut your own gaskets?

5 A. That was so gradual that it --

6 Q. Even if it's just a decade.

7 A. Yeah. I can only guess it was in the
8 '90s.

9 Q. Okay.

10 A. Late '80s, '90s.

11 Q. Okay. Now, would this -- would you have
12 to do the -- or replace the internal gaskets as well
13 on the pumps that you would overhaul?

14 DEFENSE COUNSEL: Objection to the form.

15 A. Explain internal gasket.

16 Q. Okay. Would you, after -- during the
17 overhaul of a pump, would you -- first let me ask
18 you, would you break it down and take it apart?

19 DEFENSE COUNSEL: Objection to the form.

20 A. Yes. Yes.

21 Q. Okay. Would you remove the packing?

22 DEFENSE COUNSEL: Objection to the form.

23 A. Yes.

24 Q. Okay. When you removed the packing,
25 what did you remove it with?

1 you see that? You can just pass it on over there.

2 It's just marked for the record.

3 Now, you and I have met before today.

4 Is that correct?

5 A. Yes.

6 Q. And, in fact, I have come to your house
7 and we talked together; isn't that correct?

8 A. That's correct.

9 Q. Okay. And one of the things that you
10 did for me was draw a map --

11 A. I did.

12 Q. -- of the Bowater paper mill?

13 A. That's correct.

14 Q. I am going to mark as Exhibit 2 the
15 handwritten birds-eye view map of Bowater paper mill
16 that you drew, and I'm going to hand it to you and
17 have you take a look at it and tell me, is that the
18 same map that you drew for me yesterday and if there
19 are any additions to it or anything like that that
20 you notice.

21 (Court Reporter marks Hand Drawn Map
22 Exhibit No. 2.)

23 DEFENSE COUNSEL: While he's looking at
24 it, can we make a copy at some point?

25 MR. HOLDER: Yes.

1 A. This is the one I drew for you, yes.

2 Q. Okay. Now, you can hand it back to me.
3 We may use this during the questioning to point out
4 certain areas, but to start out with, did you, when
5 you were working doing overhauls of pumps in your
6 work as a millwright and all the way through master
7 craftsman, were you sectioned off in one part of the
8 plant?

9 A. Yeah. My basic assignment was in the
10 powerhouse.

11 Q. Okay. Did your tasks take you all over
12 the mill?

13 A. Something broke down, especially the
14 paper machines, forget about what's going on in the
15 powerhouse and get the paper machine running.

16 Q. Okay. And was that something that was
17 true for pipefitters as well as millwrights?

18 A. That's correct, yes.

19 Q. Okay. And do you have knowledge that
20 Wayne Howe worked all over the paper mill as well?

21 DEFENSE COUNSEL: Object to form.

22 A. Definitely, yes.

23 Q. Okay. Where specifically -- strike
24 that.

25 You mentioned the powerhouse?

1 A. Correct.

2 Q. Okay. What kind of equipment did you
3 work on in the powerhouse?

4 A. Before I retired, my primary assignment
5 was to the IKs, the upper part of boilers. If you
6 want me to describe that I can.

7 Q. Sure. What's an IK?

8 A. An IK can be mechanical -- it has
9 mechanical parts to it. Some are driven by steam.
10 Some were driven by electric motor. But the whole
11 thing is you have steam that goes through a feed tube
12 and a lance tube that pushes into the boiler. It's
13 got nozzles on the end of the outer tube and it
14 cleans in between the tubes. The boiler's got to
15 breathe or it will stop up.

16 So that's what the whole purpose of this
17 thing is to you're burning salt in recovery boilers
18 and you're burning bark in our other two boilers and
19 it will collect. You have to keep them clean. You
20 have to keep the boiler -- the air moving through the
21 boiler.

22 That's the primary purpose of this.
23 It's under high pressure steam, 900 pounds.

24 Q. Okay.

25 A. So is that's the reasoning for those.

1 Q. When did you -- when did the IKs become
2 your primary responsibility?

3 A. My primary?

4 Q. Or just the thing that you were working
5 on the majority of the time?

6 A. I had to work on them when I was on
7 shift work as a shift millwright. That was only on
8 occasion if one tore up. Other times I started on
9 that job every day, let's see, about 1995, '6.

10 Q. Okay.

11 A. Somewhere on there.

12 Q. Around the time you became a master
13 craftsman?

14 A. Yeah.

15 Q. Okay.

16 A. Little bit before, as a matter of fact.

17 Q. When I asked you about valves, I didn't
18 ask you about packing. I asked you about packing on
19 pumps, but when you had occasion to work on valves,
20 did you have to remove packing from valves?

21 A. Yeah. Most -- most valves the system
22 that you turn to close or open a valve, you have to
23 have packing there otherwise your product is going to
24 come up through around that system. You had to pack
25 that.

1 Q. And did the removal of packing from the
2 valves release debris and dust?

3 DEFENSE COUNSEL: Objection.

4 A. Yes.

5 Q. All right. Back to the powerhouse, you
6 said you worked on the IKs. Did you also -- did you
7 also work on pumps in the powerhouse?

8 DEFENSE COUNSEL: Objection to the form.

9 A. Yes.

10 Q. Were there loss of pumps in the
11 powerhouse?

12 DEFENSE COUNSEL: Objection to the form.

13 A. Many.

14 Q. Okay.

15 A. Many.

16 Q. Did you work on valves in the
17 powerhouse?

18 A. Yes, occasionally. Yes.

19 Q. Were there any valves in the powerhouse?

20 A. Many.

21 Q. Did you have occasion to work on
22 precipitators?

23 A. Yes, I did.

24 Q. Was that in the powerhouse as well?

25 A. Yes.

1 Q. Did you have occasion to work on --
2 strike that.

3 What different kinds of boilers were
4 present in the powerhouse?

5 A. The type of operation that they did?

6 Q. Uh-huh.

7 A. We had --

8 Q. Actually, just the names of them that
9 you indicated on the map.

10 A. Okay.

11 Q. That might be most helpful.

12 A. I'll start on the combination boiler,
13 which to me, looking at the back of the mill in the
14 far outside room was the No. 2 combination boiler.
15 It burned bark. They even started burning some
16 rubber mixing it in.

17 Then you had No. 1 combination right
18 beside it, and it burned the same type material,
19 bark, and even planing mill dust. That was a mess.

20 There was an old No. 1 recovery boiler,
21 which had been shut down, and it was -- it burned
22 natural gas and it was basically used for building
23 heat just to keep enough steam going. Right beside
24 it was No. 1 -- No. 2 recovery. No. 2 recovery, it
25 was already operating when -- I forgot when they

1 installed it.

2 And then outside of that, No. 3
3 recovery. And both of No. 2 and No. 3 recovery
4 burned black liquor. It was sprayed into the boiler.
5 There was cleats welded on the tubes in the inside of
6 the boiler and that liquor, we call it heavy liquor
7 then, it was blown into the boiler and it would smelt
8 down those tubes and go to the bottom. Once it
9 smelted all the way down, it became green liquor.

10 Q. Okay.

11 A. It had another purpose.

12 Q. Sure. All righty. Just to make sure
13 that I am on the same page, the powerhouse as far as
14 boilers go, you identified a No. 1 combo boiler, a
15 No. 2 combo boiler, a No. 1 recovery boiler, a No. 2
16 recovery boiler and a No. 3 recovery boiler. Is that
17 correct?

18 A. That's correct.

19 Q. Now, do you remember if you worked on
20 any evaporators in the powerhouse?

21 A. We had pumps in the evaporators that we
22 had that we worked on them and we also had to go
23 inside of the evaporators. There was plates in the
24 evaporators and we had -- if a plate broke loose or
25 something on that order, we would have to reweld them

1 and that kind of thing.

2 Q. Okay. How about precipitators? Did you
3 work on precipitators in the powerhouse?

4 A. Oh, yeah, definitely. Our job was to
5 change packing on the screws on the precipitators.
6 We would have to go inside and had plates all in the
7 precipitators and they went -- in operation, those
8 plates were electrified and it was like a magnet and
9 all that dust and stuff, it was designed to collect
10 on those plates.

11 And then you would have a vibrator, or
12 some form of mechanical thing, to shake those plates.
13 It was on a frequency-type thing and it would shake
14 those plates and clean them off, and all that debris
15 would fall to the bottom. Screws at the bottom. We
16 had to pack all those screws.

17 Q. Uh-huh.

18 A. And that debris would go into a tank,
19 which had pumps on it, and they added water to it to
20 pump it to the waste treatment for it to settle out.

21 Q. I gotcha. Would these precipitators be
22 insulated?

23 A. Oh, definitely. Yes. Everything. A
24 simple thing. There is so much steam and so much
25 heat. You have to capture it all just about

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK FOR THE SIXTEENTH JUDICIAL
CIRCUIT

TIMOTHY W. HOWE, as Personal
Representative of the Estate
of WAYNE E. HOWE, deceased,
and JEANETTE HOWE, surviving
spouse,

Plaintiffs,

vs.

C/A No. 2015-CP-46-03456

AIR & LIQUID SYSTEMS CORPORATION,
et al.,

Defendants.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK FOR THE SEVENTH JUDICIAL CIRCUIT
Roxanne Falls, individually and
as Personal Representative of the
Estate of CHARLOTTE GAYE SMITH,
Deceased,

Plaintiff,

vs.

C/A No. 2015-CP-46-02155

CBS CORPORATION, et al.,

Defendants.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON FOR THE SEVENTH JUDICIAL CIRCUIT

JAMES CALVIN SIZEMORE,

Plaintiff,

vs.

C/A No. 2016-CO-25-0440

BOWATER PAPER MILL, et al.,

Defendants.

30(b)(6) DEPOSITION OF CLEAVER-BROOKS February 2, 2018
THROUGH THE TESTIMONY OF JOHN TORNETTA 10:09 a.m.
Job No. 2809927

1 VERITEXT-NJ, LLC 800-567-8658
2 Reported by Lynn Peppey Bayer, RPR, CM

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I N D E X

WITNESS	EXAMINATION	PAGE
JOHN TORNETTA		
	EXAMINATION BY MS. STONE	6
	EXAMINATION BY MS. SPARDONE	135
	RE-EXAMINATION BY MS. STONE	143
	EXAMINATION BY MR. CONNER	146

E X H I B I T S

NUMBER		PAGE IDENTIFIED
Exhibit 1	Notice of Deposition (Howe case)	38
Exhibit 2	Notice of Deposition (Smith case)	123
Exhibit 3	Notice of Deposition (Sizemore case)	131
Exhibit 4	commercial records (microfiche)	48
Exhibit 5	manufacturing drawings	71
Exhibit 6	parts descriptions	79
Exhibit 7	Progress Model P manual	44
Exhibit 8	documents provided to plfs by C-B representatives	121
Exhibit 9	Cleaver-Brooks' objections to notice	8
Exhibit 10	Cleaver-Brooks' objections to notice	8
Exhibit 11	Cleaver-Brooks' objections to notice	8

(Original exhibits attached to original transcript.)

(Copies of exhibits attached to transcript copies.)

P R E V I O U S L Y M A R K E D E X H I B I T S

NUMBER	PAGE IDENTIFIED

(None mentioned.)

R E Q U E S T S

REQUEST	PAGE	LINE
(No requests to produce documents were made.)		

1 (Exhibit Nos. 1 through 3 were marked.)

2 JOHN TORNETTA, called as a witness herein,
3 having been first duly sworn, was examined and
4 testified as follows:

5 EXAMINATION

6 BY MS. STONE:

7 Q Good morning, how are you?

8 A I'm good. How are you today?

9 Q I'm good. My name's Sabrina Stone and I represent
10 the plaintiffs in this case, in these cases which is
11 the Howe, Smith and Sizemore cases. Can you state
12 your full name for the record.

13 A John F. Tornetta.

14 Q Is it all right if I call you John?

15 A It absolutely is.

16 Q Okay. Because my Texas accent may mess up the Torn
17 part.

18 A That's okay.

19 MS. STONE: I just want to make sure with
20 counsel that we got our agreements on the record as
21 to one objection being good for all?

22 MS. SPARDONE: Yes, that's agreed.

23 MS. STONE: And I spoke with Joe
24 yesterday, and we have an agreement that although I
25 don't have my pro hac entered, there's no objection

1 to me taking the deposition and I also agree the
2 same for Stephanie.

3 MS. SPARDONE: That's acceptable. Thank
4 you.

5 MS. STONE: And, finally, that all
6 objections are reserved until trial except as to
7 form.

8 MS. SPARDONE: Agree.

9 BY MS. STONE:

10 Q All right, John. Sorry about that. You know you're
11 here to talk as the corporate representative for
12 Cleaver-Brooks today; is that fair?

13 A Yes, it is.

14 Q And you speak for Cleaver-Brooks?

15 MS. SPARDONE: Object to form, overbroad.

16 A Yes, I suppose, unless you ask me a question related
17 to my personal opinion, yes.

18 MS. SPARDONE: And, Counsel, I don't have
19 an actual hard copy here. I'm going to get it at
20 the break. But we do have objections to the notices
21 that I'd like to attach as -- I'll attach it at the
22 end just to keep your order in place. So he's here
23 subject to the objections that we've lodged.

24 MS. STONE: And, just for the record, the
25 objections by Cleaver-Brooks to the notices will be

1 Exhibit 9, 10 and 11.

2 MS. SPARDONE: Thank you.

3 MS. STONE: Is that correct?

4 MS. SPARDONE: We didn't go ahead and put
5 stickers on everything you ticked off because you
6 did it kind of quickly; but if that's what you have,
7 I'm fine with that.

8 MS. STONE: Okay.

9 Q The first case I want to talk with you about is the
10 Howe case. Are you aware that in all three of these
11 cases, Mr. Sizemore's case -- Ms. Smith's case and
12 Mr. Sizemore's case, they had somebody that worked at
13 Bowater?

14 A Yes, as I'm pretty sure is at least one of their
15 sites, yes.

16 Q I'm just going to make that a little clearer
17 question. You're aware that Mr. Sizemore worked at
18 Bowater?

19 A I believe so. I -- quite frankly, I didn't spend a
20 very large amount of time reviewing Mr. Sizemore's
21 testimony. But I believe there was some information
22 on Bowater in that, yes.

23 Q Are you aware that Ms. Smith's ex-husband also worked
24 at Bowater?

25 A I believe so, yes. I don't know if he worked for

1 Bowater or for a contractor, but I believe he was at
2 that site.

3 Q And you are aware that Mr. Howe also worked at
4 Bowater?

5 A Yes.

6 Q And Mr. Howe worked at Bowater from 1977 until 2008?

7 A That sounds familiar. But I certainly didn't commit
8 his testimony to memory, but it sounds proper. I
9 think it may have been with a couple of different
10 employers and then eventually the Bowater Paper Mill
11 itself. But that sounds at least close to what I
12 recollect.

13 Q And you know that there's a Cleaver -- or was a
14 Cleaver-Brooks boiler at Bowater?

15 A Yes. I think we found a small 30 horsepower Progress
16 model package boiler shipped in 1957.

17 Q And do you know where that boiler was located at
18 Bowater?

19 A Specifically on the site or what building, I couldn't
20 find anything in our records that indicated
21 specifically where it was, no.

22 Q And you said it was purchased in 1957?

23 A I know it was shipped in '57. I would have to look
24 and see if the purchase was -- you know, it could
25 have been six months before that with the actual

1 MS. SPARDONE: Object to form.

2 A We went through an awful lot of different materials.
3 But certainly gaskets when the rear -- front or rear
4 door is opened, normally the gasket is being
5 replaced. I don't know if I'd call it wearing out,
6 but it certainly is beyond -- it wouldn't be
7 something someone would normally reuse if they're
8 opening up every year.

9 When it gets to the refractory and that
10 Vee Block insulation material we were just talking
11 about, over time; however, when we're talking about a
12 boiler this small, it's much less common that those
13 types of materials are, say, wearing out on a, you
14 know, every-five-year, ten-year, whatever basis it
15 might be.

16 Q So is it fair to say it would be at least foreseeable
17 that these items would be removed and replaced?

18 MS. SPARDONE: Object to form, asked and
19 answered.

20 A At least some of them, yes.

21 BY MS. STONE:

22 Q So you talked about gaskets, they would be removed
23 and replaced. Is that correct?

24 MS. SPARDONE: Asked and answered.

25 A The ones we were talking about, absolutely, yes.

1 BY MS. STONE:

2 Q The internal insulation, would that be removed and
3 replaced?

4 MS. SPARDONE: Object to form.

5 A If the internal insulation we're talking about is
6 that Vee Block mix, that would depend upon the life
7 span of the boiler, how it was treated; and, again,
8 talking about a boiler this size and the small
9 diameter of it, very well could have gone 20 years
10 and depending on how the boiler was used no one ever
11 replaced it. I really don't have any information on
12 this one whether or not it did or didn't.

13 BY MS. STONE:

14 Q Generally on a Cleaver-Brooks boiler, it's
15 foreseeable to Cleaver-Brooks that these materials
16 would have to be removed and replaced due to wear and
17 tear or use, correct?

18 MS. SPARDONE: Object to form, asked and
19 answered.

20 A Certainly we would have expected some of those
21 materials to be replaced. But, again, I would be a
22 little careful generally because if we're using
23 generally in looking at this particular one, I don't
24 believe we would see all of them replaced on a
25 regular basis and in some cases maybe not at all. So

1 it's difficult to really generalize like that. And,
2 again, I didn't see any evidence of that in our
3 records, but we wouldn't necessarily have that in our
4 records.

5 BY MS. STONE:

6 Q So I understand the problem with the generally. What
7 in Cleaver-Brooks' opinion would not be foreseeable
8 to be removed and replaced?

9 MS. SPARDONE: Object to form, vague,
10 overbroad, compound, asked and answered.

11 A Well, I guess I think the example I gave you of the
12 Vee Block mix or the refractory in this particular
13 boiler may not. I'm not saying it wasn't. I'm just
14 saying I don't have any way to know. But knowing the
15 type of boiler this is and the size of this boiler, I
16 couldn't say for certain it was.

17 BY MS. STONE:

18 Q Okay. Anything else?

19 MS. SPARDONE: Object to form.

20 A Not that I can think of off the top of my head. As
21 we go through some of the records, we might run into
22 a material here and there that would be unlikely to
23 be.

24 BY MS. STONE:

25 Q Okay. I want to talk to you a little bit about

1 Cleaver-Brooks' record retention. Can you tell me
2 how the records are kept?

3 MS. SPARDONE: Overbroad, form.

4 A I guess it would help if I knew exactly what records
5 you're talking about first and then I could probably
6 start with that.

7 BY MS. STONE:

8 Q Okay. That was one of my questions, if there were
9 different types of records. And it's my
10 understanding that when records are searched, you
11 search to see first if a boiler was even located at a
12 location; is that correct?

13 A Yes.

14 Q And how long does it take for you to determine
15 whether a boiler was at a certain location?

16 MS. SPARDONE: Object to form.

17 A I guess it depends a great deal on the complexity of
18 the name or names I'm asked to search. But in
19 general, I -- or on average, I'd say it's probably in
20 the -- probably roughly 30 minutes per site to look
21 for it and it somewhat depends on what I find. The
22 more indications in our index cards of boilers at a
23 site for multiple boilers, the longer it takes
24 because the more commercial records I have to look at
25 to see what the model was, whether -- when it

1 shipped, if the index card was correct or not, that
2 type of thing.

3 BY MS. STONE:

4 Q Okay. And then the second layer would be to
5 determine if there's internal components --
6 information on the internal components; is that fair?

7 MS. SPARDONE: Object to form.

8 A No. I guess -- and now I have a better feel for what
9 records you're looking at. So maybe I can go through
10 a little bit of what it is. Kind of using your
11 terminology, the first layer would be the index cards
12 that I just referred to. So we have a --

13 BY MS. STONE:

14 Q Okay.

15 A -- series of index cards that are kept
16 alphabetically. They are first separated into
17 categories of types, very broad types of boilers or
18 models of boilers. So our fire-tube boilers, our
19 commercial water tubes, our industrial water tubes
20 and a few other smaller categories.

21 So within each of those, they are listed
22 by -- they're physical roughly 4-by-6-inch index
23 cards and they're kept alphabetically by the job site
24 name. So when somebody says look for Bowater Paper
25 Mill or whatever other names I was given for that, I

1 would look first under B and look for Bowater.

2 If I found something, on that index card
3 is normally a city and state type thing. So if
4 there's 50 Bowater sites around the country, I would
5 then have to see if it was a particular city and
6 state that I was looking for. If I found the city
7 and state I was looking for, on that card is normally
8 a model number which gives me an idea, but not too
9 much more information than that. And then ultimately
10 a unit number of the boiler.

11 That unit number is what I would use to
12 get to what I refer to as our commercial records.
13 Those are kept on microfiche sheets that have
14 multiple images on them. That would have been --
15 back in the day of the boiler being sold in this
16 case, 1957, that would have been the folder or file
17 that the sales records and things of that sort were
18 kept.

19 So within that -- those commercial
20 records, I would verify that the job site I found on
21 the index card matches the job site in the commercial
22 records and the unit number, it gives me a little
23 more information on when it was shipped. And
24 ultimately that -- those records -- that would be
25 what I think what you referred to as the second

1 level. Those records would get me to the -- some
2 manufacturing documents or lead me to those
3 manufacturing documents that show the components and
4 bills of materials for the various assemblies that
5 were used to put together that boiler.

6 And those drawings then get me to the part
7 descriptions which is another layer, another
8 potential layer for some of them, or just the drawing
9 that shows that part. So I think that ends my
10 dissertation, I'll call it, on the specific boiler
11 records we would have.

12 Q No, and that helps a lot, and I apologize for my
13 terminology being confusing. That helps a lot. So
14 I'm going to ask you a few questions about each step.

15 The index cards, are they at all kept
16 electronically?

17 A No.

18 Q Where are they located?

19 A In my office. And just --

20 Q And you physically -- go ahead.

21 A I just wanted to add one thing. Beyond the index
22 cards -- the index cards cover a period of time from
23 roughly the first, which would be 1932-ish, through
24 the mid to late 1980s. They were still making those
25 index cards. There's also a printout of at that time

1 in the late 1980s our information off of our order
2 entry system. It's a stack of pages a couple feet
3 high, I believe. Those are also alphabetical as
4 well. So I would search that as well.

5 And then for current boilers we would look
6 in our electronic order entry system today to see if
7 there's any record of it. But those would just cover
8 boilers -- that printout would cover boilers from the
9 mid to late 1980s through roughly late '90s, early
10 2000s. And then our electronic systems today would
11 cover any boiler post the year 2000.

12 Q Are the index cards handwritten?

13 A No. They're typed.

14 Q Has Cleaver-Brooks looked into how much it would cost
15 to digitize them or get them copied electronically?

16 MS. SPARDONE: Object to form, beyond the
17 scope of the notice, irrelevant.

18 A No.

19 BY MS. STONE:

20 Q Who typed up these note cards?

21 MS. SPARDONE: Object to form.

22 BY MS. STONE:

23 Q Index cards. Let me put it that way.

24 A Probably a lot of people. It was something that was
25 ongoing for probably 60 years nearly.

1 BY MS. STONE:

2 Q Is there an index card for every single boiler that
3 was sold by Cleaver-Brooks?

4 MS. SPARDONE: Object to form.

5 A Short of the limitations I told you
6 post-1980-whatever, late '80s, I would say probably.
7 I can't say I've ever looked at every one to verify
8 that every one's there and I'm not sure how I could
9 tell that it wasn't. So I would say yes.

10 BY MS. STONE:

11 Q So you believe Cleaver-Brooks' records related to
12 where those boilers were located is complete?

13 A As complete as they could be, yes. I -- we -- if we
14 were told a boiler was moved from one place to
15 another, we actually produced -- at the time, if it
16 was back in the times of making the index cards, they
17 would have typed up a second index card and placed
18 that alphabetically where the second job name would
19 be or if the job name changed.

20 I've seen many, many examples of that in
21 the more than 15 years I've been doing this. So it
22 was very common for someone to have said boiler
23 number X moved from location Z to location Y and we
24 made that change, we kept the old card as reference
25 and we added a new card in every one I've come

1 across.

2 Q So is it your position that if Cleaver-Brooks does
3 not have an index card for a specific site, there was
4 no Cleaver-Brooks boiler there?

5 MS. SPARDONE: Object to form.

6 A I don't believe I could ever take that position with
7 certainty. Certainly I could say that we don't have
8 record of it. But I think I would -- or if someone
9 else was looking at it, they would look at other
10 avenues to see if there's other things that could say
11 that one way or the other.

12 BY MS. STONE:

13 Q Okay. So I'm going to move to the next level, the
14 unit numbers, related to the unit numbers which you
15 called the commercial records, right?

16 A Correct.

17 Q How long would it take to do a search, let's say in
18 this case you found that there was a Cleaver-Brooks
19 boiler at Bowater. How long does it take you to find
20 a commercial record related to that unit number?

21 MS. SPARDONE: Object to form.

22 A If I have the unit number, I can go right to the
23 microfiche. The microfiche jackets, I'll call them,
24 are kept somewhat segregated by product type similar
25 to the index cards, but not exact. So they're kept

1 like that but they are kept by numbers. So if
2 it's -- I don't remember the actual unit number in
3 this case, but I'll look at it. It was 0-18343 and I
4 knew it was a Progress model boiler, so I know that's
5 in the fire-tube microfiche. So I would have gone to
6 the fire-tube microfiche and looked at number 18343.

7 Q So how long would that generally take you?

8 A The actual finding the fiche, relatively quickly.
9 It's literally going in the drawer and pulling out
10 the fiche. Going through the records which I would
11 need to do to verify the job name and look for the
12 ship date and the model number and things of that
13 sort, that's -- depending a lot on the size of the
14 records, that can take anywhere from, you know, ten
15 minutes to an hour depending on how many images are
16 on each sheet of microfiche -- or how many sheets of
17 microfiche are related to that unit number.

18 In this particular case, it looks like it
19 was a fairly small amount because I see the Bates
20 numbers go to about 25. So I could have gone through
21 that in, you know, probably 10 or 15 minutes to see
22 what was inside it. What was inside the records I
23 should say.

24 Q So I want to go back and clarify one thing. You said
25 if you have the unit numbers, it's relatively quickly

1 to find, correct?

2 A Correct.

3 Q The unit number is contained on the index cards; is
4 that correct?

5 A Yes.

6 Q So if you find an index card, you're going to have
7 the unit number, it would be rather quick to at least
8 locate the commercial records?

9 A Normally, yes. I was just saying if the unit number
10 is there, because occasionally people say to me can
11 you go find the records for this boiler and it's a
12 different name than what we may have in our index
13 cards for one reason or another and I don't have a
14 way to search the commercial records by job name or
15 location or anything like that. They are just kept
16 by number.

17 Q Okay. The manufacturing document, how do you locate
18 those?

19 A Depends a good bit on the year and sometimes the
20 product, but normally there are references within the
21 commercial records, and those references may be
22 something as vague, I'll call it, as just the model
23 number. But in other cases there are references to
24 some higher level drawings within those commercial
25 records that get me to what I'll call the initial or

1 A I don't believe so, no. Certainly -- again,
2 certainly not before or during the time periods that
3 are called out at issue here.

4 BY MS. STONE:

5 Q When you say "I don't believe so," it's that you
6 didn't find any records but you just don't remember
7 the search? I'm just trying to see why you say "I
8 don't believe so."

9 MS. SPARDONE: Object to form.

10 DEFENSE COUNSEL: Object to form.

11 A I'm only saying "believe so" because I don't have a
12 perfect recollection of what I found when I searched.
13 However, I know for certain we did not find anything
14 before or during the time periods we're talking about
15 here because if we had, we would have produced that
16 information, as we did for Bowater.

17 BY MS. STONE:

18 Q And the last one is Bowater, and that's where we
19 found some records; correct?

20 A Yes. That 1957 boiler we were talking about earlier.

21 Q So Cleaver-Brooks' records verifies that there is a
22 Cleaver-Brooks boiler at Bowater?

23 MS. SPARDONE: Object to form.

24 A I guess I'd say our records verify that we shipped a
25 boiler there and it was started up. It certainly

1 doesn't verify how long it was there, although I
2 think there's some records that show some interaction
3 in the '60s. But beyond that, I couldn't say when it
4 was there or when it wasn't there.

5 BY MS. STONE:

6 Q And you can confirm that asbestos was used on this
7 specific boiler that was shipped to Bowater?

8 MS. SPARDONE: Object to form. Did you
9 say on? Was that the question?

10 MS. STONE: Yes.

11 MS. SPARDONE: Object to form.

12 A Certainly there were components inside the boiler;
13 but as we talked about earlier, when we're talking
14 about on the outside of the boiler, I would have to
15 say no.

16 BY MS. STONE:

17 Q So you can confirm for me that asbestos-containing
18 products were used on the inside of this boiler?

19 A When it was shipped, I believe some of the components
20 had asbestos as part of the makeup of the component,
21 yes.

22 Q Do the documents that have been produced in this case
23 that we have marked as -- for the record, I'll go
24 through it more slowly -- Exhibit 4 will be BPM000001
25 through BPM000025.

1 MS. SPARDONE: Okay. Why don't you just
2 hang on so the court reporter can stop typing and we
3 can mark these. Okay?

4 MS. STONE: Yeah, no, that's fine.
5 (Exhibit No. 4 was marked.)

6 MS. STONE: Exhibit 5 will be BPM26
7 through 44.

8 (Exhibit No. 5 was marked.)

9 MS. STONE: Exhibit 6 will be BPM45 to 61.
10 (Exhibit No. 6 was marked.)

11 MS. SPARDONE: Do you want to mark the
12 manual now too?

13 MS. STONE: Yes. I was waiting 'til you
14 all were ready. Exhibit 7 will be CB_MAN_HOWE 1
15 through 50.

16 (Exhibit No. 7 was marked.)

17 BY MS. STONE:

18 Q Other than those documents that we've just marked as
19 Exhibits 4 through 7, are there any other documents
20 in Cleaver-Brooks' possession related specifically to
21 the boiler at Bowater?

22 MS. SPARDONE: Object to form. He did
23 testify about the index card. I don't know if you
24 want to call that as related. But there is that
25 particular document that isn't included.

1 A These are the --

2 MS. STONE: The index card itself is not
3 included?

4 MS. SPARDONE: Correct.

5 A So other than that, yes -- or no, there are not any
6 more documents related to the Progress model whatever
7 unit number we're dealing with, unit number 0-18343
8 that we show shipping to Bowater's Carolina
9 corporation, Catawba, South Carolina.

10 BY MS. STONE:

11 Q Did you know that other documents were produced
12 yesterday in response to plaintiffs' discovery
13 requests?

14 A I knew they were produced yesterday. I wasn't sure
15 what they were produced in response to. But
16 certainly I knew they were produced, some documents,
17 yesterday.

18 Q Did you know that there was a hearing where
19 Cleaver-Brooks' attorneys represented to the court
20 that we would be getting all records responsive to
21 our discovery requests on January 24th?

22 MS. SPARDONE: Object to form.

23 DEFENSE COUNSEL: Object to the form.

24 A No. I normally don't get involved in hearings and
25 things of that sort, so I don't believe I knew that

1 there was any such hearing.

2 BY MS. STONE:

3 Q And the judge also ordered other defendants to
4 provide the documents by Monday, January 29th. Did
5 you know that?

6 MS. SPARDONE: Object to the form.

7 DEFENSE COUNSEL: Object to form.

8 A No.

9 BY MS. STONE:

10 Q But January 31st is after both January 24th and 29th,
11 correct?

12 MS. SPARDONE: Object to form,
13 argumentative.

14 A Certainly if we're talking about the same year, yes.
15 Sorry.

16 MS. SPARDONE: That didn't even occur to
17 me.

18 MS. STONE: Just for the record, it's
19 plaintiffs' position that that is a violation of the
20 court's order and we'll likely be seeking sanctions
21 for failure to produce those records prior to the
22 deadlines provided by the court.

23 MR. THOENSEN: And let me just put
24 something on the record. This is Joe Thoensen on
25 behalf of Cleaver-Brooks. And we respectfully

1 disagree with plaintiffs' characterization of what
2 was represented or what was not represented. And we
3 will deal with that at a later time. This is not
4 the forum to debate that.

5 MS. STONE: Thanks, Joe.

6 MS. SPARDONE: We've been going --
7 Sabrina, we've been going for just about an hour. I
8 don't know if you -- we typically like to break
9 after about an hour. But if you're not at a good
10 stopping point, we can go a few more minutes.

11 MS. STONE: No, no. That's fine. I was
12 about to get into the document, so this is the
13 perfect time.

14 MS. SPARDONE: All right. Should we just
15 take ten?

16 MS. STONE: Yeah, that's fine.

17 (Recess taken from 11:06 to 11:17 a.m.)

18 BY MS. STONE:

19 Q All right, John. We just took a quick break. And I
20 would like for you to pull up Exhibit 4, which is
21 BPM000001 to BPM000025.

22 A Okay. I have that in front of me.

23 Q And what would these documents fall under under the
24 categories we were just talking about earlier?

25 A This would be what I would refer to as the commercial

1 records which are the ones that were on the
2 microfiche jackets, the multiple images in one jacket
3 type microfiche.

4 Q And this is really just specifically related to the
5 sale and the start of the boiler; is that fair?

6 A For the most part, yeah. I think there's a couple of
7 things, looks like a part or two was shipped to them
8 at some time in the '60s. But this is the -- would
9 have been that second level of documents we were
10 talking about.

11 Q And these records, once the index card is located, is
12 pretty quick to find; is that correct?

13 A Yes. I would have gone to the microfiche drawers
14 that are the fire-tube records and gone to unit
15 number 0-18343.

16 Q But there's nothing about the components in the
17 boiler, the type of insulation used, correct?

18 MS. SPARDONE: Object to form.

19 A In this particular one, not much in detail.
20 Sometimes, depending on our records, there can be.
21 But it does give some detail on some of the
22 components, some of the electrical components, things
23 of that sort. But from a potential
24 asbestos-containing component, no. It does call out
25 that it was to be insulated and lagged, sheet metal

1 lagged, on the purchase order.

2 MS. SPARDONE: What number is that?

3 A I'm sorry, I was looking at BPM19. So there is a
4 little bit of information on that which this looks
5 like the purchase order from the actual purchaser of
6 the boiler to Cleaver-Brooks.

7 BY MS. STONE:

8 Q Okay. I want you to start with the very first page,
9 BPM000001.

10 A Okay.

11 Q And it indicates Bowater's Carolina corporation; is
12 that correct?

13 A Yes.

14 Q And right beside it it says 15 pounds. What does
15 that 15 pounds mean?

16 A That's the abbreviation that's normally used to show
17 the maximum working pressure of the boiler is 15
18 pounds per square inch. So it would be a 15 psi
19 boiler.

20 Q Okay. The next line is Catawba, South Carolina; is
21 that correct?

22 A Correct.

23 Q And then it has P723-30S. Is that the model number?

24 A Yes.

25 Q And what other information is contained on page 1?

1 A The next line on that label you've been reading off
2 of is I believe what was the sales order number,
3 which is the S0-P-1170. And then on that same line
4 on the right-hand side is the 0-18343 which is the
5 unit number we talked about before. And then I
6 believe the next line is the -- looks like C0 or
7 00-2023-220, that looks to be the purchase order
8 number. If you look back at BPM19, the 2023-220 is
9 the same number as the purchase order number on the
10 Crane Co. document for purchasing the boiler.

11 Q Do you know why a copy of the index card wasn't
12 produced in this case?

13 A Quite frankly, it's something we normally don't
14 produce in any of the cases. It's just something I
15 looked at to see whether or not there were records or
16 not and got me to these records. And it has all the
17 same information on it that is within these
18 commercial records. So it doesn't add anything to
19 the information I guess is the reason I would assume
20 we don't.

21 Q And then the first line on the folder, I can't really
22 make out what it's saying, but it has a date of 1964.
23 Do you see that?

24 A Yes.

25 Q What is that 1964 referring to if it was shipped in

1 1957?

2 A Well, the -- what we're actually looking at here in
3 this image is a picture of the -- what was at one
4 time I'll call it the manila file folder. So that's
5 what you're seeing in this image. And written on the
6 front manila file folder, it appears to me it says
7 file cleared; and then there's a line to fill in and
8 it gives a date in 1964. And then the second line
9 says file cleared as well and gives some initials and
10 a date looks like in 1975.

11 And I believe what that was, from my
12 looking at these records over quite a long period of
13 time now, occasionally someone would go through
14 the -- what that time was the hard copy job file and
15 they would make sure that there weren't duplicates.
16 So let's say if there's a letter in it that someone
17 wrote and it copied someone else at Cleaver-Brooks,
18 both people, because the job files where everything
19 for a particular boiler ended up, both people might
20 have put the same copy of the letter in the file. So
21 someone would occasionally go through that and make
22 sure there weren't duplicates of things in there
23 because, quite frankly, they were looking at space
24 when it was on paper.

25 I think the 1975 one was related to the

1 time period where they started to microfilm the
2 actual hard copies of the files; so they would have
3 gone through the hard copy and made sure there wasn't
4 duplicate information before they actually went
5 through the filming process.

6 Q So the only thing removed from the folders would have
7 been duplicates; is that correct?

8 A Correct.

9 Q So if you can turn with me to BPM000002.

10 A Okay.

11 Q What is this document?

12 A It looks to be a handwritten note by somebody
13 referencing a Danny Syfrett, I believe, talking about
14 this boiler. And it appeared to me, just based on
15 what I see written there, it was somebody quoting or
16 giving this gentleman in looks like '73 some
17 information on converting the boiler's burner to burn
18 number 2 oil and natural gas. When the boiler was
19 shipped, it was there to burn just natural gas.

20 Q So in '73 they were converting it. Do you know why
21 they would do that?

22 A No. I can kind of speculate a little bit, I guess.
23 And I don't know that it shows that they did convert
24 it. I guess this is just somebody getting a number,
25 as in a price, for doing it. I didn't see any actual

1 parts order of any type that said they did it, at
2 least from Cleaver-Brooks. But normally when
3 somebody is adding a different fuel or an additional
4 fuel to what it was originally designed for, they're
5 doing it because they now have access to the second
6 fuel and they want to be able to burn either/or.

7 Q But there is nothing on this page that tells you
8 where the boiler was located at Bowater; is that
9 fair?

10 A Correct. I did not see anything, actually, in any of
11 the records that gave me a good indication of where
12 physically it was located at Bowater.

13 Q And then the next page, which is BPM3, that's the
14 same type of document, correct?

15 A Yes. It looks like a different price for a different
16 option related to that conversion to a combination
17 number 2 oil and gas.

18 Q And it's still the same model number and it's the
19 same boiler?

20 A Yes.

21 Q Will you turn with me to BPM5.

22 A Okay.

23 Q And this is a remittance request?

24 A Correct.

25 Q In 1958?

1 A Yes. It looks like when you look at the signature
2 above the field representative signature, there's a
3 by, and it looks like the last name could be Jones.

4 Q And the next page is included with this field report,
5 correct, BPM9?

6 A Yes.

7 Q Has Cleaver-Brooks tried to find out from Daniel
8 where the boiler was located?

9 MS. SPARDONE: Object to form.

10 A I -- not that I'm aware of. Nothing I've done, no.

11 BY MS. STONE:

12 Q Does Cleaver-Brooks still have any sort of business
13 relationship with Daniel or for Daniel?

14 MS. SPARDONE: Object to form, overbroad.

15 DEFENSE COUNSEL: Object to form.

16 A I'm not sure I could say for certain. Fluor Daniel
17 is a large company. It would not surprise me that we
18 sell them equipment occasionally. But I don't know
19 that for certain.

20 BY MS. STONE:

21 Q Do you know why you haven't asked Daniel to determine
22 where the location of this boiler was?

23 MS. SPARDONE: Object to form, assumes
24 facts.

25 A I suppose it's because my focus is on what's in our

1 records. I leave other people's records to others to
2 find and look and ask about.

3 BY MS. STONE:

4 Q But if Cleaver-Brooks say that it doubts that the
5 boiler was in the powerhouse, wouldn't it be
6 reasonable to try to find evidence of where it was
7 actually located?

8 MS. SPARDONE: Object to form,
9 argumentative, beyond the scope, assumes facts.

10 A Again, that's not normally something I get involved
11 in. Whether others have or not I couldn't tell you.

12 BY MS. STONE:

13 Q Okay. And so these notes that we're looking at at
14 BPM9, they are likely written by Mr. Tiner, correct?

15 A It looks that way, and that was -- in my experience
16 in looking at these, those are -- that's a sheet
17 that's usually used for any type of narrative report
18 somebody decides they want to document on a site.

19 Q And if this boiler is supposed to be a small boiler,
20 why does it take two or three weeks to be properly
21 fired?

22 MS. SPARDONE: Object to form, assumes
23 facts, argumentative.

24 A I'm not sure what you're talking about the two or
25 three weeks to be properly fired.

1 BY MS. STONE:

2 Q I'm sorry, I should have directed you to that. The
3 last two lines on these handwritten notes.

4 A Oh, where it says this unit will be properly fired on
5 natural gas 10,000 Btu in about two or three weeks.
6 Is that what you're talking about?

7 Q Yes, sir.

8 DEFENSE COUNSEL: Form.

9 BY MS. STONE:

10 Q Yes, sir.

11 MS. SPARDONE: Also calls for speculation.

12 A In reading the whole context of this, it appears as
13 though -- it actually doesn't appear, he says it up
14 there -- that the boiler is actually running
15 currently when he was writing this or just as he --
16 prior to him starting this up or with him starting
17 this up, on what they -- he wrote here as LP gas
18 which is propane gas. So it was actually running on
19 bottles of gas, which certainly can tell you the size
20 of the boiler. And what I believe he's saying there
21 is they won't have the actual gas lines, natural gas
22 lines to the facility for two to three weeks. And
23 once that is, they will switch it over to natural
24 gas. That's the way I read that.

25 BY MS. STONE:

1 Q All right. And if you could turn with me to BPM15.

2 A Okay.

3 Q Is this an invoice?

4 A Yes. Or a copy of an invoice, yes.

5 Q So Cleaver-Brooks is selling to Applied Engineering,
6 correct?

7 A Correct.

8 Q But shipping it to Daniel Construction, correct?

9 A That's what it shows there, yes, at the Bowater
10 plant.

11 Q And it's for the steam boiler, correct?

12 A Yes.

13 Q And are -- is this an invoice for a control or for a
14 pump?

15 A For a control that controls the pump and is the low
16 water cutoff. It's an electrical switch.

17 Q Did Cleaver-Brooks sell pumps for its boilers as
18 well?

19 MS. SPARDONE: Object to form.

20 A In this particular case, I didn't see any indication
21 of us supplying a pump. And the type of pump we're
22 talking about in relation to this control that
23 controls it is a feed water pump. Occasionally
24 someone would purchase a feed water system from us
25 that could have included a pump.

1 A Correct.

2 Q In the second sentence, it says, "We have forwarded
3 the contractor standard Progress prints and winding
4 diagrams for approval"; is that fair?

5 A That's what it says. I think it's probably a typo.
6 I think he meant to say wiring diagrams, but...

7 Q Okay. No, that's fine. And would the contractor be
8 Daniel?

9 A I don't know.

10 Q If it's from Applied to Cleaver, the only other party
11 that's a contractor is Daniel; is that fair?

12 MS. SPARDONE: Object to form.

13 DEFENSE COUNSEL: Object to form.

14 A I don't know that I can say that because of the Crane
15 Co. purchase of it. So I'm not sure, you know, if --
16 there are all sorts of scenarios, but one I can think
17 of is Daniel is a general contractor and Crane Co. is
18 a subcontractor or vice versa. I just don't know. I
19 didn't find anything in here that spelled that out.

20 BY MS. STONE:

21 Q So you don't know who Applied Engineering is telling
22 Cleaver-Brooks to wait until approval is received?

23 MS. SPARDONE: Object to form.

24 A I don't know exactly what he means here; but since
25 the customer who's purchasing the boiler from us is

1 Crane Company, it would actually have to be them.
 2 We -- I don't think we could take approval from
 3 anyone else on someone else's purchase order. But
 4 I -- I honestly couldn't tell you what happened in
 5 1957 specifically.

6 BY MS. STONE:

7 Q And if you can look with me on the next page, BPM19.

8 A Okay.

9 Q We're still talking about the same 15-pound steam
 10 boiler, correct?

11 A Correct.

12 Q And on the second line it says, gas fired to be of
 13 four pass construction. What does that mean?

14 A The gas fired means natural gas which is what we
 15 talked about --

16 Q Right.

17 A -- and, again, it was -- for some period of time it
 18 was LP or propane gas. The four pass construction is
 19 the arrangement of the flue gas passes through the
 20 boiler where the hot gases are traveling through the
 21 tubes and it's actually four different passes.

22 Q Okay. Turn with me to BPM20.

23 A Okay.

24 Q It's talking about the Wholesaler and Shipping Data,
 25 right?

1 A Oh, there, about a third of the way down, that
2 overall title, yes. I'm not sure what's meant by
3 wholesaler, but that's what it says, yes.

4 Q That's what it says. And it says purchased by Crane
5 Co.

6 A Correct.

7 Q And then it says shipped to Bowaters Carolina Corp.,
8 correct?

9 A Correct.

10 Q And then it says care of Daniel Construction
11 Corporation?

12 A Yes.

13 Q And right under that it says name of heading
14 contractor, correct?

15 A I'm not sure if that's heading or heating. So that
16 may somewhat answer the question you asked before,
17 but --

18 Q That's where I was going.

19 A -- again, I'm not certain. And that's the way it's
20 laid out there. Whether that was actually the case I
21 just don't know.

22 Q So when we were talking about waiting for approval
23 from the contractor and looking two pages later it's
24 saying that Daniel is the contractor, correct?

25 A Well --

1 DEFENSE COUNSEL: Object to form.

2 A -- at least the heating contractor. Whether or not
3 Crane Company is a general contractor I just don't
4 know.

5 BY MS. STONE:

6 Q Do you know what Crane Company is?

7 MS. SPARDONE: Object to form.

8 A I don't think there's anything on that that tells me
9 much about Crane Company other than their address and
10 they were founded by R.T. Crane in 1855 or '85. I'm
11 not sure what Crane Company that would be.

12 BY MS. STONE:

13 Q Do you know Crane Co. generally makes valves?

14 MS. SPARDONE: Object to form, assumes
15 facts.

16 A I'm familiar with a Crane Co. that makes valves, yes.
17 I don't know if it's the same one or not.

18 BY MS. STONE:

19 Q And on this same page on BPM20, it says type of
20 building paper mill.

21 A Yes.

22 Q Does that indicate to you that maybe that was
23 actually in the manufacturing and not an
24 administrative building of Bowater?

25 MS. SPARDONE: Object to form.

1 A I don't think it does for me one way or the other
2 where it was. I remember looking at that and
3 wondering if it really told me anything. But I
4 believe the whole facility is a paper mill, or most
5 people I believe would refer to the whole facility as
6 a paper mill. So I just -- to me it wasn't anything
7 that gave me much information.

8 BY MS. STONE:

9 Q And then on BPM25, it says Assembly Checklist,
10 correct?

11 A Correct.

12 Q And this is basically confirming the model, the
13 pounds, that sort of thing, of the boiler that is
14 being shipped to Bowater?

15 MS. SPARDONE: Object to form.

16 A Yes. I believe this is something that someone in a
17 Cleaver-Brooks manufacturing plant filled out.

18 BY MS. STONE:

19 Q So it included a motor, heating coils, a Kunkle
20 valve; is that fair to say?

21 A Yeah, I would just correct that the -- you said
22 heating coils. They're actually heater coils, and
23 that's related to the motor starter and the overload
24 heaters which are electrical safety devices on a
25 motor starter. But, yes, it calls out a Kunkle valve

1 for the safety valve and at least one gas valve and a
2 Maxitrol gas regulator.

3 MS. STONE: All right. Stephanie, do you
4 want to keep going? I know you said you like to do
5 an hour. I'm about to go to the next set of
6 documents.

7 MS. SPARDONE: We -- let's just go off the
8 record for a minute.

9 (Discussion off the record.)

10 BY MS. STONE:

11 Q All right. John, we're moving through. The next
12 thing I want you to look at is Exhibit 5.

13 A Okay. I have those in front of me.

14 Q And this is BPM000026 through BPM000044. And what
15 would you classify these documents from our
16 discussion earlier? Would they be the manufacturing
17 documents?

18 A Yeah. Or the manufacturing drawings. Basically they
19 were the drawings used by our manufacturing operation
20 to build the boiler.

21 Q And the first one is BPM26.

22 A Correct.

23 Q And it says this is for Model P15 through 40.

24 A Correct.

25 Q Our model number we have here is P723 or 700-30S.

1 Tell me how those relate to each other.

2 A The 15 through 40 is in reference to the horsepower
3 of the boiler part of the model. And if -- what you
4 said was the Model P723-30, the 30 is the horsepower
5 part of the model number. So this is -- the drawing
6 on BPM26 is for the P boiler, meaning Progress, which
7 is the name of the model line, 15 through 40
8 horsepower, and it's LP which is low pressure meaning
9 the 15 pounds per square inch. And it says gas only
10 which that gas only fits the 700 part of the model
11 number meaning it was designed to burn natural gas.

12 Q This blueprint applies to the boiler that was sent to
13 Bowater?

14 A Correct.

15 Q So if you look with me on the top left, I think we
16 went through this a little bit, it has the insulation
17 and lagging which we just went through, correct?

18 A Yes. That's what we were talking about with the
19 invoice, the Microlite information and the sheet
20 metal lagging. And I would just point out that when
21 we use the term "lagging," it might be different than
22 the term "lagging" you're used to. We're talking
23 about sheet metal.

24 Q Right. And if you look at item 17.

25 A Correct. Yes, I am. Sorry.

1 Q And it says -- it says gasket asbestos rope 5/8th
2 inch diameter; is that correct?

3 A Yes, it does say that. I think it's 5/8th. It could
4 be 3/8ths, but I believe it's 5/8ths.

5 Q I'll go with either interpretation. It's a little
6 hard to read. So an asbestos rope gasket went to
7 Bowater from Cleaver-Brooks, correct?

8 A Yes. That was used, if you look at the drawing, it
9 was used across what we call the baffle of the rear
10 door between the baffle and the tube sheet internally
11 to the boiler.

12 Q So to get into the boiler to do work inside the
13 boiler, that gasket would have to be removed and
14 replaced, correct?

15 MS. SPARDONE: Object to form.

16 A It certainly would be -- the seal between it and the
17 tube sheet would be broken when the rear door was
18 opened.

19 BY MS. STONE:

20 Q So that gasket would have to be replaced?

21 A Fairly normal that someone would. But I certainly
22 can't say that every time someone did.

23 Q Okay. And then the next line is 18, it says cement
24 asbestos JM number 40 five pounds?

25 A I think it's actually JM number 450.

1 A Okay.

2 Q This -- on paragraph G, I guess, it talks about
3 removing the firebrick and the refractory. Is that
4 correct?

5 MS. SPARDONE: Object to form.

6 A Well, it's talking about refractory maintenance.

7 BY MS. STONE:

8 Q Which requires -- hold on. I just switched pages on
9 us. It says, "To renew the fire-tube lining
10 consisting of five pieces of super duty firebrick and
11 insulating refractory, first open front and enter
12 door and remove old refractory. Then replace new as
13 follows."

14 A Yep, that's what it says. Those are the materials we
15 were talking about earlier on the drawings.

16 Q And that includes the Vee Block mix asbestos, they
17 would have to remove that?

18 A No. This is specifically talking about the -- what
19 they call the fire-tube lining which is the picture
20 down below on Howe 31 which is talking about that
21 insulating refractory material we talked about that I
22 didn't know what it was, what it consisted of, as
23 well as the refractory tile which was the
24 ceramic-like material. It's not really -- that
25 particular part is not talking about the Vee Block.

1 Q If you could look at figure 4.3, the plate head front
2 refractory.

3 A Yes. On the next page, on Howe 32?

4 Q Yes. And it identifies a Vee Block mix?

5 A Correct.

6 Q Would that be removed?

7 MS. SPARDONE: Object to form.

8 A If it was damaged in any way, this is what we were
9 talking about a little earlier where the -- it would
10 depend a great deal on how the boiler was operated,
11 what it was used for, how often it was used. Whether
12 or not that would have ever needed replacing or not I
13 don't know.

14 Q Okay. And Cleaver-Brooks doesn't have any other
15 records related to this specific boiler that it has
16 not produced, correct?

17 MS. SPARDONE: Object to form, asked and
18 answered.

19 A Correct. In the commercial records we produced of
20 all that. I guess I would be a little careful in
21 that we certainly did not produce drawings for every
22 nut and bolt and piece of steel on the boiler. So
23 there would be more drawings, but nothing related to
24 an asbestos-containing component, potential
25 asbestos-containing component.

1 BY MS. STONE:

2 Q And you said you read Mr. Grant's testimony, right?

3 A Yes. I can't say I committed it to memory, but I
4 read it.

5 Q But he worked with Mr. Sizemore, correct? I'm sorry,
6 Mr. Howe.

7 A They're easy to mix up, aren't they?

8 Q Yes, sir.

9 A I -- yes, Mr. Grant was the Wayne Grant, correct? Is
10 that the one I was thinking of earlier?

11 Q Yes. Yes, it is.

12 A Yes, I believe he said he worked with Mr. Howe.

13 Q And he identified a Cleaver-Brooks boiler at Celanese
14 as well, correct?

15 DEFENSE COUNSEL: Object to the form.

16 MS. SPARDONE: Object to form as well.

17 A Again, I don't know that I could say I recall that
18 specifically. I didn't remember a lot of reference
19 to Cleaver-Brooks in most of it. I would have to
20 look at the testimony again.

21 BY MS. STONE:

22 Q Let me pull it up. Well, before we get into his
23 testimony, it's your testimony earlier that you
24 didn't find any boilers at Celanese, correct?

25 MS. SPARDONE: Object to form.

1 DEFENSE COUNSEL: Object to form.

2 MS. SPARDONE: Which location are you
3 asking about? The location that's in the notice?
4 Either -- there are lots of Celanese locations, you
5 know, in these three cases, so I just want to make
6 sure we're clear.

7 MS. STONE: Yes. Give me a second. Just
8 a second. I'm trying to find it in the depo so I
9 can point it to him.

10 A And did you want me to answer your last question
11 while you're doing that?

12 Q Yes.

13 A The answer is no, I did not find a boiler at those.
14 And I think before when we were talking, I'm still
15 not certain that there was possibly something after
16 the time frame because I didn't commit this to
17 memory, but I don't believe there was.

18 Q Sorry. I'm trying to locate the specific passage. I
19 can tell you on page -- and this is the Wayne Grant
20 testimony -- 89.

21 MS. STONE: Wayne Grant?

22 MS. SPARDONE: Yes.

23 DEFENSE COUNSEL: Which volume are you
24 referring to?

25 MS. STONE: I didn't think there was more

1 than one volume of Wayne Grant. It was conducted
2 Tuesday, November 22nd, 2016.

3 A I thought I remembered a couple volumes of
4 Mr. Grant's testimony or -- again, it tends to blend
5 together.

6 Q No, that's fine. For the two Celanese locations in
7 the notice related to Howe, you didn't locate any
8 boilers at those two locations?

9 DEFENSE COUNSEL: Object to form, asked
10 and answered.

11 MS. SPARDONE: Object to form.

12 A Correct. I think we looked under the --

13 MR. THOENSEN: Sabrina, I'm --

14 MS. STONE: I'm sorry?

15 MR THOENSEN: Sabrina, I'm sorry to
16 interrupt. This is Joe Thoensen. There are two
17 volumes of Wayne Grant's testimony.

18 MS. STONE: Oh, I apologize.

19 MR. THOENSEN: No, it's okay. I just
20 wanted to make sure everyone's clear. The second
21 volume was taken on December the 1st.

22 MS. STONE: So we're talking volume one.

23 MR. THOENSEN: I think you're talking
24 about volume one.

25 MS. STONE: Yes.

1 A And to answer the question, no, I did not find any
2 shipments under Celanese in I think it's Rock Hill,
3 South Carolina, or Narrows, Virginia.

4 BY MS. STONE:

5 Q Okay. Related to the Howe case, do you have any
6 issue other than what we've talked about previously
7 with the testimony related to Cleaver-Brooks in this
8 case?

9 MS. SPARDONE: Object to form, overbroad,
10 vague.

11 A Well, I guess, if I remember correctly, there wasn't
12 any testimony by Mr. Howe about Cleaver-Brooks. But
13 if -- and he talked it seemed like a good bit and
14 others talked a good bit about the powerhouse
15 boilers, the multi-story powerhouse boilers that have
16 precipitators and things of that sort. If it's
17 believed that those were Cleaver-Brooks boilers I
18 would have an issue with it. But other than that, I
19 can't think of any other than what you may be talking
20 about with Mr. Grant, but I don't think that's -- I
21 think you're talking about a different site.

22 Q But we don't have any documentation to show where the
23 Cleaver-Brooks boiler was at Bowater?

24 MS. SPARDONE: Asked and answered.

25 A I think what I said was the general testimony about

1 boilers at the Bowater site by I think all the people
2 who were deposed or testimony was related to the
3 large powerhouse boilers. And, quite frankly, our
4 boiler being in a powerhouse -- this particular
5 boiler, a 15-pound steam 30 horsepower boiler of that
6 size being in a powerhouse for any other reason would
7 be highly, highly unusual because there's steam
8 there. Typically a boiler of that type in a location
9 like that is going to be used somewhere in a remote
10 building that they couldn't get steam from the
11 powerhouse to in an efficient way, so they put this
12 tiny little boiler in.

13 BY MS. STONE:

14 Q Do you have an opinion as to where it was located in
15 the plant?

16 A I think that's what I just gave you. I -- my opinion
17 would be it being in the powerhouse would be highly,
18 highly unlikely. I guess we could ask the Bowater
19 people if they have any testimony about that.

20 Q Have you ever been to Bowater?

21 A I don't believe so. I don't recall ever being in
22 Bowater in my career with Cleaver-Brooks.

23 Q There was some discussion earlier about -- I called
24 them boiler registries, but they're site inspections.
25 Did you have a chance to look at those?

1 A I don't believe so, no.

2 Q Okay.

3 A It wasn't anything that was in our records, I don't
4 believe.

5 MS. SPARDONE: Yeah, Sabrina, this is
6 Stephanie. We have a set of what Joe produced to
7 you. He, as he said, has not looked at them. I
8 don't know if you feel the need to ask him any
9 questions; but if you do, then he's going to have to
10 take some time to look at these to answer.

11 MS. STONE: No, that's fine. I just --
12 that's fine.

13 MS. SPARDONE: Did you still want to
14 attach them as an exhibit or are we not doing that?

15 MS. STONE: No, I still want to attach
16 them as an exhibit and, just be clear, what we're
17 attaching as Exhibit 8 is documents that were
18 provided to plaintiffs by representatives of
19 Cleaver-Brooks and the witness has not reviewed
20 these documents.

21 (Exhibit No. 8 was marked.)

22 Q Do you know anything about Bowater's knowledge of the
23 hazards of asbestos?

24 A I don't believe so. I don't recall, there may have
25 been some discussion in the testimony I read about --

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK FOR THE SIXTEENTH JUDICIAL
CIRCUIT

TIMOTHY W. HOWE, as Personal
Representative of the Estate
of WAYNE E. HOWE, deceased,
and JEANETTE HOWE, surviving
spouse,

Plaintiffs,

vs.

C/A No. 2015-CP-46-03456

AIR & LIQUID SYSTEMS CORPORATION,
et al.,

Defendants

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK FOR THE SEVENTH JUDICIAL CIRCUIT

ROXANNE FALLS, Individually and
as Personal Representative of the
Estate of CHARLOTTE GAYE SMITH,
Deceased,

Plaintiff,

vs.

C/A No. 2015-CP-46-02155

CBS CORPORATION, et al.,

Defendants.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON FOR THE SEVENTH JUDICIAL CIRCUIT

JAMES CALVIN SIZEMORE,

Plaintiff,

vs.

C/A No. 2016-CO-25-0440

BOWATER PAPER MILL, et al.,
Defendants.

30(b)(6) DEPOSITION OF CLEAVER-BROOKS March 6, 2018
THROUGH THE TESTIMONY OF JOHN TORNETTA 9:51 a.m.
VOLUME 2 Job No. 2835056

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I N D E X

	Page
Appearances	155
JOHN TORNETTA	
Examination By Mr. Braly	157, 309
Examination By Ms. Spardone	305
Signature and Changes	322
Reporter's Certificate	324

E X H I B I T S

No.	Description	Page
Exhibit 12	Plaintiffs' Fourth Amended 30(b)(6) Notice of Deposition of Defendant Cleaver-Brooks, Inc., Howe Case	158
Exhibit 13	Plaintiffs' Second Amended 30(b)(6) Notice of Deposition of Defendant Cleaver-Brooks, Inc., Sizemore Case	158
Exhibit 14	Plaintiffs' Third Amended 30(b)(6) Notice of Deposition of Defendant Cleaver-Brooks, Inc., Smith Case	158
Exhibit 15	Cleaver-Brooks, Inc.'s Answers and Objections to Plaintiffs' Standard Interrogatories and Requests for Production of Documents, Sizemore Case	165
Exhibit 16	Aqua-Chem, Inc. Invoices and Purchase Order	165
Exhibit 17	Daniel Construction Company Documents	188
Exhibit 18	Photograph	243

1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We're on the record.

3 Today's date is March 6, 2018. The time is 9:51.

4 JOHN TORNETTA,
5 having been first duly sworn, testified as follows:

6 E X A M I N A T I O N

7 BY MR. BRALY:

8 Q. Good morning.

9 A. Good morning.

10 Q. My name is Ben Braly. You are
11 Mr. Tornetta, correct?

12 A. I am, yes.

13 Q. Are you still speaking as Cleaver-Brooks'
14 corporate representative --

15 A. Yes.

16 Q. -- for the lawsuits entitled Howe,
17 Sizemore, and Smith?

18 A. Yes.

19 Q. Or Falls, depending on how you look at the
20 caption on that.

21 You are rejoining us from a deposition
22 that was taken on February 2nd of this year,
23 correct?

24 A. I think it was actually February 1st, but
25 I know there's been some confusion with that, but --

1 I'm pretty sure it was the 1st, but --

2 Q. Okay.

3 A. 1st or 2nd. I was just saying.

4 Q. 1st or 2nd. That's --

5 MS. SPARDONE: I think the rough
6 transcript had the wrong date on it, so --

7 MR. BRALY: Okay. I --

8 MS. SPARDONE: -- if you were looking at
9 that --

10 MR. BRALY: I'm looking at something that
11 says February 2nd. I don't care if it was the 1st
12 or 2nd.

13 MS. SPARDONE: He's here again.

14 BY MR. BRALY:

15 Q. Early February.

16 A. Correct.

17 (Exhibits 12, 13, 14 and 15 marked)

18 Q. I have marked as exhibits the notices of
19 deposition. Number 12 will be the Howe transcript
20 or the deposition notice which is the plaintiff's
21 fourth amended. Exhibit 13 will be the Sizemore
22 second amended notice of Cleaver-Brooks. And 14
23 will be the Falls or Smith case third amended notice
24 of deposition of Cleaver-Brooks.

25 Did you happen to see these?

1 MS. SPARDONE: Just before he answers,
2 just so the record's clear, these were served on
3 March the 5th, I believe, or the 4th, and
4 Cleaver-Brooks is reincorporating and reasserting
5 all the objections that it had previously lodged to
6 the previous notices. And I think you'll note that
7 there are some discrepancies in the current notices
8 versus the last notices, the last set of notices, so
9 just alerting you to that fact. But we're just for
10 the record making sure that our objections are
11 reasserted, reincorporated.

12 BY MR. BRALY:

13 Q. Have you seen these?

14 A. I think I've seen them. I didn't spend a
15 lot of time looking through those because I presumed
16 they were basically the same as the notices I had
17 seen prior to either the 1st or the 2nd of February.

18 Q. Okay.

19 A. With a different date, I should say.

20 Q. I show that before the February of this
21 year deposition that Cleaver-Brooks had produced
22 some 60 pages or so of records related to the
23 Bowater paper mill. Do you understand that to be
24 the case?

25 A. Not sure sitting here without them in

1 front of me I could verify the number, but certainly
2 we had produced our commercial records and some
3 drawings and parts descriptions related to the
4 Bowater facility, yes.

5 MS. SPARDONE: And, Counsel, just to
6 interject, Cleaver-Brooks had also produced some
7 other corporate knowledge corporate documents --

8 MR. BRALY: I'm getting to that.

9 MS. SPARDONE: -- prior to -- oh, I'm
10 sorry. I thought -- I didn't want it to --

11 MR. BRALY: I'm getting there.

12 MS. SPARDONE: -- be construed that those
13 were the only documents.

14 BY MR. BRALY:

15 Q. Prior to the first time you gave a
16 deposition in this case, it is correct that there
17 were documents produced, about 61 in total number,
18 related to the Bowater paper facility, correct?

19 A. That sounds like it could be the number.
20 I certainly don't remember the number of documents,
21 but that would make sense for the commercial records
22 we produced and the drawings we produced related to
23 that boiler.

24 Q. Okay. In addition, on January 31st there
25 was a production of what I'm just going to refer to

1 as corporate documents, documents related to safety
2 policies, Cleaver-Brooks' -- how would you classify
3 this -- like material safety data sheets, things of
4 that nature, things that are somewhat more general
5 in nature about Cleaver-Brooks' overall role in
6 utilizing asbestos in boilers.

7 MS. SPARDONE: Object to form.

8 A. Yes, I know there were a series of
9 documents produced prior, just prior to the
10 deposition related to general knowledge of the use
11 of asbestos.

12 BY MR. BRALY:

13 Q. Okay. Included in that production were a
14 set of documents that were produced with the Bates
15 label HOWE_SMITH_SIZEMORE_CB(WAU) 130 through 135,
16 six documents. And I could show these to you if you
17 would like.

18 A. Okay.

19 Q. These are six documents that I believe are
20 presumably being used I think --

21 THE WITNESS: Might have them if it's
22 easier.

23 MS. SPARDONE: 130 to 135?

24 MR. BRALY: Right.

25 MS. SPARDONE: I have a extra for you.

1 MR. BRALY: I've got them right here so
2 I'll just --

3 MS. SPARDONE: Okay.

4 BY MR. BRALY:

5 Q. Take your time.

6 A. These certainly ring a bell. I've looked
7 at a lot of documents, but --

8 Q. Sure.

9 A. -- certainly these ring a bell for ones
10 that I've looked at in the past.

11 Q. Okay. Now, these documents, the earliest
12 date on any of these documents appears to be
13 March 30th or March 23 of 1984. I'm sorry,
14 March 14th of 1984. Take your time.

15 A. I don't see a March date. I do see --

16 Q. I'm sorry.

17 A. -- some in '84.

18 Q. What am I saying?

19 A. Looks like September.

20 Q. I don't know why -- I'm saying March
21 because we're in March right now.

22 A. Okay.

23 Q. August 14th of 1984. I think you'll find
24 that on 131.

25 A. Thank you. Oh, yeah, the purchase order

1 date. I was --

2 Q. Right.

3 A. -- looking at the invoice date, but the
4 purchase order date was August of '84, yes.

5 Q. These documents do not specifically relate
6 to any of these three cases insofar as these are
7 documents that were not pulled specifically for this
8 case, but rather these are documents that are part
9 of a Cleaver-Brooks production that happens commonly
10 in asbestos-related cases. Is that fair?

11 MS. SPARDONE: Object to form.

12 A. Yeah, these are documents related more in
13 general specifically, I think, to the request about
14 any warnings that we provided with a product or with
15 documents with a product. And these are actually
16 related to -- or not related to boilers. They're
17 related to some of the water technologies equipment
18 that was another division of the company.

19 BY MR. BRALY:

20 Q. Okay. In these invoices there is a
21 statement related to asbestos gaskets that are being
22 supplied that states -- well, one of them
23 specifically says asbestos gaskets must be
24 individually packaged in permanently sealed plastic
25 containers and tagged "Caution: Contains asbestos

1 fibers. Avoid breathing dust. Breathing asbestos
2 dust may cause serious bodily harm." True?

3 A. Yes, that's what it says.

4 Q. Is the earliest example of a caution or
5 warning attached to an invoice that you can find
6 this document dated August 14th of 1984?

7 A. Yes. As far as I know, this is the first
8 one we found. And I would just correct slightly. I
9 know it's only a month, but the actual document date
10 is technically September of '84 because that's the
11 invoice date. The purchase order date for that
12 product that was being shipped was August.

13 Q. Okay. So to the best of Cleaver-Brooks'
14 knowledge, the first example of a warning or caution
15 related to asbestos-containing gasket material that
16 was ever provided by any division of Cleaver-Brooks
17 is from September of 1984?

18 MS. SPARDONE: Object to form.

19 A. That's what we found, yes.

20 BY MR. BRALY:

21 Q. And as of September of 1984 going into
22 1985, Cleaver-Brooks is still supplying
23 asbestos-containing gasket material to customers?

24 MS. SPARDONE: Object to form.

25 A. It appears in this particular case, yes.

1 MR. BRALY: And let's go ahead since
2 you -- since you do have that there, let's go ahead
3 and mark that as 16 just so we have a record of it.

4 (Exhibit 16 marked)

5 BY MR. BRALY:

6 Q. So the document I was just showing you is
7 marked as Exhibit 16. Exhibit 15, I'm going to show
8 this to you, are Cleaver-Brooks' answers and
9 objections to plaintiff's standard interrogatories
10 and request for production of documents. And this
11 was produced to us --

12 MS. SPARDONE: Which case?

13 BY MR. BRALY:

14 Q. This is marked as Sizemore. This is dated
15 March 2nd of this year. Ask if you've seen that.

16 A. Pretty sure I have, yes.

17 Q. Okay. I'll be asking you some questions
18 about that later, but for now I can take that back.
19 Thanks.

20 Talk to me a little bit about how
21 documents are kept for Cleaver-Brooks.

22 MS. SPARDONE: Overbroad.

23 A. It depends a little bit on what documents
24 we're talking about. For the most part I'll talk
25 about the boiler-specific documents you may have

1 read in previous testimony. We start out with a
2 series of index cards, I'll call them, that indicate
3 job sites where boilers would be. I don't know how
4 much detail you want me to get into in each
5 category. Along with those index cards are also
6 some printouts from the late Eighties through late
7 Ninety-ish time frame that would give similar
8 information. That would be documents related to
9 what I would call the job sites.

10 Beyond that we would have what we would
11 refer to as the commercial records for the
12 individual boilers. Those pretty much are on
13 microfilm, microfiche going through at least the
14 mid-Ninety-ish time frame in most cases.

15 Beyond those documents there are what we
16 would call the drawings or engineering drawings some
17 will refer to them as. Those are kept on aperture
18 cards of microfilm. And then beyond that there are
19 microfilm reels of part descriptions as well as a
20 scanned version of those part descriptions from a
21 certain period of time that we generally would
22 produce related to a specific boiler.

23 Those are the documents that we have
24 talked about in the past putting together in
25 relation to a specific boiler. There's certainly

1 subsets within those categories, and the drawing
2 structure may have changed that not everything's on
3 the drawing, it could be on a bill of material,
4 things of that sort. So those would be the
5 documents more related to the specific boilers and
6 the boiler job sites.

7 Q. Okay. Is it the position of
8 Cleaver-Brooks that every boiler that they've sold
9 will have an index card?

10 MS. SPARDONE: Object to form.

11 A. Certainly using the term "every" makes me
12 hesitate because I never really know. I guess I
13 believe the records are pretty good. But could I
14 say absolutely? No, I think I'd be foolish to say
15 absolutely there couldn't have been a card that was
16 missing.

17 But my experience has been the records
18 give us a very good indication of where they are.
19 In fact, some cases show them moving from place to
20 place and having multiple index cards for the same
21 boiler.

22 BY MR. BRALY:

23 Q. Are the index cards -- I guess you had
24 mentioned several levels of documents, engineer
25 drawings, correspondence related to boilers, some

1 bills of material, things of that nature.

2 Are the index cards, for lack of a better
3 term, kind of the gatekeeper for the remainder of
4 the documents basically, get the index card and it
5 gives you the roadmap to find you where all the rest
6 of the documents are located?

7 A. Certainly not the only thing. If I had a
8 serial number for a boiler, it would get me directly
9 to that specific boiler. Short of a serial number
10 with just a job name, city, and state, the index
11 cards would be the gate into that. That's the only
12 way I could find it other than a serial number or
13 unit number for the boiler.

14 Q. Where are the index cards kept?

15 A. In Milwaukee in my office.

16 Q. How much space do they take up?

17 A. It's two relatively large cabinets with
18 roughly -- trying to count them in my head --

19 Q. Uh-huh.

20 A. -- 15 drawers each. I don't think the
21 second cabinet goes all the way to the bottom, so
22 it's a bit of a guess, but educated, 20-ish
23 drawers --

24 Q. Okay.

25 A. -- of cards. There's -- I think we've

1 determined there's roughly 80,000 plus of them.

2 Q. All right. And, you know, in your
3 responses to interrogatories, the preliminary
4 statement on Exhibit 15 says, "Since the 1930s
5 Cleaver-Brooks has designed, manufactured, and sold
6 over 120,000 boilers and ancillary equipment."

7 Just based on this representation and your
8 estimate of 80,000 cards, I mean, is it fair to say
9 that the records would not necessarily be complete?

10 A. Oh, no. The -- the index card, there are
11 certainly many index cards that cover more than one
12 piece of equipment.

13 Q. Okay.

14 A. There could be three boilers, four
15 boilers, ten boilers on the same job.

16 Q. That makes sense. I'm sorry. That was
17 kind of a dumb question.

18 A. That's all right.

19 Q. The index cards, are they organized by
20 year of manufacture or like if you went to the first
21 card, why would it be the first card, I guess is
22 what I'm getting at.

23 A. It would depend on where you start what
24 you'd call the first card. There -- probably best
25 to just say -- not answer your question but say how

1 they're organized.

2 Q. Okay.

3 A. They are first organized by very broad
4 category of product. So firetube type boilers are
5 in a set of drawers. Industrial water tube is in
6 another set of drawers. Commercial water tube is in
7 a couple other various ones. Within those
8 categories they are kept alphabetically by the job
9 site name. So if it's ABC Company, it's under A.
10 If it's, you know, XYZ Company, it's under X, that
11 type of thing.

12 And then within that, let's say you're
13 searching for -- I always use the example St. Mary's
14 Hospital since there's one everywhere. Within that
15 there would be a series of St. Mary's Hospital
16 cards. One would be Milwaukee, Wisconsin, one would
17 be Des Moines, Iowa, that type of thing.

18 Q. If you wanted to find a Cleaver-Brooks --
19 if Cleaver-Brooks supplied a boiler to this
20 building, this building in which Hawkins Parnell
21 Thackston & Young's office sits here in Dallas,
22 Texas --

23 A. Uh-huh.

24 Q. -- how would you do that?

25 A. If there's a name for the building, I

1 would search under whatever that name is. If the
2 name of the building is the address, I'd search
3 under the address and it would be -- I'd actually
4 search in the beginning of each thing under actual
5 numbers that occasionally there are some there, and
6 then I would spell out the number and look for it
7 alphabetically under the spelled-out number.

8 Q. Do you have to do this -- excuse me.
9 Do you have to do this manually, or is there like a
10 electronic index that you could just do a find
11 function?

12 A. It's manual.

13 Q. Okay. Why? It just seems like it would
14 be something that you'd think about digitizing at
15 some point in the world. Is it something you've
16 ever considered or no?

17 A. I haven't.

18 MS. SPARDONE: Object to form.

19 A. I'm not quite sure I would see the
20 business reason for Cleaver-Brooks to do it.

21 BY MR. BRALY:

22 Q. Okay. How long does it take you to do a
23 search for a job site using this card system?

24 A. It depends on how complicated the name is.
25 If it's a straightforward one-word name that is

1 under, you know, M, it's probably in the 20-minute
2 range to go through each of them as well as I would
3 go through, which again is another reason there's
4 not 120,000 cards. Once we stopped using the card
5 system in the late Eighties, we have that computer
6 printout, so I would go through that as well. And
7 then I also search our more current information for
8 current boilers shipped in the 2000s just to be
9 complete.

10 Roughly 15 minutes, 30 minutes, sometimes
11 45 minutes depending on how complicated the site
12 name is.

13 Q. Okay. Are these like old library card
14 size cards or are these like actual sheets of paper?

15 A. They're 4 by 6 index cards very much like
16 recipe cards.

17 MR. BRALY: I'm getting to a --

18 MS. SPARDONE: Do you think the jury's
19 going to know what a card catalog is?

20 MR. BRALY: It's exactly the point I was
21 about to make. I'm getting to an age now where I
22 feel like I just lost half my audience.

23 THE WITNESS: It's our version of the
24 Dewey decimal system.

25 MS. SPARDONE: Yeah.

1 THE WITNESS: That'll really confuse
2 people.

3 MS. SPARDONE: I think that's funny.

4 BY MR. BRALY:

5 Q. Since your deposition on February 1st or
6 2nd of this year, we've received looks like five,
7 four additional productions of documents from
8 Cleaver-Brooks including the answers to
9 interrogatories that have been marked as Exhibit 15
10 that we got about four days ago.

11 Did you -- were you the person who
12 searched for additional documents to produce?

13 A. Yes.

14 Q. Why didn't you do that before your
15 deposition on February 1st or 2nd?

16 MS. SPARDONE: Object to form.

17 A. As I understood it before my deposition
18 February 1st or 2nd, the job site at issue, as I
19 understood it, was the Bowater facility. Quite
20 frankly, I didn't even think we were going to talk
21 about the Sizemore case other than the Bowater part
22 of it.

23 MR. BRALY: You don't happen to have the
24 exhibits from the first deposition, do you?

25 MS. SPARDONE: I do.

1 MR. BRALY: I'm sorry. And I'll tell you
2 which one I'm --

3 MS. SPARDONE: Just make sure there's
4 nothing --

5 MR. BRALY: Yeah, sure.

6 MS. SPARDONE: -- misfiled in here. Turn
7 over the keys to the kingdom.

8 MR. BRALY: I am looking for Exhibit 3.

9 MS. SPARDONE: Yes. Okay. There you go.
10 BY MR. BRALY:

11 Q. Okay. So I'm going to show you -- I was
12 going to use the current deposition notice, but as I
13 pointed out, that went out recently so that wouldn't
14 really do anything for me.

15 But Exhibit 3 is a copy of the deposition
16 notice for Mr. Sizemore for your deposition that
17 occurred on the 1st of February. It lists out
18 several different job sites on which we wished to
19 examine Cleaver-Brooks. Is it fair to say that
20 prior to that deposition that none of those job
21 sites, other than Bowater, had been searched for?

22 A. No, I don't think I could say that.

23 Q. Okay.

24 A. I certainly did a search for some before
25 my deposition. I'm not sure I could sit here and

1 say which ones of these, but I know I was asked to
2 do some searches at some point prior to that
3 deposition on the 1st.

4 So I don't think I could say that I didn't
5 search for any of these. Absolutely I did. I --
6 during that deposition I hadn't actually spent any
7 more time on the Sizemore case other than related to
8 Bowater, so I don't believe in that deposition I was
9 able to say that I did or didn't. I thought I did.

10 Q. If you had, then why weren't any documents
11 produced from those other job sites?

12 MS. SPARDONE: Objection. At this point
13 I'd just like to also point out that Exhibit 3 does
14 not have a document request attached to it and
15 Cleaver-Brooks had not been served or didn't have to
16 answer discovery until March the 2nd of 2018. And I
17 know that you know about the correspondence that's
18 gone back and forth.

19 MR. BRALY: Uh-huh.

20 MS. SPARDONE: And I can attach that as an
21 exhibit at some point.

22 Go ahead and answer if you can.

23 A. I don't know. I don't get involved in
24 when things are produced or why they're produced.
25 What I do is I -- if I'm asked to search something,

1 I search. If I'm asked to produce some drawings, I
2 produce those drawings to our attorneys.

3 BY MR. BRALY:

4 Q. Okay. On February 7th, less than seven
5 days after the conclusion of this first round of
6 deposition for you, we received documents from a
7 Domino Sugar facility in Arabi, and I believe
8 that's -- Arabi, forget what state that is. Is that
9 North Carolina?

10 MS. SPARDONE: It's New Orleans,
11 Louisiana.

12 MR. BRALY: Oh, Louisiana, that's right,
13 Arabi, Louisiana.

14 A. Yes.

15 BY MR. BRALY:

16 Q. A-R-A-B-I. We received documents from
17 Avondale shipyard for Cleaver-Brooks equipment that
18 was shipped to Avondale in New Orleans. We received
19 documents from a Cargill corn milling operation in
20 Memphis, Tennessee. We received documents that were
21 sent -- that Cleaver-Brooks equipment that was sent
22 to Daniel Construction in Greenville,
23 South Carolina.

24 And we received documents of
25 Cleaver-Brooks boilers being sent to SCE&G or

1 South Carolina Electric & Gas to an A.M. Williams
2 steam plant in Charleston, South Carolina. And we
3 received documents related to a facility called
4 Viking Distillers.

5 You're familiar with the location or the
6 finding of those Cleaver-Brooks equipment to those
7 job sites, correct?

8 A. Yes. I've seen those commercial records
9 that I think you're talking about.

10 Q. All right. Cleaver-Brooks boilers were
11 present at all of those job sites, correct?

12 A. Yes. I'd be a little careful with in
13 particular one that strikes me is the South Carolina
14 Electric & Gas one where I think it's asked for the
15 steam plant, whatever it was. Sorry. I --

16 Q. A.M. Williams.

17 A. A.M. Williams. I'm not sure our records
18 said that it was South Carolina Electric & Gas in
19 Charleston. I personally don't know whether it's
20 that location or not, whether there's more than one
21 in Charleston.

22 Q. Okay.

23 A. But other than that, yes.

24 Q. Assuming the A.M. Williams steam plant was
25 the only SCE&G steam plant in Charleston,

1 South Carolina, and we're talking about the same
2 thing, then it would be correct to say that
3 Cleaver-Brooks supplied boilers to all of those
4 locations?

5 A. Short of any other odd things with names,
6 yes.

7 Q. Yeah. Okay. And, you know, on page 9 of
8 Exhibit 15, which is Cleaver-Brooks' answers to
9 interrogatories, it states essentially that same
10 thing.

11 MS. SPARDONE: Object to form.

12 A. Just make sure.

13 BY MR. BRALY:

14 Q. Yeah.

15 A. Yes, I believe so.

16 Q. Okay. Now, I understand that we're
17 talking about two different things with respect to
18 what did you look for and what was produced. Okay?
19 What I'm telling you about this February 7th date is
20 this is when these documents were produced to us.
21 Okay?

22 A. Okay.

23 Q. Had you, prior to your deposition on
24 February 1st or 2nd, searched for the records
25 pertaining to all of these job sites before that

1 deposition?

2 MS. SPARDONE: Object to form. Overbroad.

3 A. Again, I'm not certain exactly when it
4 was. I believe so in relation to those job sites.
5 I believe a search was done for those prior, at
6 least some of them. I -- I, quite frankly, can't
7 say for certain to all of them, but I believe at
8 some point before my last deposition, the "whether
9 or not we had a boiler there" type record.

10 BY MR. BRALY:

11 Q. I guess what I'm asking is, can you say
12 that prior to February 1st or 2nd that
13 Cleaver-Brooks had searched all of the records
14 pertaining to all of the requested job sites or no?

15 MS. SPARDONE: Object to form.

16 A. Certainly not all of the records, no.

17 BY MR. BRALY:

18 Q. Okay. Cleaver-Brooks, or at least you as
19 the person who searches documents and speaks for
20 Cleaver-Brooks, were aware prior to February 1st or
21 2nd, prior to your first deposition, that out of all
22 of the job sites listed in the deposition notice
23 that's marked as Exhibit 3, that Cleaver-Brooks
24 boilers were present at more than just the Bowater
25 paper mill facility. You knew that prior to your

1 first deposition, right?

2 MS. SPARDONE: Object to form.

3 A. Well, I think that gets back to what we
4 were talking about. I certainly knew there was a --
5 during that deposition I knew there was a search
6 that was done. I couldn't sit there and enumerate
7 each of them and, quite frankly, didn't prepare for
8 that for that deposition.

9 BY MR. BRALY:

10 Q. But you did the search though, correct?

11 A. Yeah.

12 Q. Okay.

13 A. I search a lot of things, so it --
14 recalling each one of them for several different
15 cases is real easy to mix things up.

16 Q. I'm not asking you about the specific
17 details of what you recall from the beginning of
18 February. What I am asking you is, you knew at the
19 time of your first deposition that there was more
20 job sites that implicated Cleaver-Brooks in the
21 Sizemore case than just the Bowater paper mill job
22 site. True?

23 MS. SPARDONE: Object to form. Asked and
24 answered.

25 A. No, I believe I was under the impression

1 that the Bowater was the site we were talking about
2 at that deposition. As far as what we had searched
3 prior to that deposition, yes, we did search at
4 least some of those prior to that. I didn't have
5 all the details of that at the last deposition in my
6 head.

7 BY MR. BRALY:

8 Q. Sure. And I'm not asking for all the
9 details. If you had searched some of these one,
10 two, three, four, five, six, seven additional
11 locations that are found on Exhibit 15, if you had
12 searched those prior to your first deposition, you
13 would know that Cleaver-Brooks equipment went to
14 those job sites, would you not?

15 MS. SPARDONE: Object to form. Asked and
16 answered.

17 A. I guess there's a difference between I
18 would know and when I did that search and I would
19 recall that during the deposition. I certainly
20 presumed that there was another search or a further
21 search done than Bowater when we had that last
22 deposition. What all the details of that were, I
23 didn't recall. So I guess I'm not sure how I can
24 answer that --

25 BY MR. BRALY:

1 Q. What did --

2 A. -- any clearer than that.

3 Q. What did you do between the end of the
4 first deposition and February 7th with related --
5 with relationship to any searches that were done?

6 MS. SPARDONE: Object to form.

7 A. Actually I think in that period of time I
8 was pulling out drawings related to Arabi Packing.

9 BY MR. BRALY:

10 Q. That's the Domino Sugar facility?

11 A. Apparently, yes.

12 Q. Yeah. Okay. What about the other
13 locations, Avondale, Cargill, Daniel Construction,
14 SCE&G, and Viking Distillers? Did you pull out any
15 documents between the end of your first deposition
16 and February 7th?

17 A. I'm not sure I can say for certain. I
18 believe most of my time then was dealing with the
19 Arabi one.

20 Q. All right. As far as you can tell, were
21 those documents already retrieved by you prior to
22 your first deposition?

23 MS. SPARDONE: Object to form. Vague.

24 A. I don't believe any of the drawings were
25 retrieved by me prior to my first deposition, no.

1 BY MR. BRALY:

2 Q. Okay. When did you retrieve documents
3 pertaining to the Avondale shipyard in Avondale,
4 Louisiana?

5 A. I don't believe I pulled any drawings
6 related to that.

7 Q. Who did?

8 A. I don't think we produced drawings related
9 to Avondale shipyard. I think the records we're
10 talking about there are the commercial records. I
11 don't think there --

12 Q. We have a production Bates labeled AVS 1
13 through 82 for Avondale.

14 A. I believe so, yes. And that's -- that is
15 the commercial records we talked about before. I
16 generally don't pull those out.

17 Q. All right. Who does?

18 A. Our attorneys.

19 Q. Where are those kept?

20 A. I'm not sure exactly where our attorneys
21 keep them. I have a -- the microfiche sheets, I'll
22 call them, are in Milwaukee that I have access to.

23 Q. Similarly, the documents that were
24 produced to us on February 7th for the Cargill
25 location in Memphis, Tennessee, I take it that you

1 did not produce or you did not search for any of
2 these documents?

3 A. I --

4 MS. SPARDONE: Object to form. Overbroad.

5 A. -- believe that's correct. Those were,
6 again, the commercial records which are basically
7 copying of a microfiche that was done at one time.

8 BY MR. BRALY:

9 Q. Forgive my ignorance here, but if there
10 are commercial records of boiler sales to a facility
11 like Cargill or Avondale, wouldn't there be
12 corresponding engineering drawings or corresponding
13 documents similar to what we found for Arabi or for
14 Bowater? Wouldn't those exist?

15 A. Yes. I'd have to put those together.

16 Q. But you haven't done that?

17 A. No. I haven't been asked to.

18 Q. So as I understand it, there are
19 additional documents that exist for Avondale and for
20 Cargill that would consist of essentially
21 engineering drawings?

22 A. There would be, yes.

23 Q. Moving on, we also received a production
24 from Daniel -- or generally speaking to Daniel
25 Construction, and it appears to be to their

1 headquarters in Greenville, South Carolina, but I
2 can't necessarily confirm that.

3 Did you review the documents that
4 pertained to Daniel Construction?

5 A. I didn't spend a great deal of time
6 looking at those. I -- I don't think I was able to
7 determine one way or the other the -- where it
8 actually was.

9 Q. Can you tell me what it was? What did
10 Cleaver-Brooks supply to Daniel Construction and
11 when?

12 A. If I can look at the records, I could.

13 MR. BRALY: All right. Let's do that.

14 MS. SPARDONE: One second. Do you want to
15 see this?

16 MR. BRALY: I have them here.

17 MS. SPARDONE: Oh, okay.

18 MR. BRALY: Yeah.

19 THE WITNESS: I have here DAN 1 through
20 DAN 34, DAN 35 through DAN 71, and DAN 72 through
21 DAN 111. Is that what you're looking at too?

22 BY MR. BRALY:

23 Q. Yes, sir.

24 A. Okay. I just want to make sure we're
25 looking at the same things.

1 Q. We are.

2 A. All right. So in the first group -- give
3 me a moment to find the right place -- we shipped a
4 Model PSM50 trailer-mounted portable steamer on
5 March 2nd, 1965. And that was unit number 6056-65.

6 In the second group we shipped another
7 Model PSM50 portable steamer on 6/21/60, and that
8 was unit number 5490-60.

9 And in the third group of documents we
10 shipped another PSM50 portable steam boiler
11 December 6, 1960, and that was unit number 5544-60.

12 MS. SPARDONE: What shipment date? I'm
13 sorry. I missed it.

14 THE WITNESS: December 6, 1960.

15 BY MR. BRALY:

16 Q. When you say unit number, for example, the
17 last one you gave was 5544-60, is that the serial
18 number?

19 A. Yes.

20 Q. Okay.

21 A. Yeah, people tend to use that
22 interchangeably.

23 Q. All right. I mean, presumably for all
24 three of those with the serial number information,
25 there is another subset of documents that exists in

1 Milwaukee pertaining to the engineering, bill of
2 materials, specific things like what we talked about
3 with Arabi Packing and with Bowater. That would
4 exist for those three units, would it not?

5 A. There are more documents related to the
6 engineering drawings but not as you kind of put
7 there related to the unit number. Those are the
8 ones that I have to assemble based on the references
9 in these records to a high-level drawing which
10 therefore references another drawing.

11 So it's not a go to this file or this
12 piece of microfiche and find them all. It's a, for
13 lack of a better term, a matrix of documents of part
14 numbers and drawing numbers that relate to it. So
15 it's not a -- like these are on one sheet of or
16 several sheets of microfiche. The drawings would
17 not be like that.

18 Q. You did not participate in the production
19 or the search for the documents associated with that
20 location, the Daniel Construction location in
21 Greenville, South Carolina. True?

22 MS. SPARDONE: Object to form.

23 A. Other than searching to see for the
24 records, for essentially the unit numbers and the
25 ship dates, no. I didn't actually put together

1 these documents.

2 BY MR. BRALY:

3 Q. Right.

4 A. They were copied by others.

5 Q. Yeah, and that's what I was asking. You
6 talked about cards located in your office in
7 Milwaukee, all this other stuff which you personally
8 could look through and search for job sites,
9 boilers, things of that nature. True?

10 A. The index cards, yes.

11 Q. Right. These documents -- and we'll go
12 ahead and mark these as the next exhibit in the
13 series, which I think would be -- I want to say 17.
14 That's 15. We had a 16.

15 A. 16 is in front of me, yes.

16 Q. Okay. So that'll be 17.

17 A. All three groups, the --

18 Q. Yes.

19 A. The whole group?

20 Q. Yeah, the group, so that'll be -- I'll
21 wait for her.

22 THE WITNESS: Go ahead.

23 (Exhibit 17 marked)

24 BY MR. BRALY:

25 Q. So Exhibit 17 will be DAN 1 through DAN

1 111.

2 A. Yes.

3 Q. All right. You looked through these
4 documents, but you did not retrieve these documents,
5 correct?

6 A. Correct. And my look through these in
7 relation to the search for a boiler at a specific
8 facility is for the most part limited to looking for
9 that invoice, verify the ship date or verify
10 actually the ship to or where it's going, and then
11 look for the model number and the unit number,
12 verify those things, and the ship date.

13 Q. Okay. The information that you would need
14 to conduct your higher-level search for additional
15 documents is all present within those 111 pages.
16 True?

17 A. Given the age of these, it's possible. It
18 takes a little more hunt and peck than just finding
19 a drawing number in these records due to the
20 differences in drawing structures over the years.
21 I would have to go to a couple different types of
22 sheets that call out these engineering
23 specifications which may or may not show a drawing
24 number. And sometimes I have to search through a
25 series of drawing numbers and find the one that

1 relates to a PSM50 in 1960, whatever it is.

2 Q. Okay. You haven't done that search,
3 correct?

4 A. Not for these, no.

5 Q. And you haven't been asked to do that
6 search.

7 A. Correct.

8 Q. Okay. How long would a search like what
9 we're talking about take?

10 A. To pull the drawings for a specific
11 boiler?

12 Q. Yes.

13 A. It's roughly a 40-ish-hour task. That's
14 probably an average. Some will take more, some will
15 take less. Given the age of these, probably on the
16 higher side of it. Per boiler, I should say.

17 Q. Okay. Is that just you that does that
18 search, or are there other people who assist you?
19 Do you -- do you have clerks or employees or, you
20 know, anybody that helps you?

21 A. I do the search. Occasionally I'll have a
22 secretary copy things for me once I pull out the
23 microfiche cards. I would ask her to actually print
24 them for me. But in finding the correct one, I
25 would be pulling those and finding it.

1 Q. Based on your experience with
2 Cleaver-Brooks and the recordkeeping system, is it
3 likely that there are additional documents related
4 to these three portable steam boilers that just
5 haven't been searched for?

6 A. Yeah, I would expect to find the drawings
7 related to these boilers.

8 Q. The documents we received for Arabi
9 Packing and for Bowater, and we could look through
10 these in more detail later and we probably will,
11 they include callouts for, generally speaking, some
12 asbestos parts. Fair?

13 MS. SPARDONE: Object to form.

14 A. Some components, yes.

15 BY MR. BRALY:

16 Q. Yeah.

17 A. At least references to that -- I don't
18 know if you and I have talked about this before you
19 saw it. It would depend on what a supplier was
20 supplying to us whether or not it was actually an
21 asbestos component, but I believe some of these go
22 back to a time where it was probably the original
23 drawings, so --

24 Q. Well, some of them actually use the phrase
25 asbestos, like for gasket rope seal material it'll

1 say asbestos gasket rope seal material. You've seen
2 references like that in the kinds of engineering
3 drawings that were produced for Arabi Packing and
4 for Bowater. True?

5 A. Yes, I have.

6 Q. And, for example, with Bowater there's
7 callouts for Vee Mix, V-E-E Mix. I mean, you're
8 familiar with what Vee Mix is?

9 A. I think it's Vee Block Mix.

10 Q. Thank you.

11 A. And some people say V-E-E, some just say
12 V, the letter, and Block. But yes, I've seen that
13 before.

14 Q. And you know that was an
15 asbestos-containing product?

16 A. At one time, yes.

17 Q. And there's references to tadpole gaskets
18 and things like this which you understood or know to
19 be asbestos-containing products at certain points in
20 time?

21 A. At one time, yes.

22 Q. Yes. The detail in which you would find
23 that information, the -- this is just for example,
24 but like the Vee Block Mix, the tadpole gaskets,
25 asbestos gaskets, any kind of asbestos refractory,

1 any kind of asbestos-containing insulation or
2 fiberglass-containing insulation would be found in
3 these upper-level engineering drawings like what was
4 produced for Arabi Packing and for Bowater.

5 MS. SPARDONE: Object to form.

6 A. Yes. And I think we produced them for a
7 couple other jobs too, but yes.

8 BY MR. BRALY:

9 Q. Okay. Do you know why they were not
10 produced for the Avondale production?

11 A. No. I don't get involved in when we
12 produce or why we produce. I produce what I'm asked
13 to.

14 Q. Okay. So you wouldn't know why they were
15 not produced for the Cargill production?

16 A. No.

17 Q. And you wouldn't know why they were not
18 produced for the Danville production? I'm sorry,
19 Daniel production.

20 A. Correct, I would not.

21 Q. We did receive a production of what I'm
22 just referring to as quote-unquote upper-level
23 engineering drawings, and that may not be the right
24 phrase to use, for Viking Distillers on
25 February 23rd of this year. Did you have any role

1 in producing or finding those documents?

2 A. Yes.

3 Q. Tell me what you did.

4 A. I would have gone through the process
5 we've somewhat talked about where we -- I go through
6 the commercial records to find the references that
7 get me to the drawings, again, depending on the time
8 frame, and I think Viking Distillers were certainly
9 later in time than some of these. I think it was
10 mid-Seventies, if I remember correctly. So there's
11 a little more reference to actual drawing numbers in
12 those commercial records.

13 So I pull out essentially the -- which is
14 where you probably got the term the higher-level
15 drawing, which would be I guess the overall drawing
16 of the boiler or a boiler of that model and size in
17 that time period. I find the drawing that applies
18 based on the ship date of the boilers or boiler.

19 Then I look through the bills of materials
20 for the -- that drawing to find the subassemblies
21 and therefore those subassemblies and the
22 subassemblies of that. It's sort of a growing tree
23 of drawings. And on those drawings I try to find
24 anything that would be potentially an
25 asbestos-containing component or, quite frankly, one

1 that might be questioned as an asbestos-containing
2 component and I produce either that drawing or at
3 the end of it, if there's no drawing for it, the
4 part number which relates to the part description.

5 Q. Okay. How long did it take you to do all
6 that as it related to the Viking Distillers
7 location?

8 A. I don't know that I -- I know I didn't
9 keep track of each one and how long it took me. I
10 would go back to what we talked about earlier, which
11 a rough estimate would be 30 to 40 hours. That
12 being a newer boiler, probably on the lower end of
13 that. But in general, a week's worth of work.

14 Q. Okay. So I want to kind of break down
15 something that has come to light here that I guess I
16 didn't appreciate too much before we got started.

17 MR. BRALY: I'm sorry. Do you have the
18 Viking documents with you?

19 MS. SPARDONE: I could penalize you.

20 MR. BRALY: I could -- well, I know. I
21 could go by reference here, but since you --

22 MS. SPARDONE: No, we have them here.

23 MR. BRALY: -- have them here.

24 MS. SPARDONE: Do you want all of them?

25 MR. BRALY: Yeah.

1 MS. SPARDONE: Okay. Just let me check
2 them real quick. So I will just identify these for
3 the record as VIK000001 through VIK00147.

4 MR. BRALY: I don't know that we need --
5 since some of those are oversize pages, I don't know
6 that we need to mark these as exhibits since we all
7 have them and I can just reference them by
8 identification.

9 I'm going to represent to you that we
10 received production of the series labeled 1 through
11 74 on February 7th and production of VIK 75 through
12 VIK 147 on February 23rd.

13 THE WITNESS: Okay.

14 MR. BRALY: That's not a question. That
15 is simply a representation.

16 BY MR. BRALY:

17 Q. Let's start with 1 through 74. 1 through
18 74, are these the documents that the attorneys find,
19 basically?

20 A. The ones that they copy, yes.

21 Q. All right.

22 A. I -- ultimately I find them based on
23 searching the index cards and finding that unit
24 number that's at the top of the very first page.
25 And then this is then the set of commercial records

1 that we have basically on microfiche sheets, and
2 then they're copied by our attorneys to produce and
3 Bates stamped, I should say.

4 Q. Hold on a second. Tell me about what
5 these documents tell you about what Cleaver-Brooks
6 supplied to the Viking Distillery.

7 MS. SPARDONE: Object to form.

8 A. Can't say I've committed these to memory,
9 but normally there is an invoice within these
10 documents that would tell me who the purchaser was,
11 specifically what the model of the boiler or boilers
12 were, and the ship date. So that would normally be
13 one of the first things I would look at.

14 And this is an invoice, but it gives me
15 the same information. I'm looking at VIK 33, so it
16 tells me we shipped one CB200-400 steam boiler,
17 150-pound design pressure, to the Viking Distillery,
18 Inc., in Albany, Georgia, on October 18th, 1974.
19 And the unit number or serial number of that was
20 L59290.

21 So other than that, there's, yeah, series
22 of correspondence in here. If we were involved in
23 any sales of components after that boiler was
24 shipped, they would be located in here. There is
25 what's called a start-up report in many cases in the

1 commercial records which is the documentation of the
2 initial commissioning of the boiler. And then near
3 the back of the records are some of the documents
4 that get me to the drawings, engineering drawings we
5 were discussing earlier.

6 BY MR. BRALY:

7 Q. Okay. I mean, this particular boiler, if
8 you look at VIK 53 --

9 A. Yes.

10 Q. -- you see this boiler is 10 feet 8 inches
11 tall?

12 A. Yes. Well, overall height, yes.

13 Q. And if you go to the next page, VIK 54,
14 see this boiler is 16 feet 10 and a half inches
15 long?

16 A. Correct.

17 Q. If we -- I almost said scroll down, but I
18 realize you're not scrolling. If we go down to
19 VIK 62 --

20 A. Yes.

21 Q. -- we start -- what is this? What am I
22 looking at?

23 A. It's what we refer to as our -- in this
24 particular time period our process sheets, which is
25 the document that was used at the manufacturing

1 facility to basically say these are the drawings to
2 use to construct this boiler. There's some --
3 there's a higher-level drawing which is called there
4 the high-level code. It's about the second rib or
5 second bar down on that drawing or on that page, 62.

6 And then there are various subassemblies
7 that are called out, most of which will be called
8 out on that higher-level drawing. And if there's
9 anything changed on those drawings, this process
10 sheet would indicate, you see to the far right, an
11 add or a delete to a particular drawing or a
12 subassembly.

13 Q. Okay. The first entry there is for the
14 insulation and lagging for Cleaver-Brooks 400,
15 power, 96 inches. I guess that's diameter B, but
16 I'm guessing.

17 A. Yeah, it's probably diameter boiler, but
18 in the computer world back in those days the fields
19 were probably limited.

20 Q. Okay. This is indicating at least that
21 Cleaver-Brooks is supplying the insulation and
22 lagging for this boiler, correct?

23 A. Correct. That's one of the drawings we
24 produced, and I would just make sure you understand
25 that when we use the term lagging, it may not be the

1 term you're used to hearing with lagging. It's
2 sheet metal lagging over the insulation.

3 Q. Sure. And I under -- I appreciate the
4 clarification, but I also understood that to be the
5 case, so --

6 A. Okay.

7 Q. Now, the insulation would include
8 basically insulation like you might think about it,
9 but would it also include refractory? Would that be
10 part of that classification?

11 MS. SPARDONE: Object to form.

12 A. Not on that drawing.

13 BY MR. BRALY:

14 Q. Okay.

15 A. That drawing itself is the external
16 insulation and sheet metal lagging of the shell of
17 this firetube boiler.

18 Q. All right. The lagging -- I'm sorry.
19 Say that again? Where would the refractory be
20 found?

21 A. You'll find it -- there's a little bit of
22 it called out on -- I'll use the page lines on the
23 far left-hand side, line 209. It says furnace
24 liner, bricking, oil, gas or combination power.

25 So there's some refractory on that

1 drawing. There may be some others. I know there's
2 some others within some of these, but it doesn't
3 call out there, which is why I go through the
4 process of pulling the drawings. You'll see it in
5 the drawings a little more clearly.

6 Q. All right.

7 A. This is more of a high-level snapshot of
8 the main assembly drawing, which is the 607-564, as
9 well as some of the higher-level subassemblies.

10 Q. Okay. And if we go down to VIK 67, for
11 example.

12 A. Yes.

13 Q. I mean, we see callout for several
14 different styles of gaskets, correct? There's a
15 gasket for handhold. It looks like there's a
16 quantity of six of those.

17 A. Correct.

18 Q. There's a manhole gasket with a quantity
19 of one listed.

20 A. Correct.

21 Q. A manhole cover gasket which is a quantity
22 of one listed. Do you see that?

23 A. I -- are you talking about where it says
24 cover manhole or --

25 Q. Yes.

1 A. That's the cover itself, the steel cover.
2 The gasket is up above it where it says gasket
3 manhole.

4 Q. You're right. I'm sorry. I did misread
5 that. So you have those gaskets called out.

6 We would also have some kind of rope
7 gasket assembly to seal the doors on this thing,
8 would we not?

9 A. On this size boiler? We'd have to look
10 specifically at the drawings, but I believe there's
11 some rope going across the baffle on the rear door.
12 It'll be called out in the next batch.

13 Q. So I was just asking basically about what
14 we get in this set of documents that are produced by
15 the attorneys. And this is basically it. We get a
16 list of what other drawings might exist, but as far
17 as any kind of really specific detail about the
18 composition of that material or the manufacturers of
19 that material, that's something we have to look at
20 this second series of drawings to ascertain. Fair?

21 MS. SPARDONE: Object to form.

22 A. Correct. And I would just clarify that
23 the -- the list as you see it in this particular set
24 of records is from a fairly late time frame in our
25 existence where that was the way it was done at that

1 time. It's not always that clear, and certainly
2 this is not a comprehensive list of all the drawings
3 that could potentially relate to an asbestos
4 component, which is why I pulled together those
5 drawings.

6 BY MR. BRALY:

7 Q. Then we get into VIK 70 through VIK 74.
8 When you get to them, you'll understand. These are
9 redacted pages.

10 A. That's what it looks like, yes.

11 Q. And they're marked as irrelevant,
12 post-exposure. Do you see that?

13 A. Yes.

14 Q. Okay. I don't know if you're aware of the
15 contents of these pages or not, and frankly at this
16 point I don't know that I'm prepared to ask you
17 about that, although it is probably something we're
18 going to have to take up.

19 What I am curious about is, would it be --
20 would this be the place where subsequent follow-up
21 about a boiler might be located in these types of
22 documents?

23 MS. SPARDONE: Object to form.
24 Speculation.

25 A. I guess I'll have to understand what you

1 mean by subsequent follow-up.

2 BY MR. BRALY:

3 Q. Well, they're marked as post-exposure,
4 which just kind of indicates to me that these are
5 documents that may be dated after the original
6 installation documents from 1974 because otherwise
7 they wouldn't be post-exposure, right?

8 MS. SPARDONE: Object to form.

9 A. I would assume it means post-exposure of
10 the plaintiff at the job site, but I'm not -- I'm
11 not the one that redacted it, but that's the way I
12 would interpret that.

13 But certainly within these records would
14 be anything related to communication that we would
15 have related to this boiler, whether it's prior to
16 the sale, so purchase orders, things like that, or
17 after the sale, issues with the boiler or sale of
18 subsequent parts.

19 BY MR. BRALY:

20 Q. Was there anything about this production
21 for Viking Distillers that could not have been
22 accomplished prior to your first deposition in
23 February?

24 MS. SPARDONE: Object to form.

25 A. Short of the time to do it when I was

1 asked to, I guess not. There's a period of time it
2 takes to do it, so that would be the limiting factor
3 for me.

4 BY MR. BRALY:

5 Q. All right. Had you searched for documents
6 related to Viking Distillers prior to your
7 February 1st or 2nd deposition?

8 A. You're asking me had I?

9 Q. Yes.

10 A. Again, I believe I had searched for
11 whether or not we shipped a boiler. I did not
12 search for the drawings and things subsequently
13 produced.

14 Q. Okay. Had -- if you had searched for
15 whether or not Cleaver-Brooks had shipped a boiler
16 to Viking Distillers, you would have found that,
17 yes, you did, correct?

18 MS. SPARDONE: Object to form.

19 A. Yes, the Viking Distillers in Albany,
20 Georgia, yes.

21 BY MR. BRALY:

22 Q. And that's information that you would have
23 had prior to the February 1st or 2nd deposition.

24 A. Again, I believe I did do that search at
25 some time prior to that.

1 Q. If the statement was made the only
2 Cleaver-Brooks boiler that Calvin Sizemore ever
3 worked around was at Bowater Paper and that
4 statement was made prior to your deposition on
5 February 1st or 2nd of this year, that statement
6 would not be accurate. True?

7 MS. SPARDONE: Object to form.

8 A. No, I'm not sure I could testify to what
9 Mr. Sizemore actually worked around.

10 BY MR. BRALY:

11 Q. Okay. Fair enough. If the statement was
12 made the only job site that contained a
13 Cleaver-Brooks boiler that Calvin Sizemore worked at
14 was at Bowater Paper, that statement, to your
15 knowledge right now, is not factually correct,
16 right?

17 MS. SPARDONE: Object to form.

18 A. You said worked at, job site worked at,
19 not boiler worked on?

20 BY MR. BRALY:

21 Q. Right.

22 A. Yeah, as I know it now, it would be.

23 Q. And had -- given that you did do a search
24 for Viking Distillers prior to your February 1st or
25 2nd deposition, it would also be -- it would also be

1 true that at that time, on February 1st or 2nd, that
2 the statement Calvin Sizemore's only job site that
3 corresponds to a Cleaver-Brooks boiler was Bowater,
4 that would be incorrect to the knowledge of
5 Cleaver-Brooks at the time of your first deposition
6 as well, correct?

7 MS. SPARDONE: Object to form. Asked and
8 answered.

9 A. In relation to what I knew, I'd have to
10 say no, that's not correct. My understanding was
11 the job site at issue during that deposition or
12 prior to that deposition was Bowater.

13 BY MR. BRALY:

14 Q. Okay. But you just --

15 A. I didn't spend any time other than a
16 cursory look at his testimony, had no time at all to
17 look at that actual testimony. Quite frankly, as I
18 said before, I wasn't even aware that Sizemore was
19 going to be discussed other than Bowater at that
20 deposition.

21 Q. Okay. Factually you knew that
22 Cleaver-Brooks supplied a boiler to Viking
23 Distillers. And I'm using them as an example
24 because it's one we just talked about. You knew
25 that when you did your first deposition, correct?

1 MS. SPARDONE: Object to form. Asked and
2 answered.

3 A. Again, I get a little tied up with that.
4 Whether I knew it because I had searched it, yes.
5 Whether I recalled it sitting at that deposition, I
6 think the answers I gave were that I think I did
7 some search but I didn't know the details.

8 BY MR. BRALY:

9 Q. The search that you would have conducted
10 would have been at the request of attorneys for
11 Cleaver-Brooks. True?

12 MS. SPARDONE: Object to form.

13 A. Correct.

14 BY MR. BRALY:

15 Q. That investigation, basically the "Here
16 are some job sites, you need to look for these,"
17 that investigation had proceeded to that point,
18 true, before your first deposition?

19 MS. SPARDONE: Object to form. Compound.
20 Calls for speculation. Overbroad. Asked and
21 answered.

22 A. Again, I can't say the exact date, but I'm
23 pretty sure I had looked at at least some of the
24 sites we discussed prior to that deposition or
25 searched them prior to that.

1 MR. BRALY: Okay.

2 MS. SPARDONE: Are you at a good stopping
3 point just for a rest room break?

4 MR. BRALY: A couple minutes.

5 MS. SPARDONE: Okay.

6 BY MR. BRALY:

7 Q. The process by which you determined
8 Cleaver-Brooks yes or Cleaver-Brooks no, we did or
9 did not supply boilers to a job site, is this part
10 of the search that you talked about at the very
11 beginning of this deposition, the search process
12 that takes 20 minutes to an hour to search just to
13 determine did Cleaver-Brooks sell a boiler to this
14 location?

15 A. Yes.

16 Q. Okay.

17 A. Yeah, that's the index card search that we
18 talked about first.

19 Q. Right. And that's something that you had
20 done prior to your February 1st or 2nd deposition.

21 MS. SPARDONE: Objection. Overbroad.
22 Asked and answered. Compound.

23 A. At least for some of the sites, yes.
24 Again, I -- I can't recall exactly what sites were
25 searched prior to that, but I am pretty sure there

1 were sites searched --

2 BY MR. BRALY:

3 Q. Okay.

4 A. -- other than Bowater.

5 Q. And assuming that that list of job sites
6 that's contained within Exhibit 3, which was the
7 deposition notice of Calvin Sizemore's deposition,
8 assuming that that list of job sites are job sites
9 at which Calvin Sizemore worked, it is true that
10 Cleaver-Brooks supplied boilers to more job sites on
11 that list than just Bowater. True?

12 MS. SPARDONE: Objection. Compound.
13 Assumes facts.

14 A. Yes, those are the documents we produced.

15 MR. BRALY: Okay. We can take a bathroom
16 break now.

17 THE VIDEOGRAPHER: We're going off the
18 record at 11:00. We're off the record.

19 (Recess from 11:00 to 11:13)

20 THE VIDEOGRAPHER: This is disk number 2
21 of the deposition. We're back on the record at
22 11:13.

23 BY MR. BRALY:

24 Q. Mr. Tornetta, just a couple of kind of, I
25 guess, questions I should have asked you before

1 about this topic that I didn't and I just want to
2 cover them before we move on.

3 When were you first told about the
4 Sizemore case?

5 A. I'm not sure I -- I guess theoretically
6 when we were sued, which I don't know that I can say
7 when that is.

8 Q. Let me ask you a better question then.
9 When were you asked to conduct a preliminary search
10 for boiler information as it related to Sizemore
11 based job sites?

12 MS. SPARDONE: Object to form.

13 A. That's where I can't really pin down a
14 date. I do believe there was some searching done
15 prior to my last deposition and then there was some
16 searching done after that deposition.

17 BY MR. BRALY:

18 Q. Well, talk to me --

19 A. But I can't say for certain when was the
20 first time I searched. I think there was actually a
21 case in Louisiana that there may have been some
22 searching done way back then, so I can't say for
23 certain.

24 Q. Okay. As it relates to this action in
25 South Carolina, when did you conduct your search for

1 documents related to the Sizemore case? And I'm not
2 asking you for a date, but are we talking about
3 January 2018, are we talking about December 2017?
4 What are we talking about here?

5 MS. SPARDONE: Overbroad. Compound.

6 A. I believe there was at least search for
7 some sites in January of 2018.

8 BY MR. BRALY:

9 Q. Okay. First part of January, second part
10 of January? Do you know?

11 A. Off the top of my head I don't know. I'm
12 not sure I could even figure that out. Quite
13 frankly, the last two months have blended together a
14 lot with these cases.

15 Q. Okay. Did you conduct a search for every
16 job site that's contained within Exhibit A on
17 Exhibit 3 which was the Sizemore deposition notice
18 that pertained to --

19 A. So the 50, actually 60 sites.

20 Q. Are there 60 listed there?

21 A. Yeah, number 56, but 56 includes an A, B,
22 C and D, so -- and I think there are some
23 duplicates, same names and same sites, so 50 plus
24 sites.

25 Q. Okay.

1 A. I have.

2 MS. SPARDONE: Let me just take one --

3 THE WITNESS: I'm sorry.

4 MS. SPARDONE: I'm sorry.

5 MR. BRALY: Sure.

6 MS. SPARDONE: I just object that the
7 question's overbroad, compound. Go ahead.

8 A. I have at this point, yes.

9 BY MR. BRALY:

10 Q. Okay. There is a site listed on there
11 that's referred to as Hoechst Celanese in Greer,
12 South Carolina. Hoechst is H-O-E-S-H-S-T, which
13 doesn't make any sense.

14 MS. SPARDONE: Yeah, we were trying to
15 figure that out yesterday. Hoechst. Okay.

16 MR. BRALY: "Hurts," like --

17 MS. SPARDONE: Oh, "hurts"?

18 MR. BRALY: -- "Ow, that hurts."

19 MS. SPARDONE: Like the cow --

20 MR. BRALY: Yes.

21 MS. SPARDONE: -- the car company? Okay.

22 MR. BRALY: Yeah.

23 MS. SPARDONE: Who knew?

24 MR. BRALY: I did not. I had to ask
25 someone.

1 MS. SPARDONE: Looks like "Hesh" or
2 "Hashe" or --

3 MR. BRALY: Yeah.

4 BY MR. BRALY:

5 Q. Regardless, there is a job site listed in
6 there as Hoechst Celanese in Greer, South Carolina.

7 A. Yes.

8 Q. Did you search for the presence of
9 Cleaver-Brooks boilers at that location?

10 A. Yes.

11 Q. Did you find anything?

12 A. I don't believe I did.

13 Q. Okay. How would it happen that a boiler
14 would be present at a job site for which
15 Cleaver-Brooks would not know?

16 MS. SPARDONE: Calls for speculation.
17 Form.

18 A. If it actually is there.

19 BY MR. BRALY:

20 Q. All right.

21 A. I've certainly come across records or
22 testimony that was inaccurate that placed a boiler
23 where it wasn't necessarily at. But it's possible a
24 boiler can move.

25 Q. Okay.

1 A. Or the name of the company could have been
2 something else when we initially sold it.

3 Q. Like what?

4 MS. SPARDONE: Same objections.

5 A. Like what? I'm not sure.

6 BY MR. BRALY:

7 Q. You said the name of the company might
8 have been something different when you sold it. Are
9 you saying it was another company's boiler, or are
10 you saying that Cleaver-Brooks used a different
11 name?

12 A. Well --

13 MS. SPARDONE: Object to form.

14 A. -- I think an example could be the Arabi
15 site where we sold it to an Arabi Packing which I
16 believe eventually became the Domino Sugar plant.

17 BY MR. BRALY:

18 Q. Okay.

19 A. It's the way I understood it. I don't
20 think there was reference in our commercial records
21 to it being a Domino plant.

22 Q. Okay. So the name of the company to whom
23 you sold the boiler might have changed?

24 A. Correct. And I would say -- I'd just
25 clarify a little, name of the company to which the

1 boiler was located. Sometimes we sell to somebody
2 different than the end user.

3 Q. Is there a secondary market for boilers
4 like Cleaver-Brooks style boilers?

5 MS. SPARDONE: Overbroad.

6 A. I've certainly seen boilers sold used. I
7 wouldn't consider it a huge. These are large pieces
8 of equipment, but they certainly can be shipped
9 because that's the way we sell them, as ones that
10 can be shipped and moved to another place as opposed
11 to field-erected boilers that are built in place
12 that we didn't do.

13 BY MR. BRALY:

14 Q. Based on the review that you conducted,
15 you did not find any indication that Cleaver-Brooks
16 had supplied a boiler directly to the Hoechst
17 Celanese location in Greer, South Carolina, correct?

18 MS. SPARDONE: Object to form.

19 A. Correct, under that or those names
20 actually I would have searched. I did search under
21 Hoechst and Celanese, and I think there was another
22 name associated with another case as well.

23 BY MR. BRALY:

24 Q. But to the extent that a boiler had been
25 acquired through another entity other than

1 Cleaver-Brooks, even a Cleaver-Brooks boiler that
2 had been acquired by Hoechst Celanese or by anybody
3 through a separate sale, that's something that
4 Cleaver-Brooks would not have a record of. Fair?

5 MS. SPARDONE: Object to form.

6 A. I wouldn't say we wouldn't have a record
7 of that. I've found many, many examples over the
8 years of us having record of that. Could I testify
9 that we have been told of every one of those?
10 Absolutely not.

11 MR. BRALY: So Exhibit 14 is the
12 deposition notice that pertains to the Charlotte
13 Gaye Smith case. There is a corresponding notice
14 from the first deposition that would be Exhibit 2
15 which unfortunately I don't have with me. I'm so
16 sorry.

17 MS. SPARDONE: Did you want to mark it?
18 Oh, no, it's already marked.

19 MR. BRALY: It's already marked.

20 MS. SPARDONE: Let me just --

21 A. Yes, I recall this.

22 BY MR. BRALY:

23 Q. Okay. Great. Is it correct that you've
24 also done a job-based search for locations that
25 pertain to Cleaver-Brooks for the other cases that

1 are also under notice here, not just Sizemore but
2 the Smith case and the Howe case?

3 A. Yes.

4 Q. All right. There is a -- there are two,
5 actually, power plants that are listed in this
6 deposition notice. There's the Duke Power -- hold
7 on. I'm saying that wrong. Yeah, the Duke Power
8 Cliffside steam station in Cliffside,
9 North Carolina, and the Duke Power McGuire nuclear
10 station in Huntersville, North Carolina. Do you see
11 both of those?

12 A. Yes.

13 Q. And I take it that Cleaver-Brooks
14 conducted a search for those locations?

15 A. Yes.

16 Q. Are you aware that publicly-available
17 documents show the presence of Cleaver-Brooks
18 boilers at both of those locations?

19 MS. SPARDONE: Object to form.

20 A. Yeah, I was shown some -- I guess I never
21 thought of about being publicly available or not.
22 They look to be some state records of some type that
23 indicated there were some firetube boilers that they
24 had the name Cleaver-Brooks on the records at both
25 of those locations, I believe.

1 BY MR. BRALY:

2 Q. For the Cliffside location, I show a
3 firetube boiler bearing the name Cleaver-Brooks
4 manu -- built in 1995, a Cleaver-Brooks pressure
5 vessel being used as a deaerating tank,
6 D-E-A-E-R-A-T-I-N-G, tank built in 2010, and a
7 Cleaver-Brooks firetube boiler built in 1969. Oh,
8 I'm sorry. And one other one, a Cleaver-Brooks
9 firetube boiler built in 2009.

10 I'd be happy to show you these records if
11 you want to take a look through them, but I think
12 you've seen the same thing that I'm talking about
13 here.

14 A. I have seen them in the past, yes.

15 Q. When were you shown the state record
16 information?

17 MS. SPARDONE: Object to form.

18 A. It's been within the last couple of weeks.

19 BY MR. BRALY:

20 Q. Since you were shown the state record
21 information, did you make any secondary search or go
22 back and search again to find the presence of
23 Cleaver-Brooks boilers, these three boilers and
24 deaerating tank supplied to this power plant, at
25 least according to the state record information?

1 MS. SPARDONE: Object to form.

2 A. Actually, and I hope I'm not confusing
3 this, but I think the latter boilers we had located
4 in the past. The '69, if I remember right, I have
5 not been able to locate.

6 And yes, the answer to your question was
7 or is, yes, I made a second search of Duke Power
8 Maguire, Cliffside in our index card indexes, I'll
9 call them, for those names and did not find those
10 earlier boilers.

11 BY MR. BRALY:

12 Q. So you did find the more recent boilers.
13 Am I understanding that right?

14 MS. SPARDONE: Object to form.

15 A. I believe so. Again, that's -- a lot of
16 this is blending together, but I believe the more
17 recent ones may have been. Without it at my
18 fingertips, I can't say for certain. I would
19 presume they weren't at issue in this case, but I
20 could be wrong.

21 BY MR. BRALY:

22 Q. As it relates to the McGuire station, what
23 I show is a Cleaver-Brooks firetube boiler that was
24 built in 1975 that was supplied to the McGuire
25 nuclear facility.

1 Did you find any documents related to that
2 boiler?

3 A. No.

4 Q. Do you have any information that would
5 basically contradict the state record information
6 that says that from 1975 to 2003 there was an active
7 Cleaver-Brooks location at that job site?

8 MS. SPARDONE: Object to form.

9 A. I don't have any -- there weren't any
10 numbers on the documents I looked at that got me to
11 a specific Cleaver-Brooks boiler. I actually don't
12 remember those records saying anything about a span
13 of time that it was there, but maybe I missed it.

14 BY MR. BRALY:

15 Q. Well, let me -- let me just show this to
16 you. Let me go up to the page I want to start with
17 here. Okay. I'm going to move on actually from the
18 McGuire station. We'll come back to that later.

19 Or actually I'm going to go to it now.
20 Okay. Got to take this guy with me because it's got
21 all my stuff on it. I'm sorry. This gets a little
22 bit complicated, but you understand kind of the
23 nature of how some public records that you'll
24 receive on the -- what you reviewed or what you saw,
25 looked at, did it -- I mean, did it look roughly

1 like a printout that looks like this?

2 A. Yes.

3 Q. Okay. If we look down at the bottom of
4 this first page here, it says Duke Energy McGuire
5 Nuclear Station?

6 A. Yes.

7 Q. You see that? And then it continues down
8 for several pages listing various things.

9 A. Correct.

10 Q. None of which say Cleaver-Brooks. And
11 then we get down -- got to go a little bit -- right
12 here there's a firetube process boiler manufactured
13 by Cleaver-Brooks with 1975 listed as year built.

14 A. Correct.

15 Q. And then I guess this is an
16 out-of-commission date or some such, July 31st of
17 2003. Do you see this?

18 A. Yes.

19 Q. Okay. In what Cleaver-Brooks located in
20 your search -- I guess starting out the question is,
21 Cleaver-Brooks did not find a boiler for that
22 location or you did and -- or what?

23 A. Did -- I'm sorry. Go ahead.

24 MS. SPARDONE: I'm sorry. Which location?

25 MR. BRALY: McGuire. I'm sorry.

1 MS. SPARDONE: Okay.

2 MR. BRALY: McGuire.

3 MS. SPARDONE: And I think he testified
4 that there was none.

5 A. Did not.

6 BY MR. BRALY:

7 Q. Did not. Okay. In 1975 are we talking
8 about basically some kind of an old school
9 electronic format that you would find boilers of
10 that era in or no?

11 MS. SPARDONE: Object to form.

12 A. As far as our indexing of it, it would be
13 the index cards we talked about earlier if it was --
14 if that boiler was built in 1975, it would be in the
15 same -- document wise in the same range as I think
16 the Viking Distilling ones were, which were
17 roughly '75.

18 BY MR. BRALY:

19 Q. Okay. How would you account for this, the
20 presence of a state document listing a
21 Cleaver-Brooks boiler being present in 1975 and
22 Cleaver-Brooks' failure to find contemporaneous
23 records that reflect the same thing?

24 MS. SPARDONE: Object to form. Assumes
25 facts.

1 A. I'd have to --

2 MS. SPARDONE: Calls for speculation.

3 A. -- speculate a great deal, but it could be
4 the boiler was moved there, could be the boiler was
5 used there temporarily. I wouldn't necessarily go
6 by the built date and whatever that date was that
7 said 2003 as a range that that boiler was, quote,
8 there, or it could be that an error or errors in the
9 records. I would have no idea. It would all be
10 speculation.

11 BY MR. BRALY:

12 Q. It could be an error on McGuire's end, it
13 could be an error on Cleaver-Brooks' end.

14 MS. SPARDONE: Object to form.

15 A. Could be an error on anybody's end, yes.
16 Could be the state boiler inspector made an error.
17 I have no idea.

18 BY MR. BRALY:

19 Q. Okay. State boiler inspections are
20 conducted as a -- basically as a safety measure,
21 right, by the state, state governments, to ensure
22 that pressure vessels are known about and maintained
23 and safe?

24 A. Typically, yes. I'm not sure what the
25 requirements are in North Carolina, but overall,

1 yes. I know there can be differences from state to
2 state, so --

3 Q. Sure. And, I mean, especially in the
4 context of a nuclear power station, you'd want
5 information to be pretty accurate. Fair?

6 MS. SPARDONE: Object to form.

7 A. I wouldn't have any idea what they would
8 require in relation to -- if it could have been a
9 temporary boiler, not a temporary boiler. I have no
10 idea.

11 BY MR. BRALY:

12 Q. The records indicate it was there for 23
13 or 28 years.

14 MS. SPARDONE: Object to form. Assumes
15 facts. No foundation.

16 A. Again, I don't think I would interpret
17 those that way, certainly not in a definitive way.
18 The boiler was built in '75. Doesn't mean it was
19 installed there in 1975. It could have been
20 installed there in 2003, used for two months for
21 some temporary measure, and not used again and when
22 the boiler inspector came there, that boiler was
23 there. I have no idea. All speculation on my part.

24 BY MR. BRALY:

25 Q. Backing up to the Cliffside location, if I

1 understood you correctly, you said that you did find
2 some of the later installed boilers or records of
3 later installed boilers but not any records of the
4 boiler that was reflected as being 1969. Is that
5 right?

6 MS. SPARDONE: Object to form.

7 A. Correct. And I think I said I may be
8 confusing the later boilers, finding those with some
9 others, so I wasn't certain of that, but I
10 certainly -- I specifically know I did not find the
11 1969 boiler.

12 BY MR. BRALY:

13 Q. Do you know why any documents related to
14 that job site, Cliffside, Duke Power Cliffside, were
15 not produced to us?

16 MS. SPARDONE: Object to form.

17 A. No. Again, I don't get involved in what's
18 produced and what isn't.

19 BY MR. BRALY:

20 Q. Do you want to talk about Bowater for a
21 little bit?

22 A. You're asking me?

23 Q. Yeah.

24 A. I'll talk about whatever you'd like to
25 talk about, I suppose.

1 Q. All right. The Cleaver-Brooks boiler that
2 was supplied to the Bowater paper mill, do you know
3 where at the Bowater facility that boiler was
4 installed?

5 MS. SPARDONE: Cumulative. Asked and
6 answered.

7 A. I would have to look, but if I recall, my
8 last deposition, I don't think there was a way we
9 could tell from our records where it was. It was
10 a -- but I can't even off the top of my head. I
11 didn't look at it very much before this, but I think
12 it was a relatively small firetube boiler.

13 BY MR. BRALY:

14 Q. All right. You don't know anything about
15 the Bowater physical plant layout as far as where
16 buildings were located at any various points in the
17 time or anything like that?

18 A. Other than what I read in testimony --

19 Q. Right.

20 A. -- no. There was a lot of talk about
21 bark-fired boilers and liquor boilers and a power
22 house and things like that. I think in my last
23 deposition we talked this out. I think I had said
24 that it would surprise me that a boiler of the one
25 we did was in the power house. It was probably some

1 remote location that needed steam that they didn't
2 want to pipe steam to. But that again was probably
3 speculation.

4 Q. Okay. As far as the physical location of
5 any administration building or any other type of
6 building as it relates to the power house at
7 Bowater, is that information that you have at all?

8 A. Certainly not in our records. Again,
9 there may be some discussion of that in the various
10 depositions that talk about Bowater from different
11 plaintiffs, but I don't recall off the top of my
12 head.

13 Q. Short story shorter, you don't know where
14 at Bowater the Cleaver-Brooks boiler was installed.
15 True?

16 MS. SPARDONE: Asked and answered.

17 A. I don't have any definitive way to
18 determine that in our records, no.

19 MR. BRALY: Okay. So what I'd like to do
20 is get into some of these engineering drawings that
21 relate to Bowater quickly because I know you did
22 discuss some of this already, but the set that runs
23 from BPM 26 to 44, if you want to take a look at
24 those.

25 MS. SPARDONE: Are you done with Viking?

1 I just want to --

2 MR. BRALY: I might go back to it.

3 MS. SPARDONE: Okay.

4 MR. BRALY: In fact, I know I'm going to
5 go back to it.

6 MS. SPARDONE: Okay. Let's try to get
7 these in some order.

8 THE WITNESS: That's all Viking.

9 MS. SPARDONE: Okay. Thank you. What did
10 you say, 26 to what?

11 MR. BRALY: 44.

12 MS. SPARDONE: I'm just going to put them
13 all in front of him in case he needs to toggle back
14 and forth.

15 BY MR. BRALY:

16 Q. For someone who may not ever have
17 experienced drawings like this, can you -- how would
18 you describe these, just engineering drawings or
19 what?

20 A. And I assume you're starting with BPM
21 26 --

22 Q. Sure.

23 A. -- asking about that. Yeah, a description
24 of it could be an engineering drawing. Typically
25 the way I pull them out and they're usually here is

1 with the higher-level drawing first and subsequent
2 subassemblies behind it, so just gives you kind of a
3 map as I went through it. But I guess, yeah, I
4 would call them engineering drawings. They're
5 actually what was used to manufacture the boiler.

6 Q. Okay. And from this you can get ideas
7 about the height, the width, the length of a boiler.
8 Fair?

9 A. On some of them, yes. It's not always the
10 case on that very first drawing. It depends, again,
11 a little bit on time frame and what our drawing
12 structure, but in this particular one I think it
13 does give some overall dimensions of that boiler.
14 Or I should say the boiler at Bowater.

15 Q. I mean, for example, it shows that it's 53
16 and a half inches high.

17 A. Correct.

18 Q. Correct? And on the second page it shows
19 that it's 80 and 5/8 inches long.

20 A. That would be just the pressure vessel
21 part of the boiler because that's what that drawing
22 depicts. The overall length including the front and
23 rear doors on the first page, BPM 26, which is
24 Dimension D -- then you have to look at it in
25 relation to the model boiler which is a

1 30-horsepower progress. So Dimension D is --

2 MS. SPARDONE: I don't have my magnifying
3 glass. Do you need one?

4 A. -- 105 inches long, which would be the
5 total extents of the components attached to the
6 boiler that make up the whole boiler. So, 8-ish, 8
7 and a half feet.

8 BY MR. BRALY:

9 Q. Okay. This boiler utilized asbestos rope
10 5/8-inch diameter.

11 A. I believe I remember finding that before,
12 yes.

13 Q. And it was 35 inches of 5/8-inch diameter
14 asbestos rope, correct?

15 A. Correct. You're looking at item 17 on
16 BPM 26, I assume?

17 Q. Yes, sir.

18 A. Yes.

19 Q. And that's just shy of 3 feet.

20 A. Correct.

21 Q. This boiler used 5 pounds of
22 asbestos-containing cement. True?

23 A. That's what calls out there, yes.

24 Q. And it says JM450, right?

25 A. Correct.

1 Q. Do you know what JM450 was, how it came
2 packaged, anything like that?

3 A. I'm not certain of the packaging we
4 received it in, but I believe it to be a material
5 that was mixed to make cement.

6 Q. It was a powder.

7 A. It was dry form. I'm not sure I would
8 call it powder, but it was a dry form.

9 Q. At the top, item number 2 is insulation
10 and lagging. It says "See table," and I'm trying to
11 figure out what table it's talking about. Can you
12 locate the table it is referencing?

13 A. Yes. It's the one that is just below that
14 set of bill of material that has an asterisk and
15 table and gives the boiler sizes. If you go across
16 from the boiler size on the left-hand side, you'll
17 see the insulation and lagging drawing called out
18 based on the size of the boiler.

19 Q. Okay. So what size is this boiler?

20 A. 30-horsepower, so it's a P30.

21 Q. All right. In this drawing, 465-169, is
22 that one of the drawings that we have here?

23 A. I believe -- let me double-check this
24 because this has been awhile since I pulled this one
25 out.

1 That drawing was actually different.
2 You'll see a little mark next to that 465-17 -- 169.
3 There's a little triangle with a "7," which if we
4 look down at the -- not very easily on this, there
5 are revisions at the bottom of that which indicate
6 revisions that were done over time to that drawing.

7 And I believe the -- what I have access to
8 are many revisions in microfilm format but not every
9 one of them. So occasionally I have to pull out a
10 drawing that is a later revision than the boiler
11 shipped and then literally back out the revisions
12 called out there.

13 So I believe, and it's hard for me to do
14 it after the fact now, but I believe one of those
15 revisions changed that drawing for the time period
16 we're talking about this boiler shipping to 465-105,
17 which is on BPM 29.

18 Q. Okay. So let's look at that.

19 MS. SPARDONE: 29?

20 A. 29?

21 BY MR. BRALY:

22 Q. Yes.

23 A. Yes.

24 Q. BP -- it's drawing number 465-105.

25 A. Correct.

1 Q. And this is BPM 29 is the Bates number.
2 You list lagging top, lagging right side, lagging
3 left side, lagging vent.

4 A. Correct.

5 Q. As I understand it, lagging is a sheet
6 metal cover.

7 A. Correct.

8 Q. All right. Then we have 10 and a half
9 square feet of something called a Microlite
10 insulation blanket --

11 A. Correct.

12 Q. -- that is 2 inches thick and 36 inches
13 wide.

14 A. Correct.

15 Q. All right. Do you know if Microlite
16 blankets during the time period that this drawing
17 was done, which is dated April 12th of 1956, would
18 be asbestos containing or not?

19 MS. SPARDONE: Asked and answered.

20 A. I don't believe so.

21 BY MR. BRALY:

22 Q. Okay. Based on what?

23 A. I have never seen anything related to that
24 material saying it was asbestos containing. And
25 quite frankly, I've talked about that for 15 or so

1 years, and I'm assuming someone would have corrected
2 me if I was wrong.

3 Q. Okay. Going to the next page, which is
4 BPM 30.

5 A. Yes.

6 Q. This is entitled -- the drawing title is
7 "Head Rear Insulated."

8 A. Correct.

9 Q. What are we talking about?

10 A. This is the rear head or rear door of the
11 boiler that if you go back to BPM 26, it's item 6.
12 And you'll see it pointed out in the center drawing
13 shown on the back of the boiler, the right-hand side
14 of that drawing. It's what directs the flue gases
15 from one set of tubes to the other and creates a
16 division between the upper and lower half set of
17 tubes.

18 Q. If one of these boilers resembles a Coke
19 can on its side and this is one end of it, would the
20 opposing end or the corresponding door on the other
21 side be -- match it, basically be insulated in the
22 same way, or is this unique to one side of the
23 boiler?

24 MS. SPARDONE: Object to form.

25 A. It's unique to one side of the boiler.

1 This is the rear door. The front door looks
2 different.

3 BY MR. BRALY:

4 Q. Okay. The rear door utilized asbestos
5 board, one of which was 4 inches by 34 inches?

6 A. Correct. Quarter-inch JM106.

7 Q. And then the second board was 2 inches by
8 33 inches, also a quarter-inch thick, correct?

9 A. Correct.

10 Q. The rear door also uses 60 pounds of that
11 Vee Block Mix which is specified as asbestos?

12 A. Correct.

13 Q. It also uses 150 pounds of refractory
14 castable called Bafflecrete MEX-R-CO. I don't know
15 what that means. Do you know if this refractory
16 material in nineteen fifty -- 1956 would have been
17 asbestos containing or not?

18 A. I don't believe so.

19 Q. All right. Who manufactured this product?

20 A. I think that MEX-R-CO was at one point a
21 manufacturer. I think the part descriptions may
22 shed a little more light on that. I'm not certain.
23 Made 7296. That says basically the same thing,
24 refractory -- I'm looking at BPM 56, refractory
25 furnace crete course grade MEX-R-CO hundred-pound

1 bags.

2 But my understanding is those materials
3 did not contain asbestos. They are in an area
4 that's exposed to temperatures close to or exceeding
5 1,800 degrees, so I wouldn't expect it to.

6 Q. Explain that to me just from an
7 engineering point of view.

8 A. As I understand it, and this is actually
9 something I've -- I guess I've learned through this
10 litigation, that asbestos wouldn't survive
11 temperatures of that nature.

12 Q. That's something that you've heard from
13 your involvement in litigation as opposed to
14 something you just understood from your employment
15 at Cleaver-Brooks?

16 A. Correct.

17 Q. All right.

18 A. My -- my understanding of the temperature
19 range is based on my employment at Cleaver-Brooks.
20 My understanding of asbestos's ability to withstand
21 that is based on my involvement in the litigation.

22 Q. Thanks for clarification. That's exactly
23 what I meant, but I understand why you would want to
24 make that clarification.

25 This rear door also used almost 9 feet of

1 asbestos rope, correct?

2 A. Correct.

3 Q. It also used a pound of asbestos furnace
4 cement?

5 A. Correct.

6 Q. And that would be in addition to the
7 JM405 that we looked at previously, correct?

8 MS. SPARDONE: 450.

9 BY MR. BRALY:

10 Q. I'm sorry, 450.

11 A. Yes, 450, yes.

12 Q. It also used 2 pounds of this cement
13 refractory, Firefrax number 1. Do you know who the
14 manufacturer was of Firefrax number 1?

15 A. Not off the top of my head. And again,
16 I'm not sure if the part descriptions shed any more
17 light on that. Possibly do. No, the part number,
18 I'm looking at BPM 53, calls out Firefrax number 1
19 which may well be -- I don't know if that's a
20 manufacturer or trade name, to be honest with you.

21 Q. Okay.

22 A. But lists, I think, alternate Kaiser H169.
23 I'm not sure if that could apply to that time frame
24 or not, to be quite frank.

25 Q. And is Firefrax an asbestos-containing

1 product, or do you know?

2 A. I don't believe it is. I certainly would
3 have to defer to others that are more familiar with
4 it. But again, it's in an area -- it's used in
5 areas where refractory tile are used and exposed to
6 higher temperatures, so I don't believe it is, but I
7 couldn't be certain.

8 Q. Let's go down to BPM 33 real quick.

9 A. Okay.

10 Q. This is a drawing for an observation
11 window assembly?

12 A. Correct.

13 Q. I take it this is just something so people
14 can look inside the boiler, make sure nothing's
15 burning incorrectly or something?

16 A. Correct. It gives you a view of the flame
17 down the furnace from the rear door.

18 Q. It lists in its bill of materials two
19 asbestos sheet packing gaskets manufactured by Johns
20 Manville, or JM, listed as JM number 60, as having
21 an inside diameter, meaning the size of the hole
22 that the gasket is surrounding, of 1 and 7/16-inch
23 by 1/16-inch thick. Do you see that?

24 A. Correct.

25 Q. Okay. And the description of it itself

1 describes it as an asbestos-containing gasket,
2 correct?

3 A. That's what it calls out, and I believe at
4 that time it was.

5 Q. All right. Go to the next page. And I
6 think this is the front door now?

7 A. It's what we would call the inner door in
8 the front. It is in the front of the boiler, but
9 there's a front door and an inner door. And
10 actually this is more an inner plate because in this
11 particular size boiler, given its small size, it's
12 actually not hinged.

13 Q. Okay. So there's a cap that goes on the
14 outside, right, or a door?

15 A. Correct. Yeah, if you looked at that very
16 first drawing, BPM 26, what you would call the cap I
17 would call the front door which is item 5, kind of
18 pointing to the left-hand side of the center
19 drawing. That's what you would see externally.
20 It's a steel door with a motor hanging off the front
21 of it and various burner linkages.

22 Q. Okay.

23 A. This particular BPM 34 is actually
24 sandwiched between that outer front door and the
25 pressure vessel itself.

1 Q. I'm going to show you a picture. And I'll
2 have to send this to the court reporter to have it
3 marked, but if we're talking about a boiler end that
4 looks kind of like that --

5 MS. SPARDONE: Object to all the questions
6 about this document.

7 MR. BRALY: Sure.

8 MS. SPARDONE: I have no idea what it is
9 or --

10 A. Kind of, but not -- I can tell by the
11 configuration this is a much larger boiler. And the
12 way the gull-wing baffle is in the front and we do
13 have a hinged inner door in this particular case. I
14 can see it off to the right. But when you open up
15 the front door and take off the inner plate of the
16 boiler we shipped to Bowater, you would see
17 something similar to that. You'd see the end of all
18 the tubes and some burner opening. I believe the
19 burner would have been attached to the tube sheet
20 the way this is in this style boiler.

21 BY MR. BRALY:

22 Q. Okay. So this is not in any way identical
23 to what's described in the drawing BPM 34. Fair?

24 A. Correct.

25 Q. Okay.

1 A. It's not identical at all.

2 Q. But as far as a similarity between this
3 inner plate and kind of the rough look of what inner
4 plates look like or what they are, is this some kind
5 of fair example of what that would look like?

6 MS. SPARDONE: Object to form.

7 A. The inner plate you're talking about?

8 BY MR. BRALY:

9 Q. Right.

10 A. No. The inner plate's actually, on this
11 particular picture, is off the picture but cut off a
12 little bit on the right-hand side. What we're
13 looking at here in this picture is the front side of
14 the pressure vessel.

15 Q. Okay.

16 A. So where the tubes are.

17 Q. Is that similar to what we're looking at
18 in the drawing for BPM 34?

19 MS. SPARDONE: Object to form.

20 A. No.

21 BY MR. BRALY:

22 Q. No. Okay. Why not?

23 A. Because that's the pressure vessel. This
24 is the inner plate, the door, per se. And you're
25 not looking at the door there. What you're actually

1 looking at there would be more of the BPM 27, sort
2 of the left-hand view or the view on the left-hand
3 side of that drawing.

4 Q. Okay.

5 A. BPM 27 is the pressure vessel itself.

6 Q. Oh.

7 A. And what you're looking at is a head-on
8 view to the front of the pressure vessel after that
9 outer door and, in that case of the picture you had,
10 the inner door were swung open.

11 MR. BRALY: Got it. Okay. So let me take
12 care of some housekeeping here real quick. This
13 would be exhibit number -- what's the next exhibit
14 number?

15 THE REPORTER: 18.

16 (Exhibit 18 marked)

17 MR. BRALY: 18. And do you mind if I get
18 your e-mail address real quick?

19 MS. SPARDONE: Will you just copy me on
20 it, please?

21 MR. BRALY: Sure. Can I get your e-mail
22 address?

23 MS. SPARDONE: Sspardone --

24 S-S-P-A-R-D-O-N-E -- @hptylaw.com.

25 Are you representing that that is a photo

1 of a Cleaver-Brooks boiler?

2 MR. BRALY: I'm representing that it is a
3 demonstrative that I use to -- no.

4 MS. SPARDONE: Okay. It's just a boiler.

5 MR. BRALY: I'm not making that
6 representation.

7 MS. SPARDONE: I just wasn't clear.

8 BY MR. BRALY:

9 Q. Mr. Tornetta -- and you can take a look at
10 it again if you would like -- can you tell from the
11 photograph that I just showed you if that's a
12 Cleaver-Brooks boiler or not?

13 A. I don't think I could definitively because
14 there's no nameplate on it. Certainly it looks like
15 a four-pass boiler. We aren't the only ones that
16 made four-pass boilers, but it looks similar. But
17 definitively I couldn't say.

18 Q. Okay. So it looks similar to a
19 Cleaver-Brooks boiler, but without seeing a
20 nameplate or more information, you can't say for
21 sure?

22 A. Correct.

23 Q. All right. Okay. So going back to I
24 guess BPM 34, the front insulated plate head, we
25 have specified here half a cubic foot of that Vee

1 Block Mix, again calling out for it to be asbestos,
2 and then a two gasket labeled as head gaskets. Can
3 you tell from that description if those gaskets
4 would be asbestos?

5 A. Not from that description, but the drawing
6 should follow, and it does, in BPM 35.

7 Q. Uh-huh.

8 A. And I guess I can't say for certain that
9 drawing specifically says that they were asbestos
10 containing, but certainly I -- I believe at one time
11 the materials called out on BPM 35 I believe to have
12 been asbestos at one time.

13 Q. JM tadpole style. And then it gets a
14 little bit blurry on me here, but looks like 123?

15 A. Correct.

16 Q. All right. BPM 38 we have gaskets that
17 are just specified dry oven gaskets. Also listed is
18 the JM tadpole style 123?

19 A. Correct.

20 Q. How many of these style gaskets would be
21 used in a boiler like what we're talking about?

22 A. Of this drawing, 32443, I think is just
23 one.

24 Q. Okay.

25 A. It's called out on another drawing at

1 least one place. Of course, it would be too easy if
2 I could find that easily. It's actually called out
3 on BPM 26 as item 38. Pretty sure that's the one.

4 Q. Okay. Basically these gasket drawings
5 that follow are details for the gaskets that are
6 referenced earlier in the drawings?

7 A. Correct.

8 Q. All right. So you --

9 A. As I said, it's kind of that growing tree
10 and --

11 Q. Right.

12 A. Where I get to this, that's kind of the
13 end of that line short of that part number there,
14 which is also in the part descriptions.

15 Q. All right. There really is no dispute
16 that the Cleaver-Brooks boiler at Bowater contained
17 asbestos-containing cement, asbestos-containing
18 gasket material, and asbestos-containing rope.
19 Correct?

20 MS. SPARDONE: Object to form.

21 A. Correct. I believe it's called out, all
22 three of those items.

23 BY MR. BRALY:

24 Q. Talk to me about the second set of Bowater
25 documents that you have there, the second series

1 which I think is BPM 45 through 61. This looks like
2 a random collection of specifications. I --

3 MS. SPARDONE: Object to form.

4 MR. BRALY: Sure.

5 MS. SPARDONE: We take great umbrage at
6 the word "random."

7 A. Those are the part descriptions that are
8 called out within the drawings where, as I said, the
9 end of the line could be a drawing or it could be a
10 part number or it could be a drawing with a part
11 number. These are those part numbers that are
12 called out for any, as I said before, potential
13 asbestos-containing components or those that might
14 be questioned as that.

15 BY MR. BRALY:

16 Q. So talk to me about BPM 50. And there's
17 going to be a couple like this.

18 A. Yeah.

19 Q. But I can just use this as an example.
20 You see very clearly that the font and the clarity
21 of the text changes when you get to Garlock
22 Thermosil or SEPCO fiberglass, and then it's dated
23 October 22nd of 1980. Do you see that?

24 A. Yes.

25 Q. What's happening here?

1 A. I don't have a good way to, I'll say, date
2 the part descriptions. I have a fixed set in time,
3 and there are ones that certainly will contradict
4 some of the references on the drawings themselves.
5 They weren't kept necessarily in relation to date.
6 I've never really been able to figure out --
7 occasionally you'll see a date underneath some of
8 the descriptions you see there. You don't always
9 see it. I've never been able to figure out what
10 that date actually means, whether it's the first
11 time it was used, the first time it was updated,
12 whatever it is.

13 So this is what we have. There are cases
14 where in this particular case I would have to say
15 it's likely incorrect where it's calling out the --
16 I'm looking at 49 at the moment, 853-348 rope, it's
17 calling out fiberglass rope when on the drawing it
18 was clearly called out as asbestos rope.

19 Q. Right.

20 A. So it's just what we have. I don't have a
21 part description that necessarily or part
22 descriptions that necessarily are dated these are
23 the part descriptions from this time period and this
24 time period and this period. I have a snapshot.

25 Q. Based on the change in both the font -- I

1 mean, the font preceding is a serif font and this is
2 not a serif font.

3 MS. SPARDONE: Object to form.

4 BY MR. BRALY:

5 Q. Right?

6 A. I'll -- I'll say the font is different,
7 yes.

8 Q. Okay.

9 A. I can't say I testify to different types
10 of fonts and what they are.

11 Q. Do you know what a serif font is?

12 A. I know there are different fonts. I
13 couldn't tell you what's serif and what's not --

14 Q. Okay.

15 A. -- I guess is the way I'd put it.

16 Q. But the clarity of it, I mean, it's
17 diff -- they're different.

18 A. Oh, absolutely.

19 Q. The writing's different. Do you believe
20 based on the differences in the writing and then the
21 use of the numbers in what appears to be normal date
22 format of October 22nd of 1980 or 10/22/80 would
23 indicate a change in whatever specification is being
24 referenced here?

25 MS. SPARDONE: Object to form.

1 A. There was, I assume, a change in the part
2 description at some time. Whether that '80 date
3 gives me any indication of that being the time, I
4 just don't know.

5 BY MR. BRALY:

6 Q. Okay.

7 A. I don't have a way to nail that down.
8 Certainly there was a change in the font, as you
9 said. My guess is, you know, these were all on a
10 page where there were 30 of these and they were
11 kept, I presume, in some type of binder because
12 there's three-hole punches on the side. And when
13 there was a change back in those days, somebody used
14 white-out or white-out tape, took the page out of
15 the binder, typed in the new stuff, and put it back
16 in.

17 Q. Okay.

18 MS. SPARDONE: Now you for sure lost the
19 jury. Typewriters.

20 THE WITNESS: And white-out.

21 MR. BRALY: White-out.

22 MS. SPARDONE: Exactly.

23 THE WITNESS: I won't say carbon copy.

24 MS. SPARDONE: Oh, God. Mimeograph.

25 Really old.

1 BY MR. BRALY:

2 Q. Rely on the documents basically, look to
3 the engineering drawings to determine what was
4 supplied with that boiler?

5 A. To a point.

6 Q. Yeah.

7 A. And certainly in this case I think we can.
8 But I think, as I described a little bit before,
9 once we get to certain times, I have come across
10 certainly where the Vee Block Mix has been
11 referenced in our drawing and on our part
12 descriptions as asbestos containing when, in my
13 understanding, is that material from Kaiser was no
14 longer asbestos containing.

15 So I don't know that I could say, yeah,
16 absolutely rely on the drawings. The drawings say
17 what they say. I can't definitively say absolutely
18 it was this or that. Certainly I can make some
19 presumptions that the boiler made in 1956 and one of
20 those original ones, it probably was.

21 MR. BRALY: Okay. I tell you what. Let
22 me give you some signposts here about what we're
23 doing here for the rest of this deposition.

24 MS. SPARDONE: Do you want to go off the
25 record?

1 MR. BRALY: No, this is -- we'll leave
2 this on the record.

3 I'm going to ask you questions about the
4 Arabi Packing engineering drawings and the Viking
5 Distilling engineering drawings. I may ask you just
6 some surface-level questions about the other stuff,
7 what did Cleaver-Brooks supply and when. But I
8 probably have an hour and a half, two hours left of
9 questions to go. Do you want to probably get lunch
10 or something, because it's -- I just noticed it's
11 12:05, so --

12 THE WITNESS: I -- I usually defer to the
13 court reporter because she's the one sitting there
14 exercising her fingers.

15 MS. SPARDONE: I mean, I think let's
16 take --

17 MR. BRALY: Let's go off the record.

18 THE WITNESS: I certainly want to break
19 now.

20 MR. BRALY: Yeah.

21 THE VIDEOGRAPHER: We're going off the
22 record at 12:08.

23 (Recess from 12:08 to 1:04)

24 THE VIDEOGRAPHER: We're back on the
25 record at 1:04.

1 BY MR. BRALY:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. So just a couple more questions about
5 Bowater, then we'll move on to the Arabi Packing,
6 their Domino Sugar location. Okay?

7 Do you know what the boiler Cleaver-Brooks
8 supplied to Bowater was used for?

9 A. I don't think I found anything in the
10 records that gave me a direct indication of that I
11 think I looked at during the last deposition. It is
12 a -- one of the smallest boilers we make.

13 Q. Okay.

14 A. It's certainly in the firetube range.
15 It's only 30 horsepower. But I don't believe there
16 was any real good indication of what it was actually
17 used for.

18 Q. A boiler that size, what would you even
19 use that for, I mean just generally speaking?

20 A. I think what I said in the last deposition
21 I had was given the testimony about large
22 field-erected high-pressure steam boilers, it
23 wouldn't be unusual for steam from those from a
24 central place to be piped to different buildings if
25 that's what they had. And in some cases a small

1 steam boiler like that is used in a remote location
2 where it was cheaper to buy a, I don't know, it was
3 a few-thousand-dollar boiler to put there than it
4 was to run pipe or to maintain that pipe.

5 Q. Could it be used for like providing heat
6 for an enclosure or for a space?

7 A. You know, it's a low-pressure steam
8 boiler, so it was probably what we would refer to as
9 a heating boiler, not necessarily just for heating
10 space but could have been for making hot water for a
11 kitchen or a locker room, whatever it might be.

12 Q. Right, right. I'm asking because, you
13 know, at least half of the boilers used in the power
14 plant were black liquor like reheat recovery
15 boilers. You read that --

16 A. Yes.

17 Q. -- I take it, yeah. You wouldn't really
18 expect people to pipe steam all over the plant from
19 a reheat boiler that was used for a specific process
20 like that, would you?

21 MS. SPARDONE: Object to form.

22 A. I guess I'm not as familiar in the paper
23 industry as others might be, but I was always under
24 the impression when they burn that black liquor, it
25 is -- it's a waste from their product, but it's also

1 used as an energy source in addition to another
2 energy source. I could be wrong. I don't know.

3 BY MR. BRALY:

4 Q. Okay.

5 A. I think there was some reference to some
6 coal-fired boilers as well, but -- or -- and bark
7 boilers, if I remember correctly, so --

8 Q. Right.

9 A. I didn't think the boiler was there
10 specifically to get rid of that, but that's a
11 secondary purpose of it.

12 Q. Right, right. Okay. So this
13 Cleaver-Brooks boiler that you've characterized as
14 one of the smallest that you make, you could use it
15 for, like, heating or something like that.

16 A. Yeah, it's 15 PSI steam, so it could have
17 been used for heating space. It could have been
18 used for heating water. Typically a 15-pound steam
19 boiler is not used in a process unless the process
20 only requires 10 pounds of steam.

21 Q. You know what a start-up boiler is?

22 A. I've heard the term used. It depends on
23 the context, I guess, what I would understand it to
24 be.

25 Q. What do you understand it to be?

1 A. I'm a little more familiar with it in a
2 location where larger steam boilers are used,
3 field-erected type boilers, where those boilers are
4 being fed by pieces of equipment that require steam
5 before they get started such as a steam-driven pump.

6 So in order to get pump water into the
7 larger field-erected boiler, you first need steam to
8 do it, so obviously the one you're pumping water
9 into can't. So it's used to supply those devices
10 until the larger boiler is online, then it's shut
11 off.

12 Q. Kind of provide almost like a priming
13 source?

14 A. Yeah, for lack of a better term, yes.

15 Q. Okay. I don't have a better term, so yes.

16 A. Neither do I.

17 Q. Would a boiler like what we're talking
18 about be something sized appropriately to be a
19 start-up boiler, or would you need more information?

20 MS. SPARDONE: Object to form.

21 A. To be more definitive, I'd need more
22 information, but a 15-pound steam boiler in that
23 application would surprise me. And just to clarify,
24 when I say 15-pound, I mean pound per square inch.

25 BY MR. BRALY:

1 Q. Thank you. I understood what you meant,
2 but I understand why you would want to make that
3 clarification too, so thank you.

4 Being surprising to you and being
5 impossible to be used as are two different things.
6 Fair?

7 MS. SPARDONE: Object to form.

8 A. Yes. And again, as a start-up boiler, it
9 would depend on what it's really starting up.
10 BY MR. BRALY:

11 Q. Okay. Fair enough. There's no reason --
12 there's no reason on the face of the documents or in
13 the review of the documents that you've seen where
14 this type of boiler could not be used as a start-up
15 boiler under any circumstance. Fair?

16 MS. SPARDONE: Object to form.

17 A. Yeah, again, I'm assuming an awful lot
18 either way. This is a very small 30-horsepower
19 boiler and low pressure, so it's -- it would
20 surprise me again, but I certainly couldn't say
21 definitively either way.

22 MR. BRALY: Okay. That's -- that's all I
23 was looking for.

24 All right. So what I want to do is ask
25 you about Arabi Packing or Domino Sugar. I'm going

1 to move on to Viking Distillers, but let's get the
2 documents that are labeled APC starting with 54. I
3 don't need the business records. Let's just start
4 with 54. And I just want to check off a couple
5 things here.

6 MS. SPARDONE: Give me a percentage?

7 MR. BRALY: Yes, you got it. I have the
8 authority to do that.

9 MS. SPARDONE: Coffee?

10 MR. BRALY: Right.

11 MS. SPARDONE: Piece of pie?

12 THE WITNESS: Okay.

13 BY MR. BRALY:

14 Q. When did you retrieve these documents?

15 A. I think it was shortly after my last
16 deposition, I think the next week, in that week and
17 possibly into the next week. I don't remember exact
18 timing, but --

19 Q. What did Cleaver-Brooks supply to the
20 Arabi Packing Company?

21 A. Actually need the business documents to
22 see that.

23 Q. Okay.

24 A. It was a Model LF215-5, 125-pound steam
25 boiler, I believe. Let me just double-check. Yes.

1 Q. This would be a larger boiler, I take it,
2 than the one at Bowater?

3 A. Not a large amount, no. Not by a great
4 deal, I should say. It is a 50-horsepower boiler
5 versus the 30-horsepower boiler, so still in that
6 lower end of capacities for our firetube boilers.

7 Q. Okay. Is that the only piece of equipment
8 that you found that was supplied to Arabi Packing --

9 A. Yeah.

10 Q. -- or Domino Sugar?

11 A. Correct.

12 Q. You have reviewed the engineering
13 documents for this boiler, correct?

14 A. Correct.

15 Q. Do you know that this boiler was specified
16 for use with asbestos tape? True?

17 A. I believe I did see that somewhere in the
18 records that I produced.

19 Q. Well, for example --

20 A. Yes, I see it right on 54.

21 Q. Yeah. There's a specification to seal all
22 gasket joints with asbestos furnace cement?

23 A. Correct.

24 Q. You've seen reference, for example, at
25 page 56 to a specification for 30 inches of asbestos

1 rope, three-quarter-inch square?

2 A. Correct.

3 Q. And 30 inches of rope, that's, you know,
4 2 and a half feet. Is this intended to go around
5 like a groove in the door to seal it, or what is --

6 A. It's around -- in a groove in a circular
7 opening that we call the relief door. It's actually
8 depicted on 56.

9 Q. Okay.

10 A. That's actually a cutaway where you see
11 it. But if you look at the top view, it's a circle
12 that that 20 inches is going around that,
13 probably -- can't do the math in my head, but it's
14 probably a 8-inch-diameter opening.

15 Q. Okay. There is a specification on the
16 next page for 50 pounds of a product manufactured by
17 a company called Plibrico, P-L-I-B-R-I-C-O. Do you
18 see that?

19 A. Yes.

20 Q. What can you tell us about that cement?
21 What is that?

22 A. I don't know.

23 MS. SPARDONE: Object to form. Sorry.

24 A. Other than there may be a little more
25 description in the part descriptions. I don't think

1 there was though.

2 BY MR. BRALY:

3 Q. Feel free to look.

4 A. Better get those fixed. Yeah, it still
5 says Plibrico and then talks about alternate being
6 Kaiser IRC, whatever that is. Hard to read if that
7 date -- whatever that might mean.

8 Q. Okay. And can you tell us what page you
9 saw that on? I'm sorry.

10 A. Oh, I'm sorry. I should have --

11 Q. Just so -- we're not marking these as
12 exhibits, so I just want to make sure that we all
13 look at the same Bates page.

14 A. Right. APC 69.

15 Q. Thank you. On the next page we see
16 additional references to the use of Plibrico
17 products. At the bottom it lists a cement Tuff Mix.
18 It says 179 pounds of that. And then again this LWI
19 Plibrico, and it says another 108 pounds of that.

20 A. Correct.

21 Q. And then this Pyro -- I think that's
22 Pyrotex insulating block. It says 4 square feet of
23 that.

24 A. Correct.

25 Q. Do you know if the Pyrotex insulating

1 block is asbestos containing?

2 A. I think at one time I've seen that that
3 was in a different context, but I think that part
4 number I've seen listed.

5 Q. And the Arabi Packing or Domino Sugar
6 documents, from what time period was this boiler
7 installed or manufactured?

8 A. This is back in the Fifties. I don't
9 remember the exact time frame. It was started up in
10 1952. Find the ship date. We shipped it
11 August 17th, 1951, so early 1950s.

12 Q. Okay. On page APC 59 you see a
13 specification for an asbestos gasket that is used in
14 the oven?

15 MS. SPARDONE: Object to form.

16 A. Yes. The entire drawing is for the --
17 what we call the dry oven in that particular
18 instance, but within that is item 7 which is called
19 out as a gasket asbestos paper.

20 BY MR. BRALY:

21 Q. Drawing APC 61 looks like a -- almost an
22 exact duplicate of the same sight hole that was seen
23 in the Bowater documents including the specification
24 for the JM60 asbestos sheet gasket.

25 MS. SPARDONE: Object to form.

1 A. Correct. Same gasket. In fact, I think
2 the same part number. Slightly different
3 arrangement of the sight port, but same function.

4 BY MR. BRALY:

5 Q. The next page calls out more of this
6 Pyrotex -- it says Forty-Eight high temp, and
7 that -- and Forty-Eight is in quotation marks. It's
8 likely a reference to Forty-Eight Insulation is the
9 company. I don't know if you're familiar with them,
10 but --

11 A. I am. I've seen that reference before. I
12 thought it was too.

13 Q. Okay. And then it also calls out
14 12 pounds of long-fiber asbestos cement.

15 A. Correct.

16 Q. And 17 feet of an asbestos rope that's
17 3/8-inch in diameter.

18 A. Correct.

19 Q. Okay. Now, 17 feet of asbestos rope,
20 would this be the outside diameter of the rear door
21 or the rear baffle?

22 A. No. This is a little different
23 arrangement than what you're familiar with with the
24 other ones, a different style boiler. It's an older
25 style where the door is actually a plate or the rear

1 door is not one solid door. There's a rear plate on
2 the bottom, a couple rear plates on the top.

3 And I believe that gasket or that rope
4 goes around a portion where that bottom half of the
5 rear door seals against what we call the shell
6 extension in the back of that particular model
7 boiler.

8 Q. Okay. So the Arabi paper boiler or Domino
9 Sugar, there is no dispute that it was supplied with
10 asbestos gaskets, asbestos rope, asbestos cement,
11 and, depending on this Pyrotex product, maybe
12 asbestos refractory.

13 A. I wouldn't call the Pyrotex refractory. I
14 think I'd call that insulation.

15 Q. Okay. I was referencing APC 62. It says
16 refractory, and then it says Pyrotex.

17 A. Yeah, I don't know -- quite frankly, I'm
18 not sure where that reference comes from, but I'm
19 familiar with that material more, as I referenced
20 earlier, in one of the ones as a block-type
21 insulation.

22 Q. Let me reask the question then. As it
23 relates to the Arabi Packing or Domino Sugar
24 facility, there is no dispute from Cleaver-Brooks
25 that that boiler would be supplied with asbestos

1 rope, correct?

2 A. I believe so, yes.

3 Q. Asbestos gaskets, correct?

4 A. I think we saw that called out. I think
5 they're interchanging gasket and tape in some cases,
6 but yes.

7 Q. And when you say tape, you're not talking
8 about like Scotch tape. You're not -- you're
9 talking about like almost a -- like consistency of
10 tape but not like an adhering material?

11 A. Correct.

12 Q. Okay. Asbestos cement. We saw that.

13 A. Yes.

14 Q. Okay. Asbestos insulation?

15 A. In these portions, yes.

16 Q. Okay. And potentially, based on what we
17 could find out about Forty-Eight Insulation's high
18 temp, maybe asbestos refractory?

19 MS. SPARDONE: Object to form.

20 A. Again, I think that part number is really
21 talking about insulation. Even though it says
22 refractory there, I realize it says that, I think
23 it's mistakingly saying that.

24 BY MR. BRALY:

25 Q. Okay.

1 A. Because other parts, that 872-22 on one we
2 just looked at, if I recall it properly, on APC 58,
3 item 6 calls out the 4 square feet of 872-22 block
4 insulation Pyrotex.

5 Q. Okay.

6 A. I am more familiar with it, and that
7 application appears to me more as an insulating
8 block versus a refractory. I know the term
9 refractory is used pretty loosely.

10 Q. Fair enough. All right. Just like with
11 the Bowater documents, we have a third grouping of
12 documents that runs APC 65 through 77 that appears
13 to be specification notations.

14 MS. SPARDONE: Object to form.

15 A. They're what we call our parts
16 descriptions.

17 BY MR. BRALY:

18 Q. Okay.

19 A. Or part descriptions.

20 Q. Again, just like when we looked at the
21 Bowater part descriptions, would it be accurate to
22 say that those are a handy reference but, if you
23 want more accuracy, to look at the engineer
24 drawings?

25 MS. SPARDONE: Object to form.

1 A. I'd be hesitant to say more accuracy. I
2 would use them both and in context, I guess is the
3 way I'd put it. So if I'm looking at a part
4 description that I don't know what it's dated at and
5 it references that fiberglass rope in a boiler I'm
6 looking at in 1952 and on the drawing from '52 it
7 says asbestos rope, I think I'm going to look at it
8 in the context of it being asbestos rope.

9 BY MR. BRALY:

10 Q. Okay. And that's what I was going on.

11 A. Yeah.

12 MR. BRALY: Thank you. All right. So
13 let's look at the Viking Distilling documents.

14 THE WITNESS: I have those already there,
15 right?

16 MS. SPARDONE: Yeah.

17 THE WITNESS: Okay.

18 BY MR. BRALY:

19 Q. First thing as it relates to the Viking
20 Distilling documents I want to ask you is what was
21 supplied and when.

22 A. We shipped a Model CB200-400 150-pound
23 design pressure boiler on October 18th, 1974, and
24 its unit number was L59290. And it was Viking
25 Distillery in Albany, Georgia.

1 Q. Okay. And this was shipped in 1974, you
2 said?

3 A. Yes.

4 Q. All right. Let's look at the drawings
5 that you found for this boiler starting with VIK 82.
6 I'm sorry. It starts at VIK 75.

7 A. Okay.

8 Q. In 1974 was Cleaver-Brooks still utilizing
9 asbestos-containing insulation materials?

10 MS. SPARDONE: Object to form.

11 A. That I don't know that I can be certain
12 of. I think '74, from my experience in this
13 litigation, was a time period when the Vee Block
14 Mix, which I believe is called out on some of these
15 drawings, was no longer asbestos containing, and I
16 would consider the Vee Block Mix an insulating
17 material.

18 Whether or not the other pieces of
19 insulation inside the rear door were or weren't, I'd
20 really have to depend upon the suppliers of those
21 materials at the time to say whether they were or
22 not.

23 BY MR. BRALY:

24 Q. Okay. And we saw earlier in the very
25 beginning of this deposition that Cleaver-Brooks was

1 supplying gasket material that contained asbestos as
2 late as the middle Eighties.

3 A. Oh, in those invoices that we looked at
4 with that warning, yeah, that was again related to
5 some water techno -- or water purification
6 equipment, but yes, there were ones in that time
7 period.

8 Q. Okay. The boiler shipped in 1974 to
9 Viking Distilling utilized asbestos-containing
10 gasket and rope material. True?

11 A. I believe at least gasket. I -- the rope
12 would be possible. Again, it's getting to a point
13 where I'm not sure I could say what the suppliers of
14 the rope may have included in that material. I
15 think it did, but I'm not certain.

16 Q. Okay. Can you turn to page 82, please.
17 There's a table at the top. First of all, this is a
18 drawing for the rear head and davit arm, D-A-V-I-T,
19 for this boiler, correct?

20 A. Correct. Well, for boilers like this too.

21 Q. Right. This is -- this is a generalized
22 drawing. It applies to Cleaver-Brooks' standard
23 drawing for boilers who -- of this size that
24 incorporate rear door with a davit arm like it's
25 shown on this drawing, right?

1 A. Various boilers of this size. I'd be a
2 little careful of the term "standard," because while
3 we may have actually tabled it out like that,
4 whether we built boilers with that table, I don't
5 know off the top of my head. But absolutely, it's
6 designed to be a drawing for a range of boilers.

7 Q. And just for someone who might not know, a
8 davit arm is just basically a fancy hinge, right?

9 A. Yes.

10 Q. The specifications here from 1973 or '4
11 call out 20 pounds of asbestos cement, correct?

12 MS. SPARDONE: Object to form.

13 A. Yes.

14 BY MR. BRALY:

15 Q. It also calls out 54 feet of asbestos wick
16 packing, correct?

17 A. Let me just make sure. Just check one
18 thing first.

19 Q. Yeah.

20 A. Yes.

21 Q. And 54 feet of anything sounds like a lot,
22 so how do you use 54 feet of packing in that
23 assembly?

24 MS. SPARDONE: Object to form.

25 A. It is going around the inside diameter of

1 the -- where the pressure vessel tube sheet goes
2 against the shell of the boiler. Inside the closing
3 of the rear door, it's within that. So it's going
4 around the diameter of a 96-inch-diameter boiler.
5 So 54 feet, if I did $2 \pi R$, I'd probably come close
6 to that.

7 BY MR. BRALY:

8 Q. All right. Let's skip ahead here to
9 VIK 83.

10 A. Okay.

11 Q. This is a drawing for gasket front and
12 rear?

13 A. Yes.

14 Q. The material that's called out here are
15 Union Asbestos and Rubber, and there's a part number
16 there for an 8153 with alternates for a JM tadpole
17 gasket with a part number or a Garlock XP7604,
18 correct?

19 A. Correct.

20 Q. All right. Do you know these gasket
21 materials to be asbestos containing, or do you just
22 not know?

23 A. I understand at one time they were.
24 Whether they were in '74, I believe they were, but
25 I'm not certain of that.

1 Q. Next page is the installation of rope and
2 cement firebrick to rear tube sheet. Do you see
3 that?

4 A. Yes.

5 Q. And it says "See table."

6 A. Correct.

7 Q. And this is a 96-inch boiler, correct?

8 A. Yes, it is.

9 Q. So according to that table, you would need
10 8 feet of 1-and-a-half-inch-diameter asbestos rope?

11 A. Correct.

12 Q. And it also calls for 12 ounces, which
13 that's three-quarters of a pound, of asbestos cement
14 for this application here, correct?

15 A. Correct. And again, this is an area where
16 whether or not that particular cement was available
17 as asbestos cement at that time, I couldn't say for
18 certain. I think the part number is calling out a
19 JM450.

20 Q. Certainly asbestos rope was available in
21 1973, '4, correct?

22 A. You know, quite frankly, I don't get into
23 what was available and when beyond what our records
24 are, so I couldn't say for certain.

25 Q. Okay. On the next page, which is a

1 specification for the rear head insulated --

2 A. Yeah.

3 Q. -- which I guess is the rear door --

4 A. Yes.

5 Q. -- it calls out asbestos board as item
6 number 5?

7 A. Yes, it does.

8 Q. It calls out 25 pounds of asbestos cement
9 as item number 10?

10 A. Yes. Again, same part number we just
11 discussed.

12 Q. Right. It calls out two different types
13 of insulating block, but because of the time period,
14 I'm going to defer on that. I'm going to just --
15 could be asbestos, might not be.

16 And then there's something else I saw here
17 that I thought I was going to call out for you, but
18 maybe not. Oh, and then item number 22, it calls
19 out Superex insulation. Do you see that?

20 A. Yes.

21 Q. And it calls it out as one-and-a-half inch
22 thick by 12 inches by 23 inches. Do you know what
23 they're talking about here? Is this a block of some
24 kind?

25 A. I think it is a -- well, I guess anything

1 that's inch-and-a-half thick I would call more than
2 an insulating board. I'd call it more of a block.
3 Whether or not it was asbestos or not, I don't know.

4 Q. We'd have to look up what JM was doing
5 with Superex at that time, right?

6 A. If that -- if Superex is JM. I don't know
7 that.

8 Q. It is.

9 A. Okay.

10 Q. It's a JM brand.

11 A. Yeah.

12 Q. Okay. Over on the left side of that page,
13 it says coat, and it gives item number -- or it says
14 coat with asbestos cement. Do you see that?

15 A. Yes.

16 Q. Okay. So at least as far as the
17 specifications for this boiler goes, it's calling
18 for asbestos rope, asbestos gaskets, asbestos
19 cement, and potentially asbestos insulation.

20 MS. SPARDONE: Object to form.

21 A. That's what it's calling for. And again,
22 I would just defer to the suppliers or what we could
23 know from a supplier whether or not they actually
24 were asbestos containing in all those instances, but
25 I believe in at least some of them they were.

1 BY MR. BRALY:

2 Q. Last couple of these. Let's go to VIK 93.

3 A. Okay.

4 Q. And I'm actually just going to group these
5 together, VIK 93 through 96.

6 A. Okay.

7 Q. Okay. These are specifications for
8 various gasket material for use with valves and
9 regulators that are used with the boiler, correct?

10 MS. SPARDONE: Object to form.

11 A. I'll just clarify a little bit. It's for
12 use in what we call our fuel oil controller, which
13 is a device that is a series of valves and one
14 casting and a regulator for controlling the fuel
15 flow into the burner.

16 So it's -- I just would not want people to
17 get the impression that it's a valve here and pipe
18 to a valve there and pipe to a valve there. It's
19 one assembly that has valves and regulators as part
20 of it.

21 BY MR. BRALY:

22 Q. Okay. And those valves and regulators are
23 specified to be used with asbestos gaskets
24 manufactured by Johns Manville and Garlock, correct?

25 MS. SPARDONE: Object to form.

1 A. Yeah, the description here says asbestos
2 neoprene. And again, I -- that's what it says on
3 the drawing. I don't know whether it was --
4 apparently in 1959 when they drew it or actually
5 in '71 when they revised the part number, that's
6 what it was. In '74 if it was or not, we'd have to
7 look at JM or Garlock.

8 BY MR. BRALY:

9 Q. And I'm not going to go through all of
10 these, but the same would be true for all of the
11 specified gasket material that appears in these
12 drawings. For example, at page Viking VIK 102,
13 VIK 103, we see various specifications for gasket
14 material.

15 MS. SPARDONE: Object to form.

16 A. Correct, yeah, in that particular case of
17 102 it's a JM60. So is 103. If JM60 at that time
18 period was, then, yes, it would have been asbestos
19 containing.

20 BY MR. BRALY:

21 Q. Okay. All right. We have a final group
22 of production here for the Viking documents. For
23 identification it's VIK 117 through 147.

24 A. Okay.

25 Q. And again, these are the descriptive --

1 tell me what these are again. I forget the phrase
2 that you used.

3 A. These are what we would call our part
4 descriptions. So in the drawings they call out a
5 part number. Where there's no drawing, if there
6 isn't enough information, or even if there is, if
7 there's additional information on the part
8 description, I would produce that.

9 Q. Why does it look like this, by the way?
10 I mean, it's a blank piece of paper with kind of
11 this offset -- they're not in the same place in
12 every document. It looks like a ransom note, like
13 what's going on here?

14 A. The original -- well, the original --
15 original copy of it that we have would be a sheet
16 with 20 part numbers or whatever would fit in two
17 columns here. And when our attorneys produce it,
18 they, I believe, redact all the part numbers that
19 aren't relevant to this particular boiler.

20 As I'm going through the drawings, I pull
21 out -- I identify the part numbers that are at issue
22 with that particular boiler. So like in the case of
23 some of these, you'll see two part numbers on it
24 because there were two part numbers that happened to
25 be on that. They're in numerical order.

1 Q. All right. I thought that was a
2 possibility for why, I just didn't know. Thanks for
3 filling that in.

4 All right. We're moving right along here.
5 I have some questions about the other job sites that
6 we don't have engineering documents for, and so
7 let's just get started with that. It's going to be
8 shorter, though, because we don't have as much to
9 ask about.

10 Before I get to that, though, we've looked
11 at three different job sites so far. We looked at
12 the Bowater, the Arabi Packing, and the Viking
13 Distilling locations. All three of them, regardless
14 if the boiler was made in 1952 or 1973, contained
15 asbestos components, rope, gaskets, that kind of
16 thing. True?

17 A. Yeah, I think each of them identify some
18 asbestos components.

19 Q. The specifications or the drawings, the
20 engineering drawings for these boilers, while they
21 were specific to these purchases, these serial
22 numbers, the drawings we looked at were generalized
23 drawings, meaning they weren't drawn specifically
24 for this boiler, they were drawn for that class of
25 boilers. Right?

1 MS. SPARDONE: Object to form.

2 A. I -- I'd be a little careful in saying
3 that class. In some cases, yes, there's a range.
4 In some cases it's not.

5 Certainly the drawings -- in fact, I think
6 when we look at -- there were two sets and maybe I'm
7 confusing it, that they were close enough in
8 shipment time that they actually shared some
9 drawings between two of them. So, yeah, there --
10 the drawings I produced would have possibly been
11 used on -- in manufacturing other boilers.

12 BY MR. BRALY:

13 Q. Prior to 1975 are there any Cleaver-Brooks
14 boiler designs that would not have contained any
15 asbestos?

16 MS. SPARDONE: Object to form.

17 A. I'm not sure I've ever been able to
18 research it to that point, whether I could say there
19 was a particular one at that time. There's
20 certainly ones I would wonder, but I don't know that
21 I could give you anything definitive in that area.

22 BY MR. BRALY:

23 Q. How long have you been serving as a
24 corporate representative for Cleaver-Brooks in
25 asbestos cases?

1 A. Sixteen or seventeen years now.

2 Q. I know I've seen at least ten transcripts
3 of testimony that you've given in either depositions
4 or in trial. I'm guessing, but I don't know, that
5 you've looked at records for hundreds of boilers,
6 thousands of boilers? What are we --

7 A. Easily hundreds. To say thousands might
8 be accurate too. I -- that indicates more than
9 1,000, so -- I've never kept track. Just wasn't
10 something I did.

11 Q. A lot.

12 A. Yeah.

13 Q. Yeah. Have you ever seen a boiler
14 manufactured before 1975 by Cleaver-Brooks that had
15 no asbestos in it at all?

16 MS. SPARDONE: Object to form.

17 A. Again, I don't know -- it's certainly not
18 something I've kept a note of, mental or otherwise.
19 I couldn't place the time. Certainly I've come
20 across boilers I want to say in the Seventies, I'm
21 not sure when, that I did not find
22 asbestos-containing components. But I certainly
23 wouldn't want to nail it down to a specific year.
24 That's not something I've noted.

25 BY MR. BRALY:

1 Q. Okay. For a boiler manufactured prior to
2 1970 by Cleaver-Brooks, you would expect that that
3 boiler would have some asbestos-containing
4 components, correct?

5 MS. SPARDONE: Object to form.

6 A. You know, I'd always be careful with
7 expecting because usually when I expect something,
8 that's when somebody shows me something different.
9 So I wouldn't want to guess at that.

10 BY MR. BRALY:

11 Q. Sure.

12 A. I certainly haven't looked at every one.

13 Q. In the hundreds or maybe even thousands of
14 boilers that you've researched, that you've gone
15 back and actually looked at, can you recall ever a
16 situation of finding a boiler manufactured prior to
17 1970 that contained no asbestos at all?

18 MS. SPARDONE: Object to form.

19 A. I can't recall it, but again, as you know,
20 I haven't looked at every one. I -- I wouldn't want
21 to definitively say it one way or the other.

22 BY MR. BRALY:

23 Q. What did Cleaver-Brooks supply to the
24 Avondale facility and when?

25 A. I'd have to look at the records because

1 I -- off the top of my head, I'm not sure I could do
2 that.

3 MR. BRALY: That makes sense.

4 MS. SPARDONE: While he's looking, just
5 off the record.

6 (Discussion off record from 1:40 to
7 1:41)

8 BY MR. BRALY:

9 Q. All right.

10 A. The records here are a -- we supplied a
11 CBH100-30 steam boiler 15-pound design, March looks
12 like 16th, 1963. Difficult to read, so I think
13 that's right. And the unit number, serial number is
14 L30021.

15 Q. Based on what you know about that model of
16 boiler and the year of manufacture, would you expect
17 that this boiler would contain asbestos gaskets,
18 asbestos rope, asbestos insulating material?

19 MS. SPARDONE: Object to form.

20 A. It certainly wouldn't surprise me. I --
21 again, I hate to expect things because then I get
22 what I don't expect, but --

23 BY MR. BRALY:

24 Q. Would the clearest way to know for sure to
25 be look -- would that be to look at the engineering

1 drawings?

2 A. Yes, in this particular instance, yes. In
3 some cases, not necessarily. In this one it would
4 possibly also require looking at what a particular
5 supplier had available at a particular time, but in
6 the 1963 time frame I'm not sure that would be
7 necessary.

8 Q. And in 19 -- or, I'm sorry. For this
9 location, Avondale, you have not looked at the
10 engineering drawings for this boiler?

11 A. No, I haven't.

12 Q. Do you expect that those engineering
13 drawings exist?

14 A. I'm always careful expecting, but yes.

15 MR. BRALY: All right. Let's go on to the
16 next one. The next job site would be the Cargill
17 location in Memphis, Tennessee.

18 MS. SPARDONE: Oh, did I not give them to
19 you?

20 THE WITNESS: No, that's Daniel.

21 Want to know what was shipped, I assume.

22 BY MR. BRALY:

23 Q. What was shipped and when?

24 A. Okay. We shipped a CB200-200 150-pound
25 design steam boiler to Cargill Nutrena in Memphis,

1 Tennessee, on March 19th, 1975, and it was unit
2 L59414.

3 Q. Okay. Based on the year of manufacture,
4 would you need to look at the engineering drawings
5 to know what, if any, asbestos-containing components
6 would be used with this boiler?

7 A. Yes, to know for certain what was used,
8 yes.

9 Q. Do you have the information necessary in
10 those documents to find those engineering drawings?

11 A. Yes.

12 Q. Have you looked for those engineering
13 drawings for this boiler?

14 A. No, I haven't yet.

15 Q. When were these documents for Cargill
16 produced to you?

17 A. Produced to me or --

18 Q. When did you see them for the first time?

19 A. Well, I saw them when I did the search
20 where I found this. Certainly didn't do much more
21 than find that invoice.

22 Q. Right.

23 A. And I don't know that I can nail down
24 exactly when that was, but I think it was in January
25 sometime.

1 Q. All right. You can set that aside. It
2 would have been prior to your first deposition?

3 A. I think so. Again, I'm -- there's some
4 fogginess there to me on what sites were searched
5 when, but I'm sure there were sites searched before
6 then.

7 MR. BRALY: Understood. Let's look at the
8 Daniel Greenville location, Daniel Construction.

9 THE WITNESS: I think it's this one.
10 Those are ones we looked at a little bit before,
11 right?

12 MR. BRALY: I believe so.

13 THE WITNESS: Okay.

14 MR. BRALY: Those have a sticker on them.
15 We actually did mark those as an exhibit, so --

16 And by the way, anybody who's reading this
17 transcript and wondering where all of your exhibits
18 are, we've tried to reference the Bates numbers from
19 the document production, so look at the Bates
20 numbers. Please don't e-mail me at midnight asking
21 me where your exhibits are. Look at the Bates
22 numbers. It's all there. I can go off the --

23 MS. SPARDONE: People get that way?

24 MR. BRALY: Sometimes.

25 THE WITNESS: I think we did look at these

1 before, but do you want me to look at them again?

2 BY MR. BRALY:

3 Q. It has a -- go ahead and reference the
4 exhibit sticker on this one.

5 A. Oh, I'm sorry. Exhibit No. 17.

6 Q. Great, great.

7 A. Which -- do you need the Bates numbers
8 just to cover your --

9 Q. The Daniel Greenville production runs from
10 DAN 1 to DAN 111.

11 A. Correct.

12 Q. All right. What was supplied to Daniel
13 Construction and when?

14 MS. SPARDONE: You did go over this
15 earlier.

16 MR. BRALY: Did I?

17 MS. SPARDONE: The portable steamers.

18 MR. BRALY: You've seen how long this
19 takes. I'll just do it again.

20 A. We shipped a -- get the right document --
21 PSM50 150-pound trailer-mounted portable steamer --

22 BY MR. BRALY:

23 Q. Right.

24 A. -- to Daniel Construction, Greenville,
25 South Carolina, 3/2/65.

1 Q. Right. And there were three of them.

2 A. Yes.

3 Q. A third or -- there was more than one.

4 A. Earlier. One was '60 and one was -- two
5 of them were '60 and one was '65, if I remember
6 right.

7 Q. Right. And I remember why I wanted to
8 come back to this. Portable steamer, this sounds
9 like a boiler in a buggy. What is this? What does
10 this -- what does it look like and how does it work?

11 A. Probably a little bit like that. It's --
12 it is a trailer-mounted relatively small boiler,
13 50-horsepower boiler, that could be towed around
14 behind a truck.

15 Q. What would you use it for?

16 A. In some cases for portable -- I shouldn't
17 say portable -- temporary steam where you're
18 disconnecting somebody's boiler to put in a new one
19 and the time that that's disconnected they need a
20 certain amount of steam while it's being installed.
21 That's a common use. In the north they use them
22 for -- road crews use them to steam out frozen
23 culverts.

24 MR. BRALY: Oh, yeah. And this is rank
25 speculation, so I'm going to tell you that before I

1 get started. So if the objection is made, fine.

2 MS. SPARDONE: Conceded.

3 BY MR. BRALY:

4 Q. But like for a construction company like
5 Daniel that's working in steam plants and a boiler
6 like this might -- might be used like in an outage
7 or some other kind of event where they still need to
8 supply emergency, basically backup steam?

9 A. Could be, yeah. That would be the
10 temporary steam situation. Certainly the
11 50-horsepower limits it to a certain amount of
12 steam. That's a relatively small amount of steam --

13 Q. Right.

14 A. -- in an industrial application, but that
15 wouldn't be unusual.

16 Q. Right. It's not going to replace a
17 field-erected boiler, but --

18 A. No.

19 Q. -- maybe some critical path material could
20 stay up.

21 A. Correct. You could supply heat to a small
22 building or hot water to a set of showers or a
23 bathroom.

24 Q. Got it, got it.

25 The presence of asbestos in any of these

1 boilers supplied to Daniel, is that something that
2 we would have to look at the engineering documents
3 to know about?

4 A. Yeah, these are a little different
5 animals, so I wouldn't want to compare them exactly
6 to some of the other ones we've looked at in that
7 time period. So I'd want to look at the drawings to
8 see where we're talking about, and certainly to find
9 a gasket on it that would be asbestos containing
10 wouldn't surprise me.

11 Q. You have the information that you would
12 need to find the engineering drawings for these,
13 correct?

14 A. Eventually, yes. These would be -- given
15 the time period and the type of product, these are a
16 little more hunt and peck, I'll call it, for the
17 drawings where I'd have to possibly search through a
18 series of them looking for the one that applies.
19 But I think I probably could, given some time.

20 Q. You have not hunted yet, correct? You
21 have not begun the search for these engineering
22 drawings, right?

23 A. No, I have not.

24 Q. Would you have first located these
25 documents, first received these documents prior to

1 your February deposition?

2 A. I don't know. I'm not sure when I
3 searched. I know there was a series of job sites I
4 searched for after my deposition. I'm not sure if
5 Daniel Construction was one of them or not.

6 Q. Okay. Boilers like this that go on a
7 trailer, we're talking about like a standard
8 trailer, like a trailer you'd use for like a parade
9 route or something. I mean, like a parade float or
10 something like that. Would it fit on a trailer like
11 that size?

12 MS. SPARDONE: Object to form.

13 A. I'm not sure. This boiler was built into
14 a trailer. It would have been 50 horsepower. It's
15 roughly a 4-foot diameter vessel, and the actual --
16 with these boilers, they had a fuel tank and a gas
17 tank, gasoline tank for supplying it.

18 So I couldn't call it a standard trailer.
19 It was a specifically-built trailer that had those
20 tanks on it and the boiler was between it. But
21 certainly could be pulled by a commercial vehicle,
22 I would call it. I wouldn't pull it with my van.

23 BY MR. BRALY:

24 Q. What about like a pickup truck?

25 A. Possibly.

1 Q. And when we talk about a commercial
2 vehicle, I just -- lawyers are tricky people,
3 and --

4 A. I have never noticed.

5 Q. I know. What some people might call a
6 commercial vehicle might not be what I'm thinking in
7 my head right now as a commercial vehicle. What do
8 you think a commercial vehicle is?

9 A. I'm picturing a heavy-duty pickup truck or
10 larger.

11 Q. Okay. Like a three-quarter, one-ton
12 pickup --

13 A. Yes.

14 Q. -- that kind of thing? Okay.

15 A. And they're relatively heavy.

16 Q. Right.

17 A. This is --

18 Q. That was the next thing I was going to
19 ask.

20 A. -- a big hunk of steel.

21 Q. You know, there's a -- there's a -- I
22 think it's GWR, gross weight vehicle rating or
23 some -- do you have any idea what the trailer
24 capacity or the weight of one of these things would
25 be?

1 A. I'm looking at the one we shipped in 1965
2 and there's a actual bill of lading and it says
3 total weight, 4,600 pounds, I believe.

4 Q. Okay.

5 A. So --

6 Q. So like a decent-size boat.

7 A. Yeah. That's 2-ton, plus 2 ton.

8 MR. BRALY: All right. I need to look
9 through some documents for South Carolina Gas &
10 Electric. I had previously said that we didn't have
11 engineering drawings for that. I have since been
12 provided engineering drawings for that that may have
13 been produced to my office that I just wasn't aware
14 of. So I need to look at those and then I'm going
15 to have some more questions for you, so let's take
16 10 or 15 minutes. Okay?

17 THE WITNESS: Okay.

18 THE VIDEOGRAPHER: We're going off the
19 record at 1:54. We're off the record.

20 (Recess from 1:54 to 2:10)

21 THE VIDEOGRAPHER: This is disk number 3
22 of the deposition. We're back on the record at
23 2:10.

24 BY MR. BRALY:

25 Q. I want to move on, ask you about this

1 South Carolina Electric & Gas job site. I want to
2 start by asking you the questions I was asking about
3 the other job sites. What did Cleaver-Brooks supply
4 and when?

5 A. We shipped a CB, Model CB700-700 30 PSI
6 design pressure hot water boiler, two of them, on
7 January 6, 1975, and they were unit numbers L59666
8 and L59667.

9 Q. Okay. You did locate documents for
10 those -- for these two boilers.

11 A. Correct.

12 Q. These documents were located -- when did
13 you locate these documents?

14 A. The commercial records would have been
15 when I searched. And again, I'm not sure if that
16 was part of the search prior to my other deposition
17 or just after it, but the drawings and parts
18 descriptions were -- middle of last week I think I
19 finished gathering those.

20 Q. Okay. We received a transmittal that I've
21 been informed of on February 28th, Wednesday of last
22 week, with the engineering drawings for this. We
23 actually received the business records for this on
24 what looks like --

25 MS. SPARDONE: 7th?

1 BY MR. BRALY:

2 Q. Yeah, on February 7th, so just five days
3 after your initial deposition.

4 Do you know when you received the business
5 records for the South Carolina Electric & Gas
6 boiler?

7 A. Well, again, I'm not certain if I had
8 looked at them. I would have just reviewed them
9 initially for that invoice and to make sure what the
10 index card said was what the actual commercial
11 records said. I'm not certain if that was prior to
12 my last deposition or just after when I searched for
13 South Carolina Electric & Gas.

14 Q. The step one, the search of the index
15 cards would have happened before your initial
16 deposition to just determine if there was
17 Cleaver-Brooks hits on this location or not. True?

18 A. Again, I'm not certain. I don't believe
19 every one of the 60, 50 plus sites I searched prior
20 to my deposition the last time, the February 1st
21 deposition.

22 Q. Okay.

23 A. And I've -- quite frankly, I'm not certain
24 what category that fits into, whether it was just
25 before or just after.

1 Q. So tell me that. If you search the index
2 cards for a job site and you report up that, hey,
3 look, we've got some Cleaver-Brooks boilers that are
4 being sold to this location, from that
5 communication, however that happens, how long does
6 it take to receive the business records from the
7 attorneys?

8 MS. SPARDONE: Object to form.

9 A. I actually have the copies of those
10 commercial records, but the attorneys do as well.
11 So for production, they are Bates stamping them and
12 then producing them.

13 BY MR. BRALY:

14 Q. Okay.

15 A. I don't actually make the copies of what's
16 produced, but I have -- original's a bad word. I
17 have the original microfiche, which is a copy
18 obviously.

19 Q. So basically you go to the index cards,
20 you find out, oh, ah-ha, we've got something that
21 was shipped here. You can go and retrieve the
22 business records yourself and the engineering
23 drawings yourself?

24 A. Correct.

25 Q. All right. Were both of these boilers --

1 I'm sorry. Which CGE -- or I'm sorry,
2 South Carolina Electric & Gas location did these
3 boilers go to?

4 A. It shows Charleston, South Carolina, as
5 the street address, I guess I'll call it, for lack
6 of a better term because there's not a street
7 address. I didn't find anything that identified
8 other than there was some reference to Goose Creek,
9 I have no idea what that means, in a city and state
10 on one of the documents. I didn't see anything, and
11 possibly I missed it, that referred to -- I don't
12 remember the term, the name. Williams or --

13 Q. Yeah, Williams steam plant.

14 A. Yeah. I didn't see that anywhere in our
15 records. We talked a little bit about that
16 before --

17 Q. Yeah.

18 A. -- and that I -- certainly we say in most
19 places here Charleston, South Carolina, but I didn't
20 have anything throwing this into whatever that steam
21 plant was.

22 Q. Okay.

23 A. Or these, I should say.

24 Q. If you'll turn to the engineering
25 drawings.

1 A. Okay.

2 Q. There are references to some of the same
3 types of products that we've seen before. For
4 example, on I guess what would be SCEG 61, there is
5 a reference to bulk gaskets. Do you see that?

6 A. Yes.

7 Q. And this is a drawing for the baffle
8 assembly, correct?

9 A. Correct.

10 Q. How would we find out if those bulk
11 gaskets or that specification would be asbestos
12 containing or not?

13 A. We would go to the part description for
14 part number 853-394.

15 Q. Can we do that?

16 A. Yes.

17 Q. Okay.

18 A. And it may tell us one way or the other
19 and, quite frankly, may not. That's one of the
20 ones -- if we look at SCEG 89, that's one of the
21 ones similar to what we talked about before where
22 there's a difference in the font in the part
23 description that talks about Garlock Thermosil or
24 SEPCO fiberglass where I believe in 1975 when
25 this -- these boilers were shipped, that probably

1 was not the case.

2 Q. Okay. So that would be something that was
3 likely whited out and changed to say the two that
4 you mentioned?

5 A. At some point, yes.

6 Q. All right. Is there any reference in the
7 engineering drawings to help determine if those
8 would be asbestos-containing gaskets or not?

9 A. That particular gasket? I don't think so
10 other than that.

11 Q. On page 62 there's a reference to
12 refractory cement and insulated mill board that's
13 used in a drawing here for the furnace liner. Do
14 you see that?

15 A. Yes.

16 Q. Can you tell from those designations
17 whether those would be asbestos containing or not?

18 A. I don't believe the refractory cement was.
19 That's, I think, similar to I think the Firefrax we
20 talked before about.

21 Q. Is there a number you can cross-reference
22 to that sheet and determine?

23 A. Yes. 872-390 is the part number called
24 out for that. And if we look at 872-390 -- unless
25 it's out of order, I don't see. Oh, they're out of

1 order. I didn't see it in my first pass. Let's try
2 number two.

3 MS. SPARDONE: What's the part number?

4 A. I'm looking at -- oh, the Bates number is
5 mostly blacked out -- SCEG 90. And it actually
6 calls out a Trowleze material. Again, not being
7 able to date that very well, I don't know if that
8 was the actual material used in 1974.

9 I would say that that material and in that
10 application is similar to the cement we talked about
11 before. In fact, I think it was the same part
12 number, where it's in an application that's -- here
13 we're talking about temperatures in excess of
14 2,000 degrees, so it would surprise me if it did.

15 BY MR. BRALY:

16 Q. What about the insulated mill board?

17 A. I think that's called out as the JM106
18 when you look at the part description. It's
19 actually behind the refractory, so I think at one
20 time that was asbestos containing. I don't know if
21 JM106 was in 1975.

22 Q. All right. On page 66 we have again this
23 davit arm rear head assembly.

24 A. This is the one I was talking about
25 earlier that shared some drawings with the boiler

1 from --

2 MS. SPARDONE: Viking.

3 A. Viking. Thank you. Viking Distilling.

4 BY MR. BRALY:

5 Q. Okay. And just like sharing with -- it
6 has the same callout as Viking, the 20 pounds of
7 asbestos cement and the 54 feet of asbestos wick?

8 A. Except this one would be different in that
9 here we're dealing with a boiler that is a 30-pound
10 hot water boiler. So when we go to this table, we
11 have to look at the size of the boiler and the LP
12 designation instead of power.

13 And the item 5 and item 10 are not used,
14 which is the cement asbestos bulk furnace and the
15 packing asbestos wick bulb -- bulk quarter inch by
16 54 feet. So in this particular boiler those two
17 components aren't used because it's a different
18 model pressure vessel.

19 BY MR. BRALY:

20 Q. Okay. So in that drawing are there any
21 gasket materials or insulating materials that would
22 be asbestos containing?

23 A. It refers to the front head gasket, item
24 2, which is the next one. So I believe at that time
25 that was, yes.

1 Q. Okay. And that's the one found on page 67
2 which is the specification for gaskets front and
3 rear?

4 A. Correct.

5 MS. SPARDONE: Object to form.

6 BY MR. BRALY:

7 Q. Okay. And I believe that was called out
8 for as the Union Asbestos & Rubber gasket or JM
9 equivalent. Is that right?

10 A. Or a Garlock equivalent as well.

11 Q. Or a Garlock equivalent. Okay. All
12 right. For the remainder of the engineering
13 drawings in that set, we can essentially follow
14 through with it the same way that we have with the
15 other ones. You'd cross-reference parts, to the
16 extent that we can't tell from the face of the
17 engineering drawings whether they're asbestos or
18 not, with either the manufacturer's specifications
19 or with the item description, which is that third
20 set of produced documents for that site.

21 A. Correct.

22 Q. Okay. You can set that aside.

23 So -- give me a second.

24 Did you review any other job sites
25 pertaining to either the Howe case, the Smith case,

1 or the Sizemore case other than what we looked at?

2 MS. SPARDONE: Object to form. Any other
3 work sites?

4 MR. BRALY: Yes. Job sites.

5 MS. SPARDONE: Object to form.

6 A. I don't think so, other than what was
7 listed in the deposition notices.

8 BY MR. BRALY:

9 Q. Right. And you conducted a search for all
10 of those job sites?

11 A. Yes.

12 Q. Okay.

13 A. Pretty certain. Anything that was a job
14 site or I had the ability to search. There were a
15 couple that were not -- I think in the Sizemore one
16 didn't have any city or state, so I -- I'm a little
17 bit limited in what I can search and what -- what
18 would be considered a proper search with something
19 like that.

20 Q. If you saw a list of the job sites, would
21 you be able to identify the locations for which you
22 were unable to search?

23 A. I don't know. I'd have to look at it.

24 Q. Well, let's do it then. Let's look at
25 Exhibit 3, which is --

1 MS. SPARDONE: I was going to do this, so
2 had it ready.

3 A. Saucer Marine Services isn't listed in any
4 location, so I didn't search that one. The Exxon
5 facilities are all near something or in a -- as
6 broad as being in an entire state, so searching
7 something that's near might be a little difficult
8 for me to -- everybody's "near" might be different.

9 BY MR. BRALY:

10 Q. Did you make an attempt to search for any
11 of the Exxon facilities, or was it just something
12 that you set aside based on the description?

13 A. I would have set it aside based on the
14 description because near could be in the next state
15 for all I know.

16 Q. Well, then it wouldn't be near.

17 MS. SPARDONE: It's relative.

18 A. Chicago's near Milwaukee.

19 BY MR. BRALY:

20 Q. Right.

21 A. Depending on your perspective. That's why
22 getting into that is --

23 Q. Okay.

24 A. -- pretty big rabbit hole to me.

25 Palm Beach Recovery Resource Corp. didn't

1 list a state or a city. And I think that's it
2 unless I missed one. So, yes, I can do that by
3 looking at a list.

4 Q. Okay. Other than those job sites that
5 you've just kind of talked about here, the other job
6 sites are job sites you would have done a index card
7 search for prior to your deposition?

8 MS. SPARDONE: Object to form.

9 A. Certainly prior to this one. I can't
10 say -- I believe there was a couple phases of what I
11 searched for in totality --

12 BY MR. BRALY:

13 Q. Okay.

14 A. -- with the Sizemore case.

15 Q. All right. So then it's kind of, I
16 guess -- and I'm sorry for redoing some of this. I
17 just want to make sure that I've got this kind of
18 under control.

19 Prior to your first deposition, it would
20 be correct that you had not searched all of the
21 records pertaining to all of the job sites?

22 A. Correct.

23 MR. BRALY: Okay. Okay. I'm going to
24 pass the witness. I think I've -- I'll let you ask
25 your questions here.

1 MS. SPARDONE: Okay.

2 EXAMINATION

3 BY MS. SPARDONE:

4 Q. John, taking you back to the testimony you
5 gave earlier about the Cliffside boilers, just to
6 refresh you, you said that you could have been
7 confused with some other Duke facilities but you
8 thought that there were some boilers shipped to
9 Cliffside in '95, 2009, and a deaerator in 2010.
10 Remember that?

11 A. Yes, I do remember that.

12 Q. Okay. Setting aside -- well, first of
13 all, do you understand that Duke Power has a number
14 of facilities in North Carolina and South Carolina?

15 A. Yes.

16 Q. And you also said during that exchange
17 that something to the effect that you didn't think
18 that those would have been an issue. Remember that?

19 A. Yes.

20 Q. Okay. So why is it that you said that as
21 it relates to the boilers allegedly at Cliffside
22 in '95, 2009, and then the deaerator in 2010?

23 A. I think we're dealing with dates well
24 beyond where we're certain we didn't include any
25 potential asbestos-containing components with the

1 boilers, so in the Nineties and 2000s.

2 Q. Okay. So if I hear you correctly then, if
3 in fact there were boilers manufactured in '95 and
4 2009 at Cliffside, those boilers wouldn't have
5 contained any asbestos, correct?

6 A. Certainly not that we put in.

7 Q. Okay. And there's also -- there was also
8 an exchange during that line of questioning about
9 quote-unquote state records, and Mr. Braly showed
10 you some of those records on his computer. Remember
11 that?

12 A. Yes.

13 Q. Were those records that you understood to
14 be from the state boiler registry?

15 A. I'm not sure what they were. I looked at
16 them prior to. I think there's something on the
17 bottom that says something about jurisdiction online
18 and some date I don't recall. I don't know that
19 that's a state registry or some other registry that
20 people have access to. I -- it's not something I
21 get into. I search our records.

22 Q. All right. There were a lot of questions
23 about what you did and didn't do before the last
24 deposition in these cases and what you did after
25 that deposition.

1 After the first installment of the
2 deposition, how many different work sites did you
3 assemble engineering drawings and part descriptions
4 for?

5 A. For this case, three.

6 Q. And in total how many hours of work was
7 that, roughly speaking?

8 A. I would say roughly three weeks.

9 Q. Okay. Going back to the Viking units, the
10 Cargill units, and the South Carolina Electric & Gas
11 units, with regard to those work sites do you have
12 any recollection of what Mr. Sizemore testified
13 about in terms of his work, if any, on any boiler at
14 those sites?

15 A. I don't recall any. I'm pretty sure I
16 don't -- didn't see any of it. I, again, didn't
17 commit 1,600 pages or so to memory, but I don't
18 recall any.

19 Q. And in the Smith case, did you review the
20 testimony of Mr. Lewis Childers?

21 A. Portions of it.

22 Q. Okay. And did you also review portions of
23 testimony given by Mr. -- I think it is Grant, the
24 other coworker?

25 A. I think I did actually prior to the last

1 deposition, so that's certainly a little further
2 from the front of my mind.

3 Q. Okay. And during your review of those
4 transcripts, did you note any testimony that
5 Mr. Childers worked on boilers at Cliffside or at
6 McGuire?

7 A. I certainly don't remember anything that
8 might have been possibly a Cleaver-Brooks boiler if
9 he --

10 Q. Why do you say that?

11 A. I'm certainly confusing -- I could be
12 confusing it, but I think most of what he talked
13 about were larger utility type boilers,
14 field-erected type boilers.

15 Q. Okay. And with regard to Exhibit 3, do
16 you still have that in front of you?

17 A. Yes.

18 Q. Okay. So Mr. Braly just asked you some
19 questions about sites that you did not search, and
20 you listed out, for example, some -- can I see that,
21 please?

22 A. Sure.

23 Q. -- some Exxon facilities that are listed
24 as being near Flomaton, Alabama. Explain again why
25 it is that you couldn't conduct a search for any

1 boilers, given that description.

2 A. Well, certainly with a name like Exxon
3 that could potentially have facilities in multiple,
4 multiple locations, I -- I'd be very hesitant to do
5 anything that is so subjective as what somebody
6 considers near. You know, if we're talking about a
7 specific city, I can look at that, but once we start
8 getting into things that could be hundreds of miles
9 away, I certainly don't have a list of every city
10 around somewhere. I wouldn't know where to draw the
11 line, I guess is the answer to that.

12 MS. SPARDONE: Okay. That's all I have.

13 FURTHER EXAMINATION

14 BY MR. BRALY:

15 Q. So I just looked up Flomaton, Alabama, on
16 Google Maps, and it doesn't appear to be in a place
17 in the world that's near anything. I just -- did
18 you make any effort to determine what Exxon
19 facilities would be anywhere close to an area called
20 Flomaton, Alabama?

21 A. No. I -- I deal with what our records
22 say. And quite frankly, to go to that extent
23 anytime someone would say near I think would be a
24 little beyond what I could reasonably do.

25 Q. Right. For example, Flomaton is probably

1 a couple hours' drive from Pensacola, Florida, or
2 Mobile, Alabama, which are major cities. Fair?

3 A. I would say so, yeah.

4 Q. And Mobile is actually near Pensacola if
5 you want to draw it out like that.

6 A. And that's my point. Where would I draw
7 that line? If I found something in Pensacola, is
8 that near Flomaton?

9 Q. When you call it Flomaton, why would
10 you -- why would we ask you to look for an Exxon
11 facility near a place like Flomaton if it would --
12 if the idea would be, you know, near is a -- is a
13 dart board game that you can play with larger cities
14 like Pensacola or Mobile?

15 MS. SPARDONE: Object to form. Calls for
16 speculation.

17 A. That's exactly the game I wouldn't want to
18 get into is that dart board game.

19 If someone had said in Flomaton, I would
20 have certainly searched that. But when the actual
21 request is related to something near, I -- I don't
22 think I'd want to get into the what's near and what
23 isn't. And we can sit here and debate that all you
24 want, but --

25 BY MR. BRALY:

1 Q. Have you ever been to -- I mean, have you
2 ever been to rural Alabama?

3 A. Don't know.

4 MS. SPARDONE: Object to form.

5 BY MR. BRALY:

6 Q. Okay. Are you familiar with the presence
7 of things like refineries or major industrial
8 facilities being in unincorporated areas of town?

9 MS. SPARDONE: Object to form.

10 A. I can't say I am specifically, no.

11 BY MR. BRALY:

12 Q. Okay. So because of the description being
13 quote-unquote near this tiny town with a -- I don't
14 know, we could probably even figure this out. Give
15 me a second. Flomaton, Alabama. Did you ever even
16 try that, just what I just did, type in Flomaton on
17 your computer?

18 MS. SPARDONE: Counsel, it's not his job
19 to do the investigating for the plaintiffs.

20 MR. BRALY: Kind of is.

21 A. Quite frankly, I was focused on getting
22 you the information that was being requested which
23 was specifics on the boilers we had found.

24 BY MR. BRALY:

25 Q. Right. So Flomaton is a town of 1,440

1 people. Okay?

2 A. Okay.

3 Q. So because the description of the refinery
4 was just adjudicated by you to be too
5 unintelligible, you didn't even try. Is that right?

6 MS. SPARDONE: Object to form.
7 Argumentative.

8 A. I don't think I would say I didn't even
9 try. I searched well over 60 sites, and they're
10 also known as names. So I think describing it as me
11 not even trying is a little disingenuous.

12 I spent a great deal of time on this to,
13 quite frankly, start talking about this. When your
14 particular information said something so vague, I
15 think is disingenuous as well.

16 BY MR. BRALY:

17 Q. Then fine. How did you try to find
18 information about the Exxon facility --

19 A. I didn't find --

20 Q. -- near Flomaton, Alabama?

21 A. I didn't go to any of them in Exxon
22 because of the vagueness of the descriptions.

23 Q. So you didn't try.

24 MS. SPARDONE: Object to form.
25 Argumentative.

1 A. I was -- I did not do anything related to
2 those sites because of the vagueness of the
3 descriptions.

4 BY MR. BRALY:

5 Q. Which means you did not try. Correct?

6 MS. SPARDONE: You're being argumentative.
7 He's answered your question.

8 A. If that's what you want to call it, that's
9 what it is.

10 BY MR. BRALY:

11 Q. Okay. The Cliffside boilers that we
12 referenced, the North Carolina state boiler registry
13 also lists a boiler shipped to the Cliffside
14 location in 1969.

15 MS. SPARDONE: Object to form.

16 BY MR. BRALY:

17 Q. You're aware of that, right?

18 A. Yeah, I think we discussed that earlier,
19 didn't we, the Cliffside one in '69?

20 Q. Yeah.

21 A. Yeah.

22 Q. And you didn't find any records of the
23 Cliffside boiler from 1969, correct?

24 A. Correct. That's what we discussed
25 earlier.

1 Q. Okay. I just wanted to make sure that
2 there was no representation being made that the only
3 boilers Cleaver-Brooks could have shipped to
4 Cliffside were the ones from 1995, 2009, or 2010.

5 MS. SPARDONE: Object to form. Assumes
6 facts.

7 A. No, I was saying that I didn't find the
8 record of a 1969 boiler there or possibly the later
9 ones because I wasn't sure what we found. But the
10 records that were produced to me in relation to
11 whether they're state records or some other records,
12 I'm not sure, didn't give me anything I could locate
13 a specific Cleaver-Brooks boiler.

14 BY MR. BRALY:

15 Q. Okay. You said something. You said that
16 those boilers would not have contained asbestos from
17 Cleaver-Brooks.

18 A. Correct.

19 Q. Correct.

20 A. The '95 and --

21 Q. Yeah.

22 A. -- whatever those were.

23 Q. Right. What was the last year that
24 Cleaver-Brooks boilers would have contained
25 asbestos?

1 A. I don't know that specifically. However,
2 I think you've probably seen in our discovery
3 responses that in 1989 a check was made of the
4 suppliers to see if any of the suppliers of those
5 potential components were supplying anything with
6 asbestos, and they were not.

7 So I would say at least after 1989, after
8 they were not. But whether that was '88 that they
9 changed it or '87, I really have no way to tell.

10 Q. It took you three weeks to collect the
11 engineering drawings that we were talking about?

12 A. Roughly. I was certainly doing other
13 things like searching for all the rest of the sites
14 as well.

15 Q. Right. And I imagine you have other cases
16 to look at as well.

17 A. I have a few others, plus I was looking at
18 testimony as well.

19 Q. Are you aware that the Sizemore lawsuit
20 was filed on December 8th of 2016?

21 A. I probably was when we first got it.
22 Whether that's anywhere near the front of my mind,
23 no.

24 Q. All right. You were able to find the
25 engineering drawings for three of these locations

1 within the last three weeks. True?

2 A. Roughly, yes.

3 Q. Why didn't the internal examination,
4 internal search for documents with Cleaver-Brooks
5 happen before the beginning of February?

6 MS. SPARDONE: Object to form. Asked and
7 answered.

8 A. I wasn't asked to take on that task.

9 BY MR. BRALY:

10 Q. Do you have any idea why not?

11 A. No.

12 MS. SPARDONE: Same objections.

13 A. I don't get involved in that type of
14 decision-making.

15 BY MR. BRALY:

16 Q. If you had more time, it's likely you
17 could have found all of the engineering drawings,
18 even the ones that we don't have yet. True?

19 MS. SPARDONE: Object to form.

20 BY MR. BRALY:

21 Q. Time's the limiting factor here, right?

22 A. And ability to find them, yes. It takes
23 time to find them, but it takes knowledge to find
24 them too.

25 Q. There's something that I did not ask you.

1 I probably should have. I know what you told
2 Ms. Stone about what you had reviewed prior to that
3 deposition. Between the February deposition and us
4 sitting here now, what other fact witness testimony
5 have you reviewed?

6 A. I think it's limited to Mr. Sizemore's
7 testimony, some pieces of Mr. Childers' testimony.
8 I think the Grant testimony I may have actually
9 scanned prior to the last deposition, but I think
10 that's it. I can't think of any others that I would
11 have.

12 Q. When you say pieces of Mr. Childers'
13 testimony, can -- I mean, is this -- is this
14 information basically cutouts or snippets, sections
15 that were given to you by attorneys for
16 Cleaver-Brooks, or did you have the whole thing and
17 you just reviewed parts of it?

18 A. I want to be a little careful because it
19 might get into communication with our attorneys.

20 Q. I know. You know -- you know how to parse
21 that.

22 A. I was giving -- given excerpts of it.

23 Q. Okay. Is the same true for the Sizemore?
24 Were you given the whole thing, or were you given
25 excerpts of that?

1 A. That I had the whole thing. I didn't read
2 word for word the whole thing. I used the word
3 index in some places and read large portions of
4 others.

5 Q. Okay. Have you reviewed anybody else's
6 coworker testimony, anything like that in this case
7 that you know of?

8 MS. SPARDONE: In addition to what he
9 talked about --

10 MR. BRALY: Right.

11 MS. SPARDONE: -- during the first one?

12 BY MR. BRALY:

13 Q. Right, in addition to what you talked
14 about with Ms. Stone.

15 A. Not that I can think of.

16 Q. All right.

17 A. I think most of my time in the last few
18 weeks has been pulling the drawings and reviewing
19 Mr. Sizemore's testimony.

20 Q. Okay.

21 A. And discovery responses, I think.

22 Q. Right.

23 That's not what I was looking for.

24 So I just want to be clear about this.
25 When we were talking about the Exxon facilities that

1 you did not look for, we have an Exxon facility near
 2 Pennington, Alabama, an Exxon facility near
 3 Flomaton, Alabama, an Exxon facility near Ardmore,
 4 Alabama, an Exxon facility near Big Escambia Creek,
 5 which I believe is in Florida, but I'd have to look
 6 that up. Do you know where Big Escambia Creek is?

7 A. No, I don't.

8 Q. Did you make an attempt to find out?

9 A. No.

10 Q. Okay. And then Exxon facility at
 11 Louisiana, which designates an entire state, which
 12 probably have a stronger argument on that one.

13 But for the other ones, the Pennington,
 14 Alabama, Flomaton, Alabama, Ardmore, Alabama, and
 15 Big Escambia Creek, it's correct to say that you did
 16 not make an effort to drill down on what those
 17 locations -- what Cleaver-Brooks may have supplied
 18 to any of those locations. True?

19 MS. SPARDONE: Object to form.

20 A. Correct. Once I saw how vague the
 21 description was, I did not.

22 BY MR. BRALY:

23 Q. All right. What about the Florida Power &
 24 Light plants, the ones that's listed at
 25 Fort Lauderdale, Titusville, Cocoa Beach, and

1 Sanford? Did you make any attempt to discover if
2 Cleaver-Brooks had supplied any boilers to those
3 locations?

4 A. Yes.

5 Q. Okay. Those weren't too vague.

6 A. No, they give cities and states there.

7 Q. Okay.

8 A. I assume they -- well, not necessarily
9 always be in Florida, but -- and they say that,
10 so --

11 Q. So it's just basically the use of the word
12 "near" that threw you off?

13 MS. SPARDONE: Object to form.

14 A. Near was an issue as well as the one
15 without a state and then the one that was an entire
16 state I think as a whole makes the Exxon ones a
17 little --

18 BY MR. BRALY:

19 Q. Okay. And that's because you don't know
20 what the word near means?

21 MS. SPARDONE: Object to form.

22 Argumentative.

23 A. I know what the word near means. I don't
24 know what your definition of near is or
25 Ms. Spardone's definition of near, and I wouldn't

1 know where to draw the line.

2 BY MR. BRALY:

3 Q. And you didn't bother to ask anyone.

4 MS. SPARDONE: Object to form.

5 Argumentative.

6 A. I searched what I was asked to search.

7 BY MR. BRALY:

8 Q. No, you didn't. You didn't. You didn't
9 ask your attorneys to reach out to us at any point
10 in time to say, hey, you know, let's find out about
11 this.

12 MS. SPARDONE: Object to form. Also calls
13 for privileged communications.

14 A. I don't think I could travel down the path
15 of what I communicated with our attorneys without
16 breaching that.

17 MR. BRALY: Okay. All right. I'll pass
18 the witness.

19 MS. SPARDONE: Okay. Does anybody have
20 questions on the phone? All right. Fun is over.

21 THE VIDEOGRAPHER: Going off the record at
22 2:45. We're off the record.

23

24 (Deposition concluded at 2:45 p.m.)

25 -oOo-

1 I, JOHN TORNETTA, have read the foregoing
2 deposition and hereby affix by signature that same is
3 true and correct, except as noted above.
4

5 _____
JOHN TORNETTA

6
7 STATE OF _____)

8 COUNTY OF _____)

9 Before me, _____, on this day
10 personally appeared JOHN TORNETTA, known to me (or
11 proved to me under oath or through _____)
12 (description of identity card or other document) to be
13 the person whose name is subscribed to the foregoing
14 instrument and acknowledged to me that they executed
15 the same for the purposes and consideration therein
16 expressed.

17 Given under my hand and seal of office this
18 _____ day of _____, 2018.
19

20 _____
21 NOTARY PUBLIC IN AND FOR
22 THE STATE OF _____
23

24 My Commission Expires: _____
25

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK FOR THE SIXTEENTH JUDICIAL
CIRCUIT

TIMOTHY W. HOWE, as Personal
Representative of the Estate
of WAYNE E. HOWE, deceased,
and JEANETTE HOWE, surviving
spouse,

Plaintiffs,

vs.

C/A No. 2015-CP-46-03456

AIR & LIQUID SYSTEMS CORPORATION,
et al.,

Defendants

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK FOR THE SEVENTH JUDICIAL CIRCUIT

ROXANNE FALLS, individually and
as Personal Representative of the
Estate of CHARLOTTE GAYE SMITH,
Deceased,

Plaintiff,

vs.

C/A No. 2015-CP-46-02155

CBS CORPORATION, et al.,

Defendants.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON FOR THE SEVENTH JUDICIAL CIRCUIT

JAMES CALVIN SIZEMORE,

Plaintiff,

vs.

C/A No. 2016-CO-25-0440

BOWATER PAPER MILL, et al.,
Defendants.

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REPORTER'S CERTIFICATE
VIDEOTAPED ORAL 30(b)(6) DEPOSITION OF CLEAVER-BROOKS
by and through JOHN TORNETTA
March 6, 2018

I, KAREN L. SHELTON, a Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, JOHN TORNETTA, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

I further certify that that the signature by the deponent:

 X was requested by the deponent or a party before the completion of the deposition and is to be returned within 30 days from date of receipt of the transcript. If returned, the attached Errata contains any changes and the reasons therefor;

 was not requested by the deponent or a party before the completion of the deposition.

I further certify that I am neither counsel for, related to, nor employed by any of the parties in or counsel to this action, nor am I financially or otherwise interested in the outcome of this action.

Certified to by me this 6th day of March, 2018.

Karen L. Shelton, CSR, RDR, CRR

TX CSR 7050 Exp: 12/31/18

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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

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/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 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.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Third Appendix to the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

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PROOF OF SERVICE

I, the undersigned Legal Secretary of the law offices of Womble Bond Dickinson (US) LLP, Attorneys for Appellant, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

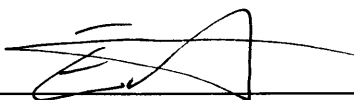
Pleading: Third Appendix to the Record on Appeal

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September 5, 2019