

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM YORK COUNTY
Court of Common Pleas

SC Court of Appeals

Jean Hoefer Toal, Circuit Court Judge

Case No. 2018-000385

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/k/a National Welding Supply, Inc.; Albany International Corp; Asten-Johnson, Inc.; Aurora Pump Company; A.W. Chesterton Company; Beloit Corporation; Black Clawson Converting Machinery, LLC; Individually and as a subsidiary of Davis-Standard LLC; CBS Corporation, A Delaware corporation f/k/a Viacom, Inc., Successor by merger to CBS Corporation, Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation; CGR Products, Inc., f/k/a Carolina Gasket and Rubber company; CAN Holdings, Inc. 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 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.; 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 & 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; Zurn Industries, ... Defendants

Of Which Covil Corporation is the Appellant.

AND

Roxanne Falls, Individually and as Personal Representative of the Estate of Charlotte Gaye Smith,
..... Respondents

v.

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; CAN Holdings, Inc. f/k/a Hoechst Celanese Corporation, sued individually and as a successor-in-interest to Fiber Industries, Inc.; Cleaver-Brooks, Inc.; Covil Corporation; Daniel International Corporation; Fluor Daniel, Inc. f/k/a Daniel Construction Company, Inc.; Fluor Daniel Services Corporation; Foster Wheeler Energy Corporation; General Electric Company; MP Supply, Inc. f/k/a Mill-Power Supply Co. and Mill power Supply Company; Resolute FP US, Inc., Union Carbide Corporation; United States Fidelity Guaranty Company; Uniroyal, Inc. f/k/a United States Rubber Company, Inc. and United Conveyor Corporation.. . . . Defendants

Of which Covil Corporation is the Appellant.

AND

James Coleman Sizemore, as Personal Representative of the Estate of James Calvin Sizemore, Descendant, Respondent.

v.

Bowater Paper Mill; E.I. Du Pont De Nemours and Company; Foster Wheeler Energy Corporation; Daniel International Corporation f/k/a Daniel Construction Company, Inc.; Resolute FP US Inc f/k/a Bowater Incorporated; 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; Cleaver-Brooks, Inc. f/k/a Aqua-Chem, Inc. d/b/a Cleaver-Brooks Division; Covil Corporation; Fluor Constructors International f/k/a Fluor Corporation; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; General Electric Company d/b/a Rayloc a/k/a NAPA; Georgia-Pacific Consumer Products LP; Honeywell International, Inc. f/k/a Allied-Products Liability Signal, Inc., sued as successor-in-interest to Bendix Corporation; SCANA Corporation d/b/a South Carolina Electric & Gas; Riley power, Inc. f/k/a Riley Stoker Corporation and D.B. Riley, Inc.

AND

Waste Management of South Carolina, Inc., as successor by merger to USA Waste of South Carolina, Inc., successor by merger to Chambers Medical Technologies, Inc., . . . Defendants

Of which Covil Corporation is the Appellant.

RECORD ON APPEAL – VOLUME 2 OF 3

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1 Go ahead, Ms. Dean.

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

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

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

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

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

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

14 THE COURT: All right, Mr. McDonald.

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

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

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

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

18 MR. McDONALD: Certainly.

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

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

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

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

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

5 THE COURT: Yes, ma'am.

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

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

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

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

16 MS. DEAN: I'll take it.

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

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

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

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

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

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

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

24 THE COURT: Mr. Meriwether.

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

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

9 THE COURT: Sure.

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

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

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

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

2 MS. DEAN: Yes.

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

6 MR. MERIWETHER: Yes, Your Honor.

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

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

16 THE COURT: All right.

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

22 THE COURT: And it's what date?

23 MR. MERIWETHER: February 28th.

24 MS. DEAN: Your Honor.

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

1 THE COURT: And how about documents?

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

7 THE COURT: All right.

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

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

13 MR. MERIWETHER: Yes.

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

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

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

19 MR. MERIWETHER: Sure, Your Honor.

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

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

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

1 February 2nd. How about that?

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

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

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

10 THE COURT: Yes.

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

13 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

12 THE COURT: --- the other way.

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

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

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

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

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

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

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

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

5 Cleaver Brooks is the first one.

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

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

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

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

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

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

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

13 MR. THOENSEN: Exactly.

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

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

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

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

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

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

21 THE COURT: Very good.

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

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

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

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

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

5 THE COURT: Sure.

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

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

8 MS. DEAN: Yeah.

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

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

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

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

3 MS. DEAN: Yes, Your Honor.

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

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

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

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

1 pages back in 1977. Can't you just use that, and which --
2 this communication just started this last -- within the
3 last week. They got me the deposition but not the
4 exhibits. They promised they'll do that today.

5 I, I'm just putting on the record so they have comfort
6 in this. I have no interest in reinventing the wheel when
7 I already have the evidence, but I am confident that if
8 they have a person that worked there in the years when our
9 guys say they were working with Covil, and that is his son,
10 and this deposition was in '77 when these particular sites
11 weren't of the target, then I'm going to have follow-up
12 questions.

13 So, I committed to reading that deposition, to not
14 asking the questions that have already been asked, but I am
15 confident that there are still things I need to learn about
16 Covil's responsibility. And then broadly, the subject of
17 their insurance is something that's critical. It's been
18 represented to Mr. Holder and to Ms. McVey and to others
19 that they are uninsured. We sought those policies. It
20 turns out that during the relevant years they do have
21 insurance, and we need to better understand that so that we
22 can evaluate the case.

23 And so our request is to order that the date they gave
24 us, the 31st, go forward and that any responsive documents
25 they haven't produced -- I don't know if that's limited to

1 the exhibits to that 1977 deposition, but what they have be
2 produced to us by week's end so that we have time to
3 prepare for the deposition.

4 THE COURT: All right, and Mr. Rheney for Covil.

5 MR. RHENEY: Thank you, Your Honor, David Rheney for
6 Covil. I guess I need to explain a little bit how things
7 have changed in the last three weeks or so, but let me, I
8 guess -- first, though, we are in the category of not
9 having produced documents and not having given a date. I
10 don't think we belong in either category.

11 The documents, Covil documents -- as you know, I, I
12 suspect you know, Covil has been out of business, defunct
13 since 1991. We have the documents. We have offered since
14 October for them to come to our office and take a look at
15 whatever they want to take a look at. So, that has been,
16 that's been offered long ago.

17 Covil has been a defendant in many of these cases, and
18 Covil has responded to discovery. Now as far as some of
19 these specific cases, I will tell the court responding to
20 these specific cases, that's going to be done in the next
21 day or so. I know those have been worked up. Mr. White
22 has to take a look at them, to put them in a file, and get
23 them out. However, this is the same information that Covil
24 has produced in every other cases. So, there's not going
25 to be any different response now than what has been done ad

1 nauseam over the last number of years. It's the same
2 documents from the same company; nothing new has happened
3 since 1991, so nothing has changed. We have offered to let
4 them come to our office and take a look at what we have.
5 So, I don't think we belong in the we-haven't-produced-
6 documents category.

7 As for the day, Ms. Dean mentioned that she was
8 willing to work with people to, to work on dates at
9 different times and consolidating, but that hasn't been the
10 case with Covil. They've insisted on January the 31st, and
11 we have asked for February the 7th or 8th. I believe I saw
12 an email from Mr. White to Ms. Dean from last week. We
13 were told that could not be done. I understand why they
14 want to proceed as soon as possible, but we asked for a
15 single week.

16 There's a reason for that, Your Honor. Jimmy Covil is
17 sixty-five years old, and so we're talking about ---

18 THE COURT: Mere child.

19 MR. RHENEY: I'm close enough to that that I'm not
20 making fun of that, but to the extent we're talking about
21 people with the company, they're gone. There, there's
22 certainly conceivably people alive who worked for the
23 company back in the seventies. They're in their eighties,
24 nineties, or more. We don't know where they are, so Jimmy
25 Covil is only person we've got available.

1 Jimmy worked for the company beginning in 1974. His
2 father, Palmer, owned the company and testified in 1977,
3 and I'll get to that in just a second. Jimmy still does
4 work for -- in loss prevention or loss control for
5 Hamrick's. He worked part time and was available to be
6 prepped to be ready for a deposition, but his supervisor
7 blew out his knee shortly after Christmas, and Jimmy is now
8 working full time and will be until March when his
9 supervisor comes back. His schedule is erratic. We
10 provided an affidavit. It's not the same every day, but
11 he's working a full-time job and doesn't have days upon
12 days to devote to this.

13 We're glad to put him up, but the Covil 30(b)(6)
14 deposition was noticed four separate times in the next two
15 weeks. The 25th, twice on the 30th, one -- and I will add
16 one of those is a North Carolina case called *Finch*, but
17 it's the same law firm that had noticed the deposition --
18 as well as January the 30th or 31st, whatever it is. We
19 think one time is sufficient, particularly on general
20 matters.

21 THE COURT: Well, why cannot the one time be the 31st
22 as opposed to the 8th?

23 MR. RHENEY: Because we can't have Jimmy Covil ready
24 by then. He is coming to sit down and talk with us as it
25 fits his schedule, and need a little bit more time.

1 We would also point out that -- I'll go back to the
2 beginning. We don't think the deposition should be taken.
3 Palmer Covil testified in June of 1977 when he was still
4 the owner and CEO of the company. I may not have the title
5 quite right, but he's the man in charge. He was
6 cross-examined by some of the best lawyers in the history
7 of this state on both the defense side and the plaintiffs'
8 side. He was thoroughly questioned over several days and
9 500 pages worth of deposition at the ---

10 THE COURT: Mr. Rheney, I'm not going to forbid them
11 from taking a 30(b)(6) of the person that is still around
12 to be deposed, the son.

13 MR. RHENEY: Well, and then ---

14 THE COURT: I'm not going to do that. What we're
15 talking about now if when we can do it.

16 MR. RHENEY: Well, Your Honor, I guess I, I do
17 understand that, just so you know, and I'm not arguing with
18 you. Please understand. What Jimmy Covil knows is going
19 to be a regurgitation of what Palmer testified to.

20 THE COURT: Well, that may be.

21 MR. RHENEY: Palmer testified to. That I know.

22 THE COURT: But we're going to have the time. We've
23 got a bunch of cases in which they want to depose him.

24 MR. RHENEY: Well, the week ---

25 THE COURT: They're going to depose him one time. At

1 least they're ready to do that. I think that's reasonable.
2 I think it's very reasonable for you to say (a) he doesn't
3 know anything and (b) if he's going to be deposed, it all
4 ought to be just one time.

5 MR. RHENEY: Well, we just ask for one more week. I
6 think Mr. White put in his email last week they wanted the
7 7th or 8th to give us enough time to get Jimmy Covil ready
8 because again his 30 ---

9 THE COURT: All right, let's see what -- Ms. Dean,
10 can't we do it the 7th or the 8th?

11 MS. DEAN: The problem is, is, as you, I think, know
12 firsthand now, is that literally that's what everyone's
13 asking for. And when they say they need more time, they've
14 had since November. And their guy's excuse is -- a guy who
15 works forty hours a week who found out in December that
16 that's the first time he's going to have to work forty
17 hours a week -- that he's going to be deposed on January
18 31st.

19 And there was a characterization there, and I don't
20 know if it was intended, that we're insisting on. That
21 couldn't be farther from the truth. Mr. Holder sent out
22 something in November that says I'll give you any day and
23 any time. He did it again in January. The date on the
24 31st came from them. We know he's available that date.

25 And so what I'm requesting is that if they have

1 documents -- and I hear him say is that Mr. White is
2 finalizing them. Get them to us by Friday and let us go
3 forward with the deposition the date they told us their
4 witness is available. If he -- if we have a hiccup on that
5 day and he didn't think of something or he forgot something
6 through -- I've worked with these lawyers for a long time.
7 We'll work it out, but we have a date that their witness is
8 available. Their best excuse under the law is he wants
9 more time to prepare. That's not unduly burdensome. The
10 law anticipates thirty days. They've had eighty.

11 THE COURT: Okay.

12 MR. RHENEY: Your Honor, just to add to that, Mr.
13 Covil was not aware he was going to be a full-time employee
14 until December 31st.

15 THE COURT: Well, that's fine. I don't think you have
16 any difference in facts. I don't think we need to go over
17 that again, but one thing she adds to it is that you agreed
18 to the 31st. He agreed to be available on the 31st. Now
19 he's saying no.

20 MR. RHENEY: Because of the change of circumstances
21 three weeks ago that -- we were going to spend time with
22 him throughout January getting him ready. That has not
23 been available to us or him because of his changed
24 situation from having to go from a part-time employee to a
25 full-time employee. He hasn't been able to devote the time

1 needed to this.

2 THE COURT: All right, here's what's going to be done.
3 The documents need to be to them by Friday. That's the
4 26th, and this deposition is going to take place February
5 the 7th.

6 MR. RHENEY: Thank you, Your Honor.

7 THE COURT: Now, get me an order to that effect, Mr.
8 Rheney.

9 MR. RHENEY: Yes, ma'am.

10 THE COURT: All right.

11 MS. DEAN: And, Your Honor, is that in all three
12 cases?

13 THE COURT: That's in all the cases, right, and I
14 believe, Ms. Harris, we have those numbers, been recited
15 into the record several times, but it's *Howe, Falls*, and
16 *Sizemore*. Very good.

17 (A PAUSE.)

18 THE COURT: We're going to take a break. Let's be
19 back in ten minutes.

20 (OFF THE RECORD.)

21 THE COURT: All right, are we ready to go? The next I
22 have on my list is Flowserve.

23 MS. DEAN: Yes, Your Honor.

24 THE COURT: For Durco. All right, Ms. Dean.

25 MS. DEAN: Your Honor, Durco or Duriron made pumps.

1 We produced discovery a long time ago, the standing order
2 of discovery asking about what pumps they had on there.
3 Over a year has passed. Yesterday they responded by saying
4 yes, our records do, in fact, show that those pumps were at
5 Celanese, and then there's a series of objections. So,
6 it's absolutely unclear whether they don't have records at
7 the other locations or whether they're standing on their
8 objections.

9 We also have a witness who identified Durco pumps at
10 Bowater. So, we have a witness who says the pumps are
11 there in one location, and I learned last night that they
12 have pumps at Celanese as well.

13 So, we want a complete set of records. I don't -- we
14 did get discovery saying our two pumps are there, but we
15 don't have the actual underlying records we've requested,
16 and we ask that we get those by Monday and a deposition
17 date before the scheduling order deadline.

18 THE COURT: When is the deposition? Has the
19 deposition been scheduled?

20 MS. DEAN: My understanding is no.

21 THE COURT: Okay.

22 MS. DEAN: Although there has been a lot of emails
23 going between all three of us, and so I could be wrong,
24 whether that's changed recently.

25 MR. RHENEY: Your Honor, David Rheney.

1 THE COURT: Yes, sir, Mr. Rheney.

2 MR. RHENEY: The -- I think I saw a deposition notice
3 of January 28th. I've, I've been out of state for the last
4 couple of days. I don't know about the discussion back and
5 forth about another date, but we can -- it's either -- if
6 y'all talked another date, we're fine with another date. I
7 think it was January 28th. That ---

8 MR. HOLDER: I think it's a placeholder. I, I don't
9 remember ---

10 MR. RHENEY: Okay.

11 MR. HOLDER: --- being provided that. I apologize.

12 MR. RHENEY: But we can certainly, we can reach a
13 date, Your Honor. Our -- I know that some discovery
14 responses were sent yesterday, and I do apologize for not
15 being up to speed. I've been out of state. I don't know
16 what was said yesterday, but to the extent that there is
17 any more, then yes, ma'am, we'll get that there, and I'll
18 check on that soon as I get back to Greenville today.

19 Our opposition, Your Honor, the motion was the witness
20 has testified that he recalled a Durco pump, but Duriron, I
21 think, is the defendant in this matter. I may be mistaken,
22 but he specifically said I don't know anything about
23 Duriron. I don't know about Covil. So, we're being asked
24 to do a 30(b)(6) deposition on a product that nobody has
25 identified as being in the Bowater plant where Mr. Howe

1 was.

2 THE COURT: Well, that's one of those connect the dots
3 things.

4 MR. RHENEY: I understand.

5 THE COURT: Your client needs to understand a 30(b)(6)
6 is going to be taken.

7 MR. RHENEY: Yes, ma'am.

8 THE COURT: It's going to be January the 29th. Monday
9 is when Ms. Dean asks that complete files for all of these
10 locations and their supply of pumps to these locations be
11 provided, and then you all will work on a deposition date.
12 And it sounds like you and Mr. Holder can figure that out.
13 The biggest thing we need to do is we need to get those
14 documents by next Monday.

15 MR. RHENEY: I understand. I'm not saying they
16 haven't been sent. I honestly don't know. I know some
17 things have been put together.

18 THE COURT: She says she's kind of getting things in,
19 and a lot of them belie the representations that have been
20 made that, no, we didn't have anything to do with that.

21 MR. RHENEY: Well, Your Honor, let me go flag back for
22 one second. I did speak to Ms. Dean during the break about
23 producing in the other case, cases we've been talking
24 about. Instead of Friday, producing the documents on
25 Monday, and she said that would be sufficient.

1 THE COURT: Yeah, but ---

2 MR. RHENEY: We'll try to get it before then.

3 THE COURT: --- it's Monday for all cases in which you
4 are involved, all documents.

5 MS. DEAN: I want to be real clear what we're talking
6 about. After the break, it was told to me that it creates
7 a lot of logistical problems to follow your order as it
8 relates to Covil and all three cases to get me the
9 documents by Friday. What I said is given I have so many
10 other documents coming from other defendants on Friday, if
11 it helps them, we can revise that by agreement until
12 Monday.

13 THE COURT: All right, that's fine on Covil?

14 MR. RHENEY: Yes.

15 THE COURT: And let me make my notation and Danny
16 White, your cocounsel, is standing, wanting to be heard.
17 I'm going to do that in just a minute, Mr. White. Let me
18 kind of get myself straight here.

19 The documents by the January 29th in Covil and in this
20 case, and then the deposition in this case, timing is going
21 to be worked out. Am I right?

22 MS. DEAN: I only want to make clear that if they
23 intend to file a summary judgement, the 28th won't work.
24 We'll need to stand by the deadline of the scheduling order
25 for the 9th. Just let me know and ---

1 THE COURT: Yeah, and I agree with that. You know,
2 it's just not fair, and let me tell you. As the night
3 follows the day, they're going to file motions for summary
4 judgment. So, the depositions need to take place earlier
5 so you can have time to deal with that.

6 Mr. White, welcome.

7 MR. WHITE: Good morning, Your Honor, Danny White.

8 THE COURT: Danny White for Flowserve by whatever ---

9 MR. WHITE: Yes, Your Honor.

10 THE COURT: --- name now know.

11 MR. WHITE: Just want to clarify because some plurals
12 were used there. Duriron is only in the *Howe* case. As I
13 understand it, the only work site involved is the Bowater
14 paper plant.

15 THE COURT: No.

16 MS. DEAN: No. So, here's -- we have gone through
17 this. There are five locations. I actually know Durco
18 incredibly well, and I disagree with Mr. Rheney's
19 assessment that because people didn't know Flowserve or
20 Duriron, that they didn't know Durco. That is normal.
21 That is exactly what happened in the *Bumgardner* case. The
22 name that was on the equipment was Durco. Duriron is a
23 different name. So, we have actual ID from a witness of
24 Durco pumps, which are the pumps that Flowserve and Duriron
25 are responsible for at Bowater. And then I learned

1 yesterday from discovery that they should have responded to
2 fourteen months ago that they also have records that their
3 Mark II pumps, which have multiple asbestos gaskets in it,
4 are at Celanese, and my guy worked at Celanese in a variety
5 of locations, and so ---

6 THE COURT: So, it's Bowater and Celanese, and that
7 covers five different locations?

8 MS. DEAN: There's two Celanese locations. There's
9 the Bowater location. There's American Enka, and there's
10 the Crown Cork and Seal location. Their discovery
11 indicated that they had a hit, for a lack of a better word,
12 verifying their pumps where at one location. I don't know
13 what their records show from the other four because their
14 answers aren't clear as to that. I do know I have ID of
15 Durco pumps at Bowater.

16 THE COURT: Okay, here's what's going to happen, Mr.
17 White. It is clear you're going to need to provide
18 documents and 30(b)(6) witness that can speak to whether or
19 not Durco, and if so in what timeframe, Durco had pumps at
20 Bowater, two Celanese -- American Enka, Crown Cork and Seal
21 -- and so that makes it real clear what they've got to
22 provide. The documents will be provided by January the
23 29th, and you all will work on a date for the deposition.
24 But it needs to be earlier in February so that at the end
25 of February the motions for summary judgment can filed like

1 they're supposed to be.

2 MR. WHITE: Thank you, Your Honor.

3 THE COURT: Okay. Very good. We've got
4 Flowserve/Durco resolved, I think.

5 MR. WHITE: I believe so.

6 THE COURT: Ms. Techman.

7 MS. TECHMAN: Your Honor, I think I wasn't fast enough
8 at the break to catch up with my colleagues. Would the
9 court give me just a minutes to talk with them regarding
10 Foster and Ingersoll Rand in an effort to see if we have an
11 understanding that might work short of court intervention?

12 THE COURT: Okay, it's Foster Wheeler and Ingersoll
13 Rand that you want to yack about?

14 MS. TECHMAN: Correct.

15 THE COURT: All right. Well, let me ask you this.
16 Can I go to Marculex and Sterling for Gorman Rupp while
17 you're talking with your colleagues about -- are you
18 wanting to talk to them or to your colleagues?

19 MS. TECHMAN: I'd like to talk with the plaintiffs. I
20 can handle the ---

21 THE COURT: Well, y'all had ten minutes to do all this
22 when I took a break.

23 MS. TECHMAN: Understood, Judge.

24 THE COURT: I've got three other cases I've got to
25 hear today.

1 MS. DEAN: We can multi-task. Jonathan can talk to
2 Jennifer, and I can keep going.

3 THE COURT: Okay. Good.

4 MS. TECHMAN: That's certainly acceptable to me.
5 Thank you for the indulgence.

6 THE COURT: Perfect. Perfect. I need to quit being
7 so antsy myself. Pardon me, Ms. Techman.

8 All right, Ms. Dean.

9 MS. DEAN: That puts us -- the next, the Marsulex, and
10 I talked to counsel on the break and believe we have an
11 agreement that we just will state on the record that they
12 will produce responsive documents by the 9th and a
13 deposition date the week of the 12th, and given that
14 agreement, as long as they can confirm. I understood it
15 correctly, this motion -- is that fair?

16 THE COURT: Who is representing Marsulex?

17 MR. ROZELSKY: Your Honor, Kurt Rozelsky for Marsulex.

18 THE COURT: All right, Mr. Rozelsky.

19 MR. ROZELSKY: I have to apologize, Your Honor.

20 THE COURT: Mr. Rozelsky.

21 MR. ROZELSKY: I thought I ---

22 THE COURT: Mr., Mr. Rozelsky.

23 MR. ROZELSKY: Yes, ma'am.

24 THE COURT: For the benefit of Ms. Harris ---

25 MR. ROZELSKY: R-o-z ---

1 THE COURT: --- spell your name.

2 MR. ROZELSKY: R-o-z-e-l-s-k-y.

3 THE COURT: Very good.

4 MR. ROZELSKY: Only one in South Carolina.

5 THE COURT: Yes, sir.

6 MR. ROZELSKY: Your Honor, I thought I was coming as a
7 note taker, and then we got this motion. So, apparently I
8 became an argument maker, so I apologize. I've been
9 texting with my partners, Tim Peck and Stephanie Flynn, to
10 work this out and, and we do have an agreement. We've
11 produced an asset purchase agreement. This is an issue
12 about successor liability, but we will produce whatever
13 documents that we have by February the 9th, and we will
14 work on a date for the week of the 12th. I even offered to
15 spend Valentine's Day with Ms. Dean.

16 THE COURT: All right, all right. So, Marsulex is on
17 the record. Mr. Rozelsky indicates, Ms. Dean, that you
18 correctly recited your agreement. So, that deals with
19 Marsulex. Thank you very much.

20 MR. ROZELSKY: Thank you, Your Honor.

21 THE COURT: All right, now we've got Sterling.

22 MS. DEAN: Your Honor, Sterling is in this case as it
23 relates to liability for Peerless Pumps during certain
24 years. Again, if Mr. McDonald is okay with this, they are
25 in both the *Smith* case, or the *Falls* case, and the *Howe*

1 case. We have a request to find out about what equipment
2 they had at the various facilities where Ms. Charlotte
3 Smith's husband worked and in the case of Mr. Howe, where
4 he worked, and are seeking to get the documents and a
5 deposition taken.

6 MR. McDONALD: Sure. The -- I thought we had a
7 discussion yesterday. Ms. Dean's firm is taking Sterling's
8 deposition next Tuesday.

9 THE COURT: Which is the 30th.

10 MR. McDONALD: In the case in North Carolina. We're
11 just going to combine the depositions. In the last two or
12 three weeks, we've redoubled efforts to try -- we answered
13 discovery in May of 2016 about our research on these sites.
14 We redoubled efforts and will provide anything, you know,
15 prior to the deposition. Our goal was by this Friday,
16 anything new that we come up with.

17 Now, I'm not sure. Are they -- are you sure they're
18 in the *Smith* case? I have them down in *Howe*, but we can
19 clarify that.

20 MS. DEAN: You know what? Mr. McDonald's right. I
21 pulled from the *Smith* case the Union Carbide deposition
22 notice, so that's my mistake. So just to be sure we're on
23 the same page, if, if ---

24 THE COURT: It's *Howe* and the North Carolina case,
25 right?

1 MS. DEAN: Yes. We can cross notice in *Howe* the
2 deposition of Sterling on the 30th, and -- if we have the
3 documents by Friday. We need to at least have a couple
4 business days to review to have a meaningful time when we
5 take the deposition.

6 THE COURT: I think Mr. McDonald is saying he can do
7 that.

8 MR. McDONALD: That's what -- I'm trying to do that,
9 Judge. I'm not the person looking.

10 THE COURT: Sure. I understand. All lawyers can do
11 is say you'll try to do it.

12 MR. McDONALD: That's right.

13 THE COURT: Absolutely. Very good. Then Sterling is
14 resolved.

15 MS. DEAN: That leaves us on our list -- and I think
16 the good news before I do go with this is I think in
17 handling this, we've also inadvertently dealt with a lot of
18 motions for protection, but if we ---

19 THE COURT: How about Gorman Rupp?

20 MS. DEAN: Gorman Rupp, that is a pump company. We
21 have been seeking from Mr. McDonald or his client to let us
22 know whether that equipment were at any of the locations
23 where Mr. Howe worked and have not been able to agree to a
24 date or to get records.

25 MR. McDONALD: Sure, Your Honor, and I come before you

1 -- Gorman Rupp will produce a witness. If the court tells
2 us to produce a witness, we'll do it immediately, all
3 right, but let me just -- I'm dis-serving my client if I
4 don't tell you about the situation, all right?

5 Gorman Rupp's main wheelhouse pump is a water pump, a
6 wastewater pump that plants would use. It has rubber
7 gaskets, rubber packing. Has nothing to do with asbestos,
8 all right, but in all honesty, in their discovery responses
9 they did at times sell some pumps with asbestos, okay?

10 All right, the testimony in this case, Mr. Howe never
11 mentioned working around a Gorman Rupp pump. Coworker
12 Newland, no testimony working around a Gorman Rupp pump.
13 Testimony from Wayne Grant, no working around a Gorman Rupp
14 pump. Testimony from Gilbert Small, no Gorman Rupp pump
15 that he recalls, and he was the millwright that worked on
16 the pumps at the Bowater plant.

17 Gorman Rupp has responded. They have provided -- I
18 mean, long time ago verified responses to discovery. We
19 have researched our records, and we have no record of any
20 pump with asbestos-containing components to any of the job
21 sites where Mr. Howe worked, all right?

22 Now the last two or three weeks, I have redoubled
23 efforts. Let's double check. Let's dig into our records,
24 and they're doing that and we may be able to just provide
25 some model numbers and things like that to satisfy them. I

1 think we definitely had sales to Bowater, but they are
2 pumps without asbestos components. I have provided a
3 transcript of a very thorough deposition of Gorman Rupp
4 that explains their history and the kind of pumps they
5 made, and I have provided that to Mr. Holder in hopes that
6 he wouldn't have to take their deposition in this situation
7 on that evidence. It seems like a waste of time.

8 THE COURT: Well, it sounds to me you would be well
9 able to say all docs I haven't provided I can provide by
10 Friday, and then you will get together with Mr. Holder and
11 decide whether or not you need to take a deposition, all
12 right?

13 MR. McDONALD: That's fair. Okay.

14 THE COURT: That resolve that, Ms. Dean?

15 MS. DEAN: Yes, and I've known -- I've worked with Mr.
16 McDonald for a decade. We have no desire to tread on
17 somebody that doesn't have asbestos, but we just need to
18 look for ourselves.

19 THE COURT: Sure. That's just a due diligence thing.

20 MR. McDONALD: Sure.

21 THE COURT: And it sounds like y'all are well on the
22 way to seeing where you are.

23 Now, that means that the only thing we've got left is
24 Ingersoll Rand and Foster Wheeler, and are we still
25 involved in discussions?

1 MS. McVEY: They are still discussing. Do you want to
2 move on to the next case, or do I need to go grab them?

3 THE COURT: Go grab them.

4 MS. DEAN: I'm likely prepared to do that, if the
5 court doesn't mind, but we can also grab them if that's
6 better.

7 THE COURT: You think it's going to take much longer,
8 or can you go on and grab them?

9 MS. McVEY: Let me go check.

10 THE COURT: Okay. Let's just be at ease for a minute.

11 (OFF THE RECORD.)

12 THE COURT: Okay, we have Ms. Techman and Mr. Holder
13 available, so we're now on Foster Wheeler. All right, and,
14 Ms. Techman, do y'all have an agreement?

15 MS. TECHMAN: Well, wish I could tell you that we did,
16 Judge.

17 THE COURT: Well, you don't have agreement then.

18 MS. TECHMAN: That's right.

19 THE COURT: Let them go forward.

20 MS. TECHMAN: Sure.

21 THE COURT: And say what's on their mind, and then you
22 can respond.

23 Go ahead, Ms. Dean.

24 MS. DEAN: Foster Wheeler is in the *Howe* case as a
25 manufacturer of boilers. We have five, five locations

1 wherein our kind of lengthy experience with Foster Wheeler,
2 they have records of whether they're there or not and where
3 we have some ID that we obtained from coworkers or
4 codefendants that we want to talk to them. And we're
5 struggling to get a concrete date for documents and
6 deposition.

7 THE COURT: All right, Ms. Techman.

8 MS. TECHMAN: Sure. Jennifer Techman for Foster
9 Wheeler. There is no evidence, as you've heard from some
10 of my colleagues, in this case from any witness who puts
11 Foster Wheeler products at issue. I say that with the
12 benefit of having heard what the court has said to my
13 colleagues about that position. But I also say that to
14 provide context: that it was only recently that we got
15 direct communication from the plaintiffs' team that they
16 were interested in at least one particular site with regard
17 to Foster Wheeler. There may now be two sites.

18 Be that as it may, whether there was one or two, I
19 have been in constant communication with the client to
20 determine if they have documents regarding the site.
21 Sometimes you have the site come up again and again, and on
22 the defense side you have the good fortune that the
23 documents have been produced before and you can pretty
24 quickly turn them around.

25 I'm sorry to tell you that is, unfortunately, not my

1 good fortune. So, there, there is a site at issue,
2 Celanese, that is -- has not been what I would call
3 previously produced. Foster Wheeler will need time find
4 documents. I understand from having heard Your Honor this
5 morning that you will require them to do that, and I have
6 told that to the client and it is underway, and they
7 understand the speed with which it needs to happen. But
8 there are only twenty-four hours in a day, and so they will
9 expedite it as much as possible, as I have explained to Mr.
10 Holder.

11 But I am not in a position to tell the court, for
12 example, it can be done by a date certain. I can tell you
13 it will be done as expeditiously as possible and, you know,
14 with full knowledge of the deadlines in the case, and in
15 particular the summary judgment. So, that's where we are
16 with regard to documents.

17 With regard to deposition, again there are prior
18 depositions taken by probably even Ms. Dean herself. So,
19 there is prior testimony from the client, and that will
20 help us because it will narrow the issues. I don't think
21 they want to take yet another deposition on quite a number
22 of issues that are already covered because they'll rely on
23 existing testimony.

24 To the extent they want to talk with a designee with
25 regard to the site, we have to get the documents before we

1 can put up the witness.

2 THE COURT: All right.

3 MS. TECHMAN: And again, they will do that as
4 expeditiously as possible, and I have explicitly told them
5 about the deadline of February 9th, that they will make all
6 best efforts to do that.

7 THE COURT: All right, here's what going to happen.
8 By January 29th, next Monday, they're going to produce
9 documents. They've got to do that, and sometime the week
10 that includes February the 8th, depositions are going to be
11 scheduled. Can y'all work with that general order?

12 MS. DEAN: Yes. I would like to make clear, because
13 of what was stated on the record, that they believe it's
14 only two locations. They may and probably very well do
15 know more than I do, but there are five locations at issue,
16 and we want to know ---

17 THE COURT: They're going to have to respond to a
18 document request for all five locations, and they're going
19 to have to be deposed on the 30(b)(6) about those
20 locations.

21 MS. TECHMAN: May I respond to that point, and it may
22 be helpful. I know Ms. Dean has got a lot going on, so she
23 simply might not remember this. When Foster Wheeler
24 receives a new case and understands the work sites at
25 issue, all five here, in their discovery -- so, months and

1 months and months ago -- this case was filed in maybe 2015
2 or 2016. They set out in their discovery what they have
3 been able to determine with regard to all the work sites.
4 So, that has been done.

5 THE COURT: Good. They just need to ---

6 MS. TECHMAN: So, that's in the discovery.

7 THE COURT: --- revisit and reverify that because
8 again, it's going to be a representation made as of January
9 29th that all documents, all locations have been given.
10 They need to look at that again, and then they need to have
11 a deposition witness available the week that includes
12 February the 8th to be deposed on these matters.

13 MS. TECHMAN: Your Honor, if I, if I cannot comply
14 with the court's order, I would appreciate the opportunity
15 to maybe have a joint phone call with you to keep the court
16 apprized. I simply don't want to leave the proceedings
17 today giving opposing counsel or the court what may be the
18 mistaken impression that it can be accomplished.

19 THE COURT: It can be accomplished. Now, Foster
20 Wheeler can comply with this, Ms. Techman. It's not your
21 fault, but they've got to understand we're down to the
22 crunch because they're going to want you to make a motion
23 for summary judgment, unless the sun doesn't rise, and
24 that's going to necessitate getting this information and
25 the deposition done in time for them to do that by

1 complying with the February 28th day. So, that's where we
2 are.

3 MS. TECHMAN: All right. So I understand Your Honor's
4 ruling, you are ordering the documents be produced by the
5 28th.

6 THE COURT: By the 29th.

7 MS. TECHMAN: By the 29th.

8 THE COURT: Which is next Monday, and that a
9 deposition be conducted in this case, 30(b)(6), for Foster
10 Wheeler sometime the week that includes the date February
11 the 8th.

12 MS. TECHMAN: Okay, and is this preceding Your Honor's
13 ruling on the merits of any defendant's motion for
14 protection?

15 THE COURT: What kind of protection are they asking
16 for?

17 MS. TECHMAN: Foster Wheeler and also Ingersoll Rand
18 have filed a motion for protection with regard to the scope
19 of the 30 ---

20 THE COURT: No, I'm absolutely not going to do that.
21 That's a connect-the-dots issue. That's just another way
22 of delaying these proceedings. They're going to answer
23 what they can answer.

24 MS. TECHMAN: Sure.

25 THE COURT: And if they go far afield, you're going to

1 instruct them not to answer and I'll deal with that, but I
2 hope that won't happen.

3 These companies need to understand we've now -- this
4 is an old case. It's been around since 2015. They need to
5 go on and get with the program, and they can get with the
6 program.

7 MS. TECHMAN: Sure. Just, just for purposes of the
8 record, Your Honor, I want it to be clear. Foster Wheeler
9 has a pending motion for protection, and that preceded the
10 motion to compel that was filed yesterday, and it seems
11 like the motion to compel is what we're hearing today. I'm
12 simply asking for clarification.

13 THE COURT: I can tell you that I am not going to
14 refuse to allow a 30(b)(6) deposition to go on the grounds
15 that have been recited in the Ingersoll Rand and then
16 Foster Wheeler, if they file one, and they just say it's
17 overbroad, vague and overbroad. Well, that's a vague and
18 overbroad reason, as far as I'm concerned, and I'm not
19 going to do it that way, as I've indicated previously to
20 someone that I respect as much as I do you, which is Mr.
21 McDonald and his clients.

22 MS. TECHMAN: Understood.

23 THE COURT: We're just not going to do it that way.
24 They don't specify anything other than it's vague and
25 overbroad. That's just not enough.

1 MS. TECHMAN: Well, now, in fairness to my client,
2 their motion actually makes a proportionality argument.

3 THE COURT: I know and I'm not impressed by that.
4 That is not enough to prevent a 30(b)(6) deposition from
5 going forward. The rules specify the circumstances under
6 which that goes. That goes to relevance and weight and a
7 whole bunch of things that don't -- that are not a part of
8 the ball game until much later on.

9 MS. TECHMAN: Understood. Foster Wheeler's view of
10 the case was simply since there had been no testimony from
11 Mr. Howe ---

12 THE COURT: I get that ---

13 MS. TECHMAN: --- or any of his coworkers ---

14 THE COURT: I get that. That, that comes up all the
15 time. These people work around machines, and they don't
16 know which ones they are.

17 MS. TECHMAN: Sure.

18 THE COURT: And it has to be identified in other ways
19 by invoices, by 30(b)(6) depositions, and the like. But on
20 the front end, we don't simply chop it off and say, oh,
21 that's vague and overbroad because you haven't connected
22 the dots. That's what I mean by that, but it's not --
23 that's said with great respect. You are a great lawyer,
24 Ms. Techman. You're doing a great job for your client, but
25 that's just a wheel spinning thing in my humble estimation.

1 My betters will correct me if I'm wrong.

2 MS. TECHMAN: If I could just make one more point?
3 That's Foster Wheeler's view of this case after all the
4 evidence has come in. So, after the personal deposition of
5 Mr. Howe, which my clients have moved to exclude because
6 they did not have an opportunity to cross-examine him, and
7 after the deposition of the coworkers, there was no one,
8 there is no one in this case who ---

9 THE COURT: I've read.

10 MS. TECHMAN: --- will identify ---

11 THE COURT: I'm aware and ---

12 MS. TECHMAN: --- as to -- understood.

13 THE COURT: I will not grant such. Thank you.

14 MS. TECHMAN: Thank you, Judge.

15 THE COURT: All right. Now, Ms. Dean, I think we've
16 got Foster Wheeler taken care of.

17 MS. DEAN: Foster Wheeler has mirror arguments in the
18 Charlotte Smith case, and so we'd ask for an order in that
19 case as well.

20 THE COURT: And it will be granted. Again, Foster
21 Wheeler is going to produce things by the 29th, and they're
22 going to set a date. The parties will get together on a
23 date that is sometime the week that includes the date
24 February the 8th. Prepare an order to the effect so Ms.
25 Techman can be protected with respect to her client. And

1 if Ms. Techman wants a ruling on the vague and overbroad
2 and so forth and so on, we'll do that as well, but ---

3 MS. TECHMAN: Can I be heard briefly -- pardon, Your
4 Honor -- on *Smith*?

5 THE COURT: Is this going to be the same thing all
6 over again?

7 MS. TECHMAN: No.

8 THE COURT: All right.

9 MS. TECHMAN: With all due respect. If, if I might
10 make a suggestion, and it might fail miserably, but let me
11 make it. Typically we reach one case for trial, and I
12 think we have all been heavily focused on Mr. Howe's case.
13 Would you allow Ms. Dean and I to reach an agreement of
14 counsel, if we can, with regard to documents or deposition
15 in any of the other trailing cases on this document if she
16 is amenable to it? And here is why I make that suggestion.

17 I am very reluctant to leave the court or Ms. Dean
18 with the mistaken impression that I can satisfy fully my
19 client's document production or deposition.

20 THE COURT: Ms. Techman, this is great for the client,
21 but of course if y'all reach some agreement that is
22 different from the order, that's fine and dandy if the both
23 of you agree.

24 MS. TECHMAN: Sure.

25 THE COURT: But this order will say what it's going to

1 say, which is January the 29th and the week that includes
2 the date February 8th. If the parties agree otherwise,
3 then I don't won't have to get involved in it anymore.

4 MS. TECHMAN: Understood. For example, I anticipate
5 she'll -- she might bring up *Sizemore*, and I think there
6 are sixty work sites in *Sizemore*, and we've had quite a bit
7 of conversation ---

8 THE COURT: These are orders ---

9 MS. TECHMAN: Sure.

10 THE COURT: --- with respect to every one of these
11 cases, *Howe*, *Sizemore*, *Falls on behalf of Smith*. The only
12 case we haven't talked about yet is *Glenn*, but these are
13 orders that affect all of these cases. They're all set
14 back to back, and they're all going to be treated the same
15 way.

16 Everybody understand where we are? Very good.

17 MS. DEAN: Yes, Your Honor.

18 THE COURT: Ms. Dean, you'll prepare an order to that
19 effect.

20 MS. DEAN: Yes, Your Honor.

21 THE COURT: Very good. Ms. Techman, anything else?

22 MS. TECHMAN: No, Your Honor.

23 THE COURT: Thank you, ma'am.

24 All right, now we got *Ingersoll Rand*.

25 MS. DEAN: *Ingersoll Rand* is a manufacturer of

1 compressors and pumps where we have been seeking what
2 identification they have of that equipment at five
3 locations and want an order that just requires them to give
4 us what documents they have, if any, by Monday and a
5 deposition by the scheduling order deadline.

6 THE COURT: Same issues you had in the previous one.
7 Any problems other than protecting you on your motion that
8 it's vague and overbroad and ought not to be taken at all,
9 et cetera?

10 MS. TECHMAN: I would simply note for the record that
11 Ingersoll Rand has moved for protection on grounds
12 including overbreadth and others. And with regard to
13 Ingersoll Rand, we have been working, as we have with
14 Foster Wheeler, with the folks that do know more. I would
15 say our communication lines are pretty open and typically
16 have been.

17 We think we have identified a date. It may be
18 slightly outside of the February 9th deadline, and we'll
19 either figure out if that is doable -- you're going to have
20 a lot going on before that date. Maybe you'll be amenable
21 to taking it slightly outside the deadline. If you're not,
22 we'll revisit it.

23 Ingersoll Rand historically doesn't have the ability
24 to go search for records at any site, as Ms. Dean knows.
25 They have documents from cases, maybe just a year ago in

1 the Carolinas, so they do have some documents. We will
2 continue to look, but I believe we've been very candid in
3 telling them that we do not have the ability, and so we
4 don't have responsive documents. If you wanted the
5 documents for, say, American Enka, I do not think the
6 client can fairly represent to you these are the documents
7 about American Enka, but I think we're on the same page
8 about that. And they do -- plaintiffs' counsel does have
9 Ingersoll Rand documents, and we'll certainly -- we can
10 discuss that as often as we need to. And if they feel they
11 need more, we are amenable to that.

12 THE COURT: Very good. Does that resolve it, Ms.
13 Dean?

14 MS. DEAN: I believe so. We're not asking ---

15 THE COURT: February 9th, the week of February the 8th
16 unless you all agree otherwise?

17 MS. DEAN: Yes.

18 THE COURT: Very good. All right, that's Ingersoll
19 Rand. Now, that competes everything I've got on list for
20 your motions to compel.

21 MS. DEAN: The next case that we had a motion for,
22 which is in the next tab, was for *Smith*, but I don't even
23 have to turn to that because the requests related the
24 Cleaver Brooks, Covil, Daniel, Foster Wheeler, and Union
25 Carbide, and we have already dealt with all of those while

1 discussing the *Howe* case.

2 THE COURT: Exactly. Now the sites, of course, are
3 different. They are spelled out in the *Falls on behalf of*
4 *Smith* motion, and they are paper mills, Bowater Papermill
5 in '68 forward and four separate Celanese plants:
6 Spartanburg, Greenville, Darlington, and Salisbury; Cannon
7 Mills of Kannapolis; Cone Mills, Concord, North Carolina;
8 Milliken Cypress, Blacksburg; Milligan in Pendleton; along
9 with ten separate Duke Power.

10 Now, that was the testimony of Childers, right?

11 MS. DEAN: Yes.

12 THE COURT: All right. Is there any -- is that the
13 universe that we're talking about?

14 MS. DEAN: We're not looking at any, any locations
15 beyond those, and some of them but not all overlap
16 locations where Wayne Howe worked.

17 THE COURT: Very good. So, what we've already done so
18 far adequately describes what needs to be done with respect
19 to the motion to compel in *Falls on behalf of Smith*?

20 MS. DEAN: Yes, Your Honor.

21 THE COURT: Which is 2015-CP-46-2155, and the orders
22 that are filed will reflect. Now, anything else on that
23 one?

24 MS. DEAN: Not, not that I'm aware of.

25 THE COURT: All right, we've got, of course, with all

1 of these voluminous motions on behalf of all kind of folks
2 to quash the 30(b)(6) depositions and for protective
3 orders. I think we have dealt with these, but if anybody,
4 any counsel feel like anything needs to be dealt with that
5 had not been dealt with, I'll be glad to do it.

6 I do not regard these motions for protective order or
7 for quashing as dealing with anything other than the
8 plaintiffs' failure to connect the dots to this defendant.
9 That is what it seems to me is the heart and soul of this.
10 Am I right about that?

11 MS. DEAN: Yes. I mean, there are, there are some
12 discrete issues like we don't want to go on a Sunday, but
13 they've all been dealt with.

14 THE COURT: Right. Okay. So, does anything else need
15 to be done? I'm just trying to protect the defendants
16 really primarily, being sure that their record is
17 protected, that their motions for the quashing and for a
18 protective order with respect to the 30(b)(6)s that we've
19 just spent a lot of time discussing in terms of exchange of
20 documents and dates for depositions, that those matters
21 have been dealt with.

22 Mr. Rheney.

23 MR. RHENEY: Yes, ma'am. You asked if that fully
24 encompassed it. I would simply add that in the case of
25 Covil, we had the additional ground of Palmer Covil's

1 previous deposition.

2 THE COURT: Right, and I think you dealt with that,
3 that you're going to supply it. I'm going to require that
4 Jim Covil's deposition be taken.

5 MR. RHENEY: Yes, ma'am.

6 THE COURT: And we've set the dates accommodating your
7 request for a little bit later.

8 MR. RHENEY: Yes, ma'am. I was simply saying that was
9 an additional ground for our motion for ---

10 THE COURT: Sure.

11 MR. RHENEY: --- protective order.

12 THE COURT: Understood.

13 MR. RHENEY: Thank you.

14 THE COURT: Everything else good?

15 All right, where are we now, Ms. Dean?

16 MS. DEAN: The next tab is for the *Sizemore* case, and
17 on page 2 of our motion we list out defendants. The good
18 news is I believe most of these have been handled with --
19 handled for Cleaver Brooks, Daniels. I believe we've
20 handled those in your other orders. For Riley, Scapa, and
21 Waste Management of South Carolina we resolved that before
22 coming. So, my records show that the only thing that's
23 left to be discussed is the CBS Corp, which is
24 Westinghouse. Relates to Westinghouse equipment.

25 THE COURT: Okay. All right. So, go forward. You're

1 into Sizemore now. Do we need to have any arguments for
2 CBS Corp?

3 MS. DEAN: I am not *pro hac* in either Sizemore or
4 Glenn, and so I'd like to maybe gave up on the podium.

5 THE COURT: Very good.

6 Mr. Holder, you going to handle that or Ms. McVey?

7 MS. McVEY: Just one second, Your Honor. Y'all keep
8 going. Let me resolve SCANA.

9 THE COURT: All right.

10 So, Mr. Holder, you're going to deal with CBS Corp?

11 MS. DEAN: And I misspoke. I was confusing Scapa with
12 SCANA. That was me being...

13 THE COURT: Yes, you struck fear into my heart. I'm
14 dealing with Scapa next Monday in York.

15 MS. DEAN: We still do need to talk that SCANA. I'm
16 sorry. I said SCANA and CBS.

17 THE COURT: All right.

18 MS. DEAN: I'm going to let someone who is...

19 THE COURT: All right, Mr. Holder.

20 MR. HOLDER: Thank you, Your Honor. Jonathan Holder.

21 THE COURT: Jonathan Holder, and we're now in Jane
22 Coleman Sizemore as the personal representative against
23 Bowater Papermill. This is 2016-CP-25-0440.

24 MR. HOLDER: Okay. As she said, Jonathan Holder for
25 the Sizemore family.

1 Your Honor, looks like we have CBS Corp as the first
2 one up. I'm, I'm -- they've given us documents in *Smith*
3 and *Howe* and, and provided deposition date of tomorrow. So
4 for *Smith* and *Howe*, there was no issue. We just haven't
5 gotten a date and documents for *Sizemore*.

6 THE COURT: All right, who's representing CBS?

7 MR. ROGERS: Andy Rogers on behalf of CBS Corporation
8 in the *Sizemore* case. We, we are working on getting a date
9 and getting the documents. There, as you have heard, there
10 are numerous sites at issue in the *Sizemore* case, and CBS
11 has documents that they can produce in probably close to
12 twenty of those sites. And a few of those have not
13 previously been collected, so they are working on that
14 right now, and also working on identifying a deposition
15 date.

16 THE COURT: All right. Can we get those documents by
17 January the 28th -- I mean, the 29th?

18 MR. ROGERS: I, I will certainly convey that to the
19 client. In all honesty, I, I think it will be very
20 difficult, but I will convey that to the client.

21 THE COURT: Well, this is another one that's ancient
22 of days, and it's in Hampton County now because you made
23 them file the case in South Carolina. Why that was done, I
24 don't know, but defense has caused this thing where it was
25 originally -- where was it, New Orleans or some place like

1 that?

2 MR. HOLDER: Yes, Your Honor.

3 THE COURT: Now it's in Hampton County because y'all
4 insisted they bring it in South Carolina. It's been
5 hanging around for a very long time. CBS needs to go on,
6 step up, and provide these documents.

7 MR. ROGERS: Yes, Your Honor.

8 THE COURT: So, it's going to be January the 29th,
9 2018, and a deposition the week that we previously gave,
10 February the 8th. Mr. Rogers?

11 MR. ROGERS: Nothing further.

12 THE COURT: Understood?

13 MR. ROGERS: Yes.

14 THE COURT: Very good.

15 Mr. Holder, anything else that needs to be said?

16 MR. HOLDER: Nothing, not on CBS. Thank you, Your
17 Honor.

18 THE COURT: Provide me with an order on this one.

19 MR. HOLDER: Yes, Your Honor. Also generally on
20 Sizemore, I just want to let everyone know. Thank you,
21 Your Honor, for signing the order granting leave to amend
22 for the wrongful death pleading. I'm going to get that on
23 file today, and that will officially amend the caption to
24 have it as the PR, and I will go ahead -- I already have
25 the South Carolina standing discovery responses, finish

1 adapting the exact information from the Louisiana discovery
2 responses that y'all all have, but they will be on the
3 South Carolina with the new, with the new caption.

4 MR. McDONALD: Only thing I would add, Your Honor,
5 this will now turn into a wrongful death case. I read Mr.
6 Sizemore's obituary. He has four children, according to
7 the obituary. So, we'll want to take the depositions of
8 those four children and would appreciate their addresses.

9 THE COURT: I'm sure you can provide that, can't you,
10 Mr. Holder?

11 MR. HOLDER: Yes, Your Honor.

12 THE COURT: Very good. They'll do that.

13 MR. HOLDER: Absolutely.

14 THE COURT: As soon as you can.

15 MR. HOLDER: I'll, I'll send that out with the amended
16 complaint, sure.

17 Okay, and then the last one, I guess, is SCANA. SCANA
18 is ---

19 MS. McVEY: I can address it if you want me to.

20 MR. HOLDER: Yes. Switch with me.

21 MS. McVEY: Good morning. Theile McVey.

22 THE COURT: All right, come up to the podium, Ms.
23 McVey. It helps Ms. Harris.

24 MS. McVEY: Ms. Harris, who's the superhero over
25 there.

1 I have reached an agreement with Ms. Walker, who
2 represents SCANA. She is going to provide date to produce
3 documents and a deposition on Monday.

4 THE COURT: Very good. Thank you very much, Ms.
5 Walker, and there is no need for the court do anything with
6 respect to an order because you two counsel have reached
7 agreement.

8 MS. WALKER: Yes, Your Honor. Thank you, Your Honor.

9 THE COURT: All right, does that complete *Sizemore*?

10 MR. HOLDER: Yes, Your Honor.

11 THE COURT: Very good.

12 MR. HOLDER: That has been resolved.

13 THE COURT: All right, so we're done with *Sizemore*.
14 Now, we still have got *Glenn*.

15 MR. HOLDER: Yes, Your Honor.

16 THE COURT: *Glenn against 3M*. Who's going to do that,
17 you or Ms. Dean?

18 MR. HOLDER: I am. That's Jonathan Holder for the
19 Glenn family.

20 THE COURT: Very good. Now *Glenn against* -- this is
21 *Rita Joyce Glenn, individually and as Personal*
22 *Representative of the Estate of Thomas Harrell Glenn,*
23 *G-l-e-n-n, against 3M Company* and many others. It's a
24 Tenth Circuit case. It's 2015-CP-4-0107. You may proceed.

25 MR. HOLDER: Thank you. Thank you, Your Honor. The

1 Glenn case is another wrongful death case pending in
2 Anderson County. Several of the defendants we've been able
3 to resolve our issues with, and so I'm just going to tick
4 through the ones we haven't. And some of these are
5 individual -- have individual circumstances, and I'll try
6 to be brief.

7 Air and Liquid Systems for Buffalo Pumps, I spoke to,
8 I spoke to Mr. Phillips this morning in the hall, and he
9 had sent me an email that I hadn't seen yet and brought me
10 a hard copy. They had already provided a date in, in
11 another case for February 7th which shared a lot of the
12 work sites with Glenn. So, they said that we are --
13 they're happy to provide the deposition for the day for all
14 the cases. So, we're happy with that, and said that they
15 are working on docs. I don't have those yet, and so I just
16 wanted to include them.

17 MR. PHILLIPS: Your notice that you gave me yesterday
18 indicates the docs, you wanted them, I think, a week before
19 and I would work to do that. I think I can accomplish it
20 this afternoon.

21 MR. HOLDER: Okay.

22 MR. PHILLIPS: That would be, I think, January 31st,
23 whatever one week is before the 7th.

24 MR. HOLDER: Okay, and that was just in the original
25 notice. I asked for docs one week before the dep, but I

1 would like to just keep in line with the rest of the
2 orders, the docs by the 29th.

3 THE COURT: All right, documents by the ---

4 MR. PHILLIPS: Your Honor, may I respond to that,
5 please? So polite and so wonderful and so eloquent -- I'm
6 Mark Phillips, by the way, for Buffalo Pumps.

7 THE COURT: Yeah, come up to the podium or get to the
8 microphone.

9 MR. PHILLIPS: Yeah. I just want to give you some
10 communication we discussed. Thank you.

11 THE COURT: Oh. Just a small, little thirty-five page
12 document.

13 MR. PHILLIPS: Well, that's why it's got tabs on it.
14 It just makes it easier for you.

15 You know what? They just told me that January 31st
16 works. I will make every human effort to accomplish that,
17 Your Honor. The bottom line is these folks withdrew this
18 deposition notice last week. I know it was inadvertent. I
19 know -- Jonathan I sent me a note late Monday night. I
20 responded early yesterday morning and said, look, we're
21 going to work with you. We offered this deposition last
22 summer for *Taylor, Jolly, Glenn*, and then those cases went
23 away, at least as to Buffalo, except for *Glenn*. And we're
24 glad to resuscitate it and all that, and we have the
25 Louisiana case that will be a perfect match. It's just a

1 matter of us getting the documents together.

2 MR. HOLDER: And they've agreed to produce them in
3 *Howe*, too.

4 MR. PHILLIPS: Yeah. Yeah.

5 THE COURT: Okay. So, the bottom line is thank you
6 very much.

7 MR. PHILLIPS: I intend to produce them -- how does
8 that sound -- by January 31st. Again, I think the
9 deposition is February 7th, subject to final confirmation.

10 THE COURT: January 31st, the documents will be
11 produced and the deposition will be taken February the 7th.
12 That sounds great.

13 MR. PHILLIPS: That is the plan.

14 THE COURT: Very good. Thank you so much.

15 Mr. Holder, that deals with Air Liquid/Buffalo?

16 MR. HOLDER: Yes, Your Honor.

17 MR. PHILLIPS: You got it.

18 THE COURT: All right.

19 MR. HOLDER: Aurora is one we've already discussed
20 actually. I'm happy to move on if, if all the same
21 arguments still apply.

22 MR. MERIWETHER: Yes. Your Honor, just for the sake
23 of the record, it's Robert Meriwether for Aurora. Aurora
24 has not ever had the capacity to search our job site, but I
25 am going to let them know they got to jolly well figure

1 something out. Heretofore, they have been only able to
2 search by serial number. I suppose there will be some
3 people pouring through the files this weekend.

4 THE COURT: Thank you, sir.

5 MR. MERIWETHER: So, we have already got a date, I
6 think, for that dep, and we're going to see what we can do
7 to come up with some documents.

8 THE COURT: All right. So, that one is resolved,
9 correct, Mr. Holder?

10 MR. HOLDER: I, I think so, as they're ---

11 THE COURT: January 29th they're going to supply the
12 documents, and then they are going to reconvene with you
13 about a deposition which obviously is going to take place
14 in that week in February.

15 MR. HOLDER: I believe the 28th, right?

16 MR. MERIWETHER: Yes.

17 MR. HOLDER: Right, it's the same for *Howe*. Okay, as
18 long as y'all are fine with the same date as *Howe*.

19 THE COURT: Right. All right.

20 MR. HOLDER: Thank you, Your Honor.

21 THE COURT: Now we've got BW/IP.

22 MR. HOLDER: Yes, Your Honor, for Byron Jackson Pumps.
23 They -- we've not -- we would seek documents by the 29th
24 and a deposition the week of the 8th.

25 THE COURT: Who is that counsel for BW/IP?

1 MR. HOLDER: I think Mr. Rheney, correct?

2 THE COURT: No one's claiming them.

3 MR. WHITE: Yes.

4 THE COURT: Mr. White.

5 MR. WHITE: It's Byron Jackson. I'm sorry. We
6 produced the documents that our client has for the various
7 Duke facilities. The David Taylor case last summer was a
8 gentleman who worked at Oconee, and Mr. Glenn is among the
9 group of people who worked at various Duke sites. We
10 produce the Byron Jackson documents for the Duke sites
11 involved in those cases last summer. If there are
12 additional ones ---

13 MR. HOLDER: Right.

14 MR. WHITE: --- we will ---

15 MR. HOLDER: Right.

16 MR. WHITE: --- produce them.

17 MR. HOLDER: And the only additional in *Glenn* is Duke
18 Marshall Steam Station. So, if ---

19 MR. WHITE: Could you clarify, give us all the Duke
20 sites you're looking for so we won't ---

21 MR. HOLDER: For *Glenn* the sites at issue are the
22 three nuclear sites that we've been dealing in the others.

23 MR. WHITE: Oconee, McGuire.

24 MS. McVEY: Oconee, McGuire, and Catawba and for *Glenn*
25 there was the fourth site. It's a steam station, Marshall

1 Steam Station. It's Duke.

2 MR. WHITE: Your Honor, we'll have those documents by

3 ---

4 UNIDENTIFIED MAN: Where's Marshall? Do you know
5 where it is?

6 MR. HOLDER: Not off the top of my head.

7 MR. WHITE: --- by Monday.

8 THE COURT: Yes, January, by January 29th you would
9 produce ---

10 MR. HOLDER: Thank you.

11 MR. WHITE: And we'll work with Jonathan ---

12 THE COURT: --- BW/IP would produce the documents.

13 MR. WHITE: --- on a date for a video -- by video.

14 THE COURT: Right.

15 MR. HOLDER: With video.

16 THE COURT: Okay, so that's resolved, Mr. Holder,
17 correct?

18 MR. HOLDER: Yes. If they're going to get -- if
19 they're willing to get a date the week of the 8th, it
20 sounds like it, Your Honor.

21 THE COURT: Very good. All right.

22 MR. HOLDER: Next up is Carboline and the same. We've
23 not received records from Carboline or, or a date. So, we
24 would ask the docs by the 29th and ---

25 MR. MERIWETHER: Your Honor.

1 MR. HOLDER: --- deposition by the 8th.

2 MR. MERIWETHER: Robert Meriwether on behalf of
3 Carboline. We have been in touch with them. Frankly, with
4 all the attention on the *Howe* case, we have been focusing
5 on those clients who are in *Howe* as well as *Glenn*, and
6 Carboline is only in *Glenn*. I am delighted to know the job
7 sites at issue: Oconee, McGuire, Catawba, and Marshall if I
8 just wrote that down correctly.

9 THE COURT: So, it sounds like y'all can resolve it,
10 correct, Mr. Meriwether?

11 MR. MERIWETHER: I think we're going to be able to
12 resolve the -- we frankly just have not had time to focus
13 on ---

14 THE COURT: Sure.

15 MR. MERIWETHER: --- *Glenn* only because of the,
16 the ---

17 MR. HOLDER: *Howe*.

18 THE COURT: *Howe* stuff. Yeah, I understand.

19 MR. MERIWETHER: *Howe* case.

20 MR. HOLDER: On these -- and, and I completely
21 understand. I don't mean to interrupt anybody. For these
22 where I absolutely know y'all are working and I appreciate
23 that, but for the people that are working to get us the
24 docs, do we include them in the order or include them in an
25 order? I just don't want to have to come back.

1 THE COURT: So far they're saying yes, they can do it.

2 MR. HOLDER: Yeah.

3 THE COURT: If they were going to tell me no, then
4 we'll do it, but yes.

5 MR. HOLDER: Okay. Great. I think we're on the same
6 page.

7 THE COURT: That's Carboline. I think they would want
8 that, too. I mean, the defense wants to have something in
9 their file saying, hey, I didn't want to do this, but they
10 made me do it.

11 CBS.

12 MR. HOLDER: CBS, I think it's -- we're just saying
13 same story, I'm imagining.

14 THE COURT: Mr. Rogers.

15 MR. HOLDER: It would only be additionally to Marshall
16 because I believe CBS previously provided documents in
17 *Taylor and Jolly*. Is that correct?

18 MR. ROGERS: Andy Rogers on behalf of CBS. Just to
19 address that, Jonathan, I believe all of the Duke sites are
20 at issue, in the Falls case, and the extent ---

21 MR. HOLDER: Correct.

22 MR. ROGERS: --- CBS had records for any of the Duke
23 sites, they would have produced in the *Falls* case. So, I
24 don't think Marshall -- I, I can double check but the
25 other, the other sites -- in short, I believe CBS has

1 produced all the docs it has, the documents it has.

2 THE COURT: And just inquire of them as to Marshall is
3 what it sounds like.

4 MR. ROGERS: I will, I will, I will double check, but
5 I believe it's ---

6 MR. HOLDER: And, and because of the crossover of
7 sites, I am happy to do *Glenn* along side *Smith* or *Sizemore*.

8 MR. ROGERS: Okay.

9 MR. HOLDER: Or all three.

10 MR. ROGERS: That's noticed for tomorrow.

11 MR. HOLDER: Actually *Smith*, you're right. I, I guess
12 I can't give everyone notice for that. So, I'll double up
13 with whether -- whatever additional date for *Sizemore* for
14 CBS.

15 MR. ROGERS: We will, we will, we will get a date on
16 that.

17 THE COURT: Great. All right, and so we next have
18 Crosby Valve.

19 MS. DEAN: Your Honor, this is Jessica Dean. I'm not
20 in the *Sizemore* case, but I did know that we were able to
21 resolve that issue, and I don't even know if I told Mr.
22 Holder, so I didn't want to waste anyone's time.

23 THE COURT: Okay. We're now at Crosby Valve.

24 MR. HOLDER: Could I have one moment?

25 MS. DEAN: I want to make sure.

1 (A PAUSE.)

2 MR. HOLDER: I think I'm, think I'm mistaken. I don't

3 ---

4 MS. DEAN: I was wrong. He was correcting me.

5 MR. HOLDER: Yeah. I don't think that we did reach --
6 I mean, Yancey is working on us a date. He, you know, same
7 counsel as Crosby and Fisher had last time. They -- the
8 only additional thing that I've pointed out is I don't need
9 any more docs for Crosby from '80 on because I have those
10 in Jolly. I, what I do need is the -- Glenn started
11 working at Duke in '69, so I need the years '69 to '79 for
12 the three nuclear sites, as well as Marshall, but for
13 Marshall I'll need docs for the entire period for both
14 Crosby and Fisher as well.

15 THE COURT: Yancey.

16 MR. McLEOD: Happy to respond, Your Honor. My name is
17 Yancey McLeod, and I'm here on behalf of Crosby Valve, LLC;
18 Fisher and Fisher Controls International, LLC.; and JR
19 Clarkson, Kunkle Valve.

20 As far as the documents concerned -- are concerned, JR
21 Clarkson Kunkle Valve has done a search. They have no
22 documents for any of these sites, the Duke facilities.
23 Your Honor, as you're aware, the, the Glenn case is really
24 a companion case to the Jolly case. These are all the same
25 witnesses, and JR Clarkson has not been named by any of

1 these witnesses, nor has JR Clarkson turned up any
2 documents. So, you know, we are hoping that we didn't even
3 need to have a 30(b)(6).

4 I understand the whole connecting the dot thing, but
5 with all due respect, I'm not sure how these dots are going
6 to get connected when we didn't turn up any documents in
7 either *Freeman, Simpson, Taylor, Jolly*, any of these
8 witnesses subject to this case have mentioned talking
9 about. So, we are hoping to resolve that. However, we're
10 trying to work with, with the plaintiffs on this, and we're
11 trying to provide dates. We have no documents after the
12 search.

13 As far as Crosby documents go, they have everything.
14 My understanding is that from the *Jolly* case, those
15 searches that were done would have included all the sites,
16 including the years. I'll double check. I've been told
17 ---

18 THE COURT: Including Marshall?

19 MR. McLEOD: Yes, Your Honor.

20 THE COURT: All right, and how about Fisher?

21 MR. McLEOD: Now Fisher is a different story, and I
22 want to be clear. We have produced -- they have all the
23 documents, and I'm including the years. I mean, I know the
24 dates are a little different, but my understanding was
25 Fisher had already produced all of the documents with the

1 exception of Marshall. And, and just so the record is
2 clear, we were responding to discovery responses. Our
3 response were based on the plaintiffs' responses, which did
4 not include Marshall as a site, and that's why we haven't
5 -- for Fisher we haven't done that search. They're doing
6 it even right now as I speak because the first time we
7 realized that Marshall was subject to the case was when
8 Jonathan was ---

9 MR. HOLDER: The deposition was ---

10 MR. McLEOD: When I ---

11 THE COURT: The bottom line is it's been done.

12 MR. McLEOD: We're, we're doing it, and so to the
13 extent that Fisher has documents for Marshall, we will of
14 course produce them ASAP.

15 THE COURT: Okay.

16 MR. McLEOD: I'm working with the plaintiffs on, on
17 the 30(b)(6) deposition.

18 THE COURT: Right. Well, then let's just zero in on
19 one thing. JR Clarkson, in or out?

20 MR. HOLDER: Your Honor, if -- I am happy to do a very
21 abbreviated deposition if they're saying they have -- can
22 verify that their records are complete, that the
23 nonexistent stuff -- a record in there is dispositive of
24 that their equipment wasn't at that site. We had a
25 good-faith belief for including them specifically in the

1 Glenn matter and so, you know, I'm not -- I don't want to
2 -- I'm asking for full ---

3 THE COURT: So there's no order required at this time.
4 You and Yancey are going to work together to verify whether
5 Clarkson is in or out, right?

6 MR. McLEOD: I'm happy to work with him on Clarkson.

7 MR. HOLDER: Absolutely.

8 MR. McLEOD: But for Crosby and Fisher ---

9 THE COURT: Crosby, Fisher are going to be the same
10 dates we've been talking about, and Mr. McLeod indicates he
11 can deal with that.

12 MR. McLEOD: No problem working with them on dates.

13 THE COURT: Exactly.

14 MR. McLEOD: And I think we're going to come up with
15 some agreement, yes, Your Honor.

16 THE COURT: Nothing I ---

17 MR. HOLDER: And we'll, we'll discuss that. Yeah,
18 sure.

19 THE COURT: Okay, that's deals with Fisher, Crosby
20 Valve, and JR Clarkson. Okay, now I'm at ---

21 MR. HOLDER: And just so I'm clear, I can draft an
22 order for Fisher, Crosby. I'm working it out on Clarkson.

23 THE COURT: Okay, how about Daniel, and that's the
24 next one on my list.

25 MR. McDONALD: We've been so focused on the other

1 cases, Judge, we really haven't talked about doing it, but
2 we'll do the same things, Your Honor. I mean, obviously
3 we'll get you the documents.

4 MR. HOLDER: Right, and, and the same date will be
5 fine because it's the same sites.

6 THE COURT: All right. So, McDonald will deal with
7 that, and that's Daniel.

8 Foster Wheeler. I'm not going to let Ms. Techman not
9 say anything, and then we go back ten minutes later and get
10 into this. What's the deal, Ms. Techman? Foster Wheeler.

11 MS. TECHMAN: Your Honor, I thought that we addressed
12 that previously.

13 THE COURT: I thought we had, too, but I just want to
14 make sure everybody is on the same page about that.

15 MS. TECHMAN: All I can add is that my client has
16 further confirmed that they do not believe that even if
17 they worked nonstop that they could produce documents with
18 regard to these sites that have not been previously
19 produced. They, they do -- they tell me they cannot do
20 that by the 29th. I certainly don't want to ---

21 THE COURT: Well, they'd sure better respond saying I
22 can't do it by the 29th but I can do it by the 30th. I
23 mean, it's not going to be adequate to say I cannot do it.
24 That's not going to cut it.

25 MS. TECHMAN: Sure. I, I just -- in an effort to keep

1 opposing counsel and the court informed, I have received
2 confirmation that even if they move it to the top of the
3 list and expedite the investigation, pulling all the
4 contracts, it, it, cannot be completed in that timeframe.
5 But they understand urgency and they will use all best
6 efforts, and we will, you know, keep opposing counsel
7 informed.

8 THE COURT: Very good.
9 Grinnell.

10 MR. HOLDER: Your Honor, we have resolved with
11 Grinnell.

12 THE COURT: All right.

13 MR. HOLDER: And ITT.

14 THE COURT: Great. Ingersoll.

15 MR. HOLDER: Ingersoll Rand, same, same issues as the
16 other cases.

17 THE COURT: Same as Foster Wheeler? Are they also
18 saying they can't possibly under any circumstances, or is
19 that limited to Foster Wheeler?

20 MS. TECHMAN: No, Judge. I think to the extent -- you
21 were talking about Thomas Glenn?

22 MR. HOLDER: Yes.

23 MS. TECHMAN: Glenn, I believe you already have the
24 documents in that case from the *McSwain* action. If you
25 would confirm if you need another copy, just let us know.

1 MR. HOLDER: Oh, yeah, that, that -- McSwain never
2 worked at Marshall. So, for the Marshall Steam.

3 MS. TECHMAN: So, supplement as to Marshall.

4 MR. HOLDER: Absolutely, that weren't -- and as long
5 as it -- yes.

6 MS. TECHMAN: So, Your Honor for purposes of the
7 record -- sorry, Jennifer Techman for Ingersoll Rand -- we
8 will speak directly with the client. We will ask if they
9 have any ability to look for records with regard to
10 Marshall, and we will let opposing counsel know if, if they
11 can or cannot. And if they can, we will keep opposing
12 counsel informed with regard to how quickly we could
13 produce any documents to the extent it might be possible to
14 identify them.

15 THE COURT: Great.

16 MS. TECHMAN: I should caution. Typically in most
17 cases they are not able to search by site, but we will make
18 the request.

19 THE COURT: Very good.

20 MR. HOLDER: I plan to include an order.

21 THE COURT: All right, next on the list is Trane US.

22 MR. HOLDER: Yes, yes. Trane US is for American
23 Standard. Same thing. Records of, of whether they had
24 boilers, and again I know that they've searched before in
25 other cases for the nuclear sites, and specifically I'm

1 really wanting Marshall.

2 THE COURT: Who represents American Standard or Trane?

3 MS. TECHMAN: Jennifer Techman for Trane. We are glad
4 to talk with opposing counsel. However, they are, they are
5 not, as a general proposition, able to search by site. We
6 have done some investigation trying to identify boilers at
7 the sites; we'd be glad to share to results of our
8 investigation with you. We can identify the BMW boilers,
9 the Combustion Engineering boilers, and some other boiler
10 manufacturers at these sites, and that might provide some
11 insight into what boilers were there.

12 MR. HOLDER: There was a, there was a document I think
13 I remember that actually listed off -- oh, but I'm thinking
14 about the Celanese, but, I mean, I'm happy to -- obviously
15 I'll accept anything that your client can provide me, but,
16 you know, I still think we need an order to try and make
17 them find the documents by the 29th.

18 THE COURT: Yeah, I agree.

19 MR. HOLDER: And a deposition by the ---

20 MS. TECHMAN: If I could respond, Your Honor?

21 THE COURT: Yes, ma'am.

22 MS. TECHMAN: They are similar to Foster Wheeler. At
23 the outset of the case, they, they will comply with Rule
24 11. They will understand the allegations in the complaint,
25 and they will timely supplement discovery. All of my

1 clients would do that. We have not withheld or failed to
2 disclose anything here. To the extent we can identify
3 equipment at a site for any of my equipment manufacture
4 clients, we do that, Your Honor.

5 THE COURT: Ms. Techman, you're just trying to qualify
6 that they don't have any ability to do it, and you're
7 reserving all your rights to say they don't have any
8 ability to do it. That's not good enough.

9 MS. TECHMAN: I wasn't ---

10 THE COURT: We've got to go on. These people got some
11 ways and means of getting these documents when they need
12 them. So, they've got to do it for this litigation.

13 MS. TECHMAN: I wanted to be sure the court doesn't
14 have a mistaken impression that the client can prove a
15 negative.

16 THE COURT: Oh, I get that completely. You can't
17 prove a negative. All I'm asking is don't throw in the
18 thing of we can't even search for it because we're not set
19 up to search that way. That ---

20 MS. TECHMAN: Sure.

21 THE COURT: --- is not going to cut it.

22 MS. TECHMAN: Sure.

23 THE COURT: But we've searched to the best of our
24 ability and targeted in on these areas that we needed to
25 target in on and we don't have anything, that's fine.

1 MS. TECHMAN: And I think there's some more discovery
2 responses make that assertion, but we understand and we
3 will follow up and ask again if they can think of any
4 further way.

5 THE COURT: Exactly.

6 MS. TECHMAN: Yeah, and I trust that plaintiffs have
7 done the same thing. In the course of, you know, the
8 outset of the case, I'm sure they have made an effort to
9 determine who ought to be in the case and what equipment is
10 at what site, so they have ---

11 THE COURT: Those good-faith bases are explored very
12 fully when you try the case.

13 MS. TECHMAN: Right. Thank you, Judge.

14 THE COURT: United Conveyor Corporation.

15 MR. HOLDER: I think we skipped over Sepco.

16 THE COURT: Yes, we did. All right.

17 MR. HOLDER: Same position as the others.

18 THE COURT: Who represents Sepco? Mr. Holder, who you
19 been dealing with?

20 MR. HOLDER: No one had responded back from them,
21 so ---

22 MS. TECHMAN: Are they not in bankruptcy?

23 (COUNSELORS CONFER.)

24 MS. TECHMAN: I think they're in bankruptcy. They're
25 not my client, but I think they're probably protected by an

1 automatic stay in bankruptcy, if I'm not mistaken.

2 THE COURT: All right, determine that and I want to
3 supplement the record to include that, Mr. Holder.

4 MR. HOLDER: Sure.

5 THE COURT: Bankruptcy.

6 MR. HOLDER: I will confirm that, so for right now we
7 don't need an order.

8 THE COURT: All right, now United Conveyor.

9 MR. HOLDER: United Conveyor, yes, same thing.
10 Looking for docs for these sites as well as a deposition
11 February the 8th.

12 THE COURT: All right.

13 MR. ROZELSKY: Your Honor, Kurt Rozelsky. You've got
14 the spelling this time. We will go back and search for the
15 Marshall Steam. We believe we've produced all the other
16 documents in prior cases for the nuclear sites. And to the
17 extent that a deposition is necessary -- they just took a
18 30(b)(6) in the Hess case that probably relates to most, if
19 not all, of these sites. We will work with counsel.

20 THE COURT: Perfect.

21 MR. ROZELSKY: Take care of that.

22 THE COURT: Perfect.

23 MR. ROZELSKY: Same for the next client, Velan.

24 THE COURT: Velan Valves, right, same? Same thing?

25 MR. ROZELSKY: Same thing, Your Honor.

1 MR. HOLDER: Right, and I, I would just note that I'm
2 not sure we had documents on the -- previously from Velan
3 because they didn't hang around the case as long. So, just
4 FYI.

5 THE COURT: Mr. Rozelsky knows what the dates are, and
6 he's going to comply with them. He indicates he can and is
7 going to search specifically for Marshall, but if he has to
8 provide the rest of the documents, he knows that's got to
9 be provided.

10 MR. ROZELSKY: To quote Ms. Techman, I'm going to make
11 every human effort possible.

12 THE COURT: Great.

13 MR. ROZELSKY: Thank you.

14 THE COURT: I just don't want these to be weasel words
15 that come back and bite me.

16 MR. ROZELSKY: Thank you, Your Honor.

17 THE COURT: Union Carbide.

18 MR. HOLDER: And I believe that's been already been
19 discussed and agreed. I had it marked out on mine as
20 already ---

21 MR. McDONALD: Yeah. I wasn't too worried it.

22 MR. HOLDER: Yeah.

23 THE COURT: Mr. McDonald.

24 All right. Now, that complete Sizemore.

25 MR. HOLDER: And I, I am -- and that -- Glenn, that

1 completes Glenn.

2 THE COURT: Glenn, excuse me.

3 MR. HOLDER: With the only caveat, and I did mention
4 it once, but for, for the sites that he had only provided
5 documents in, in Taylor, Jolly, you know, from '77 on or
6 '79 on, I would just ask that you verify that y'all
7 provided all the documents back to '69 in the Glenn matter.
8 Other than that, that's everything for Glenn and Sizemore.
9 Thank you, Your Honor.

10 THE COURT: Okay. Now, what else? I'll turn to you
11 in just one moment, Mr. Rozelsky.

12 MR. ROZELSKY: Yes, Your Honor.

13 THE COURT: Just looking at plaintiff first.
14 Plaintiffs?

15 MS. DEAN: Your Honor, that concludes everything that
16 we were aware of.

17 THE COURT: Very good.

18 And now, Mr. Rozelsky.

19 MR. ROZELSKY: Yes, Your Honor. We're the only
20 defendant in this case. We represent Tile Council of North
21 America. We're the only defendant in the Swap case.

22 Ms. McVey and I spoke. We were talking about whether
23 we were going to be able to argue the motion to strike this
24 from the March docket today. She had to leave. She agreed
25 that if we cannot resolve that in some fashion, that we may

1 ask the court to reconvene telephonically sometime next
2 week to argue that motion. The lawyers that are primarily
3 involved in that motion are with Mr. Branham today in
4 Boston taking a 30(b)(6) in that case, but we've briefed
5 that and have the summary judgment motion outstanding.

6 THE COURT: Tell me once again the caption of that
7 case.

8 MR. ROZELSKY: *Swap, S-w-a-p*. It is 2017-CP-04-1156.

9 THE COURT: And it's *Swap against The Tile Council*?

10 MR. ROZELSKY: Yes, Your Honor.

11 THE COURT: It's going to be very interesting to be
12 educated as to how the Tile Council -- what I guess must be
13 some industry organization.

14 MR. ROZELSKY: Your Honor, I'm just as interested to
15 hear it, too.

16 THE COURT: Yes. I reserved judgment.

17 MR. ROZELSKY: Thank you, Your Honor.

18 THE COURT: But that's very creative.

19 Okay, just letting y'all know in terms of having
20 telephonic resolution of these things, glad to do it. What
21 you will want to do is get in touch with Jamie Rutkoski, my
22 law clerk for this present moment in time, thank the Lord.

23 Jamie, tell them once again your email address.

24 MS. RUTKOSKI: My email address is
25 GCooperLC@sccourts.org.

1 THE COURT: And your cell number is.

2 MS. RUTKOSKI: And my cell number is 727-946-0804.

3 THE COURT: And y'all already have my contact
4 information, including my cell phone number which is
5 803-530-0457, and the normal email address that you're all
6 using, JToal@sccourts.org.

7 We will be together trying the *Steward* case in York
8 next week unless, one always hopes, they can settle it.
9 So, that's where we'll be, and if you send text or email or
10 anything to either Jamie or myself, we'll try to get back
11 to you quickly if there's some need to have some kind of
12 conference in the matter we're talking about right now with
13 Mr. Rozelsky or anything else we're talking about here that
14 relates to discovery matters, any of the things we've
15 covered today.

16 Now, anything else from any other defendant? Mr.
17 McLeod.

18 MR. McLEOD: Hey, Justice Toal, Yancey McLeod here on
19 behalf of several defendants. The plaintiffs -- and I
20 don't have a motion to this effect. I just want to bring
21 it to the court's and the plaintiffs' attention, and I have
22 not spoken to them about this, and I don't mean to be a
23 surprise to them. Could be wrong.

24 Last week, I believe they tendered an expert in the
25 *Glenn* case for the plaintiffs, and I was looking back to

1 see who the experts for the *Glenn* case were going to be. I
2 couldn't find where any expert or fact disclosures in the
3 *Glenn* case had -- and I could have missed it. I couldn't
4 find it anywhere, and I talked to some other people,
5 defendants in the case. We can't seem to find the fact or
6 expert witnesses in discovery.

7 THE COURT: The time has passed to have identified
8 them, has it not?

9 MR. McLEOD: Yeah. Oh, but they ---

10 THE COURT: Who are the experts in the *Glenn* case, Mr.
11 Holder?

12 MR. HOLDER: Mr. Ewing.

13 MR. McLEOD: That's the one that was tendered.

14 MR. HOLDER: Tendered.

15 MR. McLEOD: That, that was the first we heard of it.

16 MR. HOLDER: And I am not turning up experts, so ---

17 MR. McLEOD: I thought this was ---

18 MR. HOLDER: It surprised me just a little ----

19 MR. McLEOD: I thought this was a good time to ---

20 THE COURT: Yeah.

21 MR. McLEOD: I just want to know.

22 THE COURT: I mean, exactly. They're entitled to
23 them. They were entitled to them ---

24 MR. HOLDER: Absolutely.

25 THE COURT: --- for a long time. You've got to give

1 it to them.

2 MR. McLEOD: What's he tendered for, by the way?

3 MR. HOLDER: I, I, I don't remember.

4 Can I work this out? I'm just hearing about it for
5 the first time.

6 THE COURT: Yeah. I mean, obviously they need to have
7 that *qua prenom*.

8 MR. HOLDER: Absolutely, and I think, I think I did in
9 the confusion, but I want to work it out.

10 THE COURT: Very good.

11 MR. McLEOD: I imagine they're similar to the *Jolly*
12 case.

13 THE COURT: That's what I'm guessing, too.

14 MR. McLEOD: Yeah. I just need to know.

15 THE COURT: But anyway, you all -- but Ewing is new.
16 I don't know anything about Ewing.

17 MR. HOLDER: He's a nice guy. He's another hygienist.

18 THE COURT: Well, Mr. McLeod, just let me know if
19 there's some problem here. Otherwise, I think Jonathan
20 will look and see exactly what the scoop is and get that to
21 you quickly.

22 MR. McLEOD: Thank you, Your Honor. We'll work hard
23 to get the case ready.

24 THE COURT: Anything else we got going?

25 MS. TECHMAN: Your Honor, Jennifer Techman.

1 THE COURT: Yes, ma'am.

2 MS. TECHMAN: Several of my clients in the Wayne Howe
3 case have filed a fairly standard motion to exclude Mr.
4 Howe's partial transcript on the grounds that they had no
5 opportunity to cross-examine him before he passed. Is
6 there a time when the court wants to hear the merits of
7 that motion?

8 THE COURT: Howe is scheduled for March. Y'all had
9 filed a motion on that, right?

10 MS. TECHMAN: That's right, Judge.

11 THE COURT: And what have y'all done, Ms. Dean?

12 MS. DEAN: Your Honor, I saw that motion and that it
13 hadn't been set. I think that motion actually comes up
14 either in the context of a motion for summary judgment if
15 our sole connection is Mr. Howe's testimony, or a motion *in*
16 *limine* if it's something that we realize they have other
17 ways to get here, but we don't think they should be able to
18 talk about Howe's testimony.

19 THE COURT: Of course the reason they're pushing it
20 now is that might upset the apple cart considerably in the
21 *Howe* case, depending on how I rule and, therefore, they
22 want to know sooner rather than later I think is what
23 they're saying.

24 MS. TECHMAN: Partly, partly, Your Honor. My concern
25 is, is that my clients, to the extent they have moved, take

1 the position that any partial testimony of Mr. Howe should
2 not be before the court.

3 THE COURT: I get that. That's been dealt with many,
4 many times.

5 MS. TECHMAN: Right.

6 THE COURT: In many different contexts.

7 MS. TECHMAN: That's right, Judge. It's fairly
8 standard black-letter law.

9 THE COURT: It's a pretty standard thing.

10 MS. TECHMAN: Yes.

11 THE COURT: But ---

12 MS. DEAN: If I may? Just that we'd like to get a
13 response on file. It is an evidentiary ruling which is
14 usually in the context of motions *in limine*.

15 THE COURT: Yes, although I'll be honest with you. I
16 try to get them done beforehand to the greatest extent
17 possible so that we can march on forward, and particularly
18 if it's something that has implications for summary
19 judgment motions, as this obviously would.

20 MS. DEAN: So, I think that's clearly helpful to have
21 here, and I think there's some case law we'd like to get in
22 front of you. And I also think it's a defendant-specific
23 inquiry because you're looking at motive and opportunity,
24 which in some cases is going to be parallel for some
25 defendants.

1 THE COURT: All right, the deadline for summary
2 judgment motions to get in on that case is February the
3 28th?

4 MS. DEAN: 26th.

5 THE COURT: All right. So, why don't we get, both
6 sides get everything they want me to consider about this
7 issue on that same day.

8 MS. TECHMAN: Your Honor, if I may? The filing date
9 is February 9th unless we're going to revise that a little
10 bit after these proceedings, but I believe the filing date
11 for summary judgment is the 9th. Ms. Dean is probably
12 thinking of her response deadline.

13 MS. DEAN: I am.

14 MS. TECHMAN: Right. Fairly so.

15 THE COURT: So, when is your response deadline on the
16 February 9th?

17 MS. DEAN: February 9th motions are to be filed and
18 26th were to respond, and so I was thinking about when I
19 have to respond.

20 THE COURT: Well, let me ask you this.

21 MS. DEAN: Yes, ma'am.

22 THE COURT: How about the 26th for a time for both
23 sides to file with me information about the status of Mr.
24 Howe's partial testimony, or you want it heard earlier than
25 that?

1 MS. TECHMAN: It would streamline summary judgment,
2 Your Honor. I feel ---

3 THE COURT: Summary judgement, the filings are due by
4 y'all on February the 9th.

5 MS. TECHMAN: Correct, Your Honor.

6 THE COURT: Their filing are due on February the 26th.

7 MS. TECHMAN: And if, and if the defendant's position
8 as stated in my motion, and I think some others, is
9 accurate, consistent with black-letter law, we take the
10 position that the partial testimony of Mr. Howe is not
11 before the court, should not be considered.

12 THE COURT: I get all that.

13 MS. TECHMAN: For summary judgment.

14 THE COURT: Yeah.

15 MS. TECHMAN: Right. So, we're going to file motions
16 with that position in mind.

17 THE COURT: Well, that's fine.

18 MS. TECHMAN: So, we may need to take it up earlier.

19 THE COURT: Take up the actual hearing of the motion?
20 I hate to -- I got so dadgummed much to do, one little old
21 judge who works part time. I ain't got time to stretch
22 this thing out to the fare thee well. Y'all ---

23 MS. TECHMAN: We just tried to say, and you told us we
24 had to do it. I say that with all affection.

25 THE COURT: Yeah.

1 MR. KENNADAY: Your Honor, Your Honor, Tom Kennaday
2 for several defendants. We might have filed a similar
3 motion. I was assuming that we would file, I believe, a
4 summary judgment motion and that you would hear both the
5 summary judgment and the motion at the same time.

6 THE COURT: That's what I want to do. That's what I
7 want to do. Just go on and file the motions by February
8 the 9th, and you file your summary judgement motion.

9 MR. KENNADAY: Sure.

10 THE COURT: And she's going to have to respond to them
11 by February the 26th, and we're going to try to hear them
12 shortly thereafter.

13 MS. TECHMAN: Thank you, Judge.

14 THE COURT: Probably the 28th.

15 MS. TECHMAN: Thank you.

16 THE COURT: Does that work?

17 MS. DEAN: Yes, Your Honor.

18 THE COURT: Good. Let's just do that and be done with
19 it. Please understand this. I make no prejudgment about
20 this. It's been years since I got into these partial
21 testimony things, and they are pretty case specific. At
22 least the cases I can remember looking at are pretty case
23 specific. So, I don't know what twists and turns this
24 thing takes, but anyway that's how we'll do it.

25 MS. TECHMAN: Thank you, Judge.

1 THE COURT: Okay, what else? All right. Thank you
2 very much, ladies and gentlemen, and I will expect orders
3 that have primarily been directed towards Ms. McVey, Ms.
4 Dean, and Mr. Rheney to be forthcoming.

5 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON THE
24TH DAY OF JANUARY, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/s/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

FEBRUARY 22ND, 2018

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF YORK

SIXTEENTH JUDICIAL CIRCUIT

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

C/A NO.: 2015-CP-46-03456

Plaintiffs,

In Re:

vs.

Asbestos Personal Injury
Litigation Coordinated
Docket

AIR & LIQUID SYSTEMS
CORPORATION, et al.,

Defendants.

VIDEOTAPED.

DEPOSITION OF: 30(B)(6) OF COVIL CORPORATION
(BY JAMES P. COVIL)

DATE: February 7, 2018

TIME: 9:22 a.m.

LOCATION: Gallivan White Boyd
55 Beattie Place
Suite 1200
Greenville, South Carolina

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Elaine L. Grove-DeFreitas
Certified Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF YORK
3
4 COURT OF COMMON PLEAS
5 SIXTEENTH JUDICIAL CIRCUIT

4 ROXANNE FALLS, Individually
5 and as Personal Representative
6 of the Estate of CHARLOTTE GAYE
7 SMITH, deceased,

8 Plaintiff,

9 vs.

C/A NO.: 2015-CP-46-02155

10 CBS CORPORATION,
11 et al.,

12 Defendants.

In Re:
Asbestos Personal Injury
Litigation Coordinated
Docket

13 STATE OF SOUTH CAROLINA
14 COUNTY OF YORK
15
16 COURT OF COMMON PLEAS
17 SEVENTH JUDICIAL CIRCUIT

15 JAMES COLEMAN SIZEMORE, as
16 Personal Representative
17 of the Estate of JAMES CALVIN
18 SIZEMORE, decedent,

19 Plaintiffs,

C/A NO.: 2016-CP-25-0440

20 vs.

21 BOWATER PAPER MILL,
22 Docket, et al,

23 Defendants.

In Re:
Asbestos Personal Injury
Litigation Coordinated

Mesothelioma Death

(Jury Trial Demanded)

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1
2 The deponent does not waive reading and signing of
3 this deposition.

4 * * * * *

5 MS. DEAN: This is Jessica Dean for the
6 plaintiffs. I just want to put a couple of
7 stipulations on the record. First of all, this
8 deposition has been cross-noticed in the Howe,
9 Sizemore and Smith case, also references the Falls
10 case.

11 Second, we have agreed that an objection
12 by one defendant is good for all unless someone
13 specifically ops out. And of course everyone always
14 has the opportunity to ask the objector to identify
15 themselves if they would like to. But if not, the
16 record can read "defense objection."

17 We also reached an agreement with Covil
18 that the records that they produced in this case,
19 which have Bates ranges that we can easily reference
20 are authentic business records. And I think that is
21 it for the preliminaries. Have I missed anything?

22 MR. RHENEY: (Mr. Rheney shakes head.)

23 MS. DEAN: No? Okay. Then I think we
24 are ready to go on the record.

25 We have also agreed that appearances and

1 the reference to the case names can be on the
2 written record and not on video record.

3 THE VIDEOGRAPHER: We are now on the
4 record at 9:20:35 for the videotaped 30(b)(6)
5 deposition of James Covil, who has presented for the
6 Covil Corporation in three cases.

7 We are at the deposition offices of
8 Gallivan, White & Boyd in Greenville, South
9 Carolina.

10 Counsel has agreed that the written
11 record will state their appearances for the video
12 record. So we can swear the witness, please.

13 JAMES P. COVIL,
14 being first duly sworn, testified as follows:

15 EXAMINATION

16 BY MS. DEAN:

17 Q. Good morning.

18 A. Good morning.

19 Q. I'm hoping that if we're in trial, we'll
20 be able to talk to you then, but in the event that
21 for some reason we need to get this testimony before
22 the jury, we're videotaping it now. So if I ever
23 reference the jury, that's why.

24 A. That's fine.

25 Q. Is that okay?

1 A. Sure.

2 Q. You understand that today we didn't
3 actually seek the deposition of James Covil.
4 Instead, we wanted to know about Covil Corporation,
5 and so we kind of listed out the topics we were
6 concerned about.

7 A. Right.

8 Q. You had a chance to review that with
9 your lawyers and prepare --

10 A. Yes.

11 Q. -- and now I get to ask you about that
12 today.

13 A. Good. Yes.

14 Q. Have you ever done a deposition before,
15 either as an individual or as a company
16 representative?

17 A. Yes. 1986.

18 Q. Okay. So it has been a while?

19 A. Yes, a long while.

20 Q. Were you acting as a corporate
21 representative at the time or was that just --

22 A. That was personal for the estate of my
23 dad.

24 Q. Okay. Outside of that deposition, have
25 you ever been deposed before?

1 A. No.

2 Q. Okay. I'm informal and so I will often,
3 particularly since you're a person and you're
4 sitting in front of me, ask you what you know.
5 Please understand that I'm asking what you know on
6 behalf of the company unless I specifically say
7 otherwise.

8 A. Okay.

9 Q. And you understand today that even
10 though we're in a law firm, that you're under oath,
11 and that oath is just as important as if you were
12 sitting in front of a judge or a jury?

13 A. True.

14 Q. If at any point in time you want to take
15 a break or you think my question is unclear, you
16 know, this is a back and forth. Will you let me
17 know?

18 A. Yes, sure will.

19 Q. I want to start off by getting a bit of
20 an understanding of your history. You, as James
21 Covil, and then talk about the company's history.

22 First of all, do you go by James or Jim?

23 A. Jim. But you can call me James, either
24 one.

25 Q. When did you start working at Covil?

1 A. I started in, I'm thinking '67, '68 when
2 I was in high school. I worked in the warehouse for
3 a couple months during summer break.

4 Q. The warehouse in Greenville?

5 A. Yes. The warehouse at the Covil
6 offices. And then in the next summer, I worked
7 inside, in customer service for like six weeks or
8 so. And I started full time roughly June of '74.

9 Q. Okay. Do you mind telling me your age?

10 A. Sixty-five.

11 Q. Okay. And what position did you start
12 off in June of '74? And kind of in the broadest
13 strokes, can you give us kind of where you went from
14 there until you stopped working full time?

15 A. I was in customer service, and I moved
16 into sales for a short period of time. And I really
17 had no title other than just a general worker.

18 And then I went into the Energy Division
19 after that as like the salesperson for the Energy
20 Division. And from there I went to the Energy
21 Division manager later on, roughly 1980, somewhere
22 around there.

23 Q. When did you first go to the Energy
24 Division? So before manager, but when you just made
25 that?

1 A. '76, maybe.

2 Q. Okay. And then were you a manager in
3 the Energy Division until 1990?

4 A. Yeah. Yes.

5 Q. Okay. There is a relatively long list
6 between the three families that I represent of
7 different locations at issue. It's over 70
8 companies long. Have you ever worked in any of
9 those particular locations personally? And if it's
10 helpful, I can give you that list.

11 A. The locations that the defendants worked
12 at?

13 MR. RHENEY: The plaintiffs.

14 BY MS. DEAN:

15 Q. The locations where the plaintiffs --

16 A. Plaintiffs worked at?

17 Q. Yes.

18 A. Can you be a little more specific?

19 Q. I can. So I'm going to hand you what
20 I've marked as Exhibit 1, 2 and 3, are the notices
21 of deposition.

22 (Plaintiff's Exhibit No. 1, Notice of 30(b)(6)
23 Deposition, was marked)

24 BY MS. DEAN:

25 Q. And the main two reasons, just for

1 context, that I have these are, one, so everybody,
2 in the future can kind of just know what topics this
3 deposition is about. And two, because it lists out
4 the locations. And that will be, I think, really
5 helpful. And so on the beginning of Exhibit A, it
6 identifies premises at issue. And for Mr. Howe's
7 case, there are five that are identified. It's on
8 the third physical page of Exhibit 1.

9 Have you worked in any of those
10 locations?

11 A. No, I haven't.

12 Q. Okay. I'm going to do the same for each
13 of these.

14 A. Okay.

15 (Plaintiff's Exhibit No. 2, Notice of 30(b)(6)
16 Deposition in Calvin Sizemore Case, was marked)
17 BY MS. DEAN:

18 Q. I've marked as Exhibit 2, Mr. Calvin
19 Sizemore's deposition notice. He is the one that
20 gives us the most length. If you go to Exhibit A,
21 they list out 56 locations.

22 Have you worked in any of those
23 locations?

24 A. No, I have not.

25 Q. And I probably should have asked this

1 about Mr. Howe, as well. Even if you haven't worked
2 there, have you even been to those locations?

3 A. No, ma'am.

4 Q. What about Mr. Sizemore's locations?
5 Have you ever walked into, for instance, Duke Energy
6 Riverbend, or any of these other spots?

7 A. No.

8 (Plaintiff's Exhibit No. 3, Notice of 30(b)(6)
9 Deposition in Charlotte Smith Case, was marked)

10 BY MS. DEAN:

11 Q. And then finally, for Ms. Charlotte
12 Smith's case, I have Exhibit 3. And they reference
13 22 locations there.

14 Have you ever worked at or even walked
15 into any of those locations? It should be on the
16 third physical page.

17 A. No, I have not.

18 Q. Have you ever been into any power plant?

19 A. Not to my knowledge.

20 Q. Have you ever been into any paper mills?

21 A. No.

22 Q. Have you had the opportunity, outside of
23 looking at documents, which I'll kind of talk about
24 later, to review either the written testimony or
25 statements of people or talk to people who have had

1 actual experience in some of these places?

2 A. Yes, I have.

3 Q. Who did you talk to?

4 A. I talked with Charles McWhorter, who was
5 our vice president of contracts.

6 Q. Can you tell me his last name again?

7 A. McWhorter, M-C-W-H-O-R-T-E-R.

8 Q. Anyone else?

9 A. No.

10 Q. Was there an effort to talk to anybody
11 else that just weren't able to get there, or was
12 this person the only person that you talked to?

13 A. We tried -- we talked with Jimmy
14 Barnett, who was our field superintendent, for --
15 Danny and I did, for about five, ten minutes or so.
16 And his wife answered the phone and said that he was
17 there, that he would speak to us, but he is
18 suffering from dementia and didn't know how much
19 help he would be. So we did speak with him, asked
20 him two or three questions. And he had no response
21 to any of those questions, so we ended the phone
22 conversation.

23 We did talk with Charles McWhorter for
24 15 or 20 minutes. He is living in Myrtle Beach
25 right now. And he spoke about a few of the jobs

1 that Danny had asked about pertaining to this.

2 Q. Okay. Anyone else that you reached out
3 to but weren't able to talk to?

4 A. No, not to my knowledge.

5 Q. Okay. And for Mr. Barnett, I understand
6 that his life, basically, and particularly his
7 memory, is severely compromised.

8 A. Yes.

9 Q. Can you tell me what you can remember
10 about what you learned from Charles?

11 A. I have it in my notes, but I don't have
12 it in front of me. But he was stating that -- just
13 various jobs that he had worked on. Danny asked him
14 various questions about certain jobs.

15 MR. RHENEY: I do want to be careful
16 getting into attorney work product, Danny's
17 discussions with the client and someone else, but go
18 ahead.

19 BY MS. DEAN:

20 Q. Just for reference, Danny White is who
21 you're referencing?

22 A. Yes.

23 Q. And he is a lawyer for Covil?

24 A. Yes.

25 Q. Okay. And the main thing I'm looking

1 for is just what you learned in these conversations
2 to prepare yourself for the deposition.

3 A. Okay.

4 Q. So like what work sites.

5 A. I can't really recall. I'm thinking we
6 talked about one of the Duke jobs.

7 Q. Do you remember which Duke Power plant?

8 A. No, I don't.

9 Q. Okay. And you indicated you have notes
10 to kind of -- that related to what you learned from
11 his position?

12 A. I do.

13 Q. Can, on our break, we get a copy of
14 those notes?

15 A. I didn't bring them with me today.

16 Q. Oh, they're not in the building?

17 A. No. They're my personal notes.

18 Q. Is there someone that could take a
19 picture of it or something and get them to us?

20 MR. RHENEY: I would have to think about
21 whether we're going to produce those or not.
22 They're notes made in discussions with us.

23 MS. DEAN: It's our position that if
24 they were made to prepare him for the deposition,
25 that that doesn't apply, particularly if it would

1 reveal which location we know is at issue. So I
2 will revisit after you guys have a chance to talk at
3 a break. And given that we probably are going to
4 talk in the morning, there might be an easier way to
5 handle it.

6 THE WITNESS: Well, I can say, based on
7 the discussion with him, after asking him a few
8 questions, he really wasn't much help as far as what
9 we were trying to gain from the conversation.

10 BY MS. DEAN:

11 Q. Did he know any of the co-workers in
12 this case?

13 A. The plaintiffs or defendants?

14 Q. So whether it be Wayne Howe, who is a
15 plaintiff --

16 A. No, he knew none of those.

17 Q. But there were also people like Wayne
18 Grant or Gilbert Small that weren't the individuals
19 that are bringing the claims but worked with him or
20 understood stuff that was going on.

21 Do you know if Charles was even asked
22 whether he knew those individuals?

23 A. I don't think so.

24 Q. Okay. How did you go about identifying
25 the individuals who have experience at these

1 locations since you didn't -- to try to reach out to
2 so that you could be prepared today?

3 A. We just -- I put down a list of some
4 people that I could remember that had worked in
5 various jobs. The majority of them are passed on.
6 And the only ones that I could come up with that
7 were local were Jimmy Barnett and Charles McWhorter.
8 And it took us -- it took me probably a couple weeks
9 to get in touch with Charles. Now, he actually
10 lives in Easley, South Carolina. He has a home
11 there, but he's living at Myrtle Beach with his son.
12 His wife just passed away a few months ago, so he
13 moved to Myrtle Beach and is staying down there.

14 Q. Was there an effort to look through the
15 files, for instance, to get a more complete of the
16 hundreds of various employees that worked for the
17 company in the '60s and '70s and '80s timeframes to
18 see if you could broaden that list so it's not just
19 based on your memory?

20 A. We have those files here, in our
21 attorney's office, but I personally did not go
22 through any of those.

23 Q. And the reason I think this is of
24 particular importance is I understand that in -- I
25 think it was May 15th of 1973, but definitely May of

1 1973, there was a substantial fire --

2 A. Yes.

3 Q. -- at your main headquarters that didn't
4 destroy the entire warehouse but part of the office,
5 part of the warehouse was destroyed.

6 A. Right.

7 Q. Right? So if we want to understand what
8 happened before May of '73, you didn't even start
9 working full time with the company --

10 A. Right.

11 Q. -- until after that.

12 A. Right.

13 Q. And a lot of records are gone. Right?

14 A. Right.

15 Q. And based on the effort taken by Covil
16 to date, there isn't anybody that you've found that
17 could give you any kind of substantive information
18 about any work before 1973?

19 A. No.

20 Q. Okay. Have you ever, either while you
21 were working in the warehouse in the '60s or in your
22 work in the '70s, have to work with insulation
23 yourself?

24 A. Yes. For a short time in '68, just
25 before I went into the customer service, I went out

1 into the field and worked and observed for maybe
2 three weeks or so and actually did put on some pipe
3 covering. It was fiberglass pipe covering. And
4 that was about the extent of my working in the
5 field.

6 Q. Was that just educational? They wanted
7 to give you an idea?

8 A. Pretty much, uh-huh.

9 Q. How do you remember, after all of this
10 time, that it was fiberglass?

11 A. Because we were using -- putting it on
12 like cold water pipes for a chilled water boiler or
13 something to that effect.

14 Q. And I think I follow the logic, but
15 fiberglass was typically what was used if it was a
16 cold application --

17 A. Right.

18 Q. -- where asbestos was used when you had
19 high temperature?

20 A. Yes.

21 Q. Okay. And so it's not that you
22 specifically have a memory. It's that you've
23 learned the business well enough to know that
24 because it was cold, that's going to be fiberglass?

25 A. True.

1 Q. Okay. Do you remember anything about
2 how the work was done? In other words, how they
3 either took off the old insulation or the mechanism
4 by which they put it back on?

5 MR. RHENEY: Object to the form.

6 THE WITNESS: I don't remember anybody
7 in Covil removing any insulation. But I do know,
8 from just one of the people I've talked with and
9 being in the business for a while, that the process
10 they go through as far as installing installation.

11 BY MS. DEAN:

12 Q. So from your own personal knowledge, let
13 me start there and then I'll broaden it to what
14 you've learned from being in the business, but do
15 you remember how they went about putting it on?

16 A. Well, you have your pipes and you have
17 your pipe covering based on the size of the pipes.
18 And you either put the -- they come in three-foot
19 lengths, and you either apply that or you cut it to
20 fit the size of the pipe. The pipe covering comes
21 in various different sizes based on the size of the
22 pipe. And most fiberglass has an all-service jacket
23 on it, which is a paper jacket. And it has a
24 self-seal out, which is like a two-inch piece of
25 tape on the end of it. And when you connect the

1 fiberglass around the pipe, you peel that off and
2 stick the paper on.

3 And then after that, if there is any
4 nineties, you use a piece of fiberglass to put
5 around there. And then you would have to either put
6 canvass or paper on top of that, and you take
7 insulation mud that you mix up and put in the
8 crevices and the cracks to make it one solid piece.

9 Q. Do you know how the mud was prepared?

10 A. It was in a bag, and you add water to it
11 and mix it up.

12 Q. Okay. Outside of that about three-week
13 period when you were in high school, did you ever
14 have any hands-on work with insulation?

15 A. I put on fiberglass pipe covering.

16 Q. In later years?

17 A. No. Just that one time.

18 Q. Yeah. So outside of those three weeks,
19 then.

20 A. No. No. Yeah.

21 Q. Sorry. Did you have an opportunity, in
22 those summer months or in later years when you were
23 working there, to observe other people working with
24 insulation? Again, outside of those three weeks.

25 A. No. My job was just totally, basically

1 working inside and working in the Energy Department,
2 which consisted of residential insulation, which is
3 just fiberglass batts, storm windows, window
4 tinting, weather stripping. Anything to conserve
5 energy around the home. And it was mostly
6 residential.

7 Q. So the vast majority of residential, if
8 you're dealing with insulation, it's fiberglass, not
9 industrial and asbestos?

10 A. Right.

11 Q. Okay. Did you have the opportunity to
12 review depositions of other people who worked at
13 Covil to prepare, whether it be your father's
14 deposition or anyone else?

15 A. Yes. I went over my father's deposition
16 a couple times, and I did review the Childers
17 deposition.

18 Q. When you say Childers, you mean Lewis
19 Childers?

20 A. Yes.

21 Q. Okay. Let me start with Palmer Covil's
22 deposition. I was given three volumes of the
23 deposition taken in 1977. Is that the deposition
24 you reviewed?

25 A. Yes.

1 Q. Are you aware of any others?

2 A. That he gave?

3 Q. Yeah.

4 A. No, I'm not.

5 Q. Okay. And one of the things I
6 understand but just want to confirm is that you have
7 reviewed that to be prepared for the deposition. So
8 that while those aren't your memories, you, as a
9 company representative, have gathered what you can
10 from that deposition so you can speak on behalf of
11 the company --

12 A. Yes.

13 Q. -- since he can't.

14 A. That's correct.

15 Q. Okay. And so in trial or in other
16 cases, if you can't remember a date that something
17 occurred but your dad remembered it, I could show
18 you that, and that would be in the realm of
19 something you reviewed --

20 A. Yes.

21 Q. -- and prepared.

22 Did you review all of Mr. Childers'
23 testimony -- and let me start off with saying in
24 this case -- because he has been deposed a lot.

25 A. Numerous times.

1 Q. Yeah.

2 A. Yeah. I went through as many as I
3 could. I did not try to memorize it all, but I did
4 go through quite a few of the pages of his
5 deposition.

6 Q. Let me start off by asking, did you
7 review any other -- any testimony other than the
8 testimony he gave in Mrs. Charlotte Smith's case?
9 And sometimes it has Falls at the beginning because
10 that's the personal representative's name.

11 A. Right.

12 Q. But did you read any testimony that had
13 another caption or another case involved in it?

14 A. No, I don't think so.

15 Q. Is there anything about his testimony,
16 in terms of where he worked, the work processes he
17 used, that Covil disagrees with or had a different
18 understanding of that you can identify for me?

19 MR. RHENEY: Object to the form of the
20 question.

21 THE WITNESS: Not to my knowledge.

22 BY MS. DEAN:

23 Q. Okay. There were other individuals that
24 had testimony about insulation work that either
25 Mr. Sizemore, Mr. Howe, or Mrs. Smith's husband at

1 the time, worked around, whether it be Wayne Grant
2 or Neelands, Harley, Gil Smalls or Dwayne Waters.

3 Did you read any of those depositions?

4 A. I went through them, yes, I did.

5 Q. Okay. First, with Wayne Grant -- well,
6 let me ask you. Sorry. I sometimes do this. But
7 with Mr. Childers, did you know him at all?

8 A. No, I did not.

9 Q. Did Charles McWhorter?

10 A. No, he didn't -- didn't recollect
11 knowing him either.

12 Q. I butchered his last name, I think. How
13 did you say it, again?

14 A. McWhorter.

15 Q. McWhorter. Like a quarter.

16 A. Right.

17 Q. That helps me.

18 MR. RHENEY: M-C-W-H-O-R-T-E-R.

19 THE WITNESS: Yes.

20 MS. DEAN: Yeah. I'm abandoning the
21 actual spelling. I know she can't do that, but I
22 can. And maybe I will stop being able to call him
23 Charles.

24 Q. Did he go by Charles or Charlie?

25 A. Charles.

1 Q. Okay. Did you know Wayne Grant?

2 A. No.

3 Q. Neelands, Harley?

4 A. No.

5 Q. Gil Small?

6 A. No.

7 Q. Dwayne Waters?

8 A. No.

9 Q. Okay. Was there anything about the
10 testimony of Wayne Grant, in your review of it, that
11 Covil takes issue with or disagrees, whether it be
12 his description of the work or what he was doing?

13 MR. RHENEY: Object to the form.

14 THE WITNESS: Not to my knowledge.

15 BY MS. DEAN:

16 Q. Same question for Neelands, Harley.

17 A. No.

18 MR. RHENEY: Same objection.

19 BY MS. DEAN:

20 Q. Same question for Gil Smalls.

21 MR. RHENEY: Object to the form.

22 THE WITNESS: No.

23 BY MS. DEAN:

24 Q. And same question for Dwayne Waters.

25 A. No.

1 MR. RHENEY: Same objection.

2 BY MS. DEAN:

3 Q. And my main goal here is, you know, if
4 Covil says, you know, Mr. Waters didn't work for the
5 company for these two years or we wouldn't have
6 removed insulation this way, not to be surprised at
7 trial and so just making sure I'm being clear in
8 what I'm asking, is -- in your review of this
9 testimony, does your knowledge of the documents make
10 you believe that their description of anything that
11 relates to Covil wasn't accurate so that I can just
12 figure out why?

13 MR. RHENEY: Object to the form.

14 THE WITNESS: Everything that I looked
15 at was based on what they said and what they
16 observed. And if they didn't work at Covil, then I
17 can't really answer that.

18 BY MS. DEAN:

19 Q. Okay. Wayne Howe's testimony, he had
20 three volumes of it before he passed away. Did you
21 get a chance to look at those?

22 A. Yes, I have looked. I have gone through
23 most all of those.

24 Q. In your review are there any
25 disagreements with his testimony that Covil has

1 identified that you can explain for me?

2 MR. RHENEY: Object to the form.

3 THE WITNESS: No.

4 BY MS. DEAN:

5 Q. I mark exhibits as I find them, and so
6 they are not in any kind of logical order other than
7 when my hands got on them. And often if you know
8 something that I learned in an exhibit and you
9 identify it, I will let it go instead of bringing
10 out the exhibit.

11 A. Okay.

12 Q. So we may not talk about 41 exhibits,
13 but I'm going to start off with Exhibit 41 and just
14 say -- and just hand you a copy of it and ask you a
15 few questions.

16 (Plaintiff's Exhibit No. 41, Report Of Examination
17 For North Carolina Dusty Trades, was marked)

18 BY MS. DEAN:

19 Q. This was a document I got from Covil.
20 And it looks like it's the report of Examinations
21 for North Carolina Dusty Trades for a variety of
22 different individuals, where they identify the
23 individual, their age and if there was an
24 occupational lung disease identified by x-ray.

25 Do you see that?

1 A. I do see it.

2 Q. First of all, I see on -- and I'm going
3 by the Bates label number. But on 16696, which is
4 the third physical page, do you see that they
5 reference Harley Neelands there?

6 A. Yes.

7 Q. First of all, Covil doesn't dispute that
8 being an insulator is a dusty trade?

9 MR. RHENEY: Object to the form.

10 THE WITNESS: Can you be more specific?

11 BY MS. DEAN:

12 Q. Well, in the context that we are looking
13 at here, North Carolina actually had a designation
14 for insulators as a dusty trade. And I'm just
15 asking, would Covil, as a company that was involved
16 with insulation for years, agree that doing that
17 type of work is dusty work --

18 MR. RHENEY: Object to the form.

19 BY MS. DEAN:

20 Q. -- or at least can be?

21 A. Insulation is a construction industry,
22 so it could be many things.

23 Q. And one of them is dusty.

24 A. There is dust involved.

25 Q. Okay. And my understanding, from just

1 kind of a discussion we had before we started this
2 morning officially, was that there are employment
3 files that were kept for different individuals. Did
4 you get a chance to look at Mr. Harley Neelands'
5 employment file?

6 A. I did not look at any employment files.

7 Q. Okay. Similar question, on the very
8 last page of this document, it shows Dwayne Waters
9 and his report of examination from North Carolina
10 Dusty Trades.

11 Do you see that?

12 A. Yes.

13 Q. Did you make any kind of investigation
14 into his actual file where he was working?

15 A. No, I did not.

16 Q. I have tried to list the different
17 individuals that you may have reviewed to get ready,
18 but I want to make sure I'm not missing anybody.

19 Do you recall reading any other
20 depositions, other than the ones I have asked you
21 about, to prepare for today?

22 A. No.

23 Q. Outside of talking to your lawyers, did
24 you talk to anybody else about this deposition and
25 not to, you know -- well, I won't go into it, but

1 about the substance of what you were going to do?

2 A. No.

3 Q. Can you give me an estimate in amount of
4 time you spent preparing for the deposition with the
5 lawyers?

6 A. Many, many hours.

7 Q. Dozens?

8 A. We'll say 50 hours maybe.

9 Q. When did that work start?

10 A. Roughly, six weeks ago.

11 Q. Okay. In terms of the documents that
12 Covil has kept, let me first ask you, did you review
13 any documents outside of the ones Covil had? In
14 other words, we might get documents from Bowater or
15 Duke or some of the other places where Covil was
16 doing work. Did you review any of the documents
17 outside of what Covil had that we got from other
18 people or other sources, or was your --

19 A. Strictly what Covil already had.

20 Q. Okay. Were you aware that there were
21 documents, not just reasonably available but, in
22 fact, in the possession of your lawyers, about some
23 of these locations that referenced Covil?

24 A. Yes.

25 MR. RHENEY: Object to the form.

1 BY MS. DEAN:

2 Q. In terms of the documents that Covil
3 had, were you the person who did the actual physical
4 searching of them to pull out which ones are
5 relevant, or were you given documents from the
6 lawyers that already had been pulled out?

7 A. I did search through the file cabinets
8 and look through them. And I did look. I was given
9 some other documents also.

10 Q. In terms of your own search through the
11 file cabinets, can you give me an idea of how much
12 time you spent on that and what you were looking
13 for?

14 A. I was looking for any job file
15 pertaining to these jobs that these people were
16 employed at or worked on. And I spent roughly two
17 hours going through file cabinets.

18 Q. Did you organize them by job site?

19 A. No. I just tagged them.

20 Q. Okay. Anything else that you were
21 looking for?

22 A. No.

23 Q. And then you said you were also provided
24 documents from the lawyers. What were the nature of
25 those documents?

1 A. I have looked at invoices and material
2 shipments. I believe that's about it.

3 Q. Okay. Do you have any brothers and
4 sisters? I thought I read somewhere -- I think it
5 may have been your father. You have four aunts or
6 had four aunts?

7 A. (Witness nods head.)

8 Q. Let me ask a cleaner question. Do you
9 have any brothers and sisters?

10 A. I have a sister.

11 Q. Did she ever work in the company?

12 A. She worked as a receptionist for maybe a
13 year. No longer than that.

14 Q. Never in the field?

15 A. No.

16 Q. Okay. My understanding is that there
17 are several people that have worked at Covil as
18 insulators who have died of asbestos-related
19 disease. Is that correct?

20 MR. RHENEY: Object to the form.

21 THE WITNESS: There has been people who
22 have passed away, but I have no idea what their
23 reason for passing away was, whether it was
24 insulation related or heart attack or car wreck. I
25 have no idea.

1 BY MS. DEAN:

2 Q. Are you aware of anybody that has passed
3 away because of mesothelioma?

4 A. No, not off the top of my head.

5 Q. Okay. What about lung cancer?

6 A. No.

7 Q. What about asbestosis?

8 A. No.

9 Q. I was told, I thought from Danny White,
10 but maybe I misunderstood, that your father passed
11 away --

12 A. Yes.

13 Q. -- from an asbestos-related disease.

14 A. Well, I wasn't including him.

15 Q. Okay. Okay. I also thought one of the
16 board of directors, like Johnson or somebody else?

17 A. Russell Johnson?

18 Q. Yes, Russell Johnson had passed away
19 from asbestos-related disease.

20 A. I don't have no knowledge of that. I
21 don't know why he passed. I knew he passed away. I
22 didn't know why.

23 Q. Has Covil made any of effort to figure
24 out how many of its employees have at least claimed
25 to have passed away from an asbestos-related

1 disease, whether lung cancer, asbestosis or
2 mesothelioma?

3 A. Not to my knowledge.

4 Q. Okay. Was Covil aware that,
5 predominantly, the overwhelming cause of
6 mesothelioma is asbestos exposure. It's called a
7 signal tumor because the tumor signals what caused
8 it?

9 MR. RHENEY: Object to the form.

10 THE WITNESS: I can't answer that. I'm
11 not a doctor, so I don't have any idea.

12 BY MS. DEAN:

13 Q. And I'm not asking in terms of how,
14 medically, they have established it. But what I am
15 interested in is whether Covil, in the decades that
16 they were working in the insulation industry, at
17 some point understood that there was a disease
18 called "mesothelioma," and it was overwhelmingly
19 caused by asbestos exposure.

20 MR. RHENEY: Object to the form.

21 THE WITNESS: Well, my dad, in his
22 testimony, stated that he started hearing noise from
23 various people in 1966 about asbestos being harmful,
24 and that's the only information I have.

25 BY MS. DEAN:

1 Q. I remembered that work too.

2 What about when you started in the '67,
3 '68 time frame? I understand you are literally a
4 kid at that point. You're a high school kid. But
5 do you remember hearing, in that time frame, that
6 there were concerns about asbestos causing health
7 issues?

8 A. No. Like I said, I was a high school
9 kid, and I wasn't focused on that. I heard no
10 conversation about asbestos, per se, didn't see any
11 asbestos.

12 Q. But you, as a part-time employee for the
13 company, were never put in the situation where you
14 were working with asbestos?

15 A. No.

16 Q. But you're aware, at least in that time
17 frame, that there were dozens of men working for
18 Covil that were doing insulation work and high
19 applications of asbestos.

20 A. There was a lot of men working for Covil
21 at that time.

22 Q. When was your father diagnosed?

23 MR. RAINSFORD: I'm sorry. Did you say
24 "diagnosed"?

25 MS. DEAN: Yeah. I'm not looking for a

1 date, but just an approximate year.

2 MR. RHENEY: Well, diagnosed with --

3 MS. DEAN: I thought he had
4 mesothelioma. But maybe that -- all I know about
5 this is what Danny told me.

6 BY MS. DEAN:

7 Q. And so what disease did your father have
8 and when did he find out about it?

9 A. Honestly, I was thinking it was lung
10 cancer. Danny said it was mesothelioma. I can't
11 remember what the death certificate said. But he
12 got sick in '78, and he never recovered from -- and
13 he died in '84.

14 Q. Is he the only person that you know of
15 personally that had this disease?

16 A. Yes.

17 Q. And I understand that this is personal
18 and so I don't intend to delve into it a lot, but
19 you would agree, both from what you -- let me
20 separate that. You understand firsthand, from the
21 experience that you had at Covil with your father,
22 that this is a horrible disease.

23 MR. RHENEY: Object to the form.

24 THE WITNESS: Any cancerous disease that
25 somebody has is dangerous and harmful.

1 BY MS. DEAN:

2 Q. In terms of other people outside of your
3 father that believe that they have an asbestos
4 disease from working at Covil, have you made any
5 effort to create a list of how many people fall in
6 that category?

7 A. No, I have not.

8 Q. I saw, in Palmer Covil's deposition,
9 that there was a list of companies that the lawyer
10 and him created as of 1977. Do you happen to know
11 what I'm talking about?

12 A. Not right offhand.

13 Q. Okay. And I have his testimony here.
14 And so if you ever want to look at what I'm looking
15 at for context, I have that handy. But I will
16 represent to you, and I will show you before I hand
17 it to a lawyer, you can see the exhibit sticker,
18 which I covered up on yours.

19 A. Right. Gotcha.

20 (Plaintiff's Exhibit No. 9, List Of People That Have
21 Filed Complaints, was marked)

22 BY MS. DEAN:

23 Q. But for -- this has been marked as
24 Exhibit 9. It was Plaintiff's Exhibit 3 -- or,
25 excuse me, Defendant's Exhibit 3 for Mr. Covil,

1 Palmer Covil's deposition.

2 A. Yes.

3 Q. Where he was asked to checkmark the
4 people he individually knew in this list of people
5 that have filed complaints.

6 A. Right.

7 Q. Do you remember --

8 A. I do remember reading that.

9 Q. So I have, at least as of 1977, a
10 two-page list of people that believe that they have
11 been harmed by asbestos from Covil. What I'm
12 wondering is if anybody kept that going after the
13 date of that deposition.

14 A. I do not know that, because I was not
15 aware of this list until going through his
16 deposition and exhibits.

17 Q. Do you know if anybody in the company
18 was made aware -- and maybe not of the individual
19 people's names, because I understand there might be
20 privacy concerns, but that there were -- there is a
21 list that was long enough that it had to go to
22 another page of people who think, just from working
23 around asbestos, that they are getting sick?

24 MR. RHENEY: Object to the form.

25 THE WITNESS: If there is, I'm not aware

1 of it.

2 BY MS. DEAN:

3 Q. Let me back up a little bit before
4 getting into the substance, just to make sure we are
5 on the same page in terms of just background of
6 Covil company.

7 My understanding is Covil was a
8 Greenville, South-Carolina-based company that had
9 two primary functions: Insulation contracting and
10 distribution of insulation.

11 A. Yes.

12 Q. Founded in 1947.

13 A. Yes.

14 Q. Since it was founded until at least the
15 1980s, Covil furnished the southeast with insulation
16 products?

17 A. Yes.

18 Q. Covil had facilities and capabilities
19 and expertise to satisfy the requirements for any
20 job that involved the need of insulation?

21 MR. RHENEY: Object to the form.

22 BY MS. DEAN:

23 Q. Would you agree with that?

24 A. As far as I know, they did insulation
25 work, sales and contracting, yes.

1 Q. And would you agree that they had the
2 capabilities and expertise to satisfy any job
3 requirements when it came to the need of insulation?

4 MR. RHENEY: Object to the form,
5 overbroad.

6 THE WITNESS: I can't answer that. I
7 don't know.

8 (Plaintiff's Exhibit No. 10, 5-4-82 Letter and
9 Documents, was marked)

10 BY MS. DEAN:

11 Q. I'm going to hand you what I have marked
12 as Exhibit 10.

13 MS. DEAN: And I lost my third copy of
14 this one to give to Trey. He needed it for Daniel.
15 But you can see there it's Covil. It starts at
16 8837.

17 BY MS. DEAN:

18 Q. Do you see Exhibit 10 is a Covil
19 Corporation document dated May 4th, 1982?

20 A. Yes.

21 Q. And what it reported is that "Covil
22 Corporation has the facilities, capabilities, and
23 expertise to satisfy the requirements for any size
24 job."

25 Do you see that?

1 A. Yes.

2 Q. And they go on to say they provide
3 material and labor for contracts that went all the
4 way up to 10 million dollars, which is a big
5 contract. Right?

6 A. Correct.

7 Q. And Covil both had and bragged about the
8 fact that they handled some of the largest
9 insulation contracts in the southeast --

10 MR. RHENEY: Object to the form.

11 BY MS. DEAN:

12 Q. During the '60s and '70s time frame.

13 A. I know they did a lot of work for some
14 big companies. I don't know how large they were.

15 Q. And I'm going to come back to this if
16 you want to keep it handy, but let me show where I
17 got that from.

18 (Plaintiff's Exhibit No. 16, Covil Corporation
19 Document, was marked)

20 BY MS. DEAN:

21 Q. I hand you what I have marked as
22 Exhibit 16. And I have handed you another Covil
23 document that was provided to me. And in the second
24 sentence it says: "We have handled some of the
25 Southeast's largest insulation contracts for proud

1 companies like DuPont, Duke, Eastman-Kodak, and
2 Champion Paper, just to name a few."

3 Do you see that?

4 A. Yes.

5 Q. And you have no reason to dispute that.
6 Right?

7 A. True.

8 Q. For those particular companies, and I'm
9 really focusing in on three of the four: DuPont,
10 Duke, and Champion Paper. Are you aware of a single
11 year since those companies' different plants were
12 built where Covil was not involved with some kind of
13 insulation project for the company?

14 A. I really have no idea what the dates
15 were that they were there or the time frame of when
16 they worked there.

17 Q. In your review of the records, though,
18 you saw, over and over and over and over again, even
19 in the limited records that Covil had, that they
20 were participating at Duke Power facilities?

21 A. Oh, yeah. Yes.

22 MR. RHENEY: Object to the form.

23 BY MS. DEAN:

24 Q. It goes on to say that they did
25 service -- and this is in the second paragraph --

1 service both during and after insulation.

2 Do you see where I'm at?

3 A. Yes.

4 Q. I didn't know what that meant. Well,
5 what kind of services did Covil provide that would
6 be pre-working with the insulation or after working
7 with the insulation?

8 A. I don't know what they are getting at
9 pertaining to that. We provided a lot of services,
10 but I don't know what he is getting at.

11 Q. In terms of kind of the types of areas
12 that Covil would do insulation work, they indicate,
13 in that third paragraph, that they did work in paper
14 plants, power plants, hospitals, commercial and
15 industrial operations, chemical facilities.

16 Do you see where I'm at?

17 A. Yes.

18 Q. And if you go to the next page, in their
19 Customer References you also can see that one of the
20 references is a school system.

21 MR. RHENEY: I'm sorry. Is what?

22 MS. DEAN: The School System of
23 Greenville County.

24 THE WITNESS: Yes.

25 BY MS. DEAN:

1 Q. And so not throughout the whole country,
2 but throughout the southeast, Covil was an active
3 insulating contractor for decades.

4 A. Yes.

5 Q. I couldn't find -- and given the time
6 frame we had to kind of assemble this, I don't put a
7 huge amount confidence in this. Sometimes I feel
8 like I know exactly what is in the record. I'm a
9 little shakier on this one. But let me start with a
10 cleaner question.

11 I couldn't find anything that explained
12 the actual work process of an insulator: How you
13 remove insulation, how you put it back on, in
14 written form. Are you aware of anything like that?

15 A. I don't know that there is one.

16 Q. Okay. If I wanted to know all of the
17 different ways to remove old asbestos insulation,
18 whether it's using a hammer or using your hands,
19 using a chisel, some of the different things that
20 co-workers describe, does Covil, as a company,
21 through you, as their representative, have any list
22 of ways that they believe were okay versus were not
23 okay?

24 A. Well, first of all, I don't know of any
25 time they removed any asbestos-type insulation.

1 However, I don't know of any document or anything to
2 go by that -- saying how that would be done.

3 Q. So even just in your review of the
4 testimony of Mr. Childers, for instance, he
5 indicated he would come in during the time frame he
6 was working for Childers, remove insulation, put it
7 back on, go to the next place. Do you recall seeing
8 that?

9 A. No, I don't.

10 Q. Okay. I'll just make a mark and then we
11 can pull that up on the next break.

12 How did Covil believe the insulating
13 work was done, if it was maintenance or repair work
14 being done, if there wasn't an effort to remove the
15 existing insulation to replace it?

16 A. Well, not all --

17 MR. RHENEY: Object to the form.

18 THE WITNESS: Not all insulation that
19 they worked on, as far as maintenance, was asbestos.
20 And they had maintenance contracts with certain
21 companies that where they kept somebody at that job
22 site for X number of days, months, years.

23 BY MS. DEAN:

24 Q. And so I will divorce it from the issue
25 of what type of insulation it was, but Covil had a

1 variety of different services it performed. One was
2 to provide the materials, and sometimes that was all
3 they did --

4 A. Right.

5 Q. -- just provide it. Right?

6 A. Yes.

7 Q. Sometimes they were the actual
8 contractors that came in and installed the
9 materials.

10 A. Yes.

11 Q. Sometimes they maintained the insulation
12 that was in a facility. And I think you were saying
13 there are maintenance contracts that would define
14 how long they would be there. Right?

15 A. Right.

16 Q. And if you're maintaining a material or
17 doing a repair on a material, you could be working
18 with existing insulation.

19 A. It's possible.

20 Q. Okay. And for maintenance, that's the
21 nature of what you're doing. You're maintaining
22 something that exists over a specified period of
23 time?

24 A. That's true. But in some of these
25 facilities, they had their own maintenance people

1 that would do a lot of work before we came in and
2 reinsulated.

3 Q. And I understand, just from deposing
4 some of the people in some of these facilities, some
5 had their own maintenance department. Some didn't
6 have one at all. Some contracted with Daniels, and
7 some contracted out you. So I'm not looking for
8 this was how it worked everywhere, but in
9 situations -- in situations where Covil was the one
10 with the maintenance contract, the nature of that
11 job would be to maintain the existing insulation for
12 whatever period of time is contracted for?

13 A. Possibly could be.

14 Q. Okay. When -- in terms of these
15 different duties, whether it be maintenance, selling
16 of the insulation or installing the insulation, was
17 that the model of the business from when it was
18 founded in 1947 until they stopped the contractor
19 end, which I think was in the '80s?

20 A. Yes.

21 Q. When they stopped doing the contracting
22 work, did they also stop doing the maintenance work?

23 A. Yes.

24 THE WITNESS: Can we take a short break?

25 MS. DEAN: Of course.

1 THE VIDEOGRAPHER: Going off the record
2 at 10:08:56.

3 (Break In Proceedings)

4 THE VIDEOGRAPHER: At 10:21, we are back
5 on the record.

6 BY MS. DEAN:

7 Q. I want to spend a few minutes talking
8 about kind of the one part of Covil's business where
9 they acted as a distributor of insulating materials
10 and accessories.

11 A. Okay.

12 Q. Why have a distributor? I mean, what
13 value did Covil provide in that system, as opposed
14 to having the end-person go straight to the
15 manufacturer and get the product themselves?

16 A. Well, us being distributors, we were
17 able to put out prices on materials that some of the
18 other companies could not. And a lot of the people
19 had their own maintenance people; therefore, they
20 wasn't in the insulation business, so they had to
21 buy it somewhere. And we would bid material jobs to
22 just supply material only.

23 Q. Outside of -- well, first of all, what
24 allowed Covil, as the distributor, to have a better
25 price point than Duke, who has insulation needs and

1 multiple big plants, just by way of example?

2 A. I can only speak for like Owens Corning,
3 which is our biggest distributor. And we had an
4 agreement with them, according to my dad's
5 deposition, back in the late '50s, early '60s, and
6 that was our primary type of material that we sold
7 at that time. And then they picked up various other
8 companies and were distributors.

9 He didn't say they had written
10 agreements, but they had like verbal agreements for
11 various other companies to sell material for.

12 MS. DEAN: And I'm going to object to
13 nonresponsive, which doesn't mean it's not helpful.
14 It just means I didn't think I got the answer to the
15 question I was looking for.

16 BY MS. DEAN:

17 Q. To me, it's a broader question.
18 Regardless of who you're distributing for, why is it
19 that Covil would get a better price point than the
20 end user, particularly given that some of these end
21 users have lots of insulation needs?

22 A. Mostly because we buy more quality of
23 material from the manufacturer than someone like
24 Duke would, possibly.

25 Q. Okay. Your dad, in his deposition, when

1 he was the company representative back in 1977,
2 indicated that there were warehouses where they
3 could store it usually up to year. Do you remember
4 that?

5 A. We did have other branches that stored
6 material in warehouses.

7 Q. Can you give me, for the other branches,
8 the dimensions or some kind of idea of the size of
9 that warehouse or those warehouses?

10 A. Greensboro is the only one I went to,
11 and that was traveling with him. And it was quite a
12 bit smaller than the home office here, in
13 Greenville. But as far as dimensions, I couldn't
14 even speculate.

15 Q. How many two-car garages could fit in
16 there?

17 MR. RHENEY: Object to the form.

18 THE WITNESS: I have no idea. It was
19 not a big office at all.

20 BY MS. DEAN:

21 Q. Has there been any effort at all to
22 ascertain the size of the dimensions of the
23 different warehouses of the four branches?

24 A. Not to my knowledge.

25 Q. Okay. Do you know if any of those

1 branches still exist, if you could go into the
2 facility?

3 A. You mean, is the physical building still
4 there?

5 Q. Yeah.

6 A. I have no idea.

7 Q. Okay. Whether on your behalf or you
8 personally, has anybody investigated that?

9 A. Not to my knowledge.

10 Q. Okay. Are you aware, in the '70s time
11 frame, whether there was an issue for the
12 branches -- and I'm kind of isolating them so we are
13 not going to talk about the fire that happened in
14 the main facility for a minute -- whether there was
15 any kind of slowdown in being able to get asbestos
16 insulation out because of concerns that were
17 exploding about asbestos in the 1970s?

18 A. I would have no idea to that. I don't
19 know.

20 Q. Because there was this agreement to use
21 your father's deposition, I don't want to go into
22 all of the specifics of the different distributors.

23 A. Distributors.

24 Q. Let's try that again. Because we have a
25 lot of information from your father's deposition. I

1 don't want to retread all that, but I do want to
2 just get a list of different companies you were a
3 distributor for, "you" being Covil. And there is a
4 list on Exhibit 10 that I just would like to look at
5 together.

6 A. Okay.

7 Q. They reference, in that second
8 paragraph, that they were a distributor for Owens
9 Corning, Johns Manville, Pabco -- I'm not sure how
10 you pronounce that.

11 A. Knauf.

12 Q. Is it Knauf?

13 A. Uh-huh.

14 Q. Benjamin Foster, Childers Products,
15 Goodtempt, Forty-Eight Insulation, and Ceel-Co.

16 Do you see that?

17 A. Yes.

18 Q. And many of these companies I'm familiar
19 with, but Childers I had to look up. My
20 understanding is they were the world's largest
21 manufacturer of a variety of things, including
22 coatings, adhesives and sealants. Do you agree with
23 that?

24 MR. RHENEY: Object to the form.

25 THE WITNESS: To my knowledge, that's --

1 they did sell sealants. And I'm thinking they sold
2 metal jacketing also.

3 BY MS. DEAN:

4 Q. That was listed there, as well.

5 A. Okay.

6 Q. Do you know, on behalf of Covil, the
7 last year that their adhesives or sealants contained
8 asbestos?

9 A. No. I can say that as of '73, all
10 asbestos was out of Covil's warehouse and operation.

11 MS. DEAN: I'm going to object to both
12 nonresponsive and speculation, but I am going to
13 come back to that.

14 BY MS. DEAN:

15 Q. But for Childers, do you know when they
16 stopped selling asbestos coatings, adhesives and
17 sealants?

18 A. No, I do not.

19 Q. Do you have any basis to dispute that
20 those were sold into the late '80s?

21 MR. RHENEY: Object to the form.

22 THE WITNESS: I have no idea.

23 BY MS. DEAN:

24 Q. Have you seen -- given that you don't
25 have personal experience with this, have you seen

1 any records anywhere that suggest any uniform effort
2 was made by Covil to make sure they weren't
3 purchasing asbestos during any time frame?

4 A. I know I saw an old paperwork saying
5 that, but word of mouth and my dad's deposition said
6 that most of the asbestos was out by '73.

7 Q. When you say --

8 MS. DEAN: Let me object to
9 nonresponsive and maybe hearsay.
10 BY MS. DEAN:

11 Q. But when you say "word of mouth," who
12 are you referencing?

13 A. Just from idle talk in the office or at
14 Covil's offices.

15 Q. Okay. Can you say who would have --

16 A. I would have no idea.

17 Q. Have you seen documents that directly
18 contradict that proposition, that show asbestos was,
19 in fact, still being sold after the fire; in fact,
20 days after the fire?

21 MR. RHENEY: Object to the form.

22 THE WITNESS: No, I have seen nothing
23 pertaining to that.

24 BY MS. DEAN:

25 Q. For any of these companies listed in

1 Exhibit 10, has Covil made any effort to figure out
2 the last date in which they supplied, as a
3 business -- I'm not saying this Covil specifically,
4 but as a business, asbestos-containing products of
5 any kind?

6 A. Not that I know of.

7 Q. Sometimes -- and just so you understand
8 where I'm coming from, I'll see memos or files of
9 memos saying: We are going asbestos-free. Asbestos
10 is not to be delivered. Get rid of all the asbestos
11 that you have in the branches, where it -- well, it
12 had just burned down -- whatever it may be.

13 Anything like that at all that you're
14 aware of, in the thousands of documents Covil has,
15 to show a company directive to make sure asbestos
16 wasn't going out of the doors from a Covil facility?

17 A. Not that I can remember.

18 Q. When we think about the distribution --
19 actually, let me stop for a moment.

20 Exhibit 16, which I just handed you,
21 lists many of the same companies that they were a
22 distributor for, but they also list a few others.
23 Can you see there where they talk about Covil as a
24 distributor for, and it lists a bunch of companies?

25 A. Yes.

1 Q. And in addition to some of the ones we
2 have already seen in Exhibit 10, they list
3 CertainTeed, Armstrong, and Calsilite?

4 A. Uh-huh.

5 Q. Do you see that?

6 A. Yes.

7 Q. First of all, do you know when
8 CertainTeed last sold asbestos-containing products
9 to the public?

10 A. Not right off the top of my head, I
11 don't.

12 Q. Do you know what CertainTeed products
13 Covil sold?

14 A. I know they sold fiberglass. That's all
15 I can think of at this time.

16 Q. And when say you know that, is that from
17 your personal experience?

18 A. From experience, uh-huh.

19 Q. Okay. Have you made any effort to try
20 to figure out what CertainTeed products Covil was a
21 distributor for?

22 A. I have not.

23 Q. I saw some questions about Calsilite in
24 your father's deposition, so let me just follow up
25 with that. Was Calsilite a product that was

1 manufactured or in some way Covil was involved with
2 the manufacturing process?

3 A. Covil did no manufacturing. However,
4 I'm not familiar with the Calsilite products.

5 Q. Did they have a separate insurance
6 policy for Calsilite?

7 A. Did Covil?

8 Q. Yes.

9 A. I have no idea. Like I said, I'm not
10 familiar with Calsilite.

11 Q. Exhibit 16, I can't find a date for this
12 document. And I looked at kind of the numbers
13 before and after to see if maybe they could -- you
14 know, maybe this was part of a larger production,
15 but it didn't appear to be. And so I'm wondering if
16 you can tell, by anything that's being referenced
17 here, an approximate time frame that this would have
18 been created.

19 A. I really have no idea. I don't see
20 anything that -- timewise, that would put a date on
21 it.

22 Q. I didn't know, for instance, if the date
23 of the Air Handling Products Division -- you know,
24 that came about in '82, so I know it's at least
25 after '82. I mean, that's an example of something

1 where your personal knowledge of the company just
2 might help us get some feel.

3 MR. RHENEY: Object to the form.

4 THE WITNESS: Right. It would be -- it
5 would be thereabouts because we didn't, you know,
6 like I said, pick up the air-handling products until
7 somewhere in the '80s.

8 BY MS. DEAN:

9 Q. Okay. Do you know if anybody had any
10 concerns, when they were inviting folks out to their
11 completed projects -- do you see that, in paragraph
12 three, they are inviting people out either to their
13 facility or to their completed projects -- about
14 inviting people to a place where asbestos was
15 located?

16 MR. RHENEY: Object to the form.

17 THE WITNESS: What was your question?
18 I'm sorry.

19 BY MS. DEAN:

20 Q. Sometime in the '80s when Covil is
21 writing "Come visit our plants or our completed
22 projects," whether they be in power plants or paper
23 plants, whether they considered, at all, the risks
24 associated with having visitors come into places
25 where asbestos --

1 MR. RHENEY: Object to the form. Lack
2 of foundation.

3 THE WITNESS: I have no idea. But we
4 constantly had customers visiting our plant at
5 Covil. But as far as visiting job sites, I have no
6 idea.

7 BY MS. DEAN:

8 Q. In terms of the contract and maintenance
9 functions for Covil, as opposed to just distributing
10 goods, my understanding is that went back all the
11 way to 1947, and that your father actually spent
12 over a decade doing that work himself.

13 A. According to his deposition, he did.

14 Q. And I couldn't nail down an exact time
15 frame, but my understanding is in about 1989, a
16 decision was made to stop doing the contracting end.

17 A. Yes.

18 Q. Okay. In the projects that involved the
19 removal or maintenance of insulation -- well, first
20 of all, have you made any effort to verify how many
21 of those projects existed?

22 A. No, I haven't.

23 (Plaintiff's Exhibit No. 36, Contractor
24 Questionnaire, was marked)

25 BY MS. DEAN:

1 Q. I saw something -- and let me hand it to
2 you for reference. Exhibit 36, which I haven't put
3 a sticker on that, so I'm going to have to take it
4 right back. Sorry. I apologize.

5 Exhibit 36 says: "Contractors
6 Questionnaire" and shows that the firm name at issue
7 is Covil Corporation. And it's dated February 1st,
8 1982.

9 Do you see that?

10 A. Uh-huh.

11 Q. Is that a yes?

12 A. Yes.

13 Q. Okay. That is just for clarity on the
14 written record.

15 And if you look to Bates page 8856, you
16 can see, in terms of the work that they are coming
17 in and doing, they are doing equipment insulation,
18 lagging, fire protection and piping insulation.

19 Do you see that?

20 A. Yes.

21 Q. I may have pulled the wrong sheet. I
22 handed you the wrong thing. I apologize.

23 What did we mark that as?

24 A. 36.

25 MS. DEAN: I marked two 36s in my notes.

1 That's what's happened. So we will mark this one as
2 46. And thanks for bearing with me.

3 (Plaintiff's Exhibit No. 46, 5-31-79 Letter and
4 Attachments, was marked)

5 BY MS. DEAN:

6 Q. This is a May 31st, 1979, Covil
7 document.

8 Do you see that?

9 A. Uh-huh. Yes, I do.

10 Q. It's talking about work done at the Duke
11 Power plant, McGuire Nuclear Units 1 and 2. It
12 references Westinghouse, and it says it's in North
13 Carolina. Are you following?

14 A. Yes.

15 Q. If you look to the last page of this
16 document, it's Bates 17722, they have a takeoff
17 sheet. Have you seen one of these before?

18 A. Yes, but it has been a long time.

19 Q. What is the function of this sheet?

20 A. To try to figure out how much insulation
21 or pipe covering or material that they are going to
22 need for a particular size for a particular job.

23 Q. Do you know if this is -- this is done
24 on a Westinghouse turbine at McGuire plant, is what
25 it says at the top. Is this something that Covil

1 generates or that Westinghouse generates or that
2 Duke generates, or do you know?

3 A. Covil would generate this, I'm pretty
4 sure. It's on a Covil takeoff sheet. Let me back
5 up.

6 I can't say that for sure. Somebody
7 else could have done it, but we did -- Covil did use
8 these.

9 Q. Okay. That's all I wanted to ask you on
10 that one.

11 A. Okay.

12 Q. I think you answered this more broadly,
13 but if -- I will represent to you Westinghouse, in
14 relation to this specific project, has provided us
15 documents.

16 A. Yes.

17 Q. That's not something you have reviewed
18 or that you're in any way prepared to talk to me
19 about. Is that fair?

20 A. Correct.

21 Q. When doing a maintenance contract, would
22 you be able to tell me, for any particular facility
23 in these lists that we have, the 56 for
24 Mr. Sizemore, the 22 for Charlotte Smith's case, or
25 the five for Howe, firsthand, or based on any

1 research you have done, whether the company listed
2 had an insulating or maintenance group to do
3 insulating work at the facility listed?

4 A. I'm thinking it was in the -- well, most
5 of them were just provided material.

6 In the Howe case, I don't think we
7 actually did insulation. We provided material.

8 I think in the Childers case -- and I
9 may have these backwards, but I'm thinking in the
10 Childers case they stated, especially Wayne Grant
11 stated that Starr Davis was the insulator on the job
12 site doing the insulation.

13 MS. DEAN: Let me object to
14 nonresponsive. I asked a really long question.

15 BY MS. DEAN:

16 Q. And you had mentioned, in a prior
17 answer, that sometimes you guys did the maintenance
18 and sometime they had their own maintenance folks.
19 Do you know, for any of the actual specific
20 companies listed out for these three cases, whether
21 they had employees in-house to do insulating work?

22 A. If Covil had employees --

23 Q. No.

24 A. -- or if the people at the job site had?

25 Q. People at the job site. So by way of

1 example, Bowater is one that's in all three. Do you
2 know anything -- and if so, I will dig into the time
3 frames -- about whether they actually had a
4 workforce dedicated to installing, maintaining or
5 repairing insulation?

6 A. No, I don't know that.

7 Q. And if I broaden that to all of the
8 locations for these three, I'm just wondering if you
9 have any information to help us understand whether
10 any of those particular companies had man-force
11 in-house to their company to do insulating repair or
12 maintenance work.

13 A. I have no idea. I can't speak for them.

14 Q. When doing insulation repair work, was
15 there ever a period of time at Covil, that you are
16 aware of, where the potential that what you were
17 repairing or removing had asbestos in it, became an
18 issue?

19 MR. RHENEY: Object to the form.

20 BY MS. DEAN:

21 Q. And if so, how did the company handle
22 that?

23 MR. RHENEY: Object to the form.

24 THE WITNESS: I have no idea.

25 BY MS. DEAN:

1 Q. So to make sure I'm asking a good
2 question, I just talked to the company called Metal
3 Clad that did this stuff out in California. The way
4 he put it is: Look, if it's not -- they are
5 officially abatement contractors now. It's not like
6 one day we decided to be abatement contractors, but
7 when you're an insulator, you go in and take
8 insulation off and put new stuff on. And at a
9 certain point that became regulated. When we are
10 taking this stuff off, you have to be an abatement
11 contractor. It wasn't like an active decision one
12 day. That's just that was the natural progression.

13 I'm wondering if you, since you didn't
14 personally -- weren't on that side, but if you're
15 aware of anyone that was kind of aware of all the
16 difference regulatory changes on the end of
17 repairing or removing insulation that were happening
18 in South Carolina, North Carolina, Virginia or the
19 other states where --

20 MS. DEAN: Object to the form.

21 THE WITNESS: If we had anyone -- anyone
22 in-house, are you talking about --

23 BY MS. DEAN:

24 Q. Yes.

25 A. -- in our organization?

1 Q. Yeah.

2 A. If we did, it would be the field
3 superintendent or the construction manager, which
4 was the same person.

5 Q. Who was that?

6 A. That was Russell Johnson.

7 Q. Who has passed away.

8 A. Right.

9 Q. So, for instance, the best I can figure
10 out, and just trying to understand this, in 1984
11 there were efforts made by the Department of Health
12 and Environmental Control in South Carolina, where
13 if you're removing insulation, you have to do
14 certain things.

15 A. True.

16 Q. Do you have any indication, from any
17 records, that anybody at Covil was paying attention
18 to that?

19 MR. RHENEY: Object to the form.

20 THE WITNESS: I can't answer that.

21 BY MS. DEAN:

22 Q. Do you know if anybody ever became
23 licensed or went through the -- I think there were
24 three or four forms with the Department of Health
25 and Environmental Control -- that made any kind of

1 efforts to meet the abatement requirements between
2 1984 and 1989 when they no longer were doing
3 contracting?

4 A. Covil never did that.

5 Q. I saw, in Exhibit 43, reference to
6 abatement materials, and I didn't quite understand
7 what I was looking at. And I wanted to see if you
8 understood it better than I did. So let me begin by
9 handing you Exhibit 43.

10 (Plaintiff's Exhibit No. 43, Crawford Insulation,
11 Inc. Document, was marked)

12 BY MS. DEAN:

13 Q. This document starts off by talking
14 about Crawford Insulation. Do you recognize that
15 company?

16 A. No.

17 Q. And it says Crawford Insulation Company
18 in Florence, South Carolina. And it's dated
19 January 14th, 1986. And then it mentions Harry Link
20 and the Covil Corporation here in Greenville.

21 Do you see that?

22 A. Yes.

23 Q. And they are ordering a bunch of stuff
24 that directly relates to asbestos abatement: Tyvek
25 suits, Asbestos-Saf Sac, half-face respirators,

1 asbestos labels. The second page has other things:
2 Disposable filter bags, asbestos filters. Are you
3 following along with me?

4 A. Yes.

5 Q. And this is a customer order being
6 provided -- at the top it says to the Greenville
7 address for Covil.

8 A. Harry Link was over our urethane spray
9 division. And they used a lot of this same stuff
10 when they were spraying spray-on insulation for
11 heat, soundproofing, whatever the case may be. He
12 had guys in -- he had a certain -- we had a certain
13 division at that time, and he was over that division
14 and had men working for him that would spray on
15 insulation. And they always had to wear suits. Not
16 that it was hazardous, but it was very dirty,
17 sticky, and hard to work with.

18 Q. And just because everyone may not be
19 looking at this as we look at it. When it says
20 Covil Corporation, Greenville, South Carolina, the
21 name above that says Harry Link. Right?

22 A. Right.

23 Q. Okay. And in 1986 this wouldn't be a
24 situation, to your knowledge, where they would be
25 spraying on any kind of asbestos product?

1 A. Oh, no. No.

2 Q. And so it's your belief that when they
3 were doing spray-on work with a non-asbestos
4 product, they were wearing Tyvek suits?

5 A. Yes. They did on a lot of occasions.
6 And sometimes they would have to put plastic around
7 the area to keep it from going into other areas of
8 the building. If they were doing like a column like
9 that, if they were spraying it with insulation, they
10 would have to cordon off the area around there.

11 Q. With like plastic sheathing?

12 A. Right.

13 Q. So do you know, before Covil goes in a
14 plant -- let's say in 1986 they are going to Bowater
15 to do a project -- whether any effort was made by
16 Covil or at its direction to sample -- there is bulk
17 sampling that could be done, the insulating material
18 that already exists, to see if the Covil people were
19 working either with or around asbestos insulation
20 when they came in to do a new project that didn't
21 involve asbestos?

22 MR. RHENEY: Object to the form.

23 THE WITNESS: I have no idea that they
24 did that.

25 BY MS. DEAN:

1 Q. You do know that because of the spray
2 insulation work done at Covil, that Tyvek suits and
3 hoods and respirators and asbestos labels were
4 available and on hand to Covil if they wanted to use
5 them?

6 A. Correct.

7 Q. In trying to piece together, and I
8 understand we are probably both doing this, what you
9 believe this is referencing to, the part that
10 doesn't make sense to me are the 75 asbestos labels.
11 If this is purely being used for an asbestos-free
12 process, why are you buying dozens and dozens of
13 labels?

14 MR. RHENEY: Object to the form.

15 THE WITNESS: I have no idea.

16 BY MS. DEAN:

17 Q. Have you seen any records or references
18 that there was a thought-out plan to make sure that
19 Covil insulators, in the '70s and '80s, when doing
20 any kind of maintenance or removal work that
21 involved insulation, were taking protections or
22 making efforts to assess the existence of asbestos
23 before going into a plant or a facility to work with
24 insulation?

25 A. Not to my knowledge.

1 Q. Another document that just kind of
2 referenced removal, that I didn't fully understand,
3 that I want to hand you, is Exhibit 20.
4 (Plaintiff's Exhibit No. 20, List With Customer
5 Number And Name, was marked)

6 BY MS. DEAN:

7 Q. First of all, this looks to be a
8 computer-generated list. And it has customer number
9 and name. Do you agree with that?

10 A. Yes.

11 Q. Do you have any idea of the date of this
12 document or when a computer system even first became
13 available so they at least have the earliest
14 possible date?

15 A. I would have no idea.

16 Q. Is this a Covil-generated report, to
17 your knowledge?

18 A. I'm pretty sure it is.

19 Q. Knowing the customer number associated
20 with a particular customer name, does that allow you
21 to search your records in any kind of new way?

22 In other words, if I know American
23 Hoechst is customer number 756, do you organize any
24 of your files by that number?

25 A. Possibly. But I would not know that.

1 That's not something I handled or was familiar with.

2 Q. Okay. Have you done any kind of search
3 of the files -- my understanding, at some point they
4 were trying to be electronically searchable by,
5 first, the customer name, the actual name to see
6 whether the companies we have listed, where our guys
7 were working --

8 A. Yes.

9 Q. -- showed up in the files. Was that
10 done?

11 A. Did we, as Covil, do it?

12 Q. Yeah.

13 A. No.

14 Q. Similar question. Did you ever search
15 your records by this customer number where you had
16 them so that if we had a customer name listed --
17 Bowater will be an example because it's in all three
18 cases -- where you found a customer number, did you
19 ever search the number to see what records you could
20 find based on that number?

21 A. No, we didn't.

22 Q. One of the things on here -- before I
23 move on, part of why I ask is, this document, while
24 it lists a lot of customers for Covil, doesn't give
25 us any specifics of where or when or the nature of

1 the work. Right?

2 A. It does not. And it could be in
3 anything from buying one box of material all the way
4 up to doing a contract job.

5 Q. And the next page takes my example and
6 gives it some teeth. I mean, one of the specific
7 customers listed is Bowater Carolina Corporation for
8 job number 3168.

9 Do you see that?

10 A. Now, what page is that?

11 Q. The second page.

12 A. Second page? Okay.

13 Q. Do you see where that's at?

14 A. Yes.

15 Q. Okay. If I wanted to know more about
16 the nature of that job and when it began, to your
17 knowledge, Covil hasn't searched their records
18 either for Bowater Carolina Corp or for 3168?

19 A. Not to my knowledge. I would imagine
20 this was a -- that was their customer number and it
21 was on file in their computers. And I'm not sure if
22 anything was ever saved from the computers for our
23 files or not when we closed.

24 Q. And whether it was or wasn't is not
25 something you verified, at least --

1 A. Correct.

2 Q. And if we look to Bates 8128, I mean,
3 they list out Duke Power a dozen times --

4 A. Uh-huh.

5 Q. -- and give customer numbers. And
6 again, if I want to know, outside of the handwritten
7 comment about the particular site -- I mean, they do
8 have handwritten Clifford and other names, but if I
9 want to know anything outside of what's written
10 here, Covil hasn't, to date, done a search of either
11 the customer name or these particular customer
12 numbers to understand better the scope of that
13 project?

14 A. No, they haven't.

15 Q. The next page after that references
16 Removal and Abatement. It's customer number 17363.
17 Do you know what that's referencing?

18 A. Page -- Bates 8125?

19 Q. 8129.

20 A. Oh, okay.

21 Q. And it's about two-thirds of the way
22 down the page. And they are loosely alphabetical.

23 MR. RHENEY: I'm sorry, Jessica. What
24 was that name again?

25 MS. DEAN: Removal and Abatement.

1 THE WITNESS: Unless that was a company
2 name that we sold some material to or something is,
3 I would have no idea.

4 BY MS. DEAN:

5 Q. Okay. So in terms of either knowing
6 anything about the specific entry Removal and
7 Abatement or, more broadly, knowing what efforts
8 Covil made to make sure they were removing or
9 repairing asbestos in a safe way after they stopped
10 selling asbestos, you can't give me any details?

11 A. That's true.

12 Q. I know the amount varied. And, again,
13 this is something we learned from Palmer Covil's
14 deposition, but in the '60s and '70s time frames and
15 even going into the '80s, the amount of employees
16 varied, but there were usually hundreds of employees
17 working for Covil.

18 A. True..

19 Q. I want to get a feel for how much time
20 or money or effort was spent by the company to
21 prioritize safety by looking at a few records that I
22 think you've probably looked at before.

23 First of all, do you know, offhand,
24 either a percentage of total budget or an actual
25 concrete number, how much money during any

1 particular year Covil set aside for safety training,
2 occupational health, any of those three categories?

3 A. As far as budget, I would have no idea.

4 Q. What about concrete numbers? Do you
5 know if they ever spent more than \$100 on anything
6 there?

7 A. Oh, yes. We kept a complete supply of
8 safety equipment in our offices and to pass out to
9 job sites when they needed it.

10 Q. Let me ask a little bit more of a
11 limited question, because I can see how you have,
12 for instance, safety equipment hardhats and other
13 things of that nature.

14 A. Right.

15 Q. In terms of how much money was spent on
16 anything that could deal with a dust hazard, whether
17 it be respirators, training, educational protocol,
18 do you know how much money, in any given year, Covil
19 dedicated to that kind of thing?

20 A. I can't speculate on that, but it would
21 be in the thousands, I'm sure.

22 Q. Okay. Well, the first half and the
23 second half is half of your answer.

24 A. I know. It don't --

25 MS. DEAN: So let me object potentially

1 to speculation --

2 BY MS. DEAN:

3 Q. -- and ask you --

4 A. True.

5 Q. -- before you got into the company, were
6 you able to obtain any records? So before you had
7 personal experience about how much money was being
8 spent on safety.

9 A. No. I have no idea.

10 Q. Okay. Have you looked at the records
11 that we do have about how much money was being spent
12 on education or training?

13 A. I'm sure I looked over them, but I can't
14 recall off the top of my head.

15 MS. DEAN: Do you mind handing me the
16 stack of documents you've got there?

17 THE WITNESS: (Witness complies.)

18 MS. DEAN: And on the break I'll start
19 organizing these.

20 THE WITNESS: While you're doing that,
21 can I run back to the restroom?

22 MS. DEAN: Yes. Sorry.

23 THE VIDEOGRAPHER: Going off the record
24 at 10:59:40.

25 (Break In Proceedings)

1 THE VIDEOGRAPHER: This is the start of
2 Media Unit No. 2. We are on the record at 11:12.
3 (Plaintiff's Exhibit No. 21, 6-3-80 Letter From
4 Travis Cash To Mr. Dukes and Attachments, was
5 marked)

6 BY MS. DEAN:

7 Q. I'm going to hand what you I have marked
8 Exhibit 21, a document I got from Covil dated
9 June 3rd of 1980. And it says: "Regarding
10 Insulation Requirements."

11 Do you see that?

12 MR. RAINSFORD: I'm sorry, Jessica.
13 What was that exhibit number?

14 MS. DEAN: 21.

15 MR. RAINSFORD: Thank you.

16 MS. DEAN: Sorry.

17 BY MS. DEAN:

18 Q. And in relation to Exhibit 21, I just
19 asked you whether you saw that it was a Covil
20 document from June 3rd, 1980. And it says:
21 "Regarding Insulation Requirements."

22 A. Yes.

23 Q. Okay. We will come back to this later,
24 but they reference that this is from Milliken
25 Service Division. And one of the things the Covil

1 president writes is that: "We have furnished
2 insulation services for Deering-Milliken plants for
3 the past 20 years and have enjoyed a very good
4 relationship."

5 Do you see that?

6 A. Yes.

7 Q. And so in context of the last 20 years,
8 that's from the 1960 to 1980 time frame.

9 A. True.

10 Q. Okay. The last two pages of this
11 document appears to be an organizational chart. It
12 says: "Piping And Equipment Insulation and Freeze
13 Protection," and then "Organization of the Company."

14 Do you see that?

15 A. I do.

16 Q. In the Organization of the Company, it
17 has the "board of directors," the "president and
18 treasurer," the "senior vice president" and
19 "secretary," the "vice president of contracts" and
20 then the "controller." And it goes further down to
21 talk about different suborganizations for Covil.

22 A. Uh-huh.

23 Q. Do you see where I'm at?

24 A. Yes.

25 Q. Including "spray, field staff,

1 estimators, office managers, metal fabricating,
2 warehouse, purchasing, salesmen, service managers"
3 and one that I can't read, something "control."

4 A. "Customer service"?

5 Q. "Customer service," but at the end of
6 the "vice president of contracts," there is one that
7 says -- starts with an "S" and says "control." Do
8 you know what that says?

9 A. I don't see that. On the left side or
10 right side?

11 Q. Left side, you have "spray, field staff,
12 estimators" and then a box that I can't read.

13 A. "Sun control."

14 Q. It is "sun control"?

15 A. Yes. That's part of the Energy
16 Division.

17 Q. And then -- I mean, they go down to,
18 depending on what group you're looking at, to the
19 spray crew or field crew or the data entry person or
20 the warehouse crew in this organizational chart.
21 Right?

22 A. Uh-huh. Yes.

23 Q. What I don't see is any part of this
24 chart that is a safety or medical or health
25 component. Do you agree with that?

1 A. Not specifically. It does not have it
2 specifically on here, no.

3 Q. Okay. During any point in time that
4 you're aware of before 1988, was there ever a Safety
5 Department or a Health Department?

6 A. The Safety, as I stated earlier, was
7 taken care of by the construction manager. However,
8 part of my duties -- and only because the safety
9 equipment was kept in the office right next to my
10 office or in the supply closet right next to my
11 office -- when the field men would need supplies,
12 they would send their information in to the
13 construction manager, and he would give me a piece
14 of paper saying such and such job or so and so
15 foreman needs so many hardhats, goggles,
16 respirators, hearing protection, so forth and so on.
17 And I would get those out of the supply closet, pass
18 it on to him, and he would make sure it got to the
19 job site.

20 Q. When did you do that, starting when?

21 A. Middle '80s.

22 Q. So in the middle '80s until 1989, when
23 they stopped doing contracting, you would be
24 involved in actually getting from the supply closet?

25 A. Correct.

1 Q. Can you give me an idea of how many
2 respirators they had on hand?

3 A. We had cases of them. I would have no
4 idea how many we would have on hand.

5 Q. What is a case?

6 A. Probably 24 in a case.

7 Q. Were they the paper mask or were they
8 respirator?

9 A. No. We had paper masks, but these were
10 the neoprene respirators with the filter cartridges
11 on both sides.

12 Q. Okay. Do you know, before the middle
13 '80s when you were doing that, who handled that part
14 of the process?

15 A. The field superintendent.

16 Q. Okay. And I think you said the
17 construction manager and the field superintendent
18 was the same person. That was Russell Johnson?

19 A. Yes, in some respects it was. And then
20 later on when Russell was vice president, Jimmy
21 Barnett was our field superintendent. And he is the
22 one that we tried to contact and had dementia.

23 Q. Had dementia.

24 A. Yes.

25 Q. Okay. In the '60s and '70s time frame,

1 would Russell Johnson have been the person that was
2 the construction manager and field superintendent?

3 A. In the '60s?

4 Q. Yeah, '60s and '70s. And if I need to
5 break it down, I can if it changed.

6 A. He was there when I started in '74. So
7 I would say most likely, but I can't be 100 percent
8 sure of that.

9 Q. Are you aware of anyone in the '60s and
10 '70s time frame, other than Russell Johnson, who was
11 involved with handling safety for the insulators?

12 A. For the what?

13 Q. Insulators.

14 A. Just the field superintendent or
15 construction manager.

16 Q. And are you aware of anyone that had
17 that role other than Russell Johnson at any point in
18 time?

19 A. No.

20 Q. Given all of Mr. Johnson's
21 responsibilities, do you know how much time he was
22 able to dedicate to safety in a typical week?

23 MR. RHENEY: Object to the form.

24 THE WITNESS: I have no idea.

25 BY MS. DEAN:

1 Q. Do you know if it was anybody's job to
2 kind of monitor or regulate federal and safety rules
3 that directly governed the business that Covil did?

4 MR. RHENEY: Object to the form.

5 THE WITNESS: There again, that would
6 have to be the field superintendent.

7 BY MS. DEAN:

8 Q. I saw, in your father's deposition,
9 Mr. Palmer Covil's deposition, you know, that they
10 started ordering, for instance, the Federal Register
11 when OSHA came out.

12 A. Right.

13 Q. But I'm just wondering, in terms of,
14 more broadly, he said trade groups talked about it
15 so they ordered it, but who was the person outside
16 of Mr. Johnson, when he was the field
17 superintendent, that was supposed to have the time
18 to focus on that?

19 MR. RHENEY: Object to the form.

20 THE WITNESS: Personally, I don't know.
21 But there are several people that could have
22 possibly have handled that, but I have no person in
23 mind.

24 BY MS. DEAN:

25 Q. Did you find any records at all, in your

1 review of the records for Covil, suggesting that
2 safety protocols for working with asbestos were ever
3 addressed with employees that would potentially be
4 working with asbestos?

5 MR. RHENEY: Object to the form.

6 THE WITNESS: They -- I'm sure they were
7 addressed for new hires, for insulators. And that
8 would have been the field superintendent's job to
9 get with the foreman on the job site to manage the
10 safety on the job site.

11 MS. DEAN: And let me object to
12 speculation, which I might withdraw.

13 BY MS. DEAN:

14 Q. But when you say you're sure that that
15 happened, how do you know that?

16 A. Because in my dad's deposition, he said
17 they took all safety and OSHA regulations and
18 guidelines very seriously and handled all the safety
19 from then on in the late '60s.

20 Q. In terms of specifics, though, about how
21 that were handled, for instance, whether new hires
22 got a four-hour training class or whether there were
23 pamphlets created, have you seen any evidence or
24 indication of the specifics of how that was done
25 outside of your father's belief that it was handled?

1 A. We had an apprenticeship program --

2 Q. A what?

3 A. Apprenticeship --

4 Q. Apprenticeship.

5 A. -- for new hires and new insulators.

6 And Russell Johnson was over that. And safety was
7 part of that training for them, to teach them how to
8 be insulators.

9 Q. In terms of the specifics of what was
10 taught, not just broadly on how to be an insulator,
11 but specifically about health and safety hazards or
12 work protocol for safely handling asbestos, can you
13 give me any specifics about what was taught or when
14 it started?

15 A. No. I wasn't there, so I have no idea
16 what was discussed.

17 Q. In terms of the files, did you see any
18 indication of -- you know, sometimes when you're
19 coming up with a safety protocol and you own a
20 business, you know, there are people talking about
21 it and memos are generated and there is version one
22 to version five before it goes out to your
23 employees. Did you see anything in the written
24 record suggesting the development of or existence of
25 a safety protocol for working with insulation that

1 may contain asbestos?

2 A. No, I never did.

3 Q. I know that Palmer Covil indicated that
4 he was heavily involved with trade organizations.
5 He went to conferences. He sometimes was an officer
6 in some of those organizations. Outside of him, are
7 you aware of anyone else who had membership in or
8 whose costs were covered to go to those conventions
9 or get that organization's materials?

10 A. None, other than my dad. I'm not saying
11 they didn't. I just don't remember anybody other
12 than him being involved in those.

13 (Plaintiff's Exhibit No. 38, 12-31-73 Accountants'
14 Report and Plaintiff's Exhibit No. 39, 12-31-74
15 Accountants' Report, were marked)

16 BY MS. DEAN:

17 Q. I saw, in the records for at least a
18 couple of years, Accountant's Reports. I'm going to
19 hand you what I have marked as Exhibit 38 and then
20 Exhibit 39.

21 What I found -- and first ask you, are
22 you aware if reports like this exist for any other
23 year? You can see, at the bottom, it says
24 December 31st, 1974, in Exhibit 39, and
25 December 31st, 1973, for Exhibit 38. And they both

1 say: Covil Insulation Company Accountants' Report.

2 A. What was your question?

3 Q. Do you know if these exist for any other
4 year?

5 A. I have not seen any for any other years.

6 Q. If you look in Exhibit 39, which is the
7 Accountants' Report for Covil in '74, you can first
8 see that -- and they've referenced on the third
9 page, in their Income, the amount of Contract Sales
10 versus Material Sales.

11 Do you see that?

12 A. Okay. Yes.

13 Q. And the Material Sales, just alone,
14 where they were supplying materials, generated
15 3.389 million dollars in sales. Right?

16 A. I don't see that.

17 Q. It's the second line item, Material
18 Sales, and the amount is \$3,398,511.64.

19 A. Are you on 6-14?

20 MR. RHENEY: 2662.

21 MS. DEAN: I think you're on the right
22 page, 22662.

23 THE WITNESS: I don't see "Contract
24 Materials" on here. 16? 616?

25 MR. RHENEY: Which one are you looking

1 at?

2 MS. DEAN: Are you on Exhibit 39?

3 THE WITNESS: 616.

4 MR. RHENEY: No. That one, I think
5 (indicating).

6 THE WITNESS: This one is 39. Actually,
7 this is 38.

8 MS. DEAN: That's why.

9 MR. RHENEY: 39 is right beside it.

10 THE WITNESS: That's 40. Okay. I
11 gotcha.

12 MS. DEAN: Can I see what you have? I'm
13 worried that something was mislabeled. It was.

14 I'm just going to make the stickers
15 reflect what we've been saying.

16 MR. RHENEY: That's going to be 39.
17 Right? Okay.

18 BY MS. DEAN:

19 Q. And in case I misremembered what I said,
20 we have marked Exhibit 38 and 39, where Exhibit 38
21 is the Accountants' Report for December 31st of
22 1973, and Exhibit 39 is the Accountants' Report for
23 December 31st of 1974.

24 Do you see that?

25 A. Yes.

1 Q. And I apologize for the confusion I
2 created.

3 A. That's fine.

4 Q. On the third physical page, which is
5 Bates 22662, it has "Income" as the first item.

6 Do you see that?

7 A. Yes.

8 Q. And there are literally millions of
9 dollars of sales reported, specifically
10 3.389 million plus some change.

11 A. Yes.

12 Q. Okay. And if you look to the 1973
13 report that's marked as Exhibit 38, it's even more.
14 You can see on 22616 they have over \$4 million in
15 materials that are sold both in 1973 and in 1972.
16 And in 1972 you have almost four-and-three-quarters
17 million.

18 A. Yes.

19 Q. And so in terms of just the sale of
20 insulating materials for the years that we have
21 documentation, you're showing millions of dollars of
22 sales. Correct?

23 A. Correct.

24 MR. RHENEY: Object to the form.

25 BY MS. DEAN:

1 Q. Do you have any reason to believe that
2 these amounts wouldn't be typical of earlier years?

3 MR. RHENEY: Object to the form.

4 THE WITNESS: Well, they varied from
5 year to year, of course. But they were -- contracts
6 was our biggest income generator. I would say
7 60/40.

8 BY MS. DEAN:

9 Q. Yeah, that's what I'm seeing in these
10 three years.

11 MR. RHENEY: I'm sorry. I think he was
12 still answering.

13 THE WITNESS: No. I'm through.

14 MR. RHENEY: Okay. Thanks.

15 MS. DEAN: Sorry.

16 BY MS. DEAN:

17 Q. And in terms of what that 40 represents,
18 I do see that -- you know, that it varied from 3. --
19 almost 4 million to 4.7 million. But what you see
20 is the material part, which was the smaller part,
21 generated --

22 A. Right.

23 Q. -- at least millions. And whether
24 that's 3 or 4 or 5 varied, but millions of dollars
25 of sales for Covil. Do you agree?

1 MR. RHENEY: Objection.

2 THE WITNESS: Yes.

3 BY MS. DEAN:

4 Q. And would that kind of range be typical
5 for what the company had in prior years?

6 MR. RHENEY: Object to the form.

7 THE WITNESS: I can't answer that. I
8 don't know.

9 BY MS. DEAN:

10 Q. Have you made any effort to figure that
11 out?

12 A. No.

13 Q. One of the things in Exhibit 39 I saw
14 was a line item for "Education and Training." And
15 on the next page it talks about "Direct Cost of
16 Contracts," and that's Bates-labeled 22663.

17 Do you see where I'm at?

18 A. Yes.

19 Q. Okay. And the amount that they
20 dedicated to the Training and Education was \$5.10.
21 Correct?

22 A. Yes.

23 Q. And I will represent to you in
24 Exhibit 38, there isn't an item for education or
25 training.

1 Do you have any information, outside of
2 what's in Exhibit 38 and 39, about the total amount
3 of money spent, either in these particular years or
4 in prior years, on training and education?

5 MR. RHENEY: Object to the form.

6 THE WITNESS: No, I haven't. Other than
7 what's stated here, I have no idea.

8 BY MS. DEAN:

9 Q. Okay. In terms of not just sales but
10 actual net profits, Covil had years where they made
11 a million, two million, and sometimes more in net
12 profits from the work that they did with insulating,
13 contracting work and sales?

14 A. Yes.

15 Q. I'm sorry?

16 A. Yes.

17 Q. Do you know if even one/tenth of
18 1 percent of that money was ever dedicated to
19 safety?

20 MR. RHENEY: Object to the form.

21 THE WITNESS: Personally, I do not.

22 BY MS. DEAN:

23 Q. Did Covil have a quality assurance
24 program at any point in time that you know of?

25 A. They did. Because the field

1 superintendent, he would discuss that in his
2 apprenticeship program. But as far as what he went
3 into as part of his discussion, I don't know.

4 Q. Yeah, I saw reference to that in some of
5 the documents that you had to verify when you were
6 bidding for something, a quality assurance program.
7 But in terms of the specifics of what that was, when
8 it started, do you know anything more than the
9 existence of the program?

10 A. No, I don't.

11 Q. Do you know if any of quality assurance
12 related to anything about asbestos?

13 MR. RHENEY: Object to the form.

14 THE WITNESS: No, not right offhand.

15 BY MS. DEAN:

16 Q. I handed you Exhibit 10 earlier. There
17 was a reference in that that I didn't understand,
18 but I'm hoping you can clarify for me. It's the
19 May 4th, 1982 Contractor's Surveyor Form. I'm about
20 to hand it back to you. This is your copy. But it
21 looks like there is a Contractor's Qualification
22 sheet that talks about who the principal officers
23 are, when it was organized. And at the end it says
24 their Contractor's Liability Rating is .76. Let me
25 give you a second to look at that and just confirm

1 that you see that as well.

2 MR. RHENEY: What is that exhibit?

3 MS. DEAN: Exhibit 10.

4 THE WITNESS: Exhibit 10.

5 MR. RHENEY: Thanks.

6 THE WITNESS: What was your question?

7 BY MS. DEAN:

8 Q. It references that there's a
9 Contractor's Liability Rating in this form, and it's
10 listed here as .76.

11 A. Yes.

12 Q. First of all, just do you see that?

13 A. I do.

14 Q. What is that, if you know?

15 A. I have no idea. Never seen that before.

16 Q. Have you seen, before I handed it to
17 you, more broadly, this Contractor's Qualification
18 Statement?

19 A. Yes. I went over it -- glanced at it,
20 yes. It has got officers on there and everything?

21 Q. Yeah.

22 A. Yes.

23 Q. I've seen different variations of this,
24 at least a handful of them in the document. It's on
25 Covil letterhead or Covil -- it has the Covil label

1 on it.

2 Do you see that on the second page of
3 Exhibit 10?

4 A. I do.

5 Q. Do you know if the Qualification
6 Statement was a Covil-generated document or if it
7 was some kind of bidding form created by someone
8 else or anything about what was the purpose of this
9 statement?

10 A. I don't -- to be honest, I don't really
11 know.

12 Q. What I see repeated in it is background
13 information about the company, who their principal
14 officers are.

15 A. Right. It gets into banking
16 information, so I would say it was Covil-generated.

17 Q. It also, yeah, provides the financial
18 information, construction volume for the project
19 being discussed. And then it has a list of major
20 suppliers, and it says, Look to the reference list.
21 And then I see often a very similar resume of work
22 performed.

23 Do you -- are you following what I'm
24 seeing?

25 A. Yes.

1 Q. Do you know who created the resume,
2 whose job it was to do that?

3 A. I do not.

4 Q. Just because it's a resume, it seems to
5 me that this is used as some kind of pitch to get
6 work. But I'm not sure if you know that or if you
7 can tell me anything about that.

8 MR. RHENEY: Object to the form.

9 THE WITNESS: I would agree, but I don't
10 know for sure.

11 BY MS. DEAN:

12 Q. Okay. When you saw, on the records, a
13 list of work that had been done by Covil in these
14 resumes, did you do anything to try to -- in those
15 places where you knew work was being done that
16 overlapped with locations that we're trying to
17 figure out about -- do anything to learn if there
18 was something above and beyond what's listed here
19 about these particular projects?

20 A. Not that I know of.

21 Q. And, again, to make it a little less
22 abstract and give it a concrete example, in
23 Sizemore, one of the locations listed is Champion
24 Paper. On Exhibit 10 we have that Champion Paper is
25 a place, in the resume of work performed, where they

1 did hundreds of thousands of dollars of work, where
2 the prime contractor is Daniel, where the type of
3 work is insulation, and where it happened in 1965.
4 Right?

5 A. Yes.

6 Q. And when you saw all of these things,
7 was any concerted effort -- given the location and
8 that it was insulation work and that it's listed in
9 these notices, was anything further done to figure
10 out the scope of that work or the nature of that
11 work?

12 A. From Covil?

13 Q. Yes.

14 A. No.

15 Q. Did you review any of Daniel
16 Construction's documents that were made available in
17 this case in order to be able to talk about the
18 scope of the work done by Covil, at Champion, where
19 it lists Daniel as the prime -- or subcontractor on
20 that job?

21 A. No, I never looked at any Daniel
22 paperwork.

23 Q. Do you have any basis to dispute that
24 insulation work done at a paper mill, specifically
25 here, Champion Paper, in 1985 would have been

1 asbestos-containing insulation, just given the
2 location and time frame?

3 MR. RHENEY: Object to the form.

4 THE WITNESS: No. I have no idea if --
5 what the material was or what the work on the job
6 site was.

7 BY MS. DEAN:

8 Q. Is there anything that Covil can state,
9 just based on the amount -- it says magnitude of the
10 contract based on dollars -- that it was \$225,000 of
11 work, what -- are they able, from that, to deduce
12 anything? That it was big a project, a small
13 project, it would have taken more than four weeks,
14 anything that can give me --

15 A. I don't know of anything, as far as
16 paperwork is concerned, pertaining to that. But the
17 price of the job would -- common sense would tell
18 you whether it is a big job or a small job.

19 Q. And here, in terms of the resume of work
20 performed, I mean, they have things that go from
21 150 -- 125, I see as being the smallest, to
22 3-and-a-half, 4 million dollars. There's even a
23 5-million-dollar job on here, but they are listing,
24 in their resume, their larger work projects. Right?

25 A. Right.

1 Q. Was there any system in place -- I mean,
2 if you got Mr. Johnson or if there was somebody
3 other than him ever doing the job of going out and
4 making sure the foremen are handling safety, was
5 there any system in place to make sure the foremen
6 knew what they needed to be doing, had checklists,
7 were supervised so that the men on the job, on the
8 ground, who were supposed to be enforcing the safety
9 rules, were, in fact, doing what they were told to
10 do?

11 MR. RHENEY: Object to the form.

12 THE WITNESS: That was the field
13 superintendent's duties to follow up on that. There
14 was a safety check sheet that I saw when I was going
15 through the paperwork. Now, I'm sure -- well, I'm
16 not sure, but I would think the foreman on the job
17 would be the one to fill out that paperwork on the
18 job site and pass it on to the field superintendent.

19 BY MS. DEAN:

20 Q. I saw a checklist as well. Did you note
21 on there that there is nothing in it that relates to
22 asbestos safety protocol?

23 MR. RHENEY: Object to the form.

24 THE WITNESS: I didn't notice that.

25 BY MS. DEAN:

1 Q. Can you tell me what process was put in
2 place by Covil to make sure their foremen were
3 empowered and being monitored so that the goals of
4 the company were actually being executed on the
5 ground?

6 MR. RHENEY: Object to the form.

7 THE WITNESS: It was their jobs to keep
8 up with the timecards for all the men on the job
9 under them; their attendance, their equipment,
10 safety equipment and whatever other equipment they
11 needed on the job. That was the foreman's
12 responsibility. And the field superintendent did
13 make job checks and periodically go to the job sites
14 to follow up on a lot of that.

15 BY MS. DEAN:

16 Q. Do you agree or does Covil agree with
17 the basic idea that if a foreman who is supposed to
18 be monitoring safety equipment and safety issues has
19 too little or too many issues, that that sets up an
20 alarm bell either way?

21 MR. RHENEY: Object to the form.

22 THE WITNESS: I cannot address that
23 because I wasn't there. And there are so many
24 different things going on with different jobs and so
25 many people there that have different duties and job

1 descriptions, I don't -- I don't know how to answer
2 that.

3 BY MS. DEAN:

4 Q. And I mean to ask at least what I
5 perceive is a common sense enough question to cover
6 the vast majority of situations. If a foreman is
7 supposed to have the checklist of safety and you
8 never have a problem or you have hundreds of
9 problems, both would tell management in a company
10 that you particularly had a red flag. No job is
11 perfect, so if you're not getting anything, somebody
12 is not doing their job. But you don't also want to
13 see too many problems and routine problems. And
14 that's a fair, kind of common sense proposition.

15 MR. RHENEY: Object to the form.

16 BY MS. DEAN:

17 Q. Do you agree?

18 MR. RHENEY: Object to the form.

19 THE WITNESS: I would agree, but it
20 would be different. It's a different situation.
21 Each job is a different situation.

22 BY MS. DEAN:

23 Q. Sure. So if you have a job involving
24 two years of work versus two months of work, the
25 number of incidents that you might expect would be

1 very, very different. Right?

2 MR. RHENEY: Object to the form.

3 THE WITNESS: All jobs are different.

4 Yes.

5 BY MS. DEAN:

6 Q. Did you see a single document, in your
7 review, indicating that any foreman ever wrote down
8 an issue regarding asbestos insulation not being
9 handled properly, even once?

10 A. I never saw it.

11 Q. Some of the insulating contractors that
12 were referenced in Mr. Palmer Covil's deposition --
13 I keep almost saying just his last name and
14 realizing that's not the best way to do it -- were
15 Starr Davis, North Brothers, Guy Beaty, and Reid
16 Hayden. First of all, do you recall that?

17 A. Yes.

18 Q. And he indicated that sometimes there
19 would be shorts, and they would provide insulating
20 materials to those folks. I'm wondering if you can
21 give me any idea how often, whether records were
22 kept of that, if I could learn more about when and
23 where.

24 A. I know that did happen. Each insulation
25 company would buy from another insulation company if

1 they were short on material on a particular job or a
2 material sale. I have no idea how much or when or
3 anything, since I've seen no records pertaining to
4 that.

5 Q. So if I want to know for Starr Davis,
6 during the time frame when they were doing most of
7 the insulating contract work, at least according to
8 Wayne Grant, at Bowater --

9 A. Right.

10 Q. -- have you done any kind of research or
11 effort to figure out whether we can piece that
12 together?

13 A. I haven't.

14 Q. I also have seen documents where
15 Covil -- and Mr. Palmer Covil talked about this as
16 well -- but where Covil was doing work with Daniel
17 Construction. We looked at Exhibit 10 where we saw
18 that in four instances. Do you know when that
19 relationship began?

20 A. With Daniel?

21 Q. Yes.

22 A. Probably around the '50s, early '60s.

23 Q. I saw documents at least going back to
24 the '50s. Have you made any kind of evidence -- any
25 effort to kind of identify the different projects

1 where Daniel hired Covil to either supply them the
2 insulation or to be the contractors who are
3 supplying the insulation and actually doing the
4 insulating sub work?

5 A. No, I haven't.

6 Q. It was a strong enough relationship
7 where Daniel was one of the references listed in
8 those references listed back repeatedly. You saw
9 that. Right?

10 A. Right.

11 MR. RHENEY: Object to the form.

12 BY MS. DEAN:

13 Q. Between the 1950s -- and I know you
14 couldn't give me a particular year, but between the
15 1950s as the decade and the 1980s, are you aware of
16 a single year where Covil wasn't doing work on
17 Daniel's request?

18 A. I have no idea.

19 Q. Does Covil have -- I mean, Covil was, in
20 the documents we have even looked at, and not only
21 an insulating contractor, but they wrote in their
22 documents, This is our expertise. This is what we
23 do. Right?

24 A. Yes.

25 Q. And Palmer Covil talked about making

1 extensive efforts, as the president, to stay on top
2 of the trade and on top of the latest information
3 about the trade. Right?

4 A. Right.

5 Q. Can Covil give me an idea of when you
6 put in thermal insulation for, let's say, a heated
7 system where you have the effect of heat on
8 insulation, how long it typically should last?

9 MR. RHENEY: Object to the form.

10 THE WITNESS: I would have no idea.

11 BY MS. DEAN:

12 Q. I'm going to test that a little. When
13 you say you have no idea, you are aware, first of
14 all, that Covil is a company that were insulating
15 contractors for hot systems for decades -- did at
16 least at some point --

17 A. True.

18 Q. -- time again. And insulation, because
19 there were repair and maintenance contracts that
20 lasted sometime weeks, sometimes years, was
21 something that could be maintained for years, if not
22 decades. Did you know that?

23 A. Yes.

24 Q. And when it became understood -- you
25 mentioned earlier that there was noise in the

1 mid-'60s, but even in later years when it was more
2 established that asbestos caused health hazards, did
3 Covil make any effort to go back to the locations
4 where it already had been working, to identify the
5 hazard information they were learning to the people
6 that had asbestos in their hospitals or facilities
7 where that asbestos still likely existed?

8 MR. RHENEY: Object to the form.

9 THE WITNESS: I don't know that they did
10 that.

11 (Plaintiff's Exhibit No. 28, 11-1-89 Letter from
12 John Link to Bob Britton, was marked)

13 BY MS. DEAN:

14 Q. I want to hand you what I have marked as
15 Exhibit 28. It's a November 1st, 1989 document from
16 President and CEO John Link at Covil Corporation.

17 Do you see that?

18 A. Yes.

19 Q. In this letter -- if you need to look at
20 it for context, but it's kind of dealing with rumors
21 about what's happening with Covil Corporation in the
22 wake of deciding not to be contractors anymore.

23 A. That is true.

24 Q. One of the things that he says is for --
25 the financial decision to abandon contracting is

1 listed in the fourth paragraph where it says:
2 "Other reasons were our past exposure to asbestos
3 and with us being almost a 45-year-old company, we
4 had many insulators that have been exposed to
5 asbestos over the years and this caused our
6 insurance premiums to be outrageous."

7 Do you see that?

8 A. Yes.

9 Q. Any reason that Covil doubts the
10 accuracy of this statement by its presidents and CEO
11 at the time?

12 MR. RHENEY: Object to the form.

13 THE WITNESS: Not that I can tell.

14 BY MS. DEAN:

15 Q. It talks about, in 1989, that the
16 insurance premiums are outrageous. Can you tell me
17 anything more concrete about what was meant about
18 the amount of those premiums?

19 A. I don't know the amount specifically of
20 what, but I am slightly familiar with the insurance.
21 I know we had insurance. But as far as the
22 premiums, I would have no idea what the costs of
23 them were.

24 Q. And I'm going to try to go year by year
25 and get my head around the insurance stuff probably

1 after lunch today, but -- so I will table that and
2 maybe we can piece that together in context.

3 But let me ask you this. Outside of
4 providing people that are worried about Covil's
5 status, information about what was going on and
6 mentioning that people have been exposed to asbestos
7 and that it had a financial repercussion for Covil,
8 do you see any reference, in any other document
9 before this time, talking about asbestos as a hazard
10 or an exposure threat so that the people that may be
11 around it or working with it had information?

12 MR. RHENEY: Object to the form.

13 THE WITNESS: No. This is the only
14 thing I know I saw. However, my dad's deposition
15 states that they were aware of it, and he had heard
16 rumors or noise about it, you know, in the '60s.

17 And when OSHA was instrumenting, they
18 took all the precautions and everything they needed
19 to do safetywise to protect the employees and the
20 workers.

21 MS. DEAN: I'm going to object to
22 nonresponsive and the speculation part, because I
23 want to talk to you about how you know that later.

24 BY MS. DEAN:

25 Q. But let me incorporate what you just

1 told me and see if we can get a clean question and
2 answer. Outside of what we have marked as
3 Exhibit 28, where the president is talking about the
4 hardship on Covil because people are exposed to
5 asbestos in the way of insurance premiums, are you
6 aware of anything in the written documents, anything
7 other than your father's belief, in his deposition,
8 that things were happening that show that the people
9 working with or around asbestos potentially were
10 told that they may be exposed or that there are
11 hazards associated with it?

12 MR. RHENEY: Object to the form.

13 THE WITNESS: No, I have seen nothing
14 pertaining to that.

15 BY MS. DEAN:

16 Q. Did Covil certainly understand, all the
17 way up to its president and CEO, that if insurance
18 premiums are hiking, if there is a cost associated
19 with this exposure, that there is a harm associated
20 with the exposure. Right? And that's kind of a
21 common sense proposition.

22 A. Well, can you be more specific?

23 MR. RHENEY: Object to the form.

24 BY MS. DEAN:

25 Q. Sure. That not just in general, for

1 Covil, with their premiums for the work they had
2 their men doing, there was a cost associated with
3 that work because of the harms associated with
4 asbestos for their men that worked as insulators.

5 MR. RHENEY: Object to the form.

6 THE WITNESS: It just depends on the
7 insulation -- I mean, the insurance that they
8 were -- insurance premiums that they were charging
9 us, it was depending on how much -- I keep saying
10 insulation. How much insurance that we would carry
11 and what the prices and premiums would be.

12 BY MS. DEAN:

13 Q. And I just mean if you're a president
14 and CEO of Covil and you understand that premiums
15 are hiking, there is directly a common sense
16 analysis that if insurance is paying for something,
17 if the cost of covering it is there, the harm is
18 something that's being paid for. In other words,
19 there is a back-end result that involves somebody
20 getting sick. That was understood, as we can see by
21 the president's letter in Exhibit 28.

22 MR. RHENEY: Object to the form,
23 argumentative.

24 THE WITNESS: I see what you're saying,
25 but I have no personal proof of that or knowledge.

1 BY MS. DEAN:

2 Q. By 1989, the president -- then-president
3 of the company not only wrote about exposure to
4 asbestos for many of Covil's insulators, but by that
5 time their prior president, your father, had passed
6 away?

7 A. Yes.

8 Q. When the president of the company gets a
9 disease that takes his life that's associated with
10 asbestos, but he, in his own deposition, indicates
11 it is associated with asbestos, did you see any
12 evidence in the file that that became a siren to
13 everyone else about how serious this is?

14 MR. RHENEY: Object to the form.

15 THE WITNESS: No, I never did.

16 BY MS. DEAN:

17 Q. Do you have an estimation of when
18 Mr. Johnson passed away, the field superintendent?

19 A. Yeah. No, I don't know the exact date.
20 I'm thinking three, four, five years ago.

21 Q. Is Curtis Cash the same person as Travis
22 Cash?

23 A. Yes.

24 Q. Okay. I see Janice Perry listed, in at
25 least some of the documents, as an officer, and

1 couldn't tell from your father's deposition who that
2 was.

3 A. She was his secretary for a while -- my
4 dad's secretary for a while, and also administrative
5 assistant to the office manager.

6 Q. And at one point she became an officer
7 in the company?

8 A. Yes, she did.

9 Q. Do you know if she is still alive?

10 A. I have no idea.

11 Q. Do you have any idea of what decade she
12 might be in, in terms of age? Seventies, eighties?

13 A. I would hate to speculate on that.

14 Q. That could get you in trouble.

15 A. Let's just say she is older than I am,
16 probably.

17 Q. Okay. I did not have a chance to pull
18 the subset of documents that were represented to me
19 to be a part of the greater set of documents that
20 were insurance related. First of all, do you know
21 what I'm talking about?

22 A. No.

23 Q. Okay. I have a set of documents that
24 deal with insurance. But I worry -- I wonder if it
25 makes sense, on our lunch break, to kind of

1 reference whether I have a complete set and just get
2 us --

3 MR. RHENEY: Sure. I'm happy to do
4 that.

5 MS. DEAN: Okay. In that case, I'm
6 going to set that aside until after lunch.

7 BY MS. DEAN:

8 Q. In terms of the insulating products sold
9 by Covil for many years, you're aware, from Palmer
10 Covil's deposition, that he, himself, at least at
11 one point in time, was part of the union and that
12 "asbestos" was in the title of the union.

13 A. I know that now. I never knew that
14 before.

15 Q. In terms of the dates that your father's
16 deposition referenced about when products were used,
17 any reason we can't rely on those for many of the
18 research that you have done?

19 In other words, he said OCF was used
20 from 1954 to 1977. I understand they may have been
21 used in later years. But anything from your review
22 that suggests that the years -- that the start years
23 that he identified were off?

24 A. No.

25 Q. Okay. He indicated, in volume two of

1 his deposition, that American Enka was a company
2 that they had had a large file on in terms of
3 working with them for many years. First of all, do
4 you remember that?

5 A. Who was that?

6 Q. It was in volume two of Palmer Covil's
7 deposition.

8 A. No. What company?

9 Q. Oh. American Enka.

10 A. American Enka.

11 Q. Yes.

12 A. I'm familiar -- I'm not -- I'm familiar
13 with the company. I knew we did work there, but I'm
14 not --

15 Q. So when he says, "We have worked with
16 them for years," in 1977, if I want to try to nail
17 down how long, is that anything that you have
18 investigated?

19 MR. RHENEY: Object to the form.

20 THE WITNESS: Probably before '73 there
21 would be no files whatsoever.

22 BY MS. DEAN:

23 Q. I'm sorry. Before '73 what?

24 A. Before '73, when we had the fire, there
25 would be no files, no paperwork at all. I can't say

1 whether or not there is any files after that.

2 Q. So there were ten places that seemed to
3 be the subject of the deposition taken of Mr. Palmer
4 Covil in 1977. And we have obviously more than ten.
5 And I looked through the exhibits that were attached
6 to that. What I'm wondering, because the deposition
7 was taken after the fire, is if there was anything
8 that wasn't attached to that deposition about those
9 ten locations, that you have looked for or found --

10 MR. RHENEY: Object to the form.

11 BY MS. DEAN:

12 Q. -- because one of those locations is
13 American Enka, which is relevant here. Do you know
14 anything else about that?

15 MR. RHENEY: Object to the form.

16 THE WITNESS: No, I don't.

17 MR. RHENEY: Help me. I'm not sure what
18 you're asking. That's why I'm objecting, mostly.
19 I'm unclear what you're asking.

20 BY MS. DEAN:

21 Q. The beginning of volume two is a
22 discussion of the lawyers saying "I have provided to
23 the plaintiffs a file for these ten locations. If
24 the defendants want anything else, we can get it."

25 Thereafter, they reference that two of

1 the locations are America Enka and Fiber Industries,
2 which I will represent to you are in our notices as
3 well.

4 I didn't see a file as attached as an
5 actual exhibit to the deposition, and so it existed;
6 it existed post-fire. Has anybody tried to find
7 that? It's a long-winded question, but it gave me
8 hope.

9 A. I can't say yea or nay, whether it
10 exists or not. I don't remember seeing it.

11 Q. Outside of not remembering seeing it,
12 the same trigger point didn't go off in your head to
13 look for it when you saw that testimony from him?

14 A. No.

15 MS. DEAN: That's one in particular. I
16 mean, there is going to be a few things I'm going to
17 follow up after today, but if there is any way to
18 look for that before tomorrow, I think that makes
19 the top of the list of being important.

20 MR. RHENEY: So you're looking for files
21 for the eight that were mentioned, but there were no
22 files attached to the deposition.

23 MS. DEAN: If you look at the beginning
24 of volume two, I mean, it's truly the first five
25 pages --

1 MR. RHENEY: Yeah.

2 MS. DEAN: -- they say that there are
3 ten locations and that files existed. He
4 references, just from memory, four or five of them
5 in the first two pages, two of them being locations
6 at issue. I would love to know what all ten
7 locations are and not just those four. And then
8 those files, post-fire, existed. But I didn't see
9 that there was an American Enka. I saw a couple
10 referenced to American Enka, but nothing that would
11 be considered a job file.

12 MR. RHENEY: We can search for it. I do
13 know, as far as the documents produced, you've got
14 everything we've got. Well, there were certain
15 things that we didn't produce, but that wouldn't
16 have been one of those things, I wouldn't think, but
17 I'll double-check.

18 MS. DEAN: Okay. Appreciate it.

19 BY MS. DEAN:

20 Q. You mentioned earlier that you believed,
21 after the fire, which was reported to be on May 15th
22 of 1973, no more asbestos products were sold. Do
23 you remember telling me that?

24 A. Right.

25 Q. Was that based solely on Mr. Palmer

1 Covil's belief that that was so from his deposition
2 testimony from 1977?

3 A. Yes. But I remember -- yes, it was all
4 based on what he said in his deposition. But I do
5 remember the fire, and it wiped out every bit of our
6 inventory in our warehouse.

7 Q. If there are records that indicate that
8 much but not all of the warehouse was destroyed, do
9 you have any basis to dispute that?

10 MR. RHENEY: Object to the form.

11 THE WITNESS: I would have to see them.

12 BY MS. DEAN:

13 Q. I think you still have Exhibit -- it's
14 either 38 or 39. It's one of these accounting
15 documents. Yeah. It's Exhibit 38, 22618: "In May,
16 1973, the Corporation experienced a fire which
17 destroyed the bulk of its Greenville inventory, its
18 leasing the building, and a portion of its
19 equipment." Any basis to dispute that?

20 A. No.

21 Q. Any way to give me a more concrete
22 definition of "bulk"?

23 A. Let's just say they had to rebuild the
24 whole warehouse from the front offices, which were
25 brick and mortar, all the way back.

1 Q. Were there any residential communities
2 near this fire?

3 A. Yes. Behind there, behind the warehouse
4 there was a few houses. But the whole office area
5 was in an industrial park, so there were other
6 businesses through there. But right behind there,
7 there was residences.

8 Q. Do you have a single document evidencing
9 a decision at any point in time, really, before or
10 after the fire, since we still have the branches
11 that weren't affected by the fire, not to use
12 asbestos? I think I asked this question kind of in
13 a different context earlier, but I want to make sure
14 I'm not missing anything.

15 A. Can you restate your question?

16 Q. Sure. Anything that suggests in 1973,
17 or at any point in time before or after that, that
18 the company made known to everybody -- their
19 suppliers, the people that were ordering, the
20 companies that they were working with -- that, "Hey,
21 we're not working with or supplying asbestos
22 anymore"?

23 A. I'm not aware of that.

24 MR. RHENEY: Object to the form.

25 WITNESS CONTINUES:

1 A. But my dad did say, in his deposition,
2 that it would take roughly a year to get all the
3 asbestos products turned over and out of the
4 warehouse. And I'm sure that would -- I would think
5 that would include the branches also.

6 Q. And outside of --

7 MS. DEAN: Well, sorry. Let me object
8 to nonresponsive.

9 BY MS. DEAN:

10 Q. But outside of his belief that it would
11 take a year, did anybody monitor that? And the
12 reason I ask that, particularly, is if it typically
13 took a year to exhaust inventory, 1973, in asbestos
14 land with insulation, isn't a typical year. I mean,
15 it just, objectively, isn't. I mean, did anybody
16 see how long or monitor how long it took to get rid
17 of something that people didn't want to touch
18 anymore?

19 MR. RHENEY: Object to the form.

20 THE WITNESS: I don't know. I wasn't
21 there then, so I have no idea.

22 BY MS. DEAN:

23 Q. There was testimony from Dwayne Waters
24 that there was still asbestos that existed years
25 after that that was being used by the company. Do

1 you have any basis, outside of Palmer Covil's memory
2 and that we have in his deposition, that he is
3 wrong?

4 MR. RHENEY: Object to the form,
5 argumentative, and -- (cross-talking.)

6 THE WITNESS: We have no proof of that.
7 (Plaintiff's Exhibit No. 32, H.K. Porter Company,
8 Inc. Document, was marked)

9 BY MS. DEAN:

10 Q. I want to hand you Exhibit 32, which is
11 a document I received from Covil. Would it surprise
12 you that there is documentation that asbestos was
13 being purchased and sold, literally, days after the
14 fire?

15 MR. RHENEY: Object to the form.

16 THE WITNESS: No, it wouldn't surprise
17 me, because if certain jobs that we were on, I'm
18 sure, called for asbestos-type insulation. And I
19 have -- but I have no proof that that was actually
20 done. But we had to get companies to rewrite specs
21 a lot after we quit using asbestos, because they
22 would spec asbestos materials.

23 BY MS. DEAN:

24 Q. I think I'm following what you're
25 saying, but you're saying even after '73 a company

1 might specify the use of asbestos?

2 A. Asbestos, yeah.

3 Q. How would Covil handle that?

4 MR. RHENEY: Object to the form.

5 THE WITNESS: Covil would go to the
6 contractor or the vendor and -- I mean, the customer
7 and discuss with them that we no longer carry
8 asbestos and would make a substitute or recommend
9 another type of material.

10 BY MS. DEAN:

11 Q. Is there a single document -- and I mean
12 you referenced, in the universe of documents, there
13 are specifications and invoices that show that that
14 happened in the 1970s or in the early 1980s where
15 someone specified asbestos, like you just said, and
16 Covil came back and said, "No, we can't get that for
17 you"?

18 A. I don't know of any, right offhand.

19 Q. Here is an invoice for asbestos textile
20 products from H.K. Porter -- or H.K. Porter Company,
21 sold to Covil, and then shipped to Covil at Duke
22 Power.

23 A. Yes. This was asbestos cloth. And
24 asbestos cloth was an encapsulated material and it
25 provided no dust and it was OSHA approved.

1 MS. DEAN: I will object to
2 nonresponsive and speculation and just ask about
3 that in a minute. Give me a second to write it
4 down.

5 MR. RHENEY: What exhibit was that, by
6 the way? What exhibit number?

7 THE WITNESS: 32.

8 MR. RHENEY: Thank you.

9 BY MS. DEAN:

10 Q. My question was this is an invoice
11 regarding asbestos textile products from H.K. Porter
12 to Covil Insulation Company, where it was being
13 shipped to Covil Insulation but where they were
14 working at Duke Power Company.

15 A. That is true.

16 MR. RHENEY: Object to the form.

17 BY MS. DEAN:

18 Q. And the date of that is -- and
19 specifically, it's a customer order date is two
20 weeks after the fire on May 30th, 1973. Right?

21 A. Right.

22 Q. And it's for hundreds of yards of
23 asbestos, plain asbestos cloth. Right?

24 A. Yes.

25 Q. And in terms of cloth, when you say

1 there was no asbestos used after '73, were you just
2 meaning insulation or are you including cloth, yarn,
3 sealants, adhesives, or do you know?

4 MR. RHENEY: Object to the form.

5 THE WITNESS: I was talking about pipe
6 covering, basically, or block.

7 BY MS. DEAN:

8 Q. Do you know, for products other than
9 pipe covering and block, when was the last time
10 Covil supplied asbestos? So excluding those two
11 types of products, but for any other type of
12 product.

13 A. '72 to '73.

14 Q. How do you know that, whether it be
15 cloth or sealants or adhesives, that asbestos
16 products weren't being used?

17 A. We changed over our mud from a One Shot,
18 which contained a small amount of asbestos, to
19 Covilite, which contained no asbestos. That's one
20 example. And we have a letter from Owens Corning,
21 in 1972, stating that they no longer are making or
22 providing asbestos materials.

23 Q. Anything else?

24 A. Other than my dad's deposition, what he
25 had to say about it.

1 Q. Do you have any documentation indicating
2 when the One Shot to Covilite transition occurred?

3 A. I'm thinking '73 maybe; '72, '73.

4 Q. Do you have any documents that show
5 that? I mean, you got there in '74, so I'm
6 wondering, how did you know of that?

7 A. It may have been in his deposition. But
8 I don't recall how I remember that. I do remember
9 Charles McWhorter mentioning that he thought that
10 the One Shot had no asbestos in it at all. But my
11 dad states, in his deposition, that it had
12 three-quarters, like 1 percent. And when we changed
13 over to Covilite, that had no asbestos in it.

14 Q. But if I want to see documents that
15 evidence that Covilite had no asbestos or documents
16 about when the change occurred -- I mean, I did see
17 the Covilite -- or the One Shot asbestos content
18 reference and the claim that Covilite was
19 asbestos-free, but I didn't see any material
20 specifications or an exact time frame. Is there
21 anything you can point me to?

22 MR. RHENEY: Object to the form.

23 THE WITNESS: Not to my knowledge.

24 BY MS. DEAN:

25 Q. So if I want to broaden this, not just

1 to mud and one of the lists of distributors, like to
2 all products, whether it be CertainTeed or Johns
3 Manville or any of other products that we looked at,
4 to say there was a time frame, it was '72 or '73
5 that we stopped using asbestos, do you have anything
6 you can point me to that evidences that?

7 MR. RHENEY: Object to the form.

8 THE WITNESS: Other than my dad's
9 deposition, nothing that I've physically seen.

10 BY MS. DEAN:

11 Q. And even in the time frame of his
12 deposition, I mean, did you see any records to
13 indicate that for other major suppliers -- I think
14 they listed the four major suppliers -- an effort to
15 learn when they went asbestos-free, an effort by
16 Covil to make sure that they were only selling the
17 asbestos-free type?

18 A. I don't recall anything.

19 Q. And then for products that aren't
20 insulating products -- well, they could be
21 insulating products. So let me say other than block
22 and mud, for other products like sealants or packing
23 or gaskets or cloth, did you see any indication in
24 any records you could find, about even trying to
25 figure out whether they contained asbestos or not,

1 before selling them, by anyone at Covil?

2 MR. RHENEY: Object to the form.

3 THE WITNESS: No.

4 BY MS. DEAN:

5 Q. Has there been any effort to figure out
6 when was the first time H.K. Porter, one of the
7 distributors that we already listed out, even had an
8 asbestos-free alternative that they supplied for the
9 asbestos cloth that we show being sold to Duke in
10 1973?

11 A. No, I haven't seen it.
12 (Plaintiff's Exhibit No. 44, Memorandum from Covil
13 Insulation Company, was marked)

14 BY MS. DEAN:

15 Q. I want to hand you what I have marked as
16 Exhibit 44. And while I'm grabbing that, are you
17 aware of who was in charge of supply or maintaining
18 the warehouse -- those might be different folks, but
19 at any of the four branches?

20 A. No. The other branches --

21 Q. Yeah.

22 A. -- I had no idea.

23 Q. Yeah. Are you aware of any verbal or
24 written communication to any of them to say, "Hey,
25 we are not going to sell asbestos anymore, at any

1 time, for any reason"?

2 A. I don't. No.

3 Q. I'm going to hand you Exhibit 44. It's
4 just a one-page document from 1982 from Covil
5 Insulation Company. You can see there, this is
6 February 19th, 1982, and it's a description of
7 articles that are being sent from Covil to whatever
8 company that they reference. Right?

9 A. Yes.

10 Q. It seems like it's a form that you fill
11 out who you're sending it to and exactly what you're
12 sending. Right?

13 A. Right.

14 Q. And in order to streamline the process,
15 they have kind of pre-created columns, one that
16 talks about the number of packages and then you fill
17 out the number; one that gives a description of
18 articles, special marks and exceptions and that's
19 already autopopulated. And then you can fill in
20 weight, class or rate and check column. Right?

21 A. Yes.

22 Q. And four of the materials, all the way
23 in the 1980s, still contain, in the description of
24 what Covil is offering, asbestos materials. Right?

25 MR. RHENEY: Object to the form.

1 THE WITNESS: I'm not -- I don't know
2 about that. I have no idea.

3 BY MS. DEAN:

4 Q. So what I'm seeing in the "Description"
5 in this Covil form, on the very first one, is:
6 "Insulating Material, Silicate, Calcium and Asbestos
7 Combined"?

8 A. Right.

9 Q. And the second, a "Calcium and Asbestos
10 Combined Insulating Material." And then halfway
11 down, one that just says: "Asbestos Cement," and
12 then the second to the bottom, "Asbestos Cloth"?

13 A. Right.

14 Q. Do you at least see where I'm
15 referencing the document?

16 A. Yes, I do.

17 Q. And outside of Covil having a form that
18 includes a variety of asbestos products, even into
19 the '80s, is there any documents, kind of on the
20 other end, saying, "Just kidding. Don't ever use
21 those? In fact, it's a policy we can't."

22 MR. RHENEY: Object to the form.

23 THE WITNESS: No, not that I know of.
24 But I'm sure this was a generic form that had been
25 used for years.

1 BY MS. DEAN:

2 Q. That could completely make sense to
3 me --

4 A. It's possible.

5 Q. -- depending on the context. But if
6 you're making a policy as a company that a certain
7 material cannot be used, particularly if it has
8 financial consequences for the company and
9 financially disastrous consequences for the
10 families?

11 A. I see what you're saying.

12 MR. RHENEY: Object to the form,
13 argumentative, relevance.

14 BY MS. DEAN:

15 Q. For any of the different locations that
16 we have marked in Exhibits 1 through 3 where we list
17 out the locations relevant for each of these
18 families, does Covil have any information, that
19 you're aware of, of when abatement efforts were made
20 in any of those companies?

21 MR. RHENEY: Abatement efforts were made
22 what?

23 MS. DEAN: In any of those companies.

24 BY MS. DEAN:

25 Q. So by way of example, when Bowater hired

1 in specialists to come in and take all the asbestos
2 out?

3 A. I haven't seen anything.

4 Q. Okay. Did you note when your father
5 indicated, as the former president of the company,
6 in his deposition, that nothing worked as well as
7 asbestos?

8 A. Pardon?

9 Q. That nothing worked as well as asbestos
10 in terms of insulating material?

11 A. I do remember that.

12 Q. If you have a form that lists asbestos
13 and you also have this real practical knowledge that
14 it works well -- I mean, it does the trick, it is
15 self-evident to a company that if you don't tell
16 people not to use it, they are gonna?

17 MR. RHENEY: Object to the form.

18 BY MS. DEAN:

19 Q. Is that fair?

20 MR. RHENEY: Object to the form. Calls
21 for speculation, argumentative.

22 A. I can't -- I can't -- I don't know what
23 he was thinking, so I don't know, at that point,
24 what he was saying or doing.

25 Q. Covil realizes, as a company, that if

1 you have a useful product; in fact, a product that
2 works better than anything else that you're aware of
3 at the time frame, that if people don't know a
4 reason not to use it, that there is at least the
5 potential or opportunity that they will?

6 MR. RHENEY: Object to the form, calls
7 for speculation, argumentative.

8 THE WITNESS: I don't know. There is --
9 there are too many ifs, ands and buts pertaining to
10 that.

11 BY MS. DEAN:

12 Q. Are you aware of a single effort to make
13 sure that asbestos, which was what the president of
14 the company believed worked the best, wasn't being
15 used, even in 1977 when he made that claim?

16 MR. RHENEY: Object to the form.

17 THE WITNESS: I can't speculate on that
18 either.

19 BY MS. DEAN:

20 Q. Outside of speculation, I'm just asking
21 if there is anything that you're aware of that you
22 can point me to?

23 A. None.

24 Q. For any of the companies on the list,
25 and I'm going to start with the Howe list, with the

1 five companies there, which is American Enka, Crown
2 Cork & Seal, the two Celanese sites and Bowater, are
3 you aware or is Covil aware that their actual trade
4 business or occupation was the same as Covil's, to
5 be insulating contractors?

6 A. That those companies?

7 Q. Yeah.

8 A. They were not insulation contractors.

9 Q. Is the same true for the list for
10 Sizemore? Meaning that the companies on that list,
11 their trade, business or occupation was different
12 than Covil?

13 A. Different, yes.

14 Q. Same for the list for --

15 MR. RHENEY: I'm sorry. What? Same for
16 what?

17 MS. DEAN: For the list for --

18 THE WITNESS: Childers?

19 MS. DEAN: Mr. Childers is the witness
20 for --

21 THE WITNESS: Smith.

22 MR. RHENEY: Object to the form.

23 BY MS. DEAN:

24 Q. That the principal trade, business or
25 occupation of the companies we listed are different

1 than that for Covil?

2 MR. RHENEY: Object to the form.

3 THE WITNESS: They are. They are.

4 BY MS. DEAN:

5 Q. As it relates, at least for this case,
6 to the work location for McGuire, Duke McGuire, have
7 you investigated, at all, the claim of Mr. Waters
8 that materials were taken out of their original
9 boxes and put into different boxes when work was
10 done at that facility?

11 MR. RHENEY: Object to the form,
12 argumentative, pitting witnesses.

13 THE WITNESS: I have no way to follow up
14 on that investigation, but I would think it never
15 happened.

16 BY MS. DEAN:

17 Q. Is there any reason to believe that,
18 outside of the fact that that would be terrible?

19 MR. RHENEY: I'm sorry. What is the
20 question?

21 BY MS. DEAN:

22 Q. That that would be terrible.

23 MR. RHENEY: Object to the form,
24 argumentative.

25 BY MS. DEAN:

1 Q. "That" being taking an asbestos product
2 and putting it in an asbestos-free box?

3 MR. RHENEY: Object to the form, lack of
4 foundation.

5 THE WITNESS: It depends on when it --
6 it depends on what, you know, the situation was.
7 And I wasn't there, so I can't say.

8 BY MS. DEAN:

9 Q. And because we have two witnesses in
10 these cases that are coming up that worked with
11 McGuire, I'm just wondering if there is any
12 individual or documents that you have seen that
13 indicate that Mr. Waters' memory -- that Mr. Waters
14 is wrong, or if it's just something you don't know
15 one way or another?

16 MR. RHENEY: Object to the form of the
17 question, speculation.

18 THE WITNESS: What is the last part of
19 your question?

20 BY MS. DEAN:

21 Q. Or if it's just something you don't know
22 one way or the other? Do you want me to ask the
23 whole question?

24 A. If you would, please.

25 MS. DEAN: And the same objection can

1 stand.

2 BY MS. DEAN:

3 Q. I'm wondering if this is something that
4 you have investigated, where you can tell me more
5 about it, or if it's something Covil just doesn't
6 know one way or the other.

7 A. I have not investigated.

8 Q. I want to talk about the different
9 locations; more specifically, starting off with
10 DuPont. One of the things that Palmer Covil, the
11 former president's testimony, told us is DuPont was
12 one of the big locations where Covil did work. Do
13 you recall that?

14 A. Yes.

15 Q. Have you seen, yourself, evidence of
16 that in the exhibits that you reviewed, that there
17 was repeated times that they were doing work at
18 DuPont?

19 A. Yes.

20 Q. Is there a single year -- and I want to
21 isolate kind of the 1955 to 1980 time frame where
22 Covil, to your knowledge, wasn't working at the
23 various DuPont plantses. Plants, not plantses. Let
24 me start all over.

25 A. Okay.

1 Q. Is there a year, that you're aware of,
2 for DuPont, which was a big place of work for Covil
3 where they didn't do work between the 1955 to 1980
4 time frame in the various plants?

5 MR. RHENEY: Object to form.

6 THE WITNESS: I would have no knowledge
7 of that.

8 (Plaintiff's Exhibit No. 13, 7-31-74 Tax Exempt
9 Jobs, was marked)

10 BY MS. DEAN:

11 Q. I want to hand you what I have marked as
12 Exhibit 13. In talking, I know you only were able
13 to -- start over.

14 In reaching out to two people, one that
15 was able to give you information, did you ask
16 specifically about the nature and extent of Covil's
17 work at DuPont?

18 A. I don't recall that. Are you talking
19 about with Charles McWhorter?

20 Q. Yes.

21 A. I don't recall discussing that with him.

22 Q. I hand you what I have marked as
23 Exhibit 13. This is dated July 31st, 1974, and it's
24 titled "Tax Exempt Jobs." And it lists out a number
25 on one side and then the name or location on the

1 other side.

2 Do you see that?

3 A. Yes.

4 Q. Are you familiar with the origins of
5 this document at all?

6 A. No, I'm not.

7 Q. Do you have any knowledge, as you sit
8 here today, what that number means? Sometimes they
9 just report all of the jobs, but sometimes they give
10 a number or a series of numbers. And I'm just
11 wondering if you know that number -- if that's a job
12 number or what else it might be?

13 A. I have no idea.

14 Q. I take from that that it's fair to say,
15 at this point, you haven't made any effort to figure
16 that out?

17 MR. RHENEY: Object to the form.

18 THE WITNESS: No.

19 BY MS. DEAN:

20 Q. I want to quickly go through some of the
21 things here. It indicates that for all of the jobs
22 at Allen Plant Jobs, which is the fourth, that they
23 are listed as "All" in terms of tax exempt jobs.

24 Do you see that?

25 A. Yes.

1 Q. And, again, the date of this -- or the
2 time frame of this is July 31st, 1974?

3 A. Yes.

4 Q. Any evidence at all that work wasn't
5 done at Allen Plant in prior years, or do you know?

6 A. I have no clue.

7 Q. The next thing it indicates is that all
8 of the jobs for American Enka -- I will put it this
9 way.

10 I'm sorry. Let me start over. It lists
11 American Enka Jobs, and it indicates "All" in terms
12 of the tax exempt jobs.

13 Do you see that?

14 A. Yes.

15 Q. Do you have any idea what it means to be
16 tax exempt?

17 A. That they would not pay any taxes for
18 material they bought, I would think.

19 Q. That's just -- the logic behind that is
20 new to me, just because this isn't my industry, but,
21 I mean, were there certain materials you could
22 supply and not have sales tax associated with it?
23 Is that what it's --

24 A. I'm not sure. I have no idea.

25 Q. It also references -- is it Belews,

1 B-E-L-E-W-S?

2 A. Belews.

3 Q. Belews?

4 A. Uh-huh.

5 Q. Thank you. That the Belews Creek Jobs,
6 all of those in July 31st, 1974, are listed.

7 Do you see that?

8 A. Yes.

9 Q. And then it lists "Stillwater Carolina"
10 and gives a specific number there.

11 Do you see that?

12 A. I do.

13 Q. Further down it has both "Daniel
14 Construction Jobs," plural, and "Dan River Jobs,"
15 plural, and lists "All" next to both of those.
16 Right?

17 A. Right.

18 Q. For all of these that I have just listed
19 on just the first page, have you -- have you done
20 any kind of effort or research of any kind to figure
21 out the extent of the job, the nature of the job,
22 whether it was just supplying insulating materials
23 or contract work? Can you give me any further
24 detail?

25 A. No, I have not.

1 Q. I'm going to just go down the list. And
2 I have highlighted the ones that I think are
3 relevant, so I'm going to do them in the order that
4 they come up. But they are not consecutive.

5 Do you see that it has "Duke Power"
6 listed for "All" jobs, "Fiber Industry" for "All"
7 jobs, "General Electric" for "All"?

8 A. Yes.

9 Q. "Hoechst Fibers," and then it lists a
10 job, "Lee Steam Station Jobs," and says "All"?

11 A. Yes.

12 Q. And then "Milliken Jobs" and then lists
13 out "All"?

14 A. Yes.

15 Q. And Milliken and Lee Steam stations,
16 along with others, are Duke jobs. Are you aware of
17 that?

18 A. Yes.

19 Q. And the next case has -- sorry. The
20 next page has "South Carolina Electric & Gas" and
21 lists out four different jobs?

22 A. Uh-huh. Yes.

23 Q. And then there is also "Westinghouse
24 Jobs" where it indicates "All" of them. Right?

25 A. Yes.

1 Q. Are you familiar with the name Mundet?

2 A. Mundet?

3 Q. Yes.

4 A. No.

5 Q. Are you familiar with Crown Cork & Seal?

6 A. No. I've researched that one, and we
7 found no information on that.

8 Q. In terms of --

9 MS. DEAN: Well, it's almost 12:30. I
10 was about to go into a different location. Do you
11 want to stop for lunch or should I plow ahead?

12 MR. RHENEY: Whatever your preference
13 is. If it's here, I guess we should probably stop.

14 MR. TATE: I haven't heard it's here
15 yet.

16 MS. DEAN: So keep working?

17 MR. TATE: Maybe a few more minutes. If
18 you would prefer to take a break, I can check to
19 see --

20 MS. DEAN: I was about to get into Duke,
21 which is not a small chunk, so I think I'm going to
22 forego my order and just go to another subject for a
23 second.

24 BY MS. DEAN:

25 Q. For any of the locations listed in

1 Exhibit 1 through 3, which gives a list for each
2 thing, does Covil have any knowledge about the level
3 of sophistication each of those companies had about
4 asbestos, specifically, and the health hazards
5 associated with asbestos?

6 MR. RHENEY: Object to the form.

7 THE WITNESS: Not to my knowledge.

8 BY MS. DEAN:

9 Q. Is Covil in a position to say that
10 anything that Mr. Childers or Mr. Howe or
11 Mr. Sizemore did was unreasonable in their
12 estimation, given what they know about insulating
13 work?

14 MR. RHENEY: Object to the form, calls
15 for speculation.

16 THE WITNESS: I can't speculate for
17 them, because I don't know how much knowledge they
18 have pertaining to it.

19 BY MS. DEAN:

20 Q. And here is what I'm looking for. If
21 you intend to come to trial and say "Look" -- and
22 this is just by way of example -- "Calvin Sizemore
23 indicated that he did this and that, and we believe
24 that's unreasonable, that's not the way you should
25 do the work," I don't want to be surprised by that,

1 and so let me start off with Mr. Sizemore.

2 Is there anything about how he did his
3 work that Covil intends to say was unreasonable?

4 A. I don't know.

5 MR. RHENEY: Object to the form.

6 THE WITNESS: I have no idea.

7 BY MS. DEAN:

8 Q. Okay. Did you read Mr. Sizemore's
9 deposition?

10 A. Yes.

11 Q. I think I didn't ask you about him. And
12 if I did that, I apologize. But is there anything
13 about his description of his work that Covil intends
14 to indicate they disagree with, for whatever reason?

15 MR. RHENEY: Object to the form.

16 THE WITNESS: I didn't see anything.

17 BY MS. DEAN:

18 Q. All right. Similar question for Wayne
19 Howe. Is there anything about how he conducted
20 himself, based on what Covil knows to date, that
21 they intend to say was unreasonable?

22 MR. RHENEY: Object to the form.

23 THE WITNESS: I can't speculate one way
24 or the other, because he -- you know, a lot of it is
25 different. His -- where he worked and where the

1 others worked were different locations and different
2 things, different places. So I can't say one way or
3 the other.

4 BY MS. DEAN:

5 Q. Okay. Same question for Mr. Childers.

6 A. Same answer.

7 MR. RHENEY: Object to the form.

8 BY MS. DEAN:

9 Q. There are specific references in some of
10 the documents to doing work at, let's say, a Duke
11 facility, but on a specific piece of equipment. I
12 think the one we looked at together was a
13 Westinghouse turbine. Do you remember that?

14 A. Yes.

15 Q. Whether it be Westinghouse or General
16 Electric or Ingersoll Rand, boiler feed pumps or any
17 other particular equipment where Covil was coming in
18 to do insulating work on that equipment at a third
19 party's facility, does Covil have any information
20 about what the manufacturer of the equipment's
21 knowledge was about the dangers of asbestos?

22 A. I wouldn't know that.

23 Q. Okay. Are you aware of any information
24 provided to you -- and let me give Westinghouse as a
25 initial example -- provided by Westinghouse, to

1 Covil, about the dangers associated with either
2 building, insulating, repairing or working around
3 that equipment?

4 MR. RHENEY: Object to the form.

5 MR. RAINSFORD: Object to the form.

6 THE WITNESS: Could you repeat that?

7 BY MS. DEAN:

8 Q. Sure. Are you aware of any information,
9 provided by Westinghouse to Covil, about the dangers
10 associated with insulating, maintaining or working
11 around their turbines?

12 A. Not that I'm aware of.

13 Q. Same with GE. Are you aware of them
14 ever providing any information to Covil, in the
15 occasions where Covil was working with GE equipment,
16 with the dangers associated with insulating,
17 repairing or working around a GE turbine?

18 A. I wouldn't know that.

19 Q. Okay. Is that answer going to be the
20 same if I insert any particular manufacturer or
21 piece of equipment, whether it's a boiler or a
22 turbine?

23 A. Probably, because I have no knowledge of
24 that and have not seen any documents on it.

25 Q. Broadly speaking, in your review of the

1 files did you see any records of manufacturers who
2 used asbestos ever passing on danger information
3 about asbestos to Covil, before Covil went in and
4 did insulation work?

5 A. No.

6 Q. Similar question. When you were hired
7 by a principal contractor -- we saw, for instance,
8 that was Duke or Daniel in that one example we
9 looked at together. Do you remember that?

10 A. Yes.

11 Q. Do you see any record anywhere, from the
12 records that you have of that contractor, Daniel,
13 for instance, providing information to Covil, as the
14 sub, about the dangers specifically associated with
15 insulation work they were contracting you to do?

16 A. I have no knowledge of that.

17 Q. Finally, as it relates to the actual
18 premises where you were going, "you" -- again, I
19 mean by Covil, whether it be going to Bowater or
20 Duke or DuPont or any of these -- that list is
21 longer, but did you see any indication or evidence
22 that before you were going onto their premises, they
23 made Covil aware of the dangers of the asbestos
24 products that were on their premises before Covil
25 came in to do work?

1 A. I never saw anything related to that.

2 Q. In other words, to give a concrete
3 example, you know, if you came into Bowater in 1986
4 to do work, did you see any indication that anybody
5 at Bowater made Covil aware about the locations of
6 and dangers associated with the insulation they
7 still had in their plant when the Covil guys are
8 going in to do that work?

9 A. Not that I'm aware of.

10 MR. RHENEY: Object to the form.

11 BY MS. DEAN:

12 Q. You mentioned the word "encapsulated" a
13 minute ago, and so I want to spend a few minutes
14 understanding what Covil, as a company, understood
15 about the hazards of asbestos. First of all, are
16 you aware of anyone whose job it was to ascertain
17 when and how insulation work created hazards?

18 MR. RHENEY: Object to the form.

19 THE WITNESS: The only thing I remember
20 about that is what was in my dad's deposition and
21 what he said about that.

22 BY MS. DEAN:

23 Q. Have you seen -- and "you" as Covil --
24 any dust-release study about how many millions or
25 trillions of fibers are put into the air when you

1 work with block versus cloth versus a sealant?

2 MR. RHENEY: Object to the form.

3 THE WITNESS: No.

4 BY MS. DEAN:

5 Q. You had suggested that cloth was OSHA
6 approved, had no dust and was encapsulated. Did I
7 remember that?

8 A. Yes.

9 Q. Okay. When you indicated that Covil
10 believed that there was no dust, first of all, what
11 made you believe that?

12 A. It was in my dad's deposition. He
13 stated it.

14 Q. Okay. Any other reason?

15 A. No.

16 Q. Is Covil aware, and I mean even until
17 today, that you can have millions of fibers of
18 asbestos in the air when working with something and
19 not be able to see it? In other words, there is not
20 a visible dust that you can see, absent special
21 lighting, despite the fact that there is a lot of
22 dust in the air?

23 MR. RHENEY: Object to the form.

24 THE WITNESS: That's true with anything.

25 BY MS. DEAN:

1 Q. Were they aware of that, specifically
2 with asbestos, though, that you could see no dust
3 and still have millions of fiber in the breathing
4 zone of the worker?

5 A. I don't know. I never worked around it.

6 Q. When Covil, through you, suggested that
7 asbestos cloth was an encapsulated product with no
8 dust, or through your father when he said it, do you
9 know if they actually investigated that based on the
10 literature that was out there?

11 A. I don't know.

12 Q. Does Covil agree that before you
13 represent something is dust-free when you're talking
14 about a carcinogen as the actual specific dust, they
15 should at least investigate that before saying it?

16 MR. RHENEY: Object to the form,
17 argumentative.

18 THE WITNESS: They could have done a lot
19 of things, I'm sure, different, but I have no
20 knowledge of that, whether it was checked or tested
21 or anything.

22 BY MS. DEAN:

23 Q. Just what?

24 A. Whether it was checked or tested or
25 anything.

1 Q. Okay. In terms of Covil's understanding
2 of asbestos during the time frames when they were
3 using it or even in later years when they were
4 dealing with workers' comp and lawsuits that were
5 involved with it, was an investigation done to
6 understand concretely, or more concretely, the
7 hazards associated with asbestos?

8 A. Not to my knowledge.

9 Q. Does Covil dispute the findings of OSHA
10 about the dangers associated to asbestos, to your
11 knowledge?

12 MR. RHENEY: Object to the form, overly
13 broad, speculative.

14 THE WITNESS: I can't say one way or the
15 other, because I don't know anything about what OSHA
16 says and what they don't say, what we did and what
17 we didn't do.

18 BY MS. DEAN:

19 Q. And I think we pronounce OSHA and OSHA
20 differently, but you know what I'm talking about?

21 A. Same thing.

22 Q. Okay. Fair enough. That's ingrained in
23 me, so it would be hard for me to tweak it.

24 Has anybody, that you're aware of, ever
25 consulted with an expert, a medical doctor, an

1 occupational health person, an industrial hygienist,
2 in order to better understand the hazards of
3 asbestos during the decades when they were working
4 with and around it?

5 MR. RHENEY: Object to the form.

6 THE WITNESS: The only thing I can state
7 is what my dad said in his deposition about
8 listening to -- at a meeting, listening to
9 Dr. Selikoff. That's the only information I have.

10 BY MS. DEAN:

11 Q. Does Covil dispute that asbestos
12 exposures can result in lung cancer and
13 mesothelioma -- mesothelioma and asbestosis?

14 MR. RHENEY: Object to the form.

15 THE WITNESS: I'm not a doctor, so I
16 can't say one way or the other.

17 BY MS. DEAN:

18 Q. When Covil was making decisions how to
19 work with and around asbestos, did they understand
20 that it was being reported that asbestos caused a
21 variety of deadly diseases?

22 MR. RHENEY: Object to the form of the
23 question.

24 THE WITNESS: My dad heard noise, you
25 know, in the late '60s, mid-to-late '60s, and that's

1 all I have to go by.

2 BY MS. DEAN:

3 Q. The International Agency for Research on
4 Cancer produces information about when and how
5 easily or how hard asbestos causes disease. Does
6 Covil, to your knowledge, have any basis to dispute
7 their findings?

8 MR. RHENEY: Object to the form --
9 (cross-talking.)

10 THE WITNESS: I'm not familiar with
11 that.

12 BY MS. DEAN:

13 Q. What about the Environmental Protection
14 Agency's findings?

15 MR. RHENEY: Same objection.

16 THE WITNESS: I'm not familiar with it.

17 BY MS. DEAN:

18 Q. American Cancer Society?

19 MR. RHENEY: Same objection.

20 THE WITNESS: I'm not familiar with it.

21 BY MS. DEAN:

22 Q. There is a variety of organizations,
23 including each one I have listed so far, that have
24 indicated that asbestos exposure results in harm,
25 not just to the person using it, but to people

1 working around it, and also to family members from
2 laundering the clothes of the workers. First of
3 all, were you aware of that?

4 MR. RHENEY: Object to the form,
5 argumentative.

6 THE WITNESS: Was I aware of what?

7 BY MS. DEAN:

8 Q. That the harm presents itself not just
9 to the user, but to bystanders and to the people
10 laundering the clothes of the user?

11 MR. RHENEY: Object to the form.

12 THE WITNESS: Only when I read my dad's
13 deposition did I realize anything about it.

14 BY MS. DEAN:

15 Q. Okay. So in the years that you worked
16 for the company, that wasn't knowledge you had. You
17 obtained it in preparing for this role?

18 A. Yes.

19 Q. Does Covil have any basis to dispute
20 that, meaning that asbestos can cause harm not just
21 to the user, but to their family members?

22 MR. RHENEY: Object to the form.

23 THE WITNESS: Can you repeat that?

24 BY MS. DEAN:

25 Q. Does Covil have any basis, based on

1 research that they have done, to dispute the
2 findings your dad talked about, about how asbestos
3 causes harm, not just to the users, but to the
4 family members?

5 A. They have done no research, that I know
6 of.

7 Q. Do you know in anybody at the company
8 that did?

9 A. No.

10 Q. Okay. In terms of why asbestos is
11 dangerous, was Covil ever aware that part of the
12 problem was that the dimensions or aerodynamics of
13 asbestos made it where it easily stayed in the air?

14 MR. RHENEY: Object to the form.

15 THE WITNESS: I don't know. I'm not
16 familiar with it.

17 BY MS. DEAN:

18 Q. Okay. Is Covil, to your knowledge,
19 aware of the concept of "latency"?

20 A. Latency?

21 Q. Yes.

22 A. I'm not familiar with it.

23 Q. Okay. To put it differently, one of the
24 concepts associated with many diseases, but
25 specifically asbestos diseases, is that you have an

1 exposure date and that there is a time frame before
2 the onset of the actual disease. So with a cold,
3 latency is usually a couple days, someone sneezes on
4 you. With asbestos, it's decades.

5 A. Right.

6 Q. Do you know if anyone at Covil ever
7 learned this principle, is the first question. And
8 the second one is communicate it to anybody that was
9 working around asbestos?

10 MR. RHENEY: Object to the form.

11 THE WITNESS: Not that I'm aware of.

12 BY MS. DEAN:

13 Q. Does Covil understand that if you have
14 something that doesn't cause immediate harm and that
15 it takes a long time before you see the harm, that
16 that makes it even more important to educate workers
17 of why you have to protect yourself, because you
18 don't automatically have a response that tells you,
19 you need to do it?

20 MR. RHENEY: Object to the form, calls
21 for speculation.

22 THE WITNESS: That's a broad statement,
23 so that could refer to anything.

24 BY MS. DEAN:

25 Q. And no matter what it is, that principle

1 is true. If it's really, really important not to
2 have something happen and the reason it's important
3 doesn't immediately manifest itself, that's when
4 education and training becomes the most important?

5 MR. RHENEY: Same objection.
6 Argumentative, as well.

7 THE WITNESS: Could be, yes.
8 BY MS. DEAN:

9 Q. I intend, if needed, to rely largely on
10 you and your memory of what your father decided to
11 talk about what was known about the dangers of
12 asbestos, if we ever have to talk about this in
13 front of a jury. Can I ask you broadly, and I will
14 have a few specifics that -- follow-ups, but was
15 there anything above and beyond what was in Palmer
16 Covil's deposition about what the company knew, and
17 when, that you were able to add to that?

18 A. No.

19 Q. Okay. I saw reference to --

20 MR. RHENEY: Can I interrupt? I
21 apologize again. You said what the company knew,
22 and when, about --

23 MS. DEAN: The dangers of asbestos.

24 MR. RHENEY: Thank you. Object to the
25 form.

1 MS. DEAN: And it was your guys'
2 request. Don't make him regurgitate --

3 MR. RHENEY: Yeah. I wanted that
4 definition. What he knew and when, about what, is
5 what I was asking.

6 MS. DEAN: And because that deposition
7 wasn't videotaped, if we are ever in front of a
8 jury, it is my intent to go through a timeline. But
9 I guess my question now is, if there is nothing to
10 add, and this is largely for discovery purposes, I'm
11 happy to forego that if you don't have anything to
12 add. And my understanding is you don't.

13 THE WITNESS: Right.

14 MR. RHENEY: Understood. I was just
15 asking, when you said what and when, specifically
16 what, and when were you talking about it.

17 MS. DEAN: Got it. Got it.

18 MR. RHENEY: That's all.

19 MS. DEAN: That makes sense. Sorry.
20 (Plaintiff's Exhibit No. 7, OSHA Rules and
21 Regulations, was marked)

22 BY MS. DEAN:

23 Q. I want to hand you the actual OSHA
24 regulations and probably leave this with you at
25 lunch. I have marked them as Exhibit 7. And I know

1 your father references being aware of this and, in
2 fact, ordering the Federal Register himself, but
3 have you personally seen this before I handed it to
4 you?

5 A. No, not the pages, I haven't. I did see
6 the Registers in his office, but I never went
7 through them. But I did see the books.

8 Q. So you saw the books on the shelves?

9 A. Right. But I have never seen this
10 paperwork.

11 Q. You can see, in the very beginning,
12 under "Title 29, Occupational Safety and Health
13 Standards for Exposure to Asbestos Dust," that on
14 December 7th, 1971, an emergency temporary standard
15 concerning exposure to asbestos was published in the
16 Federal Register.

17 Do you see that?

18 A. Yes.

19 Q. Okay. One of the questions that I
20 intend to ask you, after you have time to review
21 this, is do you agree with me that nowhere in the
22 entire regulation does it say that asbestos cloth is
23 approved by OSHA?

24 MR. RHENEY: Object to the form.

25 BY MS. DEAN:

1 Q. And so I don't -- it has got three
2 columns per page and then there's multiple pages,
3 but that's going to be something I do want to come
4 back to.

5 Before we do that, do you see, on the
6 third column of the first page where it says: "In
7 the view," what paragraph I'm on?

8 MR. RHENEY: Which paragraph?

9 THE WITNESS: Which paragraph?

10 MS. DEAN: It's the second full
11 paragraph. "In the view of the undisputed grave."

12 MR. RHENEY: The third column on the
13 first page?

14 MS. DEAN: Yes. It's right here, if
15 you're a visual.

16 THE WITNESS: I don't see it.

17 MR. RHENEY: I don't know if we've got
18 the same thing you do.

19 MS. DEAN: Can I see?

20 The first two pages are not on yours.
21 But they are on mine, so they are now on yours.

22 Off the record for one second.

23 (Off-the-record discussion)

24 BY MS. DEAN:

25 Q. I just handed you a complete copy of

1 Exhibit 7. I apologize. It looked like the first
2 two pages came off. But now, on the first page in
3 the third column, there is a paragraph that I've
4 highlighted.

5 Do you see where I'm at?

6 A. Yes.

7 Q. Okay. One of the things that OSHA
8 reports is that: "In view of the undisputed grave
9 consequences of exposure to asbestos fibers, it's
10 essential that exposures be regulated now."

11 Do you see where I'm at?

12 A. Yes.

13 Q. And that paragraph ends that the "Lives
14 of employees are at stake."

15 Do you see that?

16 A. Yes.

17 Q. And when it goes through the actual
18 Rules and Regulations, it starts off two pages later
19 by defining asbestos, providing exposure levels, and
20 then it has a bunch of sub categories. Let me know
21 when you get there.

22 A. Okay.

23 Q. They have, for instance, in the middle
24 of the second column, "Work practices" such as "wet
25 methods"?

1 A. Uh-huh.

2 Q. They have, in the next column, having
3 air purified respirators?

4 A. Uh-huh.

5 Q. On the next page it talks about having
6 special clothing, changing rooms, clothe lockers and
7 laundering.

8 Do you see all that?

9 A. Uh-huh. I do.

10 Q. And it's not just that this 1971 Federal
11 Regulations for employee was known to the company.
12 You have seen, with your own eyes, your dad had that
13 sitting on his desk. Right?

14 MR. RHENEY: Object to the form,
15 argumentative.

16 THE WITNESS: He had the books, is all I
17 can testify to.

18 BY MS. DEAN:

19 Q. And there is an entire section that
20 talks about different things that deal with lockers
21 and clothing and laundering rooms to isolate the
22 asbestos-contaminated clothing from other people so
23 it doesn't get brought into the home.

24 Do you see where I'm talking about?

25 A. Not really.

1 Q. If you look down, for instance, the
2 first column on the page of the Federal Register
3 that says 11321, it talks about "Special clothing"
4 that the employer shall provide, and require the use
5 of, special clothing such as coveralls --

6 A. Yeah, I see that.

7 Q. -- full-body clothing?

8 A. Uh-huh.

9 Q. And the next category is "Change rooms"?

10 A. Yes.

11 Q. And then "Lockers." And the lockers are
12 to make sure you don't bring the contaminated
13 clothes of the employee home.

14 And then they have "Laundering" so you
15 don't bring the asbestos-contaminated clothing home.
16 Are you following?

17 A. Yes, I am.

18 MR. RHENEY: Object to the form.

19 BY MS. DEAN:

20 Q. And my understanding is that the idea of
21 having change rooms or special laundry or, I don't
22 know, concrete actions to make sure that Covil's
23 workers, after they go into a plant that had
24 asbestos in it, didn't bring that home to their
25 family members is not something you could find

1 documented that that ever happened.

2 MR. RHENEY: Object to the form.

3 THE WITNESS: I never saw anything.

4 BY MS. DEAN:

5 Q. One of the things your dad indicated --
6 actually, I'm sorry. Let me backtrack for a minute.

7 For any particular asbestos product that
8 was ever sold by Covil historically, do you know if
9 Covil either conducted a study themselves or paid
10 someone else to conduct a study to figure out how
11 much asbestos was released in the air, whether it
12 was block or pipe covering or seals or cloth or
13 anything else?

14 MR. RHENEY: Object to the form.

15 THE WITNESS: I wasn't there, so I can't
16 answer that.

17 BY MS. DEAN:

18 Q. And in your review of the documents, did
19 you see anything like that?

20 A. No.

21 Q. I'm sorry. I missed your answer.

22 A. Not that I recall.

23 Q. Okay. Similarly, do you know if anyone
24 at Covil ever asked or personally did, either way,
25 research of what other people paid to have done, and

1 in terms of test results about any of the products
2 Covil used or sold, to see what was being reported?

3 MR. RHENEY: Object to the form.

4 THE WITNESS: Well, that's kind of a
5 broad statement, so I don't know. Do you have a
6 specific question about one of those items or one
7 thing?

8 BY MS. DEAN:

9 Q. If you haven't seen it for any, I was
10 trying to save time, but I can take -- I can break
11 them down. So for insulation materials, like --
12 let's start with pipe covering. Do you know if
13 anybody looked at or paid someone else to look at,
14 hey, what research did other people pay for that
15 could help us understand what exposure levels exist?

16 A. I'm not aware of it.

17 Q. Would that be any different if we talked
18 about block?

19 A. No.

20 Q. Mud?

21 A. No.

22 Q. Cloth?

23 A. No.

24 Q. Any other asbestos component that you
25 guys sold?

1 A. Not that I can think of.

2 Q. Okay. One of the things that I know,
3 from looking at Palmer Covil's deposition as the
4 past president, is that he does remember going to
5 Selikoff's talk. Do you remember that?

6 A. Right. Uh-huh.

7 Q. Selikoff is S-E-L-I-K-O-F-F.

8 His big conference from 1965 was created
9 into a book. Did you know that, or have you ever
10 seen that?

11 A. No, I didn't know that.

12 Q. Is Covil aware that out of all of the
13 different hundreds of asbestos products used,
14 insulating materials was kind of identified as the
15 first to study as a group to figure out how many
16 people were getting sick and when and where?

17 MR. RHENEY: Object to the form.

18 THE WITNESS: Covil wasn't aware of
19 that. I'm not aware of it.

20 BY MS. DEAN:

21 Q. One of Selikoff's earliest findings were
22 that 10 percent of asbestos insulating workers that
23 were part of that asbestos union were getting
24 asbestos disease in one out of every ten people. Do
25 you expect, given Mr. Palmer -- his prior testimony

1 as the prior president, that he stayed abreast of
2 what was going on, that that was something known to
3 him or at least available to him?

4 MR. RHENEY: Object to the form,
5 speculation.

6 THE WITNESS: It was available. And I
7 believe he did state that he was on top of it.

8 BY MS. DEAN:

9 Q. Any communications to the
10 non-officer-level people, the people that were on
11 the ground, about that information that you could
12 find?

13 A. That I could find now?

14 Q. Yeah.

15 A. No.

16 (Plaintiff's Exhibit No. 14, Occupational and
17 Nonoccupational Exposures to Asbestos Article by
18 W.C. Hueper, was marked)

19 BY MS. DEAN:

20 Q. I want to hand you what I have marked as
21 Exhibit 14, which is just one of the articles in
22 this book by a gentleman by the name of Dr. Hueper
23 from the National Cancer Institute. And then I
24 think after this, food or no, we will take a break.

25 And just for your own benefit, I'm going

1 to just hand you the book so that you can just see
2 that this was part of that conference.

3 Do you see that, my poor, battered book?
4 I have provided a copy of "Section IV, Human
5 Exposure to Asbestos: Community Studies,
6 Occupational and Nonoccupational Exposures to
7 Asbestos" by Hueper?

8 A. Yes.

9 Q. Okay. The first paragraph, I just want
10 to read and first confirm that I have just read it
11 correctly. It says -- and if you look at the first
12 page of the book, we're talking about 1965, that:
13 "Numerous reports by many investigators from various
14 countries establish the fact that an occupational or
15 nonoccupational inhalation of dust of different
16 chemicals and physical types of asbestos results in
17 the development of asbestosis of the lungs which,
18 depending on the type of exposure, may be designated
19 as an occupational, neighborhood or household
20 pneumoconiosis. Since 1935 an increasing amount of
21 epidemiologic, clinical and pathologic evidence,
22 moreover, incriminates this health hazard is one of
23 the environmental sources of cancer of the lung."

24 Do you see that?

25 A. Yes.

1 Q. And, first of all, just in terms of the
2 diseases that are referenced in this first paragraph
3 and referenced by name, both asbestosis and cancers
4 of the lung. Right?

5 A. Right.

6 Q. But they also, in the get-go, I mean,
7 from the very first paragraph, indicate that the
8 concerns are not just limited to occupational, but
9 include household exposures.

10 Do you see that?

11 A. I do.

12 Q. And, finally, in the very first
13 paragraph it indicates that this information has
14 been developing, but all the way back from 1935.

15 Do you see that?

16 A. Yes.

17 Q. If you turn a few pages, there is a
18 subsection on page 187 called: "Occupational
19 Activities, Processes and Products with Asbestos
20 Hazards."

21 Do you see that?

22 A. I do.

23 Q. And it references the same two diseases,
24 asbestosis and asbestos cancer hazards. And it says
25 that asbestos -- asbestosis and asbestos cancer

1 hazards relate to an inhalation exposure to
2 asbestos, not only for asbestos workers properly
3 engaged in the direct and regular production,
4 processing, handling or using of asbestos-containing
5 materials, but also for the large number of
6 individuals who may sustain such contacts on an
7 incidental basis.

8 Do you see that?

9 A. I do.

10 Q. And you know, from the former
11 president's testimony, that there were insulators
12 who were in the direct and regular job of handling
13 and using asbestos insulation materials in earlier
14 years. Right?

15 MR. RHENEY: Object to the form.

16 THE WITNESS: There was.

17 BY MS. DEAN:

18 Q. And what this is reporting is that the
19 concerns, specifically asbestosis and asbestos
20 cancer concerns, weren't just limited to them but to
21 people who have contact more incidentally. Do you
22 agree?

23 MR. RHENEY: Object to the form.

24 THE WITNESS: That's what it says.

25 BY MS. DEAN:

1 Q. The next paragraph has a table that
2 lists out groups of people in operations and
3 processes where -- well, Table 2 says "Asbestosis,"
4 and it has a subsection called: "Operations and
5 products with contact to asbestos for producers,
6 processors, users, consumers and residents." And
7 then it also, below that, has "Occupational groups"
8 and "Nonoccupational groups." Right?

9 A. Yes.

10 Q. And we can look at this with the jury
11 together later, if we need to, but even if we just
12 go to the "Nonoccupational groups," it talks about
13 just being an inhabitant of a house with asbestos
14 insulation in there. Right?

15 MR. RHENEY: Object to the form.

16 THE WITNESS: It does.

17 BY MS. DEAN:

18 Q. And then the next page has an entire
19 subsection for: "Asbestos Cement Products and
20 Consumption."

21 Do you see where I'm at?

22 A. Yes.

23 Q. It says: The greatest quantity of
24 asbestos of all grades is used in the manufacture of
25 a variety of asbestos cement and plaster products,

1 such as asbestos cement proper, which may be applied
2 like ordinary mortar or plastic (sic) or which may
3 be sprayed on walls; insulating materials for the
4 covering of pipes, boilers, cables, conduits and
5 ducts. And then it goes on.

6 Do you see that?

7 A. I do.

8 Q. And that paragraph ends by saying --
9 well, first of all, you can see, throughout the
10 paragraph, as they are talking about it, they have
11 repeated citations where for they've studied this
12 and are referencing the results of their study.
13 They are footnoted as 23 or 21a or 40.

14 Do you see where I'm talking?

15 A. I do.

16 MR. RHENEY: Object to the form.

17 BY MS. DEAN:

18 Q. And the paragraph concludes that the
19 circumstances under which asbestos cement products
20 are used in the human economy makes it likely that
21 they may create asbestos health hazards of an
22 associated type for other workers, as well as in
23 homes where asbestos insulation was used. And
24 that's kind of echoing what we saw in the chart just
25 a second ago.

1 MR. RHENEY: Object to the form.

2 BY MS. DEAN:

3 Q. Do you see that?

4 A. I see it.

5 Q. Okay. In terms of what actual knowledge
6 exists to Covil, and specifically to Covil's
7 president all the way back in the '60s, not just
8 asbestos generally, but insulating products to
9 people working with it, along with their households
10 were identified to create health hazards both in the
11 form of cancer and asbestosis. Would you agree?

12 MR. RHENEY: Object to the form.

13 THE WITNESS: I don't know exactly what
14 he took away from his -- when he heard Dr.
15 Selikoff's speech because I wasn't there, so I don't
16 know.

17 BY MS. DEAN:

18 Q. Certainly, it was available. We can see
19 that from looking at the record.

20 A. Right.

21 MR. RHENEY: Object to the form.

22 BY MS. DEAN:

23 Q. I missed your answer.

24 A. What was the question?

25 Q. Did you say "right"?

1 A. I was just agreeing with you.

2 Q. Okay. I like agreement.

3 MS. DEAN: Okay. We have been going
4 about an hour and a half, so let's take a little
5 break.

6 THE VIDEOGRAPHER: This is the end of
7 Media Unit Two. We are off the record at 1300 hours
8 and thirty seconds.

9 (Break In Proceedings)

10 THE VIDEOGRAPHER: This is the beginning
11 of Media Unit Three. We are back on the record at
12 1300 hours, 56 minutes.

13 BY MS. DEAN:

14 Q. Over the lunch break I was provided the
15 personal record for the Lewis Childers from Covil.
16 And the only real question I had about this is, does
17 Covil have a feel for how complete these records
18 are?

19 MR. RHENEY: Object to the form.

20 THE WITNESS: I'm not sure. Some of
21 them are more fuller than others. I don't know
22 what's left out of all of them, but some of them are
23 thicker than others. I guess it depends on how long
24 they've been there, whatever. He hasn't been there
25 very long.

1 BY MS. DEAN:

2 Q. And that's what I'm trying to gather,
3 whether there was a retention policy so that Covil
4 feels confident that they would have a full record,
5 at least after 1973, or was it just kept
6 indiscriminately based on the judgment of whoever
7 was in office at the time, or do you know?

8 A. I don't know. I do know they have a lot
9 of personnel records here. I don't know how many
10 was burned up in the fire.

11 Q. So if I have a guy, though, that says,
12 "I worked here in 1981 and I know I did," and you
13 don't have a record of that, is it Covil's position
14 that "If we don't have a record it probably didn't
15 happen," or is it "We just don't know" --

16 MR. RHENEY: Object to the form.

17 BY MS. DEAN:

18 Q. -- we can't confirm or deny your memory?

19 A. No. I don't know.

20 Q. You don't know --

21 A. One or the other.

22 Q. Okay. As you're sitting here now,
23 though, you can't give any sense for how complete
24 these records are?

25 A. No.

1 Q. And I was provided Mr. Childers' -- I
2 know we're working to find some other folks
3 either -- would the answer be the same for each
4 person?

5 A. Most likely, yes.

6 Q. Okay. As promised, I wanted to come
7 back to the question about OSHA. Were you able to
8 see anything in the Regulations -- we marked these
9 as Exhibit 7 -- that indicated that asbestos cloth
10 was approved by OSHA?

11 A. I didn't completely read it all the way
12 through, so I can't answer that.

13 Q. Okay. In the portions that you have had
14 an opportunity to read, did you see anything that
15 suggested that?

16 A. No.

17 Q. The OSHA regulations indicate that there
18 were threshold limits. And the prior president and
19 Palmer Covil's deposition kind of referenced those.
20 Are you aware of any efforts to determine whether
21 particular work done by Covil's employees stayed
22 within those limits to see whether they do a lot of
23 the thing in the Regulations that are triggered if
24 you go above those limits?

25 A. I'm not aware of any.

1 (Plaintiff's Exhibit No. 45, From Little Violations,
2 Major Accidents Grow Safety Presentation, was
3 marked)

4 BY MS. DEAN:

5 Q. Okay. I want to hand you what we have
6 marked as Exhibit 45. And it was produced to me by
7 Covil. It says: "From Little Violations, Major
8 Accidents Grow." And it appears to be some kind of
9 safety presentation about accident prevention. Do
10 you recall seeing this before?

11 A. I don't think I have.

12 Q. It's a longer document than most that we
13 have looked at. In my review of the document, there
14 are references to dates when the presenter is giving
15 examples, but I can't find a date for when this was
16 generated. Do you know?

17 A. I do not know.

18 Q. Huh?

19 A. I do not know.

20 Q. Okay. Sorry. Do you know who would
21 have created this document?

22 A. I do not. Like I said, I have never
23 seen it before.

24 Q. Much of the focus of the document -- and
25 if you want to take time to look at it -- it is

1 about safety prevention, wearing safety goggles,
2 taking your time so that you don't get your necklace
3 caught in the machine, things of that nature. I'm
4 wondering if you know of any event that may have
5 been the impetus for this occurring.

6 A. I do not. I don't know of any major or
7 minor accidents that we had that were related to any
8 of this.

9 Q. The second page has a Supervisor's
10 Safety Creed. It says: "You must do your best to
11 eliminate hazards before they create tragedy and
12 misfortune."

13 Do you see that?

14 A. I do.

15 Q. And that basic principle is one that
16 Covil agrees to?

17 MR. RHENEY: Object to the form.

18 THE WITNESS: I don't know how this was
19 derived at and who had it and who didn't, so I can't
20 answer to that.

21 BY MS. DEAN:

22 Q. Outside of where it came from, the
23 principle that's being referenced, I'm wondering if
24 Covil agrees with. But for a supervisor, they need
25 to do their best to eliminate hazards before they

1 create harm.

2 MR. RHENEY: Object to the form.

3 THE WITNESS: Every supervisor is
4 different, so I can't answer that for them.

5 BY MS. DEAN:

6 Q. Is there any supervisor who wouldn't
7 have the analysis that you should eliminate hazards
8 before you hurt people?

9 MR. RHENEY: Object to the form.

10 THE WITNESS: I don't know.

11 BY MS. DEAN:

12 Q. It goes on to say, in that same page,
13 "To be informed of all hazards" -- I'm looking at
14 the fourth paragraph -- "you must believe your men
15 deserve to work in a safe environment, to encourage
16 work safety, and to be informed of all hazards."

17 Do you see that?

18 A. I do.

19 Q. And those are basic principles not only
20 written down in this Covil record, but that Covil
21 believed in.

22 MR. RHENEY: Object to the form.

23 THE WITNESS: They may or may not.
24 There, again, I can't answer.

25 BY MS. DEAN:

1 Q. The next page talks about attitude and
2 rationalization. And it says that there was a
3 questionnaire put into the National Safety Council
4 about preventing accidents.

5 Do you see where I am?

6 A. I do.

7 Q. First of all, do you know, outside of
8 this reference in the Covil document to the National
9 Safety Council, whether either Palmer Covil or
10 others in the company were involved with the
11 National Safety Council?

12 A. Not to my knowledge.

13 Q. Is Covil aware of how much information,
14 in going back how far this organization put out
15 information about the dangers of asbestos?

16 A. I don't know. I have never seen any.

17 Q. Do you know when Covil first got
18 computers?

19 A. Not right off the top of my head. I'm
20 trying to think.

21 Q. Were they there when you started in '74?

22 A. No. I would say late '70s maybe.

23 Q. Okay. And the reason I thought about
24 that right now is if you look on that same page, you
25 can see in the paragraph "What grisly thoughts,"

1 exclamation mark.

2 Do you see that? I'm on 2765.

3 A. Yeah, I see that now.

4 Q. In that paragraph, in that same sentence
5 you can see that this is a typewriter. Right? You
6 can see the error in the word "being" and how they
7 corrected it?

8 A. Uh-huh. Yes.

9 Q. Okay. I'm just trying to get some
10 context of when this thing was written.

11 The few pages -- they have handwritten
12 page numbers in the top, so I'm on page 5. They
13 have "Safety In A Changing World" as the heading.

14 Do you see that?

15 A. I do.

16 Q. And one of the things written in this
17 Covil document is: "We must strive to gain
18 knowledge in the science of safety and apply our
19 safety knowledge to everything we do." I'm at the
20 last sentence of the fourth paragraph.

21 Do you see that?

22 A. I do.

23 Q. Is that something that Covil not only
24 wrote here but believed was reasonable to expect of
25 the company?

1 MR. RHENEY: Object to the form.

2 THE WITNESS: I don't know. I can't
3 speak for what they think.

4 BY MS. DEAN:

5 Q. Later in that same document, it's the
6 second-to-last paragraph on that page, it writes
7 that: Our attitude toward safety must continue to
8 change. By this I emphasize that we must continue
9 to work at the improvement of our knowledge with
10 respect to safety and that we must be deeply mindful
11 that technology advance calls for increasing effort
12 and ingenuity in providing safeguards.

13 Do you see that?

14 A. I do.

15 Q. And this idea that the company needs to
16 continue to change as technology changes, in order
17 to make sure safety is improved, is something that
18 is reasonable for Covil's customers and employees to
19 expect of the company. Would you agree?

20 MR. RHENEY: Object to the form. I'm
21 sorry. I didn't mean to interrupt. Object to the
22 form, speculation.

23 THE WITNESS: I don't think this would
24 actually be something that Covil wrote. I believe
25 they might have copied it from somewhere. That's

1 just my thinking.

2 BY MS. DEAN:

3 Q. Okay. Let me adjust the question.
4 Because you're saying maybe we got this from
5 somebody else and distributed it, as opposed to
6 writing it ourselves.

7 A. Possibly.

8 Q. Okay. Whether Covil wrote it or got it
9 from someone else, this is a document we have from
10 the Covil files. And we know that from the Bates
11 number at the bottom. Right?

12 A. Right.

13 Q. And one of the things that are in their
14 records is this idea that you need to have an
15 attitude towards safety that means that you continue
16 to improve on safety, especially as technology
17 changes. And I guess my question in that is just
18 whether Covil believes that it is their expectation,
19 for its customers and employees to have of it.

20 MR. RHENEY: Object to the form --

21 THE WITNESS: They did have a good
22 attitude towards safety.

23 MR. RHENEY: -- speculation.

24 BY MS. DEAN:

25 Q. And whether they did or didn't, my

1 question is more just whether that's fair for
2 Covil's employees and customers to expect it to
3 happen.

4 MR. RHENEY: Object to the form, calls
5 for speculation.

6 THE WITNESS: I cannot say, one way or
7 the other, what they were thinking during at that
8 time.

9 BY MS. DEAN:

10 Q. Well, as the representative of the
11 company, you're put in the position to answer
12 questions, even in time frames when you aren't
13 there. And I understand that's kind of a tricky
14 analysis, but the base idea that these claims that
15 they make in this record, in their file about
16 prioritizing safety and advancing in safety, I'm
17 just wondering if Covil believes those are fair
18 things to expect of it.

19 MR. RHENEY: Object to the form.

20 THE WITNESS: Covil was very dominant in
21 the safety field, as far as making sure their
22 employees were safe in the plant and on the job
23 site.

24 MS. DEAN: And let me object to
25 speculation and nonresponsive and kind of step back

1 from that.

2 BY MS. DEAN:

3 Q. Whether they were or not, we will talk
4 about in another area. I'm just wondering if the
5 expectation that safety be important and that you
6 progress with technology to have better safeguards
7 is something that's fair to expect of Covil from
8 their customers and from their employees.

9 MR. RHENEY: Object to the form,
10 speculation.

11 THE WITNESS: Covil was -- safety was
12 very important to Covil.

13 BY MS. DEAN:

14 Q. And because it was important to Covil,
15 they certainly would not be surprised if they would
16 expect it to be important to their customers and
17 their employees?

18 MR. RHENEY: Object to the form, calls
19 for speculation.

20 THE WITNESS: True.

21 BY MS. DEAN:

22 Q. The next page has "Safety In A Changing
23 World." It says, in the second paragraph -- I'm
24 looking at the last two sentences: "I think we must
25 recognize that safety rules and regulations aimed at

1 protecting the worker have come about, to a
2 considerable extent, from demonstrated need. It has
3 come about partly because of our own failing to work
4 safely without regulations."

5 First of all, do you see where I'm at?

6 A. No.

7 Q. Okay. It's page 6, on the physical
8 page.

9 A. Oh, 6. Okay.

10 Q. And then it's the second paragraph,
11 about halfway down.

12 A. Okay.

13 Q. I'm just going to start it again. It
14 reads that: "I think we must recognize that safety
15 rules and regulations aimed at protecting the worker
16 have come about, to a considerable extent, from
17 demonstrated need. It has come about partly because
18 of our own failing to work safely without
19 regulation."

20 Do you see where I'm at?

21 A. I do.

22 Q. Does Covil have any basis to dispute
23 what's written in this document in their file?

24 MR. RHENEY: Object to the form,
25 speculation, overly broad.

1 THE WITNESS: I don't know. I can't
2 answer that.

3 BY MS. DEAN:

4 Q. Okay. At least, based on what you do
5 know from your investigation, there is no basis to
6 dispute that?

7 MR. RHENEY: Object to the form.

8 THE WITNESS: I don't know. I can't
9 answer that.

10 BY MS. DEAN:

11 Q. Page 15 is labeled: "Our Stake In
12 Safety." In the third paragraph it says: "It is
13 obvious that we have a physical, financial and moral
14 stake in avoiding injuries. It is obvious, too,
15 that we must make safety a part of our daily lives,
16 on and off the job, if we are to prevent accidents."

17 Do you see that?

18 A. I do see it.

19 Q. And from a business perspective, Covil,
20 who operated as an insulating contracting business
21 for many years, understands and agrees that if
22 you're going to make something a policy or a process
23 of a company, it does take repeated effort.

24 MR. RHENEY: Object to the form.

25 THE WITNESS: I would agree with that.

1 BY MS. DEAN:

2 Q. If you look to page 24 of the document,
3 this is one of the places where I found a reference
4 to a date. It references April 17, 1970.

5 Do you see that?

6 MR. RHENEY: I'm sorry. I see it.

7 MS. DEAN: It's kind of in the middle of
8 the page, under "Guard Left Off: Workman Killed."

9 MR. RHENEY: Okay.

10 BY MS. DEAN:

11 Q. Just to try to piece together the best
12 we can, knowing that this looks like it was on the
13 typewriter, and this date, it looks like this is
14 probably sometime in the '70s, although exactly
15 when, you can't tell me. Is that fair?

16 MR. RHENEY: Object to the form,
17 speculation.

18 THE WITNESS: I would say it's fair.

19 BY MS. DEAN:

20 Q. Do you know -- and I suspect from your
21 earlier answer the answer is no, but do you have any
22 idea of who this was disseminated to?

23 A. Like I said, I've never seen it before.
24 And some of the wording in here is not what I would
25 have seen, accustomed -- been accustomed to seeing

1 in like any memos or anything, so that's why I said
2 I think it was recopied. But I never saw the
3 booklet, itself, or who it might have went out to.

4 Q. I will represent to you this gets into
5 really specific detail about how to prevent certain
6 types of injury, have your wife sign a contract that
7 it's okay that you live without an arm because you
8 don't want to use a guard. I mean, really specific
9 detail. But there is nothing mentioned about
10 asbestos for a group of insulating contractors. And
11 I know you haven't independently verified, but
12 assuming that what I'm telling you is true, any
13 explanation for why you would have an almost 70-page
14 safety document for Covil in the '70s that wouldn't
15 have any safety information about asbestos for
16 insulating contractors?

17 MR. RHENEY: Object to the form, lack of
18 foundation.

19 THE WITNESS: I have no idea.

20 BY MS. DEAN:

21 Q. Okay. That was a longer document, but I
22 think that's all we have on that. Do you mind
23 telling me the exhibit number?

24 A. 45. Do you need it back?

25 Q. No. I just didn't have it marked.

1 I noted that there was an effort, at a
2 certain point in time, to have employees, upon being
3 hired, x-rayed. Are you familiar with that?

4 A. I'm vaguely familiar with it. I didn't
5 handle that, but I know what you're talking about.

6 Q. Do you know when it started?

7 A. No, I have no idea.

8 Q. Okay. I found a reference to this in
9 Exhibit 40, which I'm going to hand you. This is
10 dated August 1st, 1973.

11 A. Thank you.

12 (Plaintiff's Exhibit No. 40, Notice to Job
13 Applicants, was marked)

14 BY MS. DEAN:

15 Q. The first question is do you know if, at
16 any time before 1973, new applicants were being
17 x-rayed?

18 A. No, I don't.

19 Q. Do you know if there was any effort to
20 x-ray people, after they were hired, every year or
21 every five years or anything like that?

22 A. I don't know when in South Carolina. I
23 think, in North Carolina, they had to be x-rayed
24 annually. But I don't know of any --

25 Q. You don't know what?

1 A. I don't know of any after '73 for our
2 guys at Covil.

3 Q. Okay. So outside of x-rays on new hire
4 and x-rays in North Carolina, are you aware of any
5 routine effort to have employees x-rayed at Covil at
6 any time?

7 A. I don't know of any effort. And I saw
8 where it had been done, but I wasn't -- like I said,
9 I wasn't involved in it, so --

10 Q. Do you know if employees were provided
11 the results of their x-rays if anything was found?

12 A. I have no clue.

13 Q. Do you know why a decision was made to
14 start x-raying folks when they were hired? I
15 understand in North Carolina it's probably because
16 there was a statute, but do you know why it was
17 being done upon being hired?

18 A. No.

19 Q. Okay. I want to -- starting with Wayne
20 Howe's locations, I want to try to look at some
21 records of work done by Covil at these locations.
22 Starting with Bowater, did you see, in your review
23 of the record, that -- well, I think you told me,
24 actually, before the lunch, that you saw that
25 materials were sold but not contracting work. Did I

1 understand that right?

2 A. Invoices. Is that right?

3 Q. I'm kind of asking you. I thought
4 you -- I thought you said in Smith you saw
5 contracting work, and in Howe you saw invoices or
6 material supply?

7 MR. RHENEY: Object to the form.

8 BY MS. DEAN:

9 Q. Let me just ask you, what did you find?
10 This is Howe. That's cleaner.

11 A. I'm not real sure. I did see some
12 invoices, but I'm not sure exactly which case it was
13 in.

14 Q. Is there anything that you can look at
15 to refresh your memory so that I can know what you
16 know?

17 A. Not that I have here with me.

18 Q. Okay. And this is not meant to be a
19 memory test, but I need to find out what you know in
20 some kind of menial fashion. Do you have any way to
21 be able to answer my questions about specific
22 locations? And I understand with three categories,
23 this is harder than the average case. But if I want
24 to go to a particular site and understand what you
25 know or what you've referenced, do you have any way

1 to be able to tell me what you have done?

2 A. I have notes on it. If you want to
3 revisit it tomorrow, I can refresh my memory
4 tonight.

5 Q. Let me pause for a minute and ask you --
6 I mean, to me, as we go through 70 locations, doing
7 that today, and on some of them, probably a dozen or
8 two I found documents, but to have to re -- go back
9 through that list to see if he has anything that I
10 don't seem remarkably inefficient. And 90 percent
11 of why I'm here is to figure out if I can connect
12 the dots on these. So does it make sense to do
13 that?

14 MR. RHENEY: Well, let me -- we're off
15 the record?

16 MS. DEAN: We can if we want to.

17 MR. RHENEY: Oh, yeah. I didn't see any
18 need to carry on a conversation with the tape
19 rolling.

20 MS. DEAN: Okay. Let's go off.

21 THE VIDEOGRAPHER: Going off the record
22 at 1400 hours, 20 minutes.

23 (Break In Proceedings)

24 THE VIDEOGRAPHER: At 1500 hours, 53
25 minutes and 30 seconds, we are back on the record.

1 BY MS. DEAN:

2 Q. My understanding is that you wrote some
3 notes and were to try to track what you could learn
4 about the different locations where my clients
5 worked --

6 A. Right.

7 Q. -- since there are multiple locations.
8 And you have those now?

9 A. Yes.

10 Q. Okay. The first location I want to ask
11 you about is Bowater. Or if it is easier, if you
12 can just tell me, for each location for Mr. Howe,
13 what you were able to find. I can take notes, and
14 we can go from there.

15 A. Where he worked at?

16 Q. Yeah.

17 A. That we worked at?

18 Q. Yes.

19 A. Okay. American Enka and Celanese Rock
20 Hill, Bowater Rock Hill. And we couldn't find
21 anything on Celanese Virginia, so that's iffy
22 whether we were even there or not.

23 Q. And were you able to find anything about
24 Crown Cork & Seal?

25 A. No. I know nothing about Crown Cork.

1 Q. And I'm assuming just how you picked up
2 that first document. Did you organize these
3 separately by location -- by plaintiff? In other
4 words, do you have a Howe set, a Sizemore set?

5 A. Yes. Howe set aside the -- was made up
6 of the jobs that he worked on.

7 MS. DEAN: Okay. Can we go ahead and
8 mark that as Exhibit 47?

9 MR. RHENEY: Wait. Which one is that?
10 He has got several things there. You've got them
11 broken down, Howe --

12 THE WITNESS: Yes. Right.

13 MR. RHENEY: Okay. Okay. Cool.

14 MS. DEAN: Do you mind handing me Howe
15 and I'll put the --

16 THE WITNESS: Sure.

17 (Plaintiff's Exhibit No. 47, Memorandum, was marked)

18 BY MS. DEAN:

19 Q. So I see that these kind of have
20 references to the depositions. Are the check marks
21 where you found records as well? Is that --

22 A. We didn't find records. When I got
23 this, Crown Cork was checked. However, we never
24 found any records on them.

25 Q. Okay. So I see, in Exhibit 47,

1 references to testimony. How did you go from there
2 to be able to tell me: "We were at American Enka,
3 Celanese Rock Hill, and Bowater"?

4 A. Based on part of his deposition.

5 Q. Okay.

6 A. At -- we either -- at some of these
7 places, we were either insulation contractors or we
8 supplied material to the contractor.

9 Q. Okay. For American Enka, which one of
10 the two was it?

11 A. Asheville.

12 Q. Did they provide the actual materials or
13 were they the contractor?

14 A. I'm not real sure.

15 Q. Do you know during what years they were
16 in American Enka -- Covil?

17 A. Yeah. He says -- well, he says he was
18 there '62 to '65.

19 Q. Right.

20 A. So I'm not real sure. And I don't have
21 that on my other notes.

22 Q. How were you able to even confirm the
23 baseline that Covil had a relationship with American
24 Enka?

25 A. It was in our records, some of our

1 records, and then it was in some of his deposition.

2 Q. Okay. What were you able to learn from
3 your records?

4 A. That -- just that we supplied material,
5 but I'm not sure if we worked there, if we had,
6 actually, insulators there.

7 Q. Okay. What materials were supplied?

8 A. He just said that he saw material being
9 delivered in boxes, pipe cover material being
10 delivered. But I have no idea whether it was
11 fiberglass or calcium silicate. We found no records
12 pertaining to that back in the '60s, because if they
13 were, they were all burned up in the fire. So --

14 Q. So you have no basis to dispute what he
15 testified to.

16 A. Right.

17 Q. Did you see that your father's testimony
18 about the relationship with American Enka in his
19 deposition?

20 A. I remember seeing it, but I don't recall
21 what he said.

22 (Plaintiff's Exhibit No. 5, Volume 2 of Deposition
23 Palmer Covil, was marked)

24 BY MS. DEAN:

25 Q. I'm going to hand you what I have marked

1 as Exhibit 5, which is just volume 2 of that
2 deposition, and direct to you page 142. And you can
3 see there -- I'm sorry. Give me one moment. I'm on
4 the wrong page.

5 If you start on page 141, you can see a
6 discussion between the lawyer about requested files
7 about a variety of jobs, ten different jobs. And
8 then Mr. Covil is asked: "Can you tell us what's on
9 this list"?

10 And he starts listing off different
11 things that are on the list.

12 Do you see where I'm at?

13 A. Yeah.

14 Q. And one of things that he lists is
15 American Enka in Asheville. And that was probably a
16 very -- a good stack, because we did work in just
17 about -- we did work in there just about all the
18 time.

19 Do you see that?

20 A. I don't see anything listing --

21 Q. It's on page --

22 A. 141?

23 Q. -- 142, lines 10 to 11.

24 A. Oh. 142.

25 Q. So to make a cleaner question, in trying

1 to discuss what different job files the company had,
2 what the former president of the company said in
3 1977, under oath, is that they were at American Enka
4 in Asheville, and there is probably a good stack
5 because -- and this is a quote, "because we do work
6 in there just about all the time."

7 Do you see that?

8 A. Yes, I do.

9 Q. Any basis to dispute that?

10 A. No.

11 Q. Okay. So in addition to your notes of
12 the testimony of Mr. Howe about doing work there and
13 seeing Covil's presence, you have the former
14 president's testimony kind of reassuring that they
15 did have a regular presence there. Right?

16 A. Right.

17 MR. RHENEY: Object to the form.

18 BY MS. DEAN:

19 Q. Now that I've given more context to
20 this, when he says that there is a good stack, any
21 idea where that stack is, given that we knew it
22 survived the fire?

23 MR. RHENEY: Object to the form.

24 THE WITNESS: I have no idea.

25 BY MS. DEAN:

1 Q. Okay. Do you have any information, from
2 your research about the nature of the business of
3 American Enka, what they were doing there?

4 A. I'm pretty sure that they were like
5 doing pipe covering and maybe a boiler or two.

6 Q. And given what you know about the
7 industry and doing that type of work, particularly
8 in the '60s time frame, it's almost certain that
9 that was an asbestos-containing material?

10 MR. RHENEY: Object to the form,
11 speculation.

12 THE WITNESS: I don't know that for a
13 fact.

14 BY MS. DEAN:

15 Q. I understand that without documents we
16 don't know that for a fact.

17 A. Right.

18 Q. But given your understanding of an
19 industry, that would be the first thing you would
20 assume?

21 MR. RHENEY: Object to the form.

22 THE WITNESS: I still can't say. It's
23 very possible they used a little bit of everything,
24 but I don't know for sure.

25 BY MS. DEAN:

1 Q. What else does Covil believe would have
2 worked in high heat situations in the '60s, for
3 instance, that would have been used in a boiler that
4 would have worked in that time frame?

5 MR. RHENEY: Object to the form.

6 THE WITNESS: The only thing that I know
7 that they used, at that particular time, was calcium
8 silicate.

9 BY MS. DEAN:

10 Q. Do you know what the particular makeup
11 of calcium silicate is?

12 A. Not right offhand.

13 Q. You had also mentioned that in your
14 review you were able to show that there was a
15 relationship between Celanese and -- Covil, Celanese
16 Rock Hill, specifically --

17 A. Yes.

18 Q. -- as supposed to Celanese Virginia.
19 What were you able to learn about that?

20 A. Basically, that they were just there
21 doing work. I really didn't find a whole lot,
22 because we did a lot of work at Celanese, various
23 different ones.

24 Q. Do you know whether it was insulating
25 contracting work or the supply of insulating

1 materials or both?

2 MR. RHENEY: Object to the form.

3 THE WITNESS: I'm not real sure.

4 BY MS. DEAN:

5 Q. When you said Covil was there, what did
6 you base that on?

7 A. That they based it on Howe's deposition,
8 saying that he or Wayne Grant or some -- one of his
9 buddies said they saw a Covil truck pulling in at
10 various times. So it could have been material or
11 contracts. But I don't think we actually did -- I
12 don't think we did contract with them. But I don't
13 know for sure.

14 Q. So based on your knowledge of the
15 company, you believe that it's more likely that it
16 was just a material supply and not a contracting?

17 A. Could be.

18 Q. In terms of when or how long or the
19 nature of that supply, can you give me any
20 additional detail --

21 A. The duration of the job?

22 Q. Yeah.

23 A. I wouldn't know that.

24 Q. And then, finally, Bowater, you
25 indicated that in the Howe locations, that's a place

1 where Covil would have been present. How do you
2 know that?

3 A. At where? I'm sorry.

4 Q. Bowater.

5 A. Bowater? Through the files that
6 showed -- I think we had material sales coming from
7 the manufacturer to Bowater plant.

8 Q. Which manufacturer, when you say "the
9 manufacturer"?

10 A. I can't remember which one it was. It
11 could have been Owens Corning. It could have been
12 Pabco or Raybestos. I'm not real sure.

13 Q. But there was a document that you
14 reviewed that showed that?

15 A. I saw an invoice pertaining to that.

16 Q. Do you remember the date?

17 A. Oh, no.

18 Q. Do you have any kind of note that
19 indicates the Bates number or anything that can help
20 me find it?

21 A. Well, I have a note here from Wayne
22 Grant where he said Starr Davis did the
23 insulators -- was the insulators on that job. But
24 he saw a Covil truck pull up for a material
25 delivery.

1 Q. So that kind of confirmed your thought
2 that it was material supply, not contracting?

3 A. His deposition, uh-huh.

4 Q. Sorry.

5 A. It was on his deposition.

6 Q. And so does that confirm your thought
7 that this was limited to material supply and not --

8 A. That would be my thinking.

9 Q. Okay. Was there anything outside of the
10 deposition testimony that you reviewed or relied on
11 to understand, you know, for instance, that it was
12 Raybestos, Pabco or Owens Corning?

13 A. No.

14 Q. Do you have any basis to dispute that
15 Covil was involved routinely at Bowater, going all
16 the way back to the '50s, all the way to the
17 mid-to-late '80s?

18 MR. RHENEY: Object to the form.

19 THE WITNESS: I have no idea what dates,
20 but I know we did -- they were a customer for quite
21 a while.

22 BY MS. DEAN:

23 Q. Any way to give me an idea of how big of
24 a customer were they -- they were, or what you mean
25 by "quite a while"?

1 A. Several years. Well, they could have
2 been on that list that you had this morning where
3 they were a Bowater customer. But I did see it
4 somewhere, you know, when they were naming the
5 larger customers.

6 Q. Before this case-specific customer that
7 you were familiar with, I know you were kind of in a
8 different part of the company, but did you know that
9 they were a customer for the insulating contractors
10 back when you were in the Energy Division?

11 A. Yeah. I would just hear their name from
12 the salesmen or the estimators.

13 Q. Okay. I want to hand you what I'm going
14 to mark as Exhibit 29. I only have one copy of
15 this. This is a document that was produced to us
16 from Daniel. And you will see the Daniel Bates
17 label at the end.

18 (Plaintiff's Exhibit No. 29, Pulp Mill And Hardboard
19 Job Requirement Orders, was marked)

20 MR. CONNER: What is that Bates number,
21 if you don't mind?

22 MS. DEAN: It says Daniel, underscore,
23 Stewart, S-T-E-W-A-R-T, underscore, 1866.

24 MR. CONNER: Thank you.

25 BY MS. DEAN:

1 Q. And you can see, on the top right, it
2 says Bowater. And it's talking about a pulp mill
3 and hardboard job and that they did back in the
4 1950s. And in their requirement orders, what they
5 call out for their insulation materials, are Covil
6 Insulating Company, which you can see about halfway
7 down.

8 A. But it doesn't say where --

9 Q. Under --

10 A. -- which. I know it doesn't say which
11 plant, which Bowater plant.

12 Q. Oh. It was given to us in a production
13 for Bowater Carolina, but I don't think that's
14 actually on the document. The only thing that
15 indicates location is where it says "Bowater,"
16 handwritten on the upper right.

17 A. Okay.

18 Q. Are you aware of work done by Covil at
19 other Bowater locations other than Bowater Carolina?

20 A. Not specifically. But when they talk
21 about Bowater, I just look at Bowater as a whole --

22 Q. Yup.

23 A. -- whole entity.

24 MR. CONNER: Just so we're clear,
25 Jessica, are you talking about Bowater Catawba?

1 MS. DEAN: I thought, in the documents,
2 they reference it as Carolina.

3 THE WITNESS: This says Bowater Rock
4 Hill.

5 MR. CONNER: That may be something
6 different. I don't know. But I have heard
7 reference to Bowater Catawba.

8 MR. RHENEY: My understanding is Catawba
9 and Rock Hill were the same thing.

10 MR. CONNER: Oh, is that right?

11 MR. RHENEY: I don't want to swear to
12 that, but that was my understanding.

13 MS. DEAN: That's my understanding as
14 well, but in their -- well, let me look at 20.

15 MR. CONNER: I don't mean to raise
16 confusion. I just thought I would get it --

17 MR. RHENEY: Then stop.

18 MR. CONNER: Okay. I probably should.

19 MS. DEAN: That one doesn't say.

20 MR. RHENEY: I have heard them mentioned
21 interchangeably, I think.

22 MS. DEAN: It's Catawba here, but then
23 it also says --

24 BY MS. DEAN:

25 Q. So I have reference to Bowater, in some

1 of the documents you have provided, as Bowater
2 Carolina Company. And also references Bowater
3 Catawba.

4 Does that sound right to you? And
5 that's C-A-T-A-W-B-A. Are you familiar with that?

6 A. It could be one and the same.

7 Q. Okay. We will look at that one in
8 actually just a moment. But to go back to here,
9 this document talks about both pulp mill and
10 hardboard job requirements in reference for the
11 insulating materials, Covil Insulating Company. Any
12 basis to dispute that involvement, as reported in
13 Exhibit 29?

14 A. No.

15 Q. Okay. Is it Covil's position that there
16 was an asbestos-free alternative that could have
17 been used on that work in the 1950s time frame?

18 A. I have no idea.
19 (Plaintiff's Exhibit No. 23, Bowater Project Labor,
20 and Plaintiff's Exhibit No. 24, Subcontract
21 Agreement, were marked)

22 BY MS. DEAN:

23 Q. The next exhibit I wanted to show you is
24 Exhibit 23 and 24 -- I guess exhibits. Exhibit 23
25 is a handwritten document we received from Covil

1 that says "Bowater Project Labor" and references
2 time -- times in 1986.

3 Do you see that?

4 MR. RHENEY: What is that exhibit number
5 again?

6 THE WITNESS: 23.

7 Where does it say '86?

8 BY MS. DEAN:

9 Q. It's the very first entry when they put
10 times. It says 3-16 --

11 A. Oh, I see.

12 Q. -- 86. You see where I'm at?

13 A. And there's some that says '87?

14 Q. Yes. The second document to, I think,
15 provide better context of what we are looking is
16 marked as Exhibit 24. And this is a BE&K
17 Construction document that is labeled Subcontractor
18 Agreement. And it says it is by and between Bowater
19 Carolina Company of Catawba and BE&K Construction
20 Company and Covil of Greenville, South Carolina.

21 Do you see that?

22 A. Yes, I see that.

23 Q. Covil, there, is the subcontractor. And
24 then they have a scope of work immediately below
25 that.

1 Do you see where I'm talking?

2 A. Yeah, Scope of Work.

3 Q. And the time frame of this is dated
4 February 26, 1986.

5 Do you see that in the beginning?

6 A. Yes, I do.

7 Q. I deduced from that that this Bowater
8 project label document, which is marked as
9 Exhibit 26 -- excuse me, 23, is likely referencing
10 this work here. Do you agree that, at least based
11 on what we know, that that makes sense?

12 MR. RHENEY: Object to the form,
13 speculation.

14 THE WITNESS: I would have no way of
15 knowing that it's the same, one and the same.

16 BY MS. DEAN:

17 Q. Are you aware of any other work in that
18 exact time frame that was happening for Bowater,
19 outside of the work talked about in Exhibit 24,
20 which is specifically showing to happen at Bowater
21 Carolina Company of Catawba?

22 A. No.

23 Q. Okay. The first thing is in the Scope
24 of Work, it talks about furnishing all supervision,
25 labor, equipment, tool, materials, except as noted,

1 and incidentals required to supply and install all
2 insulation on required piping systems.

3 A. Uh-huh.

4 Q. Do you see where I'm at?

5 A. Yes.

6 Q. Right after that, and then after the
7 next paragraph you can see, there looks like there
8 is writing but that it has been obscured somehow.
9 There is kind of two missing spaces where paragraphs
10 seemed like they would go. Any idea why?

11 MR. RHENEY: Object to the form.

12 THE WITNESS: I have no idea.

13 BY MS. DEAN:

14 Q. Do you have any independent information,
15 outside of the documents I have given you, about the
16 scope of this work?

17 A. No, I don't.

18 Q. Okay. If you look to the next page, it
19 has a reference on insurance and talks about the
20 need to have comprehensive general liability
21 insurance and have a limit of liability of \$500,000.

22 Do you see that?

23 A. Yes.

24 Q. Do you -- I recently learned that if the
25 existing insurance coverage wasn't met for a

1 particular job, you could get job-specific
2 heightened insurance. Is that something you're
3 familiar with at all?

4 A. I know a little bit about it, but I'm
5 not familiar with a whole lot of it.

6 Q. Do you know if this job resulted in
7 getting additional insurance in the 1986 time frame,
8 by Covil, for work at Bowater Carolina?

9 A. I don't specifically. But we did have a
10 certificate of insurance that we sent with all bids.
11 So if they're bidding on this job, then they would
12 have had to have the certificate of insurance.

13 Q. Okay. So you answered my question. If
14 the person seeking the job mandated a certain
15 insurance policy before it could be obtained, there
16 would have to be some kind of certificate that you
17 had that insurance?

18 A. You would have to send a certificate
19 with your bid package.

20 Q. Okay. Has Covil made any effort, by and
21 through you, either in looking at the Bowater
22 documents we received in this case or by talking to
23 people, learn anything more about the nature of this
24 work discussed in Exhibit 23 and 24?

25 A. No.

1 Q. Outside of the document that we marked
2 as Exhibit 29, going all the way back to the '50s at
3 Bowater and these two documents we just looked --
4 about to looking at the '80s, have you found other
5 records discussing the nature of the work done by
6 Covil at Bowater?

7 A. No, I haven't.

8 Q. Was there ever an effort to search by --
9 by word term, Bowater, to see if you were getting
10 all the hits for Covil's work at Bowater?

11 A. We did various word searches, but I
12 don't know if Bowater came up pertaining to that.
13 The word searches we did were like in deposition,
14 that sort of thing, to find Covil, the word "Covil."

15 Q. Oh, I see. Like so if you were
16 searching Sizemore's deposition, you would isolate
17 the parts that had to do with your company?

18 A. Right.

19 Q. Okay. In terms of the records Covil has
20 even after the fire, do you know if that search has
21 been done specific to Bowater, either by job number
22 or Bowater's name?

23 A. No, I don't.

24 Q. Okay. As it relates to Charlotte
25 Smith's case, you're aware that her husband at the

1 time, Lewis Childers, was deposed. We talked about
2 that. So what I would like to do now is understand
3 where you were able to find any kind of indication
4 that Covil was present at any of the locations he
5 identified.

6 A. Well, he only worked for Covil from
7 '70 -- all in '70 and the first quarter of '71. And
8 then again in '79, and like the last quarter of
9 1980.

10 Q. How do you know that?

11 A. From his Social Security records.

12 Q. Anything else?

13 A. That's it.

14 Q. Okay. And then in terms of where he was
15 when working for Covil, or the testimony we have
16 from witnesses about him being around Covil even
17 when he wasn't working for them, have you been able
18 to cross-reference what Covil knows about that for
19 the different work sites we identified in the
20 deposition notice, which is Exhibit 3?

21 A. Yes. I have this for Childers'
22 employment for Covil.

23 MS. DEAN: Okay. Let's go ahead and
24 mark this as 48.

25 (Plaintiff's Exhibit No. 48, Childers' Employment By

1 Covil, was marked)

2 BY MS. DEAN:

3 Q. Okay. And I'm going to hand you back
4 48. And if you don't mind going through what you
5 were able to ascertain about Covil as it related to
6 the Charlotte Smith locations.

7 A. Childers worked in the Fiber Industries
8 in Earl, North Carolina, where there is no --

9 Q. In where?

10 A. In Earl, North Carolina. And there is
11 no recollection of Covil being there at that
12 particular time. He stated that he worked there
13 during the mid-'70s, but where he actually worked
14 for Covil were in the '79 and '80.

15 Q. I saw reference to different Fiber
16 Industry locations, including Salisbury, Shelby,
17 Charlotte and Greenville.

18 A. Yes, there is Salisbury on here.
19 Childers knew nothing about Covil being on a job.
20 But Harley Neelands said that Covil may have
21 supplied the insulation.

22 Q. You're referencing Fiber Industries
23 in --

24 A. Salisbury.

25 Q. Forgive my ignorance of geography, but

1 is Earl -- is there any way that Earl would be the
2 same thing as any of these other four locations that
3 are referenced?

4 A. No. I had never heard of it. But
5 checking into it, it's up close to Shelby, North
6 Carolina. And Salisbury is a different location.

7 Q. The person who has done an extraordinary
8 amount of work on this case says that oftentimes
9 there is two locales for one spot, just to confuse
10 people. So that helps. Thank you.

11 Outside of the testimony from the --
12 from Mr. Neelands, were you able to find any
13 independent verification of Covil's presence at
14 Salisbury -- at the Fiber Industries location in
15 Salisbury, North Carolina?

16 A. Just that Neelands said that he thought
17 that Covil could have supplied insulation to the
18 plant, but that has not been verified.

19 Q. I want to show you a couple of places
20 where I've seen at least reference to it. First, if
21 you see the testimony of Palmer Covil, indicating
22 that there was a presence by Covil at Salisbury,
23 North Carolina, at least by the date of his
24 deposition in 1977 --

25 A. Have I seen it?

1 Q. Yeah.

2 A. No.

3 Q. Okay. Do you still have that testimony
4 from volume 2 in front of you?

5 A. Yes.

6 Q. If you look to that same page that we
7 were on, which was 142, right after referencing
8 American Enka on lines 10 to 11, he goes on to
9 say -- lists that they were at Fiber Industry,
10 Salisbury, North Carolina.

11 Do you see that?

12 A. Yes, I do.

13 Q. Okay. Again, this is in reference to
14 files that were being reviewed in 1977 for work
15 sites. Any idea where that file is?

16 A. I would have no idea.

17 Q. Okay. I guess today it's fair to say
18 that's not something that you specifically saw?

19 A. I never saw it, no.

20 Q. Bear with me for one moment. If you can
21 return to Exhibit 16, which we looked at a little
22 while ago, it is a document --

23 A. Okay.

24 Q. The last page of that document is that
25 resume of major material contracts for Covil in

1 Greenville, South Carolina. And you can see there
2 one of them that's listed is Celanese Fibers
3 Operations.

4 Do you see that? It's on the very last
5 page.

6 A. Very last page?

7 MR. RHENEY: I don't think you're
8 looking at the same thing.

9 MS. DEAN: Is it Exhibit 16?

10 THE WITNESS: 16.

11 MS. DEAN: I have two documents there,
12 that's why.

13 THE WITNESS: Oh, okay. That's 20.
14 Sorry.

15 BY MS. DEAN:

16 Q. No. Hold on a second. Just to have a
17 clean record, if you look to the last page of
18 Exhibit 16, it's one of the resumes of major
19 material contracts for Covil in Greenville, South
20 Carolina.

21 A. Uh-huh.

22 Q. And one of the plants listed is the
23 Celanese Fiber Operations.

24 Do you see that?

25 A. Yes.

1 Q. And in terms of the locations where the
2 work done -- it's actually three locations:
3 Salisbury, Shelby, and Charlotte.

4 Do you see that?

5 A. Yes, I do.

6 Q. For over 150 -- well, not over. For
7 \$150,000.

8 A. Right.

9 Q. And the nature of the work, it says:
10 "Piping and Equipment Insulation and Accessories."
11 Correct?

12 A. Right. Yes.

13 Q. So we have the president of the company
14 indicating that there was work done specifically at
15 the Salisbury location in the deposition. We have a
16 co-worker who remembers seeing it, and we also have
17 documentation of piping and insulation work
18 happening as a major material contract for Covil.
19 Is that fair?

20 MR. RHENEY: Object to the form.

21 THE WITNESS: True.

22 BY MS. DEAN:

23 Q. Do you have, in your notes for the --
24 related to the Charlotte Smith case, the work at
25 Fiber Industries Greenville?

1 A. No, nothing about Greenville.

2 Q. I want to hand you what we are going to
3 mark as Exhibit -- or what we have marked as
4 Exhibit 13. It's probably best to take that clip
5 off because we are going to go back into a few of
6 these documents, for at least now. But that was the
7 Tax Exempt Job that we looked at together earlier
8 this morning.

9 A. Do you know what exhibit number it was?

10 Q. 13.

11 A. 13. Okay. All right.

12 Q. And the only question -- actually, there
13 is a couple questions, now that I look at this more.
14 Do you see that one of the companies listed in here,
15 in this 1974 document, at the very bottom of the
16 first page, is Deering Milliken?

17 A. Uh-huh. Yes, it is.

18 Q. We will come back to that in a little
19 bit, but I don't think we talked about that the
20 first time.

21 If you see on the second page, you can
22 see that Fiber Industry jobs is also reported as a
23 Tax Exempt Job. In fact, they say "All" the jobs
24 are tax exempt --

25 A. Yes.

1 Q. -- on page 2 of this document.

2 Do you see that?

3 A. Yes, I do.

4 Q. Okay. I think I interrupted you when
5 you were going through what Exhibit 48 told you
6 about where Covil may have been in relation to where
7 Mr. Childers worked. Did you get through
8 everything?

9 A. There was -- we talked about Salisbury,
10 Celanese Spartanburg.

11 Q. Celanese Spartanburg, I don't have that
12 you told me anything about. What are you aware of
13 in relation to Covil's contact with that location?

14 A. So he was -- he was there for two or
15 three months in the early '70s. He worked for
16 Daniel. That was a contractor on the job.

17 Q. Do you have any indication that the
18 materials were supplied by Covil?

19 A. Harley Neelands said that he thought
20 Daniel bought the material from Covil and supplied
21 the insulation, but that's all he said.

22 Q. So outside of you broadly knowing that
23 there had been a long-lasting relationship between
24 Daniel and Covil, do you have anything, in terms of
25 specific records to confirm that?

1 A. No.

2 MR. RHENEY: Object to the form.

3 BY MS. DEAN:

4 Q. Any basis to question it? I mean, is
5 there anything that you know of that makes that seem
6 inaccurate?

7 MR. RHENEY: Object to the form.

8 THE WITNESS: I have nothing formal, no
9 paperwork or anything to say yea or nay.

10 BY MS. DEAN:

11 Q. Okay. And any other location for --
12 that relates to the Charlotte Smith case where you
13 have any indication of Celanese presence?

14 A. No. That's all I have.

15 Q. Did you see, in any of the deposition
16 testimony relating to Lewis Childers, about working
17 at Duke?

18 A. I don't recall any.

19 Q. Okay. Maybe the easiest way to approach
20 this is did you do research for the Duke facilities
21 in relation to Mr. Sizemore's locations that were
22 identified in his deposition notice?

23 A. Did I? No.

24 Q. So if you look to Exhibit 3, which is
25 the deposition notice for Charlotte Smith's case,

1 locations 13 to 22 are all related to Duke Power:
2 Duke Power Allen, Catawba, Cliff stream (sic), Lee,
3 Steam, and it goes on.

4 Do you see where I'm at?

5 A. Yes. Well, I see on this sheet that I
6 have where his jobs -- that he was there.

7 Q. Has there been a search of the Covil
8 records to find out how often and how frequently
9 they were repeatedly at each and every one of these
10 locations?

11 MR. RHENEY: Object to the form.

12 THE WITNESS: I don't recall any.

13 BY MS. DEAN:

14 Q. Okay. Whether it be by Duke Power, by
15 the particular station's name, by the town that the
16 station is in or by the job number associated with
17 the station, was there a review of Covil's records
18 to see what hits they could find relating to these
19 different Duke Power locations?

20 A. Not that I know of.

21 Q. Okay. Before we get to what I have been
22 able to find for each location, you are aware, on
23 behalf of Covil, that Covil and Duke had a
24 long-lasting, extensive relationship. They have
25 worked for many, many years together. Correct?

1 MR. RHENEY: Object to the form.

2 THE WITNESS: They did. They did.

3 (Plaintiff's Exhibit No. 15, Covil Corporation
4 Congratulates Duke Power Company Document, was
5 marked)

6 BY MS. DEAN:

7 Q. I want to hand you Exhibit 15 that I
8 think just evidences at least part of what you said.
9 And ask you, first of all, if you recall seeing this
10 document that I got from Covil.

11 A. I don't recall seeing this.

12 Q. Okay. The second page I primarily
13 attached because it gives us a date for a reference
14 of the time. And it's dated May 4th, 1979.

15 Do you see that?

16 A. I do.

17 Q. And then the first page says:
18 "Congradulations (sic) Duke Power Company for 75
19 years of faithful service to the community it
20 serves. We" -- and at the beginning it says "Covil
21 Corporation," so we know this is coming from
22 Covil -- "are especially proud to have been a part
23 of Duke's growth." And then it has kind of a motto.
24 "When it comes to insulation, Covil has you
25 covered." Right?

1 A. Right.

2 Q. Okay. And, again, when they are talking
3 about being a part of Duke's growth as they
4 celebrate their 75 years, this is in the late 1970s.
5 Correct?

6 A. True. Yes.

7 MR. RHENEY: Object to the form.

8 BY MS. DEAN:

9 Q. And we, earlier today, looked at
10 documents where they were, for lack of a better
11 word, bragging. They have done big insulating jobs,
12 and one of the first ones they reference are DuPont
13 and Duke. Do you remember that?

14 MR. RHENEY: Object to the form.

15 THE WITNESS: I do.

16 BY MS. DEAN:

17 Q. There is one -- before we get to the
18 specific plants, there is one thing I saw, kind of
19 repeatedly in the documents that I didn't
20 understand, where many of the records show a
21 relationship with Covil doing work for Duke but also
22 referencing First Federal corp of South Carolina.
23 Is that a name you're familiar with?

24 A. That was our lending institution or our
25 bank at one time.

1 Q. Okay. And so I will see Duke contracts
2 that show them as a party. And to your
3 understanding, they are affiliated with Covil, not
4 necessarily Duke.

5 A. Right.

6 Q. Okay. That was -- okay. That helps.

7 I want to start with the Allen Steam
8 Station in Belmont, North Carolina. Is that a place
9 where you know that Covil had historically done work
10 for Duke?

11 A. I'm pretty sure we've done work there.
12 I don't recall any specifics on it, but --

13 Q. And based on just the records we have
14 alone, that's work that extended for multiple years?

15 A. True.

16 Q. A couple of things I was able to find.
17 If you can turn to Exhibit 13 again, and that's that
18 Tax Exempt letter. And you can see that the Allen
19 Plant Jobs are listed in 1974 for "All" jobs.

20 MR. RHENEY: I'm sorry. What exhibit,
21 again?

22 MS. DEAN: It's Exhibit 13 --

23 MR. RHENEY: Thank you.

24 MS. DEAN: -- which is the --

25 BY MS. DEAN:

1 Q. It's the fourth entry, Allen Plant Jobs;
2 All. And this is dated July 31st, 1974.

3 Do you see that?

4 A. I do.

5 Q. In addition to that, have you seen any
6 efforts to be prepared to talk about this location
7 which was listed in both, I will represent, the
8 Smith and Sizemore notices? Any other records that
9 evidence a presence by Covil at Duke Power?

10 A. All of Duke Power or just Allen Steam
11 plant?

12 Q. Allen. Sorry.

13 A. No.

14 (Plaintiff's Exhibit No. 30, Power-House Division
15 Document, was marked)

16 BY MS. DEAN:

17 Q. Okay. I want to show you what I have
18 marked as Exhibit 30. You see here that this is a
19 Covil document that we got. And it's labeled the
20 "Power-House Division"?

21 A. Yes.

22 Q. And what it reports is that: Beginning
23 on January 1st, 1973, Covil Insulating Company will
24 have a new division under the management of Mr. Cash
25 entitled the Power-House Division.

1 Do you see that?

2 A. I do.

3 Q. And the way I read it is they are
4 giving, for some of the existing jobs, or old jobs,
5 a new number now that they have a new division. And
6 they list the "Old Numbers" in one column, the "Job
7 Name" and location in the second column, and then
8 the "New Job Number" now that they have a new
9 division.

10 Do you see that, as well?

11 A. I do.

12 Q. For -- starting with Allen plant, they
13 reference that before this division starts in 1973,
14 there are two different entries for the old job
15 numbers, the pre-'73 numbers. And they say "Duke
16 Contract #3 & 4" and "Duke Contract #5." And then,
17 finally, they assign them new job numbers.

18 Do you see that?

19 A. Yes.

20 Q. Have you made any effort to determine,
21 based on either the old number or the new number,
22 the nature, extent, time frame -- and then we know
23 one is before '73, one is after, but anything about
24 those?

25 A. No, I haven't.

1 Q. As opposed to referencing this three
2 different times, I'm going to try to kind of group
3 them together, although I was trying to do them by
4 station. But here they reference two other stations
5 or plants for Duke. Marshall Plant is right above
6 Allen Plant.

7 Do you see that?

8 A. I do.

9 Q. And they reference three different old
10 job numbers, or pre-'73 numbers, and they assign it
11 three new numbers.

12 Do you see that?

13 A. Yes.

14 Q. And then for the -- how do you say the
15 Oconee?

16 A. Oconee.

17 Q. Oconee?

18 A. Uh-huh.

19 Q. Okay. For the Oconee job, I mean, there
20 is -- there is nearly -- I think there is a dozen
21 different jobs that are there.

22 Do you see that?

23 A. Yes.

24 Q. And for each one of them, they have a
25 pre-'73 Old Job Number and their assignment and New

1 Job Number.

2 Do you see that?

3 A. Yes.

4 Q. Same question for the Oconee and
5 Marshall Plants that I asked for Allen. Any attempt
6 to, by Covil, ascertain what is available to them
7 about these projects, based on these job numbers?

8 A. No.

9 Q. That certainly just, in and of itself --
10 kind of evidencing what you're saying, is that for
11 many years there was a relationship between Covil
12 and a variety of the different Duke facilities.
13 Fair?

14 MR. RHENEY: Object to the form.

15 THE WITNESS: Yes.

16 BY MS. DEAN:

17 Q. The next Duke location I want to talk
18 about, you pronounced for me once and I have
19 forgotten. It's B-E-L-E-W-S.

20 A. Belew. Belew.

21 Q. Belew?

22 A. Belews Creek. Belew.

23 Q. Like the color.

24 A. With an E, Belew.

25 Q. Okay. I'm going to try. That was in

1 Walnut Cove?

2 A. I believe so.

3 Q. Okay. Are you aware that there was an
4 extensive, longstanding relationship between Covil
5 and this particular station?

6 MR. RHENEY: Object to the form.

7 THE WITNESS: No, not right offhand.
8 We've had, you know, there again, several jobs with
9 Duke, but that one I'm not familiar with.

10 BY MS. DEAN:

11 Q. Okay. If you look to Exhibit 10, which
12 we have already marked, and Exhibit 13 that we have
13 already marked, I just would like to confirm that in
14 Exhibit 13 you see that this is a particular and
15 specific location for Duke Power identified in that
16 Tax Exempt Jobs done in '74. And then after we are
17 able to do that, talk to you about Exhibit 10 in a
18 little bit more depth.

19 I have a couple -- Exhibit 13 is largely
20 alphabetical.

21 MR. RHENEY: I'm sorry. What did you
22 say?

23 MS. DEAN: Huh?

24 MR. RHENEY: Did you ask a question?

25 BY MS. DEAN:

1 Q. Just to confirm that the Duke, Belews
2 Creek jobs were referenced in Exhibit 13, which --

3 A. Yes, it was.

4 Q. -- referenced multiple jobs in '74.

5 A. Yes.

6 Q. And then if you can get to Exhibit 10 --

7 A. Okay.

8 Q. -- the last page we looked at before is
9 the Resume of Work Performed. And one of the things
10 explicitly listed here, in the Resume of Work
11 Performed by Covil, is Belews Creek --

12 A. Yes.

13 Q. -- for 4 million dollars at Duke Power,
14 involving Insulation & Lagging, in Walnut Cove,
15 North Carolina in '76.

16 Do you see that?

17 A. Yes, I see it.

18 Q. In terms of the specifics of that work,
19 how much insulation and lagging was removed? How
20 much was put on when it was happening? How many
21 people were there, over what months? Have you
22 investigated any of that to give me more detail?

23 A. No, I haven't.

24 Q. Are you aware that this work went on for
25 multiple years prior to what's being listed in

1 Exhibit 10 in 1976?

2 MR. RHENEY: Object to the form.

3 THE WITNESS: I'm not aware of it, no.

4 BY MS. DEAN:

5 Q. I want to hand you what I'm going to
6 mark as Exhibit 11 --

7 (Plaintiff's Exhibit No. 11, Covil Insulation
8 Company Document, was marked)

9 BY MS. DEAN:

10 Q. -- which is a document we received from
11 Covil, that lists the Covil Insulation Company and
12 gives some background information, and then on the
13 second page gives some information about its net
14 worth and its annual construction volume.

15 Do you see that?

16 A. I do.

17 Q. First, as it relates to Ocone, and I'm
18 skipping around again now just so we don't have to
19 keep returning to the same document, it shows, in
20 '72, '73, '74 and '75, millions and millions of
21 dollars of work being reported. Correct?

22 A. Yes.

23 MR. RHENEY: Object to the form.

24 BY MS. DEAN:

25 Q. And it specifically indicates that this

1 is thermal insulation and lagging work. True?

2 A. True.

3 Q. And the amounts range from 7 to 9
4 million each one of those years so that, you know,
5 we are talking over \$35 million. Right?

6 A. Right.

7 Q. Again, if I want to know more about what
8 was being put in in '72 or what was taken off or how
9 many people were involved, any of those details,
10 have you been -- have you done an investigation of
11 Covil's records to find out what we know about that?

12 A. No, I haven't.

13 Q. If you turn to the last page, there is
14 "Current projects under construction." And one of
15 the very first projects they reference is the Belews
16 Creek Power Plant in Walnut Cove, North Carolina,
17 Duke Power.

18 Do you see that?

19 A. I do.

20 Q. And it's thermal insulation and metal
21 lagging, and it shows the exact same contract value
22 of 4 million. Right?

23 A. Yes.

24 Q. But unlike the prior document that we
25 looked at, this has a duration of work and indicates

1 that as of June 19th, 1975, the date of the
2 document, this project has gone on for four years.

3 Do you see that?

4 A. I see that.

5 Q. And so -- and this is -- in your review
6 of the record, when I asked whether we could confirm
7 whether there had been years of work done at this
8 particular location, you hadn't found this.

9 A. I haven't found it and didn't know it.

10 Q. And in an effort not to keep returning,
11 there also is a reference to McGuire Nuclear Power
12 Plant here.

13 Do you see that?

14 A. Yes.

15 Q. This is the third Duke facility that is
16 referenced in this document. This one is located in
17 North Carolina and has a description of work. This
18 is thermal insulation and metal lagging. Correct?

19 A. Yes.

20 Q. The value of this contract is 5 million
21 dollars. Correct?

22 A. That's correct.

23 Q. And in terms of duration, this one goes
24 back five years --

25 A. Five years.

1 Q. '70 to '75. Correct?

2 A. Yes.

3 Q. If I want to know, for either one of
4 these very large projects, the 4 million or
5 \$5 million project, what products they put in in '70
6 versus '71, what was taken out, who did it, have you
7 done any research to be able to tell me what Covil
8 knows from its own records about the nature of this
9 work?

10 MR. RHENEY: Object to the form.

11 THE WITNESS: No, I haven't done any of
12 that.

13 BY MS. DEAN:

14 Q. Do you remember, from the earlier
15 documents that we reviewed, that at least there are
16 some records that indicate that part of this Belews
17 Creek, Walnut Cove project with Duke Power involved
18 asbestos-containing products?

19 A. That -- asbestos what?

20 Q. Asbestos-containing products.

21 MR. RHENEY: Object to the form.

22 THE WITNESS: I have no reason to
23 believe that.

24 BY MS. DEAN:

25 Q. As a reminder, do you recall us looking

1 at the 1973, May 30th document where there were
2 hundreds of yards -- I think it was over 450 yards
3 of asbestos cloth sold to that exact location?

4 A. Yes.

5 Q. Okay. I want to hand you one more
6 document on this location. It may already be
7 marked, Exhibit 22. It's right here. This is a
8 Contractor's Prequalification Form.

9 I'm sorry. I handed it to you and then
10 did a fake-out. But I didn't have a sticker on it.
11 I apologize.

12 (Plaintiff's Exhibit No. 22, Contractor's
13 Prequalification Form, was marked)

14 BY MS. DEAN:

15 Q. I hand you Exhibit 22. This is a
16 document for Covil Corporation, to your insured,
17 giving some background information about the
18 company.

19 Do you see that?

20 A. Yes, I do.

21 Q. And at the bottom it says:
22 "Form No. 102" and then gives the date April 1975?

23 A. Yes.

24 Q. If you look to the next page, it gives
25 the name and location of different work being done.

1 And one of the places that it references here is the
2 Belews Creek Power Plant at Duke and the 4 million
3 contract amount.

4 Do you see that?

5 A. Yes.

6 Q. And as of 1975, it indicates that it's
7 only 80 percent complete.

8 Do you see where I'm at?

9 A. Yes, I do.

10 Q. It also confirms work by Covil, done at
11 McGuire. And it indicates that's only 5 percent
12 complete for that \$5-million-dollar contract.

13 Do you see that?

14 A. I do.

15 Q. Finally -- and this will reference
16 several locations that we've either looked at or
17 will look at in the future, but this is further
18 verification of Covil's involvement in American Enka
19 for a \$200,000 contract.

20 Do you see that?

21 A. I see that.

22 Q. It also references work done at Oconee
23 Power Plant for Duke for \$3 million?

24 A. Yes.

25 Q. And then it references Cliffside Steam

1 Plant, doing work for \$650,000 in 1972.

2 Do you see that?

3 A. I do.

4 Q. For any of these locations, if I want to
5 know for Cliffside Steam Plant anything more about
6 the nature of the work, what was put in, what was
7 taken out, how many people were working for
8 \$650,000, is that something that you have
9 investigated based on what is available to Covil in
10 their own files?

11 A. No, it is not.

12 Q. Do you know when the Belews Creek,
13 Walnut Cove Duke Power plant was built?

14 A. Not right offhand, other than what we
15 have already gone through.

16 Q. And I wasn't able to ascertain this in
17 the time that we had, but I don't know, especially
18 given the magnitude of this contract, if you guys
19 were building the place or if it was an existing
20 plant where work was being done. Do you know --

21 A. It was an existing plant where work was
22 being done.

23 Q. Exhibit 31 --

24 MR. RHENEY: When you're at a good
25 breaking point. It doesn't have to be now.

1 MS. DEAN: I've got two more documents
2 on this spot, and then we'll -- I will be happy to
3 break. This is very tedious.

4 (Plaintiff's Exhibit No. 31, 7-16-73 Letter from
5 Travis Cash to P.H. Claxton, was marked)

6 BY MS. DEAN:

7 Q. I hand you Exhibit 31.

8 Do you see that this references, at the
9 top, Covil Insulation Company, July 16th, 1976? And
10 it's in reference to Westinghouse and talking about
11 quotes given to furnish insulation materials for
12 those Westinghouse turbines, along with the
13 associated boiler feed pumps?

14 A. This says 1973 on mine.

15 Q. Did I say something different?

16 A. '76.

17 Q. Oh. I meant '73. Thank you.

18 A. Okay. Yes.

19 Q. Did I get everything else right?

20 A. Yes.

21 Q. Okay. And then the next page just
22 confirms that, as opposed to just providing the
23 quotes, that this is work done by Covil, on the
24 turbines, doing turbine insulation at Walnut Cove.

25 Do you see that?

1 A. I do.

2 Q. Have you made any effort, or did you
3 even know that Covil's lawyers had the Westinghouse
4 documents pertaining to this job that Covil did?

5 A. No, I didn't.

6 Q. So if I want to ask about specifics,
7 that's not something you have had a chance to
8 review?

9 A. No.

10 Q. Are you familiar with brown mud cement?

11 A. A little bit.

12 Q. What is it?

13 A. It's similar to One Shot, but the brown
14 mud contains no asbestos.

15 Q. How do you know that?

16 A. Charles McWhorter confirmed that in his
17 conversation, and I'm pretty sure it was in my dad's
18 deposition.

19 Q. Okay.

20 A. Maybe.

21 Q. And Charles McWhorter is the person that
22 you talked to --

23 A. Yes.

24 Q. -- beforehand.

25 Do you have any documentation of who

1 made it, what their specifications show? Any more
2 detail other than the memories of people that worked
3 for Covil?

4 A. I have no information, no.

5 Q. Okay. Are you aware of the different
6 manufacturers of high-temperature material, cement
7 material supplied by Covil, historically?

8 A. I know some. Gold Bond. I think
9 Raybestos may have made some. I'm not 100 percent
10 sure.

11 Q. And then I saw reference, in some of the
12 depositions, to blue mud cement. Is that
13 something --

14 A. Blue mud is different. It's what came
15 out earlier, in the '60s, '70s. And brown mud
16 replaced blue mud in the '70s.

17 Q. And was that a shift from an
18 asbestos-containing mud or cement to a
19 non-asbestos --

20 A. Yes.

21 Q. -- based on what you know?

22 Do you have any information or records
23 to show what -- who supplied the blue mud and how
24 much asbestos was in it?

25 A. It's my understanding blue mud had like

1 a quarter of 1 percent -- three-quarters of
2 1 percent of asbestos in blue mud.

3 Q. And where is -- what's the source of
4 that?

5 A. I'm thinking it was my dad's deposition.

6 Q. Anything else that you can think of?

7 A. No.

8 Q. Do you know what fiber type of asbestos
9 was in that?

10 A. No, I have no idea.

11 Q. This may not trigger any memories, but
12 just to make sure, there is chrysotile, crocidolite
13 and amosite is the various commercial types of
14 asbestos that were historically sold. Any idea
15 which type would have been used in blue mud cement?

16 A. No, I would have no idea.

17 Q. Crocidolite was called "African blue,"
18 largely because under microscope it had a blue tint.
19 Any idea if that's why this was called blue mud?

20 A. Everybody called it "blue mud" or "One
21 Shot." I have no idea.

22 Q. Were One Shot and blue mud synonymous,
23 or were those different products?

24 A. It's one and the same, I believe.

25 Q. Okay. Who manufactured that, do you

1 know?

2 A. Gold Bond was one of them. But I have
3 no idea about everybody that -- there were several
4 that manufactured it, but --

5 MS. DEAN: Okay. We have been going for
6 a while. Want to go ahead and take a break?

7 THE VIDEOGRAPHER: This completes Media
8 Unit Number Three. Off the record at 17:02:30.

9 (Break In Proceedings)

10 THE VIDEOGRAPHER: We're beginning Media
11 Unit Number Four. Back on the record at 17:13:45.

12 BY MS. DEAN:

13 Q. Throughout the day we have looked at
14 records regarding Cliffside Steam Station, Dan
15 River, on that Tax Exempt sheet, Lee Steam Station
16 and Marshall where those Duke Power locations are
17 mentioned. The only follow-up I have is if I want
18 to know anything more, outside of what I found in
19 those documents about the nature of that work, have
20 you done any investigation in order to be able to
21 tell me that, based on Covil's records?

22 A. No, I haven't.
23 (Plaintiff's Exhibit No. 35, 10-30-78 Letter from
24 Owens Corning Fiberglas Corporation to Travis Cash,
25 was marked)

1 BY MS. DEAN:

2 Q. And then as it relates to McGuire, we
3 looked at Exhibit 10 that showed that this was a
4 5-million-dollar job; Exhibit 11, that showed the
5 same; Exhibit 22, that showed it was only 5 percent
6 complete.

7 I want to show you, I think, two more
8 documents on that, just to finish up. Starting with
9 Exhibit 35, you can see this is dated October 30th,
10 1978, and it's relating to the McGuire Nuclear
11 Plant. And it's from Travis Cash, at Covil
12 Corporation, about insulating with both Kaylo and
13 Fiberglas.

14 Do you see that?

15 A. Yes, I do.

16 MR. RHENEY: Objection. You said it's
17 from Travis Cash?

18 MS. DEAN: If I did, I misspoke.

19 BY MS. DEAN:

20 Q. It's to Travis Cash, at Covil
21 Corporation --

22 MR. RHENEY: Okay. Thank you.

23 BY MS. DEAN:

24 Q. -- regarding Kaylo and Fiberglas at
25 McGuire Nuclear Plant.

1 MR. RHENEY: Okay.

2 BY MS. DEAN:

3 Q. Is that right?

4 A. That's true.

5 MR. RHENEY: Objection.

6 BY MS. DEAN:

7 Q. And one of the things it talks about, in
8 terms of where they're insulating, is who is going
9 to invoice who. And one of the things they
10 reference is for the GE turbine shipments, Covil
11 will invoice General Electric.

12 Do you see that?

13 A. Yes, I do.

14 Q. I asked this, I think, more broadly, but
15 are you aware, in relation to this project, where
16 any other -- where General Electric provided Covil
17 or Duke or anyone any information about what it knew
18 about the dangers of asbestos, going all the way
19 back to the 1930s?

20 MR. RHENEY: Object to the form.

21 THE WITNESS: I'm not familiar with it.

22 BY MS. DEAN:

23 Q. Huh?

24 A. I'm not familiar with it.

25 Q. Okay. I want to hand you what I have

1 marked -- we have already marked Exhibit 36, so I
2 don't think we need to return back to that.
3 Specifically, as it relates to McGuire Nuclear
4 Station, do you recall Mr. Waters' testimony about
5 his experiences working with Covil at this location?

6 A. I didn't review Waters' testimony.

7 Q. Okay. I will represent to you he is a
8 co-worker, listed in the series of cases who
9 discusses working for Covil at this location and
10 using asbestos products in the mid- to even
11 late-'70s. With that context, have you done any
12 kind of investigation to verify whether his claims
13 are accurate or not?

14 A. No, I haven't.

15 MR. RHENEY: Object to the form.

16 BY MS. DEAN:

17 Q. As it relates to Duke at Oconee Nuclear
18 Station, we already looked at Exhibit 10 and 11 and
19 22, so I think I have just one more that I would
20 like to show you, which is Exhibit 19.

21 (Plaintiff's Exhibit No. 19, Memo from Paul Talley
22 to Customer Service, et al., was marked)

23 BY MS. DEAN:

24 Q. This is the location where we saw that
25 there was a multi-million-dollar contract and that

1 it lasted the duration of four years. Do you recall
2 that?

3 A. I do.

4 Q. Here, we can see that they are at least
5 reporting that the work was going to be closed out
6 in order to kind of get a bookend in the other
7 direction on January 9th, 1976.

8 Do you see that?

9 A. I do.

10 Q. Okay. That's all I wanted to ask you
11 about that one.

12 MS. DEAN: And I don't think I gave you
13 a copy. I'm sorry.

14 MR. RHENEY: Okay.

15 BY MS. DEAN:

16 Q. Going back to some of the other
17 locations identified for Ms. Smith's case, there was
18 a reference to Westinghouse Turbine Plant. Did you
19 review the records at all to figure out whether and
20 what work was done by Covil for Westinghouse? And I
21 don't mean on a Westinghouse turbine, but actually
22 at an actual Westinghouse facility.

23 A. No, I didn't follow up on that.

24 Q. We already talked about Celanese.

25 Same question for Cannon Mills in North

1 Carolina.

2 A. No.

3 Q. Same question for Cone Mills in Concord,
4 North Carolina.

5 A. No.

6 Q. And when you say "No," that's not
7 something that you followed up on or did --

8 A. I didn't follow up on it, no.

9 Q. There is also a reference to Milliken in
10 South Carolina. Are you familiar with that company?

11 A. I know it exists. I'm not familiar with
12 what they do or our work there or anything.

13 Q. Are you aware of a long-standing
14 relationship between Covil and Milliken?

15 A. No, I'm not.

16 Q. If you don't mind finding Exhibit 21. I
17 just -- I'm hoping to refresh your memory where --
18 as you look. But we looked at this earlier today
19 where it discussed Covil having insulation
20 requirements with Milliken for the past 20 years,
21 providing their insulation services. And we even
22 talked about how it was dated in 1980, so 20 years
23 would be from 1960 to 1980. Once you have a chance
24 to look at that again, can you just confirm that
25 that's accurate, based on the first page of

1 Exhibit 21?

2 MR. RHENEY: Object to the form.

3 THE WITNESS: That's what it says.

4 BY MS. DEAN:

5 Q. So the good news is some of those
6 locations are covered in Mr. Sizemore's list, but
7 there is also quite a few that are not. And so the
8 next topic I would like to discuss with you is
9 starting off with your notes of what you were able
10 to learn about Covil's interaction with any of the
11 Sizemore locations.

12 A. I don't think I have a whole lot on
13 Sizemore. I know he was not a Covil employee, but
14 he worked at 56 different places throughout his
15 career.

16 Q. At least.

17 A. At least. That we know of. So let's
18 see if I've got any notes here.

19 Q. And if you want to hand me the
20 documents, I can start kind of organizing them back
21 in order, in the event that we need to reference
22 them again, while you find your notes.

23 A. I just want to make sure I don't get
24 mine mixed up with yours.

25 Q. Thanks.

1 A. That should be all of them.

2 All I remember jotting down about
3 Mr. Sizemore is he worked for Daniel on the Bowater
4 and DuPont jobs.

5 Q. We have already talked about having a
6 long-standing relationship with DuPont, and so my
7 only real follow-up question is whether we are
8 talking about DuPont Camden Plant, Brevard Plant.

9 A. I don't have his paperwork.

10 Q. Sorry. Let's make sure I'm not missing
11 any particular locations. Give me one second.
12 Yeah, I think it's just those two locations.
13 Whether we're talking about their Camden Plant or
14 Brevard Plant, did you do any investigation of
15 what's available in the Covil's file, either by that
16 plant name or by job number to determine the nature
17 of any specific work done by Covil with this, you
18 know, customer that was known to be a big customer
19 of theirs?

20 A. No, we did not.

21 Q. And then I think I may have interrupted
22 you, but I'm not sure, in going through the list on
23 Sizemore, what you were able to --

24 A. Well, I just said that's all I had in my
25 notes was what I mentioned. He worked for Daniel on

1 the Bowater and DuPont jobs.

2 Q. In order to figure out whether any of
3 the specific work he did in Daniel -- for Daniel
4 involved Covil as either a subcontractor for Daniel
5 or insulation products supplied by Covil, did you do
6 any kind of investigation of the records to be able
7 to see whether that connection you know exists
8 generally, exists specifically for his specific
9 location?

10 A. No, I didn't.

11 Q. Okay. There were a couple of Duke
12 locations that we haven't already discussed, in
13 relation to Ms. Smith's case, that I just want to
14 ask you about as a group. There is Duke Energy Buck
15 Steam Station in Rowan County, Duke Energy in
16 Riverbend Steam Station in Mt. Holly, North
17 Carolina. For either of those locations, did you do
18 any investigation based on the actual station name
19 or job number in order to determine what, if any,
20 involvement Covil had at those locations?

21 A. No, we didn't.

22 Q. For Duke Energy at Cliffside Steam
23 Station, we looked at a document that indicated, in
24 Exhibit 10, that there were \$650,000 of insulation
25 and lagging work where the main contractor was

1 Daniel, and it was done in 1972. Do you generally
2 recall looking at that?

3 A. Yes, I remember looking at it.

4 Q. If I want to know anything more specific
5 other than Daniel was the primary -- other than what
6 is reflected in Exhibit 10, is that anything that
7 you have investigated, based on what Covil has
8 available at the time?

9 A. I haven't seen anything on it.

10 Q. Okay. General Electric Power System and
11 Gas Turbine Plant in Greenville, South Carolina, is
12 another on the list. And I know we have talked
13 generally about General Electric turbines, but this
14 is an actual plant for them. Have you investigated
15 what work, if any, Covil had done, either based on
16 that name or job number at that location?

17 A. No, I haven't.

18 Q. And Exhibit 13, that list of Tax Exempt
19 Jobs, lists General Electric and says jobs but
20 doesn't -- it just says "All," as opposed to
21 providing specific numbers. Can you give me any
22 more information, outside of the date of this being
23 1974, of what "All" -- what "All" jobs for General
24 Electric would entail?

25 A. I would have no idea.

1 Q. And in terms of not having any idea, you
2 haven't researched to see whether the company has
3 any better idea of what that notation in Exhibit 13
4 means?

5 A. No.

6 Q. Okay. Wright Manufacturing was a
7 location referenced. Is that something that you
8 have researched in Covil's records?

9 A. Repeat the name.

10 Q. Wright's Manufacturing.

11 A. I'm not familiar with it.

12 Q. Bolan Machine & Manufacturing?

13 A. I'm not familiar with it.

14 Q. Halter Marine?

15 A. I'm not familiar with it.

16 Q. Brunswick Nuclear Generation (sic)
17 Station?

18 A. No.

19 Q. Saucer Marine Services?

20 A. No.

21 Q. We have talked about some Celanese
22 places, but I don't think we have talked about Cape
23 Industry Chemical Plant in Wilmington, North
24 Carolina. Is that something that you have reviewed
25 in order to see what Celanese has available on it?

1 A. No.

2 Q. And when you say, "No" or "not
3 familiar," can I take that to mean that's not
4 something that you have gone, either based on job
5 number or the title of the plant --

6 A. No, I haven't researched it. And when I
7 say I'm not familiar, I've never heard of it. I'm
8 not familiar with the company at all.

9 Q. Okay. And the reason I'm following up
10 is that I might -- you could mean I'm not familiar
11 with it, even after doing your research, but that's
12 not really aiming -- you're not familiar with it and
13 they haven't reviewed the records to figure out
14 whether there is anything in there?

15 A. Right.

16 Q. Fair? Okay. Then I won't keep going
17 back to that. I'm sorry. There is a Port
18 Everglades Power Plant?

19 MR. RHENEY: Object to the form.

20 BY MS. DEAN:

21 Q. Is that something -- is that something
22 researched --

23 A. It's not anything I know anything about.
24 If it was, it was our industrial associate's job in
25 Jacksonville, but I still know nothing about it.

1 Q. Okay. And haven't researched?

2 A. No.

3 Q. Viking distillers in Albany, Georgia?

4 A. I'm not familiar with it.

5 Q. And that's a location -- that's one of
6 the locations for your branches in Albany?

7 A. Right.

8 Q. Okay. Y-12 National Security Complex?

9 A. Never heard of them.

10 Q. James River paper mill?

11 A. I'm not familiar with it.

12 Q. There are several Exxon facilities
13 listed here. Regardless of the particular location,
14 either physically or the plant, have you done any
15 research to evaluate whether Covil had involvement?

16 MR. RHENEY: At where?

17 MS. DEAN: At any of these Exxon
18 locations.

19 MR. RHENEY: Exxon. Okay. Thank you.
20 Sorry. I didn't hear that part.

21 THE WITNESS: No, I haven't.

22 BY MS. DEAN:

23 Q. International Paper and Riegelwood Paper
24 Mill in Southport, North Carolina? Any research?

25 A. No.

1 Q. Stone Container paper mill?

2 A. No.

3 Q. Champion Paper is a company that we saw
4 both in Exhibit 10, that there was a \$225,000
5 contract where Daniel was the key contractor in
6 1965, and listed in Exhibit 16 as one of the larger
7 companies that Covil had worked with. Do you recall
8 that?

9 A. I do recall that company.

10 Q. In terms of doing any further
11 investigation outside of what's in Exhibit 10 or 16,
12 is that something you have done?

13 A. No.

14 Q. Inland Orange Paper Mill, have you done
15 any research on that?

16 A. No.

17 Q. General Chemical Plant?

18 A. No.

19 Q. Cargill Corn Milling Plant?

20 A. I'm not familiar with that.

21 Q. PG&E, Pacific Gas & Electric?

22 A. No.

23 Q. BP Amoco?

24 A. No.

25 Q. General Chemical Plant?

1 A. No.

2 Q. South Carolina Electric & Gas in
3 Walterboro, South Carolina, was one that we saw
4 listed on Exhibit 13 and talked about later. And
5 it's listed in Exhibit 16, in relation to their
6 Columbia location. If I want to know anything more
7 than what's listed there about what was done, when
8 it was done, have you investigated that?

9 A. No, I have not.

10 Q. Wheelabrator waste-to-energy plant in
11 Pompano Beach, Florida.

12 A. I'm not familiar with it.

13 Q. Are you familiar with South Carolina
14 Electric & Gas in Charleston, South Carolina?

15 A. I have heard of it, yes.

16 Q. Is that something that you know,
17 independent of the records, as being a customer of
18 Covil?

19 A. I'm not sure.

20 (Plaintiff's Exhibit No. 17, 7-28-82 Letter from
21 Travis Cash to George Self and Attachments, was
22 marked)

23 BY MS. DEAN:

24 Q. Okay. I hand you what we have marked as
25 Exhibit 17. And you can see this is dated July 28,

1 1982. And it's an insulation quotation for Southern
2 California (sic) Electric & Gas.

3 MR. RHENEY: South Carolina.

4 THE WITNESS: South Carolina.

5 MS. DEAN: Did I say North?

6 MR. RHENEY: Southern California.

7 MS. DEAN: Oh, God bless. Let's try all
8 over again. And, please, no one designate this.

9 BY MS. DEAN:

10 Q. What I have just handed you says
11 July 28th, 1982. And it is an insulation quotation
12 relating to your client South Carolina Electric &
13 Gas.

14 Do you see that?

15 A. Yes, I do.

16 Q. And it's referencing that it's in
17 Charleston, South Carolina?

18 A. Yes.

19 Q. If you go to the next page, you can see
20 that this has a Contractor's Qualification
21 Statement. And we have seen similar statements that
22 we have looked together at today.

23 A. Yes.

24 Q. Do you recall that?

25 On the next page it talks about how they

1 have 235 field construction workers and then
2 references the amount of work done at McGuire
3 Nuclear Station for Duke.

4 Do you see that?

5 A. Yes.

6 Q. And we have kind of talked about the
7 McGuire station in several contexts, but here it's
8 referencing, in '78, '79, '80 and '81, millions and
9 millions of dollars each of those years in contract
10 volume. Correct?

11 A. Yes.

12 MR. RHENEY: Object to the form.

13 BY MS. DEAN:

14 Q. Varies from 7 to 12 million, and totals,
15 in those four years, over \$40 million.

16 MR. RHENEY: Object to the form.

17 THE WITNESS: I see that.

18 BY MS. DEAN:

19 Q. And I think I said "over 40 million."
20 It's actually at 40 million. Fair?

21 A. Right.

22 Q. We looked at this document earlier, in
23 terms of the contractor liability rating of .76.

24 What I would like to look at, that we
25 haven't looked at before, first, is on Bates 8813 on

1 Customer References. And you see there that one of
2 the references that Covil gives when doing bids
3 includes South Carolina Gas & Electric, Duke Power
4 Company, and Daniel. Correct?

5 A. Yes.

6 Q. And then on the last page, I think we
7 have already gone through, in other examples of the
8 resume, each of those locations. Correct?

9 A. Yes.

10 Q. You know what? The only thing I don't
11 is if you look at the Carolina Power & Light, there
12 is an entry there for \$156,000 to do insulation and
13 lagging work.

14 A. Yes.

15 Q. Do you see where I'm at?

16 A. I do.

17 Q. Okay. That's all I wanted to ask you
18 about that.

19 MR. RHENEY: What's that, 17?

20 THE WITNESS: 17.

21 BY MS. DEAN:

22 Q. The next locations, I'm going to put
23 them as a group. And if that's not something that's
24 objected to, I think we might close this out.

25 A. Okay.

1 Q. For Fort Howard paper mill; Palm Beach
2 Resource Recovery Corp; Chambers Medical Center;
3 Mill Creek Generation (sic) Station; Moss Landing
4 Power Plant; Big Brown Steam plant; and then Florida
5 Power & Light plants in Fort Lauderdale, Sanford,
6 Cocoa Beach, or Titusville, did you do any research
7 of Covil's records to determine what, if any,
8 involvement they had there?

9 A. No.

10 (Plaintiff's Exhibit No. 18, 11-1971 through 1-1975
11 Subcontractors/Vendors - Hoechst Spartanburg Job
12 Site, was marked)

13 BY MS. DEAN:

14 Q. I want to hand you what I have marked as
15 Exhibit 18. This is the second document I now have
16 that I obtained from Daniel. It's Bates-labeled
17 Smith 156. And I only have one copy of this. But
18 it references work done at Hoechst Spartanburg
19 between November '71 through January 1975. And if
20 you look at this, you can see that they are at least
21 referencing that one of their subcontractors on this
22 project is Covil Insulation. And for ease of
23 reference, I'm going to just highlight that. Can
24 you confirm that that's what is being reported?

25 MR. RAINSFORD: What is the exhibit

1 number on that, please?

2 THE WITNESS: 18.

3 MR. RAINSFORD: 18? Okay.

4 THE WITNESS: Yes, I can confirm that
5 Covil was on there.

6 BY MS. DEAN:

7 Q. In terms of this project between '71 and
8 '75 -- sorry -- '74 --

9 A. '75.

10 Q. '75. Thank you. Have you done any
11 research on the documents that are available to
12 Covil to determine anything about the extent or
13 nature of that, what products they were putting in,
14 for instance, in '71, or taking out?

15 A. No, none at all.

16 Q. Okay. Any reason --

17 MR. RHENEY: Object to the form.

18 BY MS. DEAN:

19 Q. -- to dispute Daniel's records about
20 Covil's involvement in this project?

21 A. Pardon?

22 MR. RHENEY: Object to the form.

23 BY MS. DEAN:

24 Q. Any reason to dispute Daniel's records
25 about Covil's involvement in this project?

1 MR. RHENEY: Object to the form.

2 THE WITNESS: No. I'm just not familiar
3 with it. It's one of those job sites that I'm not
4 familiar with.

5 BY MS. DEAN:

6 Q. And given your background, I guess I
7 should just ask more broadly, for Covil, as a
8 company, whether, as you sit here today, you have
9 any basis to dispute Daniel's records about Covil's
10 involvement at that location?

11 MR. RHENEY: Object to the form.

12 THE WITNESS: No.

13 BY MS. DEAN:

14 Q. I think that's all I wanted to ask you
15 about that.

16 The next document I want to ask you
17 about, and I apologize a little for jumping around,
18 but I call them "orphan documents," that for one
19 reason or another didn't get referenced. And I want
20 to make sure I didn't miss anything.

21 I'm going to hand you what we will mark
22 as Exhibit 25. And it says "The Employee Handbook"
23 and indicates it's "For the Employees of Covil
24 Corporation, Volume II;" and dated 1977.
25 (Plaintiff's Exhibit No. 25, The Employee Handbook,

1 was marked)

2 BY MS. DEAN:

3 Q. Do you see that on the front?

4 A. I do.

5 Q. Do you know where Volume I is at?

6 A. No. I have no idea. I'm surprised this
7 one turned up.

8 Q. We had looked at, earlier today, a list
9 that was attached to Palmer Covil's deposition of
10 people, as of 1977, that had filed lawsuits. Do you
11 recall that? It was a two-page typed list.

12 A. Yes.

13 Q. This is the exact time frame. It's in
14 1977, dated on the front, Exhibit 25. Right?

15 A. Got it.

16 Q. And it says it's an Employee Handbook,
17 and it has an entire section on Safety, section X.
18 Right?

19 A. I don't see anything on safety.

20 MR. RHENEY: 78 and 93.

21 THE WITNESS: 93?

22 MR. RHENEY: Uh-huh.

23 WITNESS CONTINUES:

24 A. Okay. Yes, I see the Safety part.

25 Q. Take a moment to look at that and just

1 confirm that it literally doesn't, indirectly or
2 directly, mention anything about asbestos and the
3 health hazards associated with asbestos.

4 MR. RHENEY: Object to the form.

5 THE WITNESS: No, it says nothing about
6 asbestos.

7 BY MS. DEAN:

8 Q. I don't want to recount everything we
9 know from the past president's deposition; but
10 broadly, there was noise from unions, he was
11 involved with trainer associations, he concretely
12 knew about asbestosis. And this is all in the '60s.
13 Right?

14 MR. RHENEY: Object to the form.

15 THE WITNESS: According to his
16 deposition, yes.

17 BY MS. DEAN:

18 Q. By the '70s, and well before '77, OSHA
19 had came out. And we even looked at that together
20 as Exhibit 7. Do you recall that?

21 A. Yes, I do.

22 Q. By '77, we have a list that literally
23 expands more than one page of people in the most
24 personal way, "I worked for you and I think I'm
25 hurt," that filed claims. And they are listed out.

1 Do you recall that?

2 MR. RHENEY: Object to the form.

3 THE WITNESS: Yes, I recall that.

4 BY MS. DEAN:

5 Q. And still by that time frame where there
6 is not just federal regulations and noise and
7 conferences about it, but there is a personal
8 question of Covil specifically, The Employee
9 Handbook, in the section about Safety, doesn't
10 mention anything about the health hazards of
11 asbestos or what you need to do to avoid them.

12 MR. RHENEY: Object to the form,
13 argumentative.

14 BY MS. DEAN:

15 Q. Fair?

16 MR. RHENEY: Same objection.

17 THE WITNESS: What was the question?

18 BY MS. DEAN:

19 Q. Even by 1977, when they know about the
20 health hazards of asbestos, there is federal
21 regulations on it and they have their own personal
22 complaints about it, there is not anything about the
23 hazards of asbestos or what the people who work with
24 or around it need to do to protect themselves from
25 it. True?

1 MR. RHENEY: Object to the form.

2 THE WITNESS: It doesn't -- I have no
3 idea who made this up or printed it or published it.

4 BY MS. DEAN:

5 Q. We do know, from the documents Covil
6 gave me here, that it is for the employees of Covil.
7 Right?

8 A. Right.

9 Q. And my representation that there is no
10 information about asbestos health hazards is
11 accurate, based on your review?

12 A. No, there is not.

13 Q. Huh?

14 A. What did you say? No, there is not?

15 Q. There is not anything in there saying --

16 A. No, there is not.

17 Q. -- "hey, asbestos causes diseases"?

18 A. Right.

19 Q. And there is nothing in there that says
20 here are the steps that you need to take not to get
21 sick or not to get your family sick?

22 A. None of that is in there.

23 Q. If you turn to the fourth page of the --
24 it shows page number four, and it's Bates
25 number 2882, there is a section that just says:

1 "We're Growing With The Industry."

2 Do you see that?

3 A. I do.

4 Q. It says: "Our success is due to a
5 number of key factors. We keep abreast of
6 technological advances."

7 Do you see that?

8 A. I do.

9 Q. It also says, in the next paragraph,
10 that "Covil directs open-shop insulation operations
11 across the entire Southeast."

12 Do you see that?

13 A. I do.

14 Q. And then it talks about the various
15 branch offices that you told us about in Wilson,
16 North Carolina; Albany, Georgia; Columbia, South
17 Carolina, and Greensboro. Correct?

18 A. Right.

19 Q. Is the information reported here
20 accurate, based on your knowledge?

21 A. It is.

22 Q. Okay. That's all I wanted to ask you
23 about that.

24 A. However, this was printed in 1977 when
25 we had no material with asbestos in it.

1 MS. DEAN: I will object to the
2 nonresponsive portions, and in the event that a
3 court doesn't agree.

4 BY MS. DEAN:

5 Q. Have you made any reference, either from
6 your suppliers where you were the distributor, or
7 seen any indication, in your own records, that there
8 was an active decision not to use asbestos in any
9 form by '77? In other words, outside of your
10 father's beliefs that were referenced in those
11 depositions --

12 A. No.

13 Q. -- do you have any basis for that?

14 A. No.

15 (Plaintiff's Exhibit No. 33, Childers Products
16 Company Invoice, was marked)

17 BY MS. DEAN:

18 Q. I'm going to just mark as Exhibit 33 the
19 Childers document where I found out that they were a
20 manufacturer of metal jacketings, coatings,
21 adhesives and sealants, but not ask any questions
22 about it.

23 A. Okay.

24 Q. You had already explained that to me, so
25 I'm just marking this, really, for reference.

1 I want to hand you what we are going to
2 mark --

3 MR. RHENEY: I'm sorry. What is that
4 exhibit number?

5 THE WITNESS: Exhibit No. --

6 MS. DEAN: The last was 33.

7 THE WITNESS: 33.

8 MR. RHENEY: Thank you.

9 (Plaintiff's Exhibit No. 42, Index - Safety Section,
10 was marked)

11 BY MS. DEAN:

12 Q. And then I'm going to hand you what we
13 have marked as 42. This is a different safety
14 document that has an Index that says "Safety
15 Section." And this is where I saw that Safety
16 Checklist. I wanted to give you a moment to review
17 this and confirm whether it be the Safety Checklist
18 procedures for safety in the Construction Division,
19 or anywhere else in here, that there is nothing that
20 describes for the employees or workers for Covil
21 anything about the hazards of asbestos or what an
22 individual needs to do in order to protect
23 themselves from those hazards.

24 MR. RHENEY: Object to the form.

25 MS. DEAN: Is that based on compound?

1 Do I need to break them up, or is it okay otherwise?

2 MR. RHENEY: Well, compound was the main
3 thing I was thinking of there.

4 MS. DEAN: Then, I will -- yeah, I will
5 break it up.

6 BY MS. DEAN:

7 Q. In this document marked as Exhibit 42
8 that says "Safety Section," is there anything that
9 references the hazards of asbestos that you could
10 find?

11 A. I see nothing in there that states about
12 asbestos, but it does get into x-rays and dust and
13 fibers.

14 Q. In terms of explaining to anyone why
15 x-rays are needed or the particular health hazards
16 associated with that dust, is there anything that is
17 explained by Covil in the safety document?

18 A. No.

19 Q. In terms of what efforts needed to be
20 taken to protect yourself or your family from dust
21 that contains asbestos, is there any reference to
22 what needs to be done?

23 A. It talks about respirators being
24 supplied.

25 Q. Okay. Anything else?

1 A. Not that I can see.

2 Q. And you're aware that a respirator, if
3 worn properly, can protect the person wearing it if
4 it's the right respirator and it fits right, but not
5 the person who might be interacting with the clothes
6 of the wearer?

7 MR. RHENEY: Object to the form,
8 speculation.

9 THE WITNESS: Well, that's -- that's
10 only for the wearer to know, you know, whether it
11 fits right or whether it's the proper respirator for
12 the job, whatever.

13 BY MS. DEAN:

14 Q. My question was probably terrible, so
15 I'm going to try again. A respirator, if it fits
16 right and if it has the right cartridges in it, can
17 protect the person using it from breathing in toxic
18 dust. Right? That's the point of a respirator.

19 A. That is.

20 Q. But even if you have the perfect
21 respirator on and are wearing it right, that doesn't
22 protect you from getting the dust on your clothes
23 and bringing it home to your family. Right?

24 MR. RHENEY: Object to the form.

25 BY MS. DEAN:

1 Q. You would need to be doing something
2 else.

3 MR. RHENEY: I'm sorry. I didn't mean
4 to interrupt. Object to the form.

5 THE WITNESS: It could be any type of
6 dust, not necessarily asbestos fibers.

7 BY MS. DEAN:

8 Q. And my point is, the respirator keeps
9 you from breathing in the dust. It doesn't keep you
10 from getting it all over your clothes.

11 MR. RHENEY: Object to --

12 THE WITNESS: If it's the proper
13 respirator.

14 MR. RHENEY: Object to the form.

15 BY MS. DEAN:

16 Q. Right. If it's the proper respirator,
17 it keeps you from breathing it in. But my point is
18 it doesn't have anything to do with keeping the dust
19 from being all over --

20 A. The respirator does not, no.

21 Q. Did we, in going through all those
22 locations, mark all of your notes? I'm not sure if
23 I missed anything.

24 A. I believe we covered all of it.

25 Q. I know we covered it, but did we -- are

1 they all -- do we have an exhibit sticker on all of
2 them?

3 A. On my -- not on my notes.

4 Q. Can we mark the remainder as Exhibit 49,
5 either the notes or if you prefer to keep your
6 originals, a copy of them?

7 A. We've got 47 on that one.

8 Q. 47 we, I think, attached for the Howe
9 stuff. 48 --

10 A. Yes. This is Childers. We don't have
11 an exhibit on it.

12 Q. Okay. So what I'm going to do with what
13 you just handed me is -- the Childers, is attach
14 this to 48, because they both have to do with the
15 Smith case, and staple them together, if that's
16 okay.

17 A. Okay.

18 Q. And then was there anything -- whether
19 they be handwritten or typed, anything else that I
20 didn't get?

21 A. No. This is just -- my notes scribbled
22 on here of various different things.

23 Q. Okay. Can we copy or use the originals,
24 depending on your preference, the rest of those, as
25 Exhibit 49?

1 A. There's nothing we hadn't already talked
2 about.

3 Q. Huh?

4 A. There's nothing we hadn't already talked
5 about.

6 Q. I know. But it's just to have it as
7 part of the record, as opposed to going through it
8 and asking questions.

9 A. We can. Do you want to copy it or just
10 exhibit it?

11 Q. Some people want to keep their
12 originals; some people are okay getting a copy back.
13 That's really y'all's call.

14 MR. RHENEY: We will make -- you keep
15 the original, and I'll keep them as a copy.

16 THE WITNESS: Yeah, I will keep these.

17 MS. DEAN: Okay. We will mark those as
18 Exhibit 49.

19 (Plaintiff's Exhibit No. 49, Handwritten Notes of
20 James Covil, was marked)

21 BY MS. DEAN:

22 Q. Are you aware, on behalf of Covil, what
23 experts Covil is relying on in this litigation?

24 A. What experts?

25 Q. Uh-huh.

1 A. I'm not.

2 Q. Did Covil do anything to vet or learn
3 about the experts, to see if they think they are
4 legit or not, anything like that?

5 MR. RHENEY: Object to the form,
6 relevance.

7 THE WITNESS: Everybody that was
8 involved in it was discussed with me at some point
9 in time.

10 BY MS. DEAN:

11 Q. Are you familiar with the name of any of
12 those experts?

13 A. No, not right offhand.

14 Q. One person in particular, I just want to
15 see if the name rings a bell, is Victor Rockly.

16 A. I don't know.

17 MS. DEAN: Then I think this is probably
18 a decent stopping point.

19 I would like to state, for the record,
20 that Exhibit 26, 27, 34 and 37 have not been marked
21 and will not be marked. There should be, however,
22 exhibits between 1 and 49. I would like to have a
23 chance just to, especially since we are changing
24 court reporters, verify that, for sure. Although
25 Exhibit 49 we are going to get a copy of.

1 Exhibits 4, 6, 8 and 12 have not been
2 marked, but I suspect will be marked tomorrow. So I
3 think unless anyone else disagrees, that this might
4 be a good chance to go off the record, verify that,
5 and then adjourn for the day?

6 MR. RHENEY: Sure.

7 THE VIDEOGRAPHER: This then completes
8 the 30(b)(6) deposition of the Covil Corporation and
9 James Covil, Volume 1. Going off the record at 1800
10 hours and 2 minutes.

11 (The deposition was adjourned at 6:02 p.m.)
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SIGNATURE OF DEPONENT

DEPONENT: JAMES P. COVIL
DEPOSITION DATE: JANUARY 7, 2018
REPORTER: ELAINE L. GROVE-DEFREITAS
CASE CAPTION: TIMOTHY W. HOWE
vs.
AIR & LIQUID SYSTEMS, ET AL
CASE CAPTION: ROXANNE FALLS
vs.
CBS CORPORATION, ET AL
CASE CAPTION: JAMES C. SIZEMORE
vs.
BOWATER PAPER MILL, ET AL

(Please return both Signature Of Deponent pages)

I, the undersigned, JAMES P. COVIL, do hereby
certify that I have read the foregoing deposition
and find it to be a true and accurate transcription
of my testimony, with the following corrections, if
any:

PAGE	LINE	CHANGE	REASON

1
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SIGNATURE OF DEPONENT

DEPOSITION DATE: JANUARY 7, 2018
REPORTER: ELAINE L. GROVE-DEFREITAS
CASE CAPTION: TIMOTHY W. HOWE
vs.
AIR & LIQUID SYSTEMS, ET AL

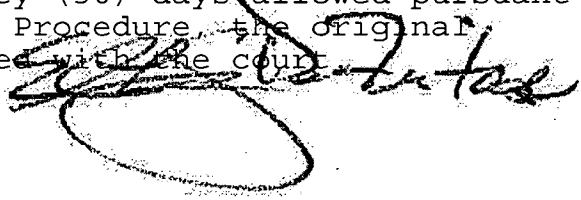
CASE CAPTION: ROXANNE FALLS
vs.
CBS CORPORATION, ET AL

CASE CAPTION: JAMES C. SIZEMORE
vs.
BOWATER PAPER MILL, ET AL

PAGE	LINE	CHANGE	REASON

<u>JAMES P. COVIL</u>	<u>DATE</u>

I, Elaine L. Grove-DeFreitas, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition, both verbally and in writing. If the deponent fails to execute and return foregoing Signature Of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



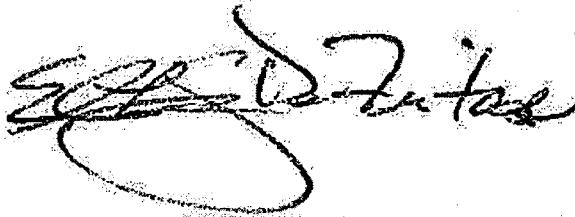
ELAINE L. GROVE-DEFREITAS
Certified Shorthand Reporter
My Commission Expires 6/25/2020

CERTIFICATE OF REPORTER

I, Elaine L. Grove-DeFreitas,
Certified Shorthand Reporter and Notary Public for
the State of South Carolina at large, do hereby
certify that the foregoing transcript is a true,
accurate and complete record.

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 this 13th day of February
2018 at Spartanburg County, South Carolina.



ELAINE L. GROVE-DEFREITAS
Certified Shorthand Reporter
My Commission Expires 6/25/2020

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

3 TIMOTHY W. HOWE,
4 as Personal Representative
5 of the Estate of WAYNE E.
6 HOWE, deceased, and
7 JEANETTE HOWE, surviving
8 spouse,

C/A NO.: 2015-CP-46-03456

Plaintiffs,

In Re:

vs.

Asbestos Personal Injury
Litigation Coordinated Docket

9 AIR & LIQUID SYSTEMS
10 CORPORATION, et al.,
11 Defendants.

11 VIDEOTAPED
12 DEPOSITION OF: 30(B)(6) OF COVIL CORPORATION
(BY JAMES P. COVIL) - Volume II

13 DATE: February 8, 2018

14 Time: 9:06 a.m.

15 LOCATION: Gallivan White Boyd
16 55 Beattie Place
17 Suite 1200
Greenville, South Carolina

18 TAKEN BY: Counsel for the Plaintiffs

19 REPORTED BY: Mary K. Stepp, Court Reporter
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23
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25

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

3 ROXANNE FALLS, Individually
4 and as Personal Representative
5 of the Estate of CHARLOTTE GAYE
SMITH, deceased,

6 Plaintiffs,

7 vs. C/A NO.: 2015-CP-46-02155

8 CBS CORPORATION,
9 et al.,

In Re:
Asbestos Personal Injury
Litigation Coordinated Docket

10 Defendants.

11 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
12 COUNTY OF HAMPTON FOR THE FOURTEENTH JUDICIAL
CIRCUIT

13 JAMES COLEMAN SIZEMORE, as
14 Personal Representative
of the Estate of JAMES CALVIN
SIZEMORE, decedent,

15 Plaintiffs,

C/A NO.: 2016-CP-25-0440

16 vs.

17 BOWATER PAPER MILL,
18 et al.,

In Re:
Asbestos Personal Injury
Litigation Coordinated Docket

19 Defendants.

Mesothelioma Death
(Jury Trial Demanded)

1 APPEARANCES OF COUNSEL:

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24 Power, Inc.:

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I N D E X

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(JAMES P. COVIL)

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1 MS. DEAN: This is Jessica Dean. We made a
2 series of stipulations and agreement yesterday that apply
3 today, so they don't need to be repeated. In addition,
4 we agree there's no need to reswearing the witness. The
5 only clarification I wanted to make is that there
6 are -- on the stipulation about the documents being
7 authentic business records, I didn't have the particular
8 Bates ranges. There are three. One is just a Covil 1
9 through 24022. The second is Covil-Palmer-Depo. And
10 then the final one, which I understand is duplicative,
11 but nonetheless is Covil_INS_1 through 927. I think
12 other than that, unless somebody has something, we can go
13 on the video record.

14 MR. RHENEY: Okay.

15 THE VIDEOGRAPHER: Stand by.

16 We are now on the record at 9:07. This is the
17 continuing 30(b)(6) videotaped deposition of Covil
18 Corporation that has presented James Covil as its
19 witness.

20 JAMES COVIL,
21 having been previously sworn, testifies as follows:

22 EXAMINATION CONTINUED

23 BY MS. DEAN:

24 Q. A few follow-up questions today and then I want
25 to talk to you largely about insurance before we --

1 before we finish today.

2 A. Okay.

3 Q. The first is I learned from some depositions
4 others in my office were taking yesterday, some things I
5 want to follow up on. One is that the Fluor Daniel
6 corporate representative indicated that Covil, based on
7 his experience -- and he was not just the representative,
8 but had firsthand experience in the field -- and his
9 understanding was that Covil had a relationship with
10 Duke, so that they were the exclusive insulating
11 contractor for Duke facilities. Do you have any basis to
12 dispute that?

13 MR. RHENEY: Object to the form.

14 THE WITNESS: We -- we did a lot of work for
15 Duke. I do know that. I don't know if we was the sole
16 contractor or sole material supplier. But we -- as we
17 talked yesterday, we did a lot of work for them.

18 BY MS. DEAN:

19 Q. Are you aware of any other insulation contractor
20 that was used in any Duke facility where Covil worked,
21 other than Covil for insulating contracting needs?

22 A. I'm not aware of that.

23 Q. Another deposition that occurred yesterday was
24 of Westinghouse. And I don't know if you recall us
25 looking at a few documents indicating that there was

1 insulating work done by Covil on the Westinghouse
2 turbines?

3 A. Yes.

4 Q. Those -- according to what I'm told, those
5 turbines had been abated and there were findings of
6 asbestos insulation. First of all, did you know that?

7 A. No, I did not.

8 MR. RHENEY: Object to the form.

9 BY MS. DEAN:

10 Q. According to the documents we've looked at,
11 Covil was the insulator. Are you aware of anyone else
12 that would have been involved in insulating a job, where
13 Covil was the assigned insulator? In other words, if you
14 were given the bid to insulate a turbine or a boiler or a
15 piece of equipment, would it be typical that Covil would
16 be the only insulating contractor on that job?

17 MR. RHENEY: Object to the form. Speculation.

18 THE WITNESS: For that particular job, most
19 likely. But not being there, not understanding, you
20 know, the particular job, I would have really -- not know
21 who all was on the job site at any particular time.

22 BY MS. DEAN:

23 Q. If there was an atypical situation, where for
24 some reason they hired more than one insulating
25 contractor for a discrete job, would you expect that to

1 be referenced in the documents, if the documents still
2 existed?

3 MR. RHENEY: Objection to the form.
4 Speculation.

5 THE WITNESS: Our documents would be solely for
6 us. I can't speak for the other people that --

7 BY MS. DEAN:

8 Q. Okay.

9 A. -- would have been there.

10 Q. Uhm, do you know during what time frame Covil
11 went from being a union to nonunion shop?

12 A. Just from my dad's deposition was in the '60s, I
13 believe.

14 Q. Okay. I saw that, but I didn't -- I couldn't
15 figure out or pinpoint, other than him saying in '65,
16 '66, when there was a noise, they were already
17 non -- with the unions. And even then I couldn't tell if
18 they were union at that time and that's why he heard the
19 noise or if that's something he was hearing from people.

20 A. I believe he stated he heard --

21 MR. RHENEY: Object to form.

22 THE WITNESS: -- some news from the union and
23 other open shop companies.

24 BY MS. DEAN:

25 Q. I saw that as well, but were -- does that

1 indicate to you that they were with the union at the time
2 that he was hearing that?

3 MR. RHENEY: Object to the form. Speculation.

4 THE WITNESS: I'm not sure.

5 BY MS. DEAN:

6 Q. Do you know if the decision to be nonunion had
7 anything to do with the rising concerns that the
8 president of the company indicated he understood about
9 asbestos in the mid -- mid to late --

10 A. I don't think that had anything to do with it.

11 MR. RHENEY: Object to form.

12 BY MS. DEAN:

13 Q. Do you know what the reason was to go from union
14 to nonunion?

15 A. No, I don't. Not back then. I've heard him
16 discuss before that he could acquire more work being open
17 shop, rather than union.

18 Q. Okay.

19 A. Back in the early '70s or so.

20 Q. Okay. You had indicated yesterday, if I heard
21 you right, that Covilite was an asbestos-free product.
22 Do you remember that?

23 A. That's my understanding, yes.

24 Q. Have you seen the sworn Answers to
25 Interrogatories -- which are just legal names for

1 questions that have written answers to it -- by Covil in
2 this case?

3 A. Yeah, I believe I have.

4 Q. They were just produced to us this week and I
5 had an opportunity to look at them last night. Are you
6 aware that multiple times they admit that Covil --
7 Covilite was an asbestos-containing product?

8 A. No, I have not heard that.

9 Q. So, to your knowledge, me telling you that is
10 the first time you've heard something --

11 A. Yes.

12 Q. -- of that nature?

13 Okay. For the different branches, I want to
14 just make sure I understand where they were located. And
15 I tried to go through the documents, and so I just want
16 to confirm the address and if they ever changed, figure
17 that out.

18 For the one in Albany, I see 2108 Jones Avenue.

19 A. I have no idea what the addresses are.

20 Q. Do you know if it was anything other than one
21 location? I mean, did you ever hear about any others?

22 A. Not to my knowledge.

23 Q. For the one in Wilson, I have 929 Wilco
24 Boulevard.

25 A. I believe that's correct.

1 Q. Greensboro is 1911 Sullivan Street?

2 A. Yes.

3 Q. And then the one in Augusta, I had 134 Sandbar
4 Ferry Road.

5 A. I'm not sure about that one.

6 Q. Are you aware of it ever being in a different
7 location?

8 A. Not to my knowledge.

9 Q. Okay. I was able to review the employment
10 records that were provided me yesterday. The one thing
11 that came into mind is I -- I didn't see any Sizemore
12 records. And I thought Mr. Sizemore, at least for a
13 brief period of time, worked with Covil. Do you know if
14 those records exist?

15 A. His deposition exists.

16 Q. But in terms of any records the company itself
17 has?

18 A. Oh, Covil had?

19 Q. Yes.

20 A. I don't think so.

21 Q. Uhm --

22 A. Not that I've seen.

23 Q. Have -- have you done a search specifically for
24 Calvin Sizemore's records?

25 A. In the personnel records?

1 Q. Yes.

2 A. No, I haven't.

3 Q. Okay. Did you do any additional research from
4 when we finished yesterday to now?

5 A. No, I did not.

6 Q. Okay. And, specifically, and I don't mean to
7 limit it to this, but there was a discussion about Fiber
8 Industry and America Enka in Palmer Covil's deposition
9 that there was a file there. Any effort made to find
10 that file?

11 A. No, I didn't.

12 Q. Okay. These are documents I only have one copy
13 of, so I will hand them first to your lawyer. I'm going
14 to mark this as Exhibit 59 (sic). It just lists, as of
15 July 13th, 1977, all of the branches for Covil. And here
16 I see the ones that we've talked about, Greensboro,
17 Wilson, Augusta. But I also see a few others. And I
18 just wanted to ask you, if you can tell me the nature of
19 those branches.

20 MR. RHENEY: (Peruses document.)

21 (Document tendered to the witness.)

22 (Witness peruses document.)

23 THE WITNESS: The metal fab department was like
24 a division. It did -- it cut metal for --

25 MR. RHENEY: I'm sorry, I apologize. I don't

1 mean to interrupt. You've got that marked 49?

2 MS. DEAN: Yes.

3 MR. RHENEY: And I think that his notes that we
4 copied and added after the conclusion of the deposition
5 last night are 49, if I'm not mistaken. That's how I had
6 written them down anyway.

7 MS. DEAN: Yeah, you're right. Let's remark
8 that as 51. I apologize for that. And so the earlier
9 reference to the document with the different branches to
10 49 was in error, and we're now marking that as Exhibit
11 51.

12 MR. RHENEY: Thanks.

13 (Plaintiff's Exhibit No. 51 was marked for
14 identification.)

15 MS. DEAN: And that's got a Bates, for anyone
16 else looking for it, for the Covil-Palmer-Covil-Depo 635.
17 BY MS. DEAN:

18 Q. I'm sorry, you were talking about --

19 A. The metal fab department was actually across the
20 street from our offices.

21 Q. Okay.

22 A. And it was -- we did metal work, just sheet
23 metal work for anybody, any other companies, as well as
24 for some of our jobs. I don't -- it says, "December
25 1968." I'm pretty sure it was open till Covil closed,

1 also --

2 Q. Okay.

3 A. -- in '91. We talked about Albany. Sure-Fit
4 was a fitting business that we bought, I'm thinking out
5 of North Carolina. And it was an existing company and it
6 was bought out. And I'm pretty sure it closed, but I'm
7 not 100 percent sure. It closed several years -- a few
8 years right after it was opened.

9 Columbia, just by my dad's deposition, we bought
10 out an insulation company down there. And I don't know
11 any more about it --

12 Q. Okay.

13 A. -- what kind of business it acquired or
14 anything.

15 Q. The actual, physical address?

16 A. Yes, I never went there.

17 Q. Okay.

18 A. Jacksonville, I'm not familiar with it.
19 Charleston was the same, we bought out a small insulation
20 company. And it opened, of course, in September and
21 closed in April.

22 The Industrial Associates were -- we bought out
23 a company called Keene Corporation. They had those two
24 branches. And we used those for contract work and they
25 both were union shops. That's basically all I know about

1 them.

2 Q. Can you give me any indication of where the
3 Charleston plant was located?

4 A. I do not know.

5 Q. Was there ever any kind of survey done of what
6 materials were in either the Columbia or Charleston
7 locations of insulating contractors that you bought out?

8 A. No, I'm not aware of that.

9 Q. Okay. That's all I wanted to ask you on that
10 one.

11 (Plaintiff's Exhibit No. 50 was marked for
12 identification.)

13 BY MS. DEAN:

14 Q. Okay. That's all I wanted to ask you on that
15 one.

16 The next exhibit I've marked is Exhibit 50. And
17 this more cleanly evidences what we were talking about
18 yesterday. It shows that on July 14th, 1977, so right
19 before Palmer Covil's deposition, that files were pulled
20 and on hand for Fiber Industry in Salisbury and America
21 Enka in Asheville. Just -- and I kind of put a check
22 mark to make it easy to identify the two locations I'm
23 most concerned with.

24 A. Okay.

25 Q. Do you see that?

1 A. Yes.

2 Q. So, you know, especially when I have an
3 indication that there are files for work done in earlier
4 years that existed post-fire, were in the hands of
5 lawyers in 1977, it makes me very hopeful. I mean, we
6 can add in there were also files gathered in the context
7 of litigation, so with the knowledge of litigation that
8 those exist. Have you done anything to find them?

9 A. No, I haven't.

10 Q. Okay. The next question I have for you is just
11 in relation to a document I saw in Mr. Waters' file.

12 MS. DEAN: And it's probably worth noting, I was
13 provided employment records for different coworkers --
14 Mr. Neelands, Mr. Waters, Mr. Childers -- and I'm hoping
15 to obtain whatever you have from -- for Mr. Sizemore
16 before we finish. Those weren't Bates labeled.

17 Can we have an agreement so that those are
18 authentic business records as well and figure out some
19 way by written stipulation to make it clear what those
20 documents consist of?

21 MR. RHENEY: Sure.

22 MS. DEAN: Okay. Because without having the
23 whole file, I'm just representing to you that this came
24 out of Dwaine Waters' file, because it only references
25 his first name.

1 THE WITNESS: Okay.

2 (Plaintiff's Exhibit No. 52 was marked for
3 identification.)

4 BY MS. DEAN:

5 Q. But it says from July 29th, 1980. I'm going to
6 mark this as Exhibit 52. The apprenticeship director
7 from Covil Corporation, William Rush, is writing this to
8 Dwaine Waters. First of all, do you know Mr. Rush?

9 A. He was our controller --

10 Q. Okay.

11 A. -- for a while.

12 Q. Is he a person you knew personally?

13 A. Just by working with him, yes.

14 Q. A good worker for Covil?

15 A. Yes.

16 Q. How long did he work there, approximately?

17 A. I'm not real sure.

18 Q. Is it years?

19 A. Yes. Oh, yes.

20 Q. He says to Dwaine, "It's difficult to find
21 employees with the dedication you have shown in
22 completing this program." And wrote this to him.

23 First of all, do you know -- and you may not --
24 but from personal experience, if he was a person that
25 easily gave praise of that nature?

1 MR. RHENEY: I'm sorry, is he a person what?

2 MS. DEAN: Who easily gave that type of praise.

3 MR. RHENEY: Objection to the form. Relevance.

4 THE WITNESS: Not to my knowledge.

5 BY MS. DEAN:

6 Q. Any basis to dispute his -- his assessment of
7 Mr. Waters?

8 MR. RHENEY: Objection to form.

9 THE WITNESS: I wouldn't know. I wasn't around
10 him that much and so I don't know how often he did or if
11 he did it at all.

12 BY MS. DEAN:

13 Q. And I just want to ask this for each of -- each
14 of the coworkers. Based on what you've been able to
15 determine either from the files or from your discussion
16 with other people that have worked there or your own
17 experience, have you seen any indication that, first of
18 all, with Mr. Waters that he was anything but a
19 responsible, good employee while working for Covil?

20 MR. RHENEY: Object to the form. Speculation.

21 THE WITNESS: I did not know him, so I can't
22 speak for that.

23 BY MS. DEAN:

24 Q. Same question for Lewis Childers, based on what
25 you have been able to ascertain. Did you see any

1 indication that he was anything other than a responsible,
2 good employee when he worked at Covil?

3 A. I'm not familiar with him and cannot answer.

4 MR. RHENEY: Objection to form. Speculation.

5 MS. DEAN: Okay.

6 THE REPORTER: Can you repeat your answer?

7 THE WITNESS: Yeah.

8 THE REPORTER: You were both talking at the same
9 time.

10 MR. RHENEY: Which one of us, me?

11 THE REPORTER: I need his answer.

12 MR. RHENEY: Give me one second, Jim.

13 THE WITNESS: I said, there again, I did not
14 know him, so I can't speak for him.

15 BY MS. DEAN:

16 Q. Similar question for Mr. Sizemore. Based on the
17 records that you have and what you were able to learn,
18 were you able to determine anything other than he was a
19 responsible, good employee for Covil?

20 MR. RHENEY: Object to the form. Relevance,
21 speculation.

22 THE WITNESS: Same answer.

23 BY MS. DEAN:

24 Q. And then -- which is that you don't have any
25 information one way or the other?

1 A. No.

2 Q. Mr. Neelands -- sorry, I just had to think about
3 who I had left off. Mr. Neelands, based on the
4 employment file and what you were able to learn of him,
5 any indication that he was anything but a good,
6 responsible employee for Covil?

7 MR. RHENEY: Object to the form. Relevance,
8 speculation.

9 THE WITNESS: No.

10 BY MS. DEAN:

11 Q. Okay. Were you ever a member of the board of
12 directors for Covil?

13 A. Yes.

14 Q. When did that start?

15 A. In the later years. Late '80s, maybe. I'm not
16 real sure.

17 Q. So only a matter of a few years?

18 A. Yes.

19 Q. Okay. What position did you have?

20 A. I was executive vice president one time and then
21 chairman of the board one time.

22 Q. So somewhere in '87, '88, '89 time frame to --

23 A. Yes.

24 Q. -- 1991?

25 A. Yes.

1 Q. Okay. Prior to that time, did you have any
2 management position in the company outside of the energy
3 department?

4 A. No.

5 Q. Okay. In terms of any decisions that were being
6 made about how to handle, train, deal with asbestos, was
7 that ever your job in any way?

8 A. None whatsoever.

9 Q. Okay. Since the company got involved with
10 litigation, my understanding is that started with a
11 workmen's comp claim in 1972 and has been ongoing. Have
12 you had any involvement from meeting the family members,
13 going to funerals, collecting documents, any involvement
14 before you got involved in this case in those litigation
15 efforts?

16 A. Only involvement I had was -- and, no, I did not
17 attend any of the funerals. Only involvement was a lot
18 of the suits. The paperwork was delivered to me and I
19 would bring them to the attorneys here and deliver them
20 to them.

21 Q. Other than literally, physically delivering
22 them, were you editing them, reviewing them --

23 A. No.

24 Q. -- providing documents?

25 Okay. So it was limited to --

1 A. Some of them I would look at to see if I
2 recognized a name, but a lot of them I never even opened
3 or messed with. I just bring them down here and pass them
4 off.

5 (Plaintiff's Exhibit No. 12 was marked for
6 identification.)

7 BY MS. DEAN:

8 Q. I'm going to hand you what we've marked as
9 Exhibit 12. It's a document I received from Covil that's
10 entitled, "Insulation Outlook, November 1985." And it's
11 referencing the NICA Convention in 1986. And you're
12 aware, for no other reason from Palmer Covil's
13 deposition, that that's the National Insulation
14 Contractors Association?

15 A. Yes.

16 Q. And that's an association that Covil long had
17 membership in?

18 A. Yes, my dad did.

19 Q. And this is being sent to Travis Cash, Jr., who
20 had a leadership position in Covil for many --

21 A. Yes.

22 Q. -- many years?

23 On the last page of this there's an editorial
24 from the president of this organization, Thomas E.
25 Decker. Do you see that?

1 A. Yes, I do.

2 Q. And it's entitled, "We are facing up to a
3 thousand percent increase in insurance costs for coming
4 years." Do you see where I'm at?

5 A. Yes.

6 Q. That's a huge increase, right?

7 A. It is.

8 MR. RHENEY: Object to the form.

9 BY MS. DEAN:

10 Q. It's an increase that would suggest to any
11 business owner, for no other reason other than business,
12 that you needed to understand what was going on there,
13 right?

14 MR. RHENEY: Object to the form. Speculation.

15 THE WITNESS: I --

16 MR. RHENEY: Argumentative.

17 THE WITNESS: Yeah, try to understand.

18 BY MS. DEAN:

19 Q. One of the things he writes in here is, "We are
20 facing up to a thousand percent increase in insurance
21 costs for the coming years with no apparent
22 justification."

23 Do you see that in the fourth paragraph?

24 A. I do.

25 Q. Did anybody at Covil say, that's crazy? And I

1 don't mean to use those exact words, but we've personally
2 had dozens of our men get sick, there is a justification
3 here?

4 MR. RHENEY: Object to the form. Argumentative.

5 THE WITNESS: I can't -- I can't speak for that
6 because I never discussed this with anybody.

7 BY MS. DEAN:

8 Q. Do you know if this reflects the opinion of
9 folks at Covil, these insurance rates don't seem to be
10 justified with anything or whether people were taking
11 seriously the repeated claims from families that loved
12 ones were getting sick?

13 MR. RHENEY: Object to the form.
14 Argumentative --

15 THE WITNESS: I can't answer that.

16 MR. RHENEY: -- and relevance.

17 BY MS. DEAN:

18 Q. What you do know is by 1977 -- this is almost a
19 decade later, eight years later -- but by 1977, Covil had
20 concrete claims, two pages worth of them, from
21 individuals about asbestos-related concerns that was
22 attached to Palmer Covil's deposition. Do you recall
23 that?

24 A. I --

25 MR. RHENEY: Object to the form.

1 THE WITNESS: I recall reading that, but I knew
2 nothing about them.

3 MS. DEAN: Okay. I think that's all I wanted to
4 ask on that one.

5 MR. RHENEY: Oh, that can go right over there.

6 MS. DEAN: Thank you. I'm trying to keep the
7 exhibits that we've marked today in a separate pile. And
8 I only mention that because if you start seeing me fail
9 in that effort, I'd appreciate help.

10 (Plaintiff's Exhibit No. 8 was marked for
11 identification.)

12 BY MS. DEAN:

13 Q. I want to mark as Exhibit 8 a document that was
14 marked as Defendant's Exhibit No. 1 in Palmer Covil's
15 deposition. And that's Bates labeled Palmer-Covil-Depo
16 513. Do you see what I've handed you?

17 A. Yes, I do.

18 Q. Are you familiar with this document?

19 A. Yes.

20 Q. I kind of used this document as a starting point
21 to understand insurance coverage that Covil understood
22 that it had as of 1977 to cover personal injury claims
23 that they were dealing with at the time that your father
24 was deposed. Do you understand that that's what this
25 was --

1 A. Yes.

2 Q. -- originated for?

3 Were you involved at all in creating this?

4 A. No.

5 Q. You do know, however, that the president of the
6 company not only was involved in creating this, but was
7 questioned about this under oath in the summer of 1977?

8 A. Yes.

9 Q. I think the best -- the best way to approach
10 this or at least how I'd like to approach this is go
11 through three major insurance companies that are
12 referenced here, and then try to piece together what
13 isn't referenced here, if we could.

14 First of all, you see that one company that is
15 listed twice is USF&G?

16 A. Yes.

17 Q. Are you familiar with that company?

18 A. None other than just seeing their information on
19 paperwork.

20 Q. Is Covil aware of any instance where USF&G
21 representative inspected or conducted any safety survey
22 on any job where Covil was present?

23 A. I'm not aware of any of that.

24 Q. Did you see any records that evidence that they
25 were doing safety surveys or inspections at jobs for

1 Covil?

2 A. No.

3 Q. And that's -- I mean to ask that for every
4 single month where they indicate that they have insurance
5 here. And the two times where insurance is indicated is
6 in the time periods that Covil existed prior to March
7 1964 and then a second time from March '76 through the
8 present, which was the summer of '77, correct?

9 A. Yes.

10 Q. And in terms of just the importance of Exhibit
11 8, this document was created 40 years ago. So it's much
12 closer in time to the actual events that we're trying to
13 understand than where we are today. Do you agree with
14 that?

15 A. Right.

16 Q. And in terms of the first line here, prior to
17 March 1964, just to round this out, my understanding is
18 that's not forever before, because the company didn't
19 start until 1947?

20 A. Right.

21 Q. So the time frame we're talking there is about a
22 16, 17-year time frame from 1947 to February of 1964,
23 fair?

24 A. Fair.

25 Q. Are you aware, on behalf of the company, of

1 anyone filing a claim with USF&G for an asbestos-related
2 injury that falls in this time frame?

3 A. I'm not familiar with it.

4 Q. Is that something that you've investigated?

5 A. No, I haven't.

6 Q. I could not find an actual policy for this time
7 frame. Could you?

8 A. No.

9 Q. Did you look?

10 A. I did not.

11 MR. RHENEY: Can you clarify the time frame.
12 You're talking '47 to '64?

13 MS. DEAN: Yes.

14 MR. RHENEY: Okay.

15 MS. DEAN: For these questions I'm limiting it
16 to --

17 MR. RHENEY: Okay. Thank you.

18 THE WITNESS: No, I did not.

19 BY MS. DEAN:

20 Q. Was any effort made that you're aware of, in
21 responding to topic 21, which is the topic about
22 insurance and the notices in Exhibit 1, 2, and 3, to
23 contact USF&G and see what they understood about the
24 existence of the policy, the limits of the policy, claims
25 made under this policy in the past or any other details

1 for --

2 A. Personally, I did not.

3 Q. Okay. Are you aware of anyone that did so to
4 prepare you, as the person that was represent -- you
5 know, designated as the corporate representative to
6 talk --

7 A. I believe my attorneys did.

8 Q. What were -- what was able to be ascertained
9 about the existence of this policy?

10 MR. RHENEY: I'm sorry, what was your question?

11 BY MS. DEAN:

12 Q. What was able to be ascertained about the
13 existence of this policy?

14 A. I can't speak for that.

15 Q. So if I want to learn anything about that
16 policy, its limits would be my first -- my first
17 question, whether there's any dispute about its existence
18 is pretty important.

19 A. I can give you some aggregate limits. Some of
20 them were 100, 300. Some were 250, 500. That's
21 basically all I know from going through and referencing
22 material.

23 Q. If I want to know specific for this time frame,
24 though. I mean, I saw some that were 250 to 500, 100 to
25 300 or 1 million. And I'm going to try to identify for

1 whose policy and what years the best we can. But if I
2 wanted to learn anything about a huge time frame, in the
3 '40s, '50s, and the bulk of -- or at least the first few
4 years of the '60s, do you have anything you can tell me
5 about that?

6 A. No.

7 Q. Do you know if any effort to locate Goldsmith
8 Agency or any of its predecessors to determine whether
9 they have records? And I'm -- I'm -- just to put
10 everyone on the same page, this indicates that it's a
11 USF&G policy through a Goldsmith Agency. So have you
12 figured out anything from the broker, Goldsmith Agency?

13 A. I have not.

14 Q. If I want to know if there were any exclusions
15 to the policy, if there -- if it's been exhausted in any
16 way or if the policy is aggregated, meaning if I have a
17 guy, for instance, who is exposed from '53 to '55, can I
18 add up policy limits for each of those years, do you know
19 the answers to those questions?

20 A. No.

21 Q. Have you been able to investigate what's
22 reasonably available to Covil, so that you can tell me
23 whether those answers exist or not?

24 A. Can't answer that.

25 Q. Okay. The second time USF&G is discussed -- and

1 so for my next series of questions, I'm going to be
2 asking about this time frame -- is March '76 through the
3 present. Do you agree with me that what you see in all
4 of the policies listed in Exhibit 8 is a March
5 start-and-end date?

6 A. Yes.

7 Q. So what I take this as is, at the very least, we
8 understand that given this was a June deposition, this is
9 a March '76 through March '78 policy. Because we were
10 past March of '77.

11 A. Right.

12 Q. It's also been indicated to me that this was a
13 three-year policy. Is that something you were able to
14 independently verify?

15 A. Yes.

16 Q. Do you know where you were able to verify that?

17 A. There again, just through paperwork that I've
18 looked at going through my records.

19 Q. But if I want to know a specific -- and this
20 is -- I'm putting my hand on a binder that was given to
21 me yesterday that has the approximately a thousand pages
22 of insurance documents. If I wanted to know which --
23 which one in this stack evidenced that, do you know?

24 A. No, I don't.

25 Q. It's also been indicated to me that it may have

1 been canceled, but that there is no paperwork to reflect
2 that. Is that something you understand?

3 A. I heard that, yes.

4 Q. Do you know why that any -- why that's even
5 believed to be true that there was a contract for three
6 years that was canceled?

7 A. No, I have no idea.

8 Q. Do you know who first thought that was true?

9 A. No, I don't.

10 Q. Finally, it was indicated to me that we do
11 understand the limits of that policy. Do you know where
12 the paperwork is regarding those limits?

13 A. I don't have them. I would assume the attorneys
14 would have them --

15 Q. Okay.

16 A. -- if there is any available.

17 Q. One thing I noticed in the insurance documents
18 is there be, on occasion, a spike in coverage. So, by
19 way of example, coverage would be 100, 300. And you
20 would see that increase up to 1 million, 3 million for a
21 particular job. Did you -- and I don't mean those
22 specifics, but did you see incidents of that in the
23 records?

24 A. Yes.

25 Q. Was any effort made by Covil to search their

1 records, specifically for the 90-plus jobs at issue in
2 these three cases, to see whether there were increases
3 for those particular job sites in insurance, and who was
4 providing that insurance increase?

5 A. No, I didn't. Not personally.

6 Q. Do you know if that -- do you know if that's
7 anything that even if not done by you, you could tell me
8 about today so that I could learn about it?

9 A. I have no knowledge of it.

10 Q. Do you know if the insureds that we know had a
11 relationship with Covil, either because they are listed
12 on Exhibit 8 or because they are in these documents
13 (indicating) -- so this is not meant to be a limit of
14 exhaustive list, but Maryland Casualty, USF&G, Sentry --
15 whether they were given the list of here are the 90
16 locations. There's 56 for Mr. Sizemore, 22 for Charlotte
17 Smith's case, and 5 for Mr. Howe. Can you determine
18 whether you have specific policies to those locations?
19 Do you know if that was even done?

20 A. I have no idea.

21 Q. Covil certainly doesn't dispute that when they
22 have paid someone to insure them and they are now the
23 insured, that the information relating to that insurance
24 relationship is available to them, if they have
25 questions?

1 MR. RHENEY: Object to the --

2 BY MS. DEAN:

3 Q. I mean, that's why you have an insurance agent,
4 right?

5 MR. RHENEY: Object to the form, calls for
6 speculation. Irrelevant.

7 THE WITNESS: I can't answer that, not being
8 familiar with it.

9 BY MS. DEAN:

10 Q. Have you, as the company representative who has
11 the topic included of what is your insurance
12 relationship, become familiar with that so you can answer
13 those questions for me?

14 A. Can you repeat that?

15 Q. Sure. When you got the notice that says, hey,
16 we want to know about insurance -- I'm certainly
17 paraphrasing -- but did you at that point in time make
18 yourself familiar with these issues, so that you could
19 talk about it on behalf of Covil?

20 A. I did review some paperwork along with thousands
21 of other pages of paperwork, but I don't remember
22 specifics.

23 Q. Outside of reviewing paperwork, one of the
24 things to me that screams out as potentially being not
25 only available and reasonably available to the company,

1 but owed to the company is the people you paid for the
2 policy to answer questions about it. Even that basic
3 concept -- which I'm relating from my own personal car
4 insurance -- but even that basic concept, did you
5 investigate that to see if that was true and if that was
6 a huge avenue of information available to Covil, so that
7 you could talk to me about it today?

8 MR. RHENEY: Object to the form of the question.

9 THE WITNESS: I didn't investigate it.

10 MR. RHENEY: Object to the form of the question.

11 Relevance, argumentative, and speculation. Go ahead.

12 BY MS. DEAN:

13 Q. If I want to know for this period of time, that
14 March '76 through that three-year contract period, if
15 there were any exclusions, if any part of that policy had
16 been exhausted, if policy years can be aggregate --
17 aggregated, any specific questions, are you able to
18 answer them for me?

19 A. Probably not.

20 Q. Okay. Let me -- let me then at least nail it
21 down for those three specifics. I got a guy who is
22 exposed from March '76 to March '79. He is exposed every
23 day of that year. I get a 38 million dollar verdict. Is
24 this a policy where I can get maximum value for the
25 stated policy for each one of those years and add them

1 up?

2 MR. RHENEY: Object to the form.

3 THE WITNESS: Can't answer that. I'm not
4 familiar with it.

5 BY MS. DEAN:

6 Q. Okay. A second thing that's in the written
7 policy for many of them is that there's a per occurrence
8 or person limit, and then there's an aggregate limit.
9 And so what I'd really like to know is if you have a, you
10 know, an amount that you're never going to pay more than
11 that, no matter how many claims there are, how much of
12 that has already been exhausted. Do you know that?

13 A. I do not know that.

14 Q. Okay. The next insurance company I would like
15 to talk to you about is Sentry. And that is a company
16 that is specifically referenced in Exhibit 8 two times,
17 correct?

18 A. Yes.

19 Q. Okay. The first time is a reference from March
20 of 1964 through March of 1970. So during a six-year
21 period, correct?

22 A. Correct.

23 Q. And then the second is March of '67 through
24 March of 1970 or a three-year period under the umbrella
25 coverage section, correct?

1 A. True.

2 Q. And that indicates a 1 million dollar umbrella
3 policy?

4 A. True.

5 Q. For the six-year period first, have you been
6 able to ascertain the limits of that policy?

7 A. No, I haven't.

8 Q. There are at least a few things that I've been
9 able to ascertain here. And I think probably the best
10 thing to do, even though I don't like hurting trees, but
11 in this event I want to attach this binder as Exhibit 6.

12 (Plaintiff's Exhibit No. 6 was marked for
13 identification.)

14 BY MS. DEAN:

15 Q. And my understanding is that these documents
16 that were kind of segregated out with the insurance Bates
17 number, so that it says, "COVIL_INS," was an effort by
18 Covil to pull everything they could find on insurance.
19 Is that your understanding as well?

20 A. My understanding.

21 Q. Okay. Did you personally make the effort to
22 make sure in all of the documents that Covil has, we
23 found everything about insurance and put it in there or
24 was that done by someone else at your request?

25 A. I didn't personally do it.

1 Q. Do you know how it was done?

2 A. No.

3 Q. In other words, do you know if there
4 was -- everything was searchable, so you could OCR it and
5 look for the word insurance or if someone physically
6 looked at every page?

7 A. Don't know.

8 Q. Okay. Do you know if anyone has ever had to tap
9 into a dime of the umbrella policy?

10 A. Not familiar.

11 Q. Are you familiar with the concept of an umbrella
12 policy?

13 A. Yes.

14 Q. I mean, my understanding on the most basic terms
15 is it's an excess policy. It's only when you've
16 exhausted the other policy that exists. Is that --

17 A. Yes.

18 Q. -- yours as well?

19 And so whether the entire million dollar policy
20 exists for every one of those years or whether -- because
21 the initial policy hadn't been exhausted is not something
22 you know?

23 A. I would not know that.

24 Q. I'm going to kind of ask these questions as a
25 group, based on your answers from the last. And if we

1 need to break it up, let me know.

2 Have you either con- -- well, first, have you
3 ever contacted anybody at Sentry Insurance or anyone that
4 worked with or may have documents that Sam Crain had,
5 who's the agent listed on Exhibit 8, to determine what
6 they know and could make available to Covil about these
7 insurance policies?

8 A. I have not.

9 Q. If I want to know how much of the policies have
10 been exhausted, if there's an aggregate prohibition, if
11 there's any other exclusions, if they ever escalated the
12 amount to a higher amount for a particular project, are
13 you able to give me any answers about those types of
14 specifics?

15 A. No.

16 Q. I think we discussed this in relation to a
17 specific policy or project, where we were looking at
18 yesterday. But I want to broaden that, in that you will
19 see in the records that when bidding for a job, sometimes
20 the plant owner or facility owner has an explicit
21 requirement in their contract that you have certain
22 policy limits.

23 A. Yes.

24 Q. I'm assuming that that was the impetus for
25 particular projects, where the limit requirement was

1 higher than the limits already existed that you would go
2 to your insurance carrier to -- carrier to increase it?

3 A. Possibly.

4 Q. Is there any other reason that you can think of,
5 outside of that reason, why that would be happening --

6 A. No.

7 Q. -- to me?

8 Okay. Are you aware of any jobs that Covil
9 could have obtained, where it was an explicit term of the
10 bid that you have insurance where you could accept that
11 job without a certificate of insurance?

12 A. Not familiar with that.

13 Q. Put differently, my understanding is a matter of
14 practice is that's the type of thing in these kind of
15 relationships that -- that the plant would want evidence
16 of before awarding a bid.

17 A. Yes.

18 Q. The certificate of insurance.

19 A. Normally, yes.

20 Q. Okay. The third insurance company I want to ask
21 you about that's listed on Exhibit 8 is Maryland
22 Casualty. You see that that is referenced twice?

23 A. Yes.

24 Q. The first time it indicates insurance policy
25 from March of 1970 to March of 1976 for six years?

1 A. Yes.

2 Q. And then the second is March of '70 till March
3 of '73, a three-year period for 1 million umbrella
4 policy?

5 A. Yes.

6 Q. Again, if I want to ask you from the documents
7 that have been obtained the specifics about either of
8 those policies in terms of the limits on the policy, do
9 you have that information?

10 A. No.

11 Q. One of the things that was reported to me is
12 that there -- there's indications in the records that
13 there were at least periods where it spiked up from 100
14 to 300 to 3 million. Do you independently know that?

15 A. Not personally, no.

16 Q. Do you know whether Covil knows or it has even
17 investigated, through its own records or through Maryland
18 Casualty or through its agent, whether they can get more
19 information about the policy limits, the policy terms or
20 whether there were times that the locations identified in
21 Exhibits 1, 2, and 3, where those ever increased, where I
22 can get more detail on that?

23 A. No. We never followed up on that.

24 Q. There's, in Exhibit 8, a reference to two
25 different insurance companies. One is listed from

1 March '73 through March '76 -- actually, I'm sorry, let
2 me -- let me go back on Maryland Casualty and ask a
3 mirroring question on that I forgot to ask.

4 If I want to know whether you can aggregate for
5 each year, whether there has been a loss so I can
6 understand how much of the policy has been exhausted,
7 whether they have ever had to tap into the umbrella
8 coverage, whether there are exclusions, learn any of
9 those specifics to understand what limitations, if any,
10 exist on this policy, are you able to tell me any of
11 those details?

12 A. No.

13 Q. Okay. One of the insurance in Exhibit 8
14 referenced once is a Kemper Insurance with a \$5 million
15 umbrella policy for March of '73 through March of '76.
16 Do you see that?

17 A. Yes.

18 Q. Do you know if anyone has ever made a claim
19 under that policy?

20 A. I have no idea.

21 Q. Is that something that's been investigated?

22 A. Not that I know of.

23 Q. Do you know if the policy exists?

24 A. No.

25 Q. If I want to know any details at all about that,

1 even as simple as who was the agent to how much of it has
2 been exhausted, can you tell me anything?

3 A. I would have no idea.

4 Q. Do you know if Kemper Insurance still exists or
5 is viable or has been bought out by anybody?

6 A. No, they do not exist.

7 Q. How do you know that?

8 A. Just through consultation with my attorneys.

9 Q. Do you know if it's an ongoing business? Do you
10 know if it's -- that business has been purchased by
11 others? Do you know anything about that, other than what
12 lawyers have told you?

13 A. I have no idea.

14 Q. Outside of that representation that they don't
15 exist anymore, that they are out of business, anything
16 that you've done in order to evaluate for this 5 million
17 dollar policy over the course of '73, '74, '75, and '76,
18 what if anything exists for the people that had exposures
19 in that year under that policy?

20 A. I don't have any information on that.

21 Q. Another policy that's limited right under that
22 is March '76 through the present. And it says "Ranger
23 Insurance, 2 million dollars." Do you see that?

24 A. Yes.

25 Q. Present again was the summer of '77, so that we

1 can expect at least that went to March of '78, fair?

2 A. Yes.

3 Q. What, if anything, do you know about the nature
4 of that policy?

5 A. I don't know anything about it.

6 Q. Do you know where it's located, who the agent
7 was, if anyone has made a claim, how much of it has been
8 exhausted, if Ranger is viable, anything?

9 A. Don't know.

10 Q. What, if anything, was done by Covil in response
11 to a notice that asked about this to figure that out?

12 A. Nothing, personally.

13 Q. Okay. Was there anything done for you, even if
14 it was not done personally, so you'd be ready to answer
15 these questions today?

16 A. I have no information on that.

17 Q. Okay. In looking at records, I have seen or
18 have been told about some other policies, including a
19 Hartford policy in 1980 to '81 and a second one from '81
20 to '82. Are you familiar with that?

21 A. Slightly.

22 Q. What -- what do you know about it?

23 A. I just know it exists -- existed during that
24 time.

25 Q. Outside of what we have in Exhibit 6 about that

1 policy, are you able to give me any additional
2 information about the Hartford policy?

3 A. No.

4 Q. Again, just to round it off, if I want to know
5 about whether you can aggregate the policy over those two
6 years, how much of it has been exhausted, whether the
7 claims referenced in any of these documents were actually
8 settled and paid, anything, have you, on behalf of Covil,
9 done anything to answer those questions by either talking
10 to folks at Hartford, trying to find the underlying
11 agent, anything?

12 A. No, I have not.

13 Q. Okay. Similarly, I understand that there was an
14 insurance policy with a company called Evanston, also in
15 the '80 to '81 and '81 to '82 time frame. Are you
16 familiar with that?

17 A. I know of it, yes.

18 Q. Okay. Outside of the records that are in
19 Exhibit 6, can you tell me anything about that policy?

20 A. No.

21 Q. Did you make any effort, either personally or
22 have someone report back to you, about what Evanston
23 understands about a 1980s policy?

24 A. No.

25 Q. So if I want to know about how much of it has

1 been exhausted, exclusions, amounts, anything outside of
2 what's in Exhibit 6, can you tell me that?

3 A. I cannot.

4 Q. I also saw some later policies, one from '88
5 to '91 with Scottsdale. Are you familiar with that?

6 A. I know of it, yes.

7 Q. Okay. Can you provide me any additional
8 information?

9 A. No.

10 Q. Did you contact Scottsdale to see if they can?

11 A. I did not.

12 Q. Do you know if any claim has ever been paid from
13 them that relates to asbestos --

14 A. I do not.

15 Q. -- diseases?

16 Same question for CIGNA. I saw a policy or had
17 a policy referenced to me from March '91 to -- a very
18 short period of time -- May of '91. CIGNA through
19 Pacific Employer's Insurance. Are you familiar with
20 that?

21 A. I know of it, yes.

22 Q. Did anybody contact the insurer to find out more
23 about the nature of that policy?

24 A. Not to my knowledge.

25 Q. There are time frames in here where I can't find

1 evidence of a general commercial liability policy for
2 Covil. And I want to admit that given how short a time
3 frame we had to examine these records, combined with a
4 lot of other records in this case that aren't related to
5 you, that we -- we made a real effort to find them. But
6 I'm wondering if you're aware of any general commercial
7 liability policies, other than the ones I've outlined,
8 for the company?

9 A. No, ma'am.

10 Q. That means that from March of '82, for instance,
11 until March of '88, we don't see a policy.

12 A. Right.

13 Q. The company stopped doing insulation contracting
14 work after March of '88, right?

15 A. Right.

16 Q. So if they are doing any work of any substance
17 for any person, they are going to want evidence or a
18 certificate of insurance, right?

19 A. True.

20 Q. So the question is not whether you were insured
21 during that time frame. It's just who, right?

22 MR. RHENEY: Object to form.

23 BY MS. DEAN:

24 Q. There had to be an insurance policy given the
25 nature of your business?

1 MR. RHENEY: Object to form.

2 A. Possibly, not familiar with it.

3 Q. Any idea who that was?

4 A. No, I don't.

5 Q. Any investigation to figure that out?

6 A. No.

7 Q. Similarly, there is a time frame from March of
8 '78 to March of '80. You know, a time frame where we
9 know from recommendation lists that millions of dollars
10 of business were being done for Duke. For instance, I
11 think we looked at the \$5 million policy. Any question
12 in your mind that there would need to be a certificate of
13 insurance, when doing a million dollars worth of business
14 with companies like Duke?

15 MR. RHENEY: Object to the form.

16 THE WITNESS: I can't -- I can't speak on that.
17 I have no idea.

18 BY MS. DEAN:

19 Q. So I know the asbestos end of the business is
20 not where you were ever placed, but as a person that was
21 in the energy division that was involved with the company
22 for years and became a director, you have no idea whether
23 companies like Duke would require some kind of evidence
24 of insurance?

25 A. Yes, they would.

1 Q. What do you know about that?

2 A. I just know that you have to send in a
3 certificate of insurance when you bid jobs.

4 Q. Okay. And you were certainly aware that as a
5 company, they were doing work in '78, '79, and '80,
6 right? They were an existing company?

7 A. Right.

8 Q. And, similarly, that was true from '82 to '88?

9 A. Yes.

10 Q. Outside of the general commercial liability
11 policies, there were entire time frames after March of
12 '78 where I couldn't find an indication of an umbrella
13 policy. Do you know if one existed?

14 A. No, I don't.

15 Q. I did find indication of director and officer
16 policies. Do you recall ever looking at those?

17 A. I don't recall it.

18 (Plaintiff's Exhibit No. 53 was marked for
19 identification.)

20 BY MS. DEAN:

21 Q. Give me one second. I'm going to hand you what
22 we're going to mark as Exhibit 53. The Crum & Forster
23 Insurance policy that was provided to me from Covil.
24 First of all, are you familiar with the name Crum &
25 Forster?

1 A. No, I'm not.

2 Q. I'm sorry, what?

3 A. No, I'm not.

4 Q. So if I want to know whether they had additional
5 policies with Covil outside a director and officer
6 liability and company reimbursement liability policy, is
7 that something you've investigated in any way?

8 A. I have not.

9 Q. Do you know for any director and officer
10 liability policy that Covil had at any point in time,
11 whether any claim has ever been submitted relating to
12 asbestos injury?

13 A. No, I do not.

14 Q. Do you know when -- when the company first
15 determined to have director and officer liability?

16 A. No. I know they had key man insurance, life
17 policies, but I'm not familiar with liability.

18 Q. Okay. Do you know what -- what was the trigger
19 to decide to have this type of insurance?

20 A. I do not.

21 Q. Do you know if there have been any claims of
22 fraud against any directors and officer, as it relates to
23 asbestos injuries from any of their workers or clients?

24 A. Not familiar with any.

25 MR. RHENEY: Let me know when you're at a break

1 point.

2 MS. DEAN: Yes. Actually, this is as good as
3 any.

4 MR. RHENEY: Okay. Thanks.

5 THE VIDEOGRAPHER: Going off the record at 9:50,
6 9:50.

7 (Recess was taken from 9:50 a.m. to 10:07 a.m.)

8 THE VIDEOGRAPHER: At 10:07 we're back on the
9 record.

10 BY MS. DEAN:

11 Q. In relation to the Crum & Forster policy that we
12 were discussing, the last page shows that this was signed
13 by Mr. Johnson, President, in 1982, and has an indemnity
14 required of 5 million, and shows the same agent that's
15 referenced repeatedly in Exhibit 8. Anyone reach out to
16 either the agent or the insurance company to find out
17 anything more about Crum & Forster and what type of
18 insurance they provided and when?

19 A. The agent has passed away. He's been dead for
20 several years.

21 Q. That's something that was told to me. How did
22 you find that out?

23 A. He was -- he and my dad were real close friends.
24 And I remember when he retired. And his son took over
25 the business, after he retired from it. And I knew it

1 through his son.

2 Q. Do you know if any records were maintained?

3 A. I do not.

4 Q. Uhm --

5 A. And his son has passed away since then, also.

6 Q. Do you know if that agency still exists?

7 A. No, it does not.

8 Q. Has anybody at Crum & Forster been contacted
9 that you know of?

10 A. Not that I'm familiar with.

11 Q. Do you know in the 1981 time frame who the
12 director and officers were?

13 A. Not right off the top of my head.

14 Q. My understanding that at least a few people that
15 I saw in the documents include Russell Johnson, who's
16 passed away, correct?

17 A. Correct.

18 Q. Travis Cash?

19 A. Yes.

20 Q. Is he alive?

21 A. He is, but he's in his 90s.

22 Q. Okay. And then I know Charles McWhorter is
23 alive, right?

24 A. Yes.

25 Q. Anybody else in the 1980s time frame that you

1 can think of, other than those three and yourself and the
2 like part of it that was an officer or director?

3 A. During that time period? Not that I remember.

4 Q. I recall seeing Janice Perry listed as a
5 secretary. You already told me about her.

6 A. Yes.

7 Q. Any -- anybody else?

8 A. Other than Rick Link, when he was president, but
9 that was later on in the '80s.

10 Q. Okay. Do you know if he's still alive?

11 A. Yes, he is.

12 Q. I saw in the records provided for me a National
13 Union Fire Insurance Company of Pittsburgh liability
14 application for director and officer liability. It's
15 Covil 3598. Do you know if any effort was made to
16 contact this insurance company to determine what, if any,
17 insurance they provided to Covil and when?

18 A. Not to my knowledge.

19 Q. This is dated August 4th of 1982. So it falls
20 right in that time frame where we don't see evidence of
21 any insurance. Or at least I haven't seen it yet in
22 terms of the corporal general -- corporate general
23 liability insurance. And that's why, particularly when
24 you see an application for insurance, even if it's not
25 calling the insurance company directly, was any effort

1 made that you know of for what is available to Covil to
2 determine what, if any, relationship existed with this
3 insurance company?

4 A. No.

5 Q. I saw documents referencing a South Carolina
6 Insurance Company in the actual employment files that
7 were provided to me yesterday. Are you familiar with
8 that company?

9 A. Do you know the name of it?

10 Q. Huh?

11 A. Do you know the name of it?

12 Q. South Carolina Insurance Company.

13 A. Oh, that's the name of it?

14 Q. (Laughter.) Yeah.

15 A. No, I'm not familiar with it.

16 Q. And I have -- let me find what I was looking at.
17 Bear with me for one moment. (Pause in proceeding.)

18 Sorry about that. It's in the reference of,
19 again, the employment records and in workmen's comp
20 insurance. But it shows South Carolina, again, Insurance
21 Company. I just circled that. These aren't Bates
22 labeled, and so I'll just hand that to you for reference.
23 But do you know if anybody has referenced, called or
24 contacted that company to evaluate whether the insurance
25 was limited to workmen's compensation or whether they had

1 additional insurance of any kind?

2 A. No, I don't have any idea.

3 Q. Okay. Do you want to see that? Sorry. I
4 didn't mean to...

5 MR. TATE: (Peruses document.)

6 BY MS. DEAN:

7 Q. Are there any other insurance company names for
8 any type of insurance that you're familiar with that I
9 haven't asked you about yet? In relation to Covil, not
10 personal stuff.

11 A. Not that I can think of.

12 Q. Okay. If I want to know for Howe/Smith's (sic)
13 claim what's the maximum amount of insurance that the
14 variety of insurance companies that are involved during
15 the years of his alleged exposure, what that maximum
16 value is, do you have any idea?

17 A. I have no idea.

18 Q. Same question for Charlotte Smith's family.

19 A. I have no idea.

20 Q. Same question for Mr. Sizemore's?

21 A. I have no idea.

22 Q. Are you aware of any instance in Covil's history
23 of asbestos litigation from 1972 to the present, where a
24 claim wasn't paid due to a lack of insurance?

25 A. I'm not familiar with it.

1 MS. DEAN: Okay. So -- thank you. Subject to
2 questions from others, I have no more questions right
3 now.

4 Although, I think I've pretty clearly identified
5 in the deposition where there are concerns that I don't
6 have everything reasonably available to the company.
7 There's discrete things like the American Enka file
8 that -- that is referenced both in the document and in
9 Palmer's deposition. And then there are things that I
10 couldn't get my hands on without your help, like what the
11 insurance carriers know that are reasonably available to
12 Covil.

13 And so I want to continue to work with counsel.
14 If there's work to be done before, too, that we can
15 continue to do, I'm here and available to do that. If
16 that's not realistic, then we need to come up with a plan
17 of action. But our position is, for the topics that we
18 tried to inquire about where an investigation was
19 admitted not to be done or where information we know this
20 hasn't been produced that that creates a problem of
21 compliance with the notice, and we just need to figure
22 out what -- what we agree on, what we don't, and what the
23 step forward is.

24 And so I don't know how people want to proceed
25 from here. It probably makes sense to see if others in

1 the room or on the phone have questions. But once we're
2 done with all the questions' folks have, I would like
3 guidance from you guys on the next step. Including of
4 whether it makes sense for me to go to the 10th floor and
5 look at documents and then come back up or if not. So...

6 MR. RAINSFORD: I've got a handful of questions.
7 I don't know if anybody else has any.

8 MR. RHENEY: Anybody on the phone got any
9 questions?

10 (No response.)

11 MS. DEAN: Do you want to switch spots?

12 MR. RHENEY: I'll take silence as a no. We'll
13 change around here. One second. I'll be right back.

14 THE VIDEOGRAPHER: Do you want to go off the
15 record or stay on?

16 MS. DEAN: Let's go off.

17 THE VIDEOGRAPHER: Going off the record at
18 10:18:50.

19 MS. DEAN: If we can stay on the written record
20 for a moment. As predicted yesterday, Exhibits 6, 8, and
21 12 have now been added. So the only exhibit that -- in
22 the chronological order that we have of 1 to 53 that I
23 haven't already noted was not marked, that will not be
24 marked, is Exhibit 4. So that there's a clean record of
25 what we have and what we don't have.

1 (Recess was taken at 10:19 a.m. 10:20 a.m.)

2 THE VIDEOGRAPHER: At 10:20:20 we're back on the
3 record.

4 EXAMINATION

5 BY MR. RAINSFORD:

6 Q. Good morning, Mr. Covil. My name is Todd
7 Rainsford. I represent CNA Holdings, which at different
8 times under plants is under the name Fiber Industries,
9 Celanese, and Hoerst Celanese.

10 Yesterday you discussed Covil having done some
11 insulation work and supplying some materials to Fiber
12 Industries and Celanese job sites in the Carolinas. Do
13 you remember discussing that?

14 A. Yes.

15 Q. First, I'm going to have a few general questions
16 about Covil performing insulation work at any of these
17 entities. And for Fiber Industries, Celanese, and
18 Hoerst, I'm just going to use the word Celanese, is that
19 okay with you?

20 A. That's fine.

21 Q. When Covil was performing work at any Celanese
22 facility, even if Celanese was paying for the work to be
23 done, Covil was the insulation specialist and determined
24 how to do the work; is that correct?

25 A. Correct.

1 Q. And Covil would supply all the materials and
2 tools to the Celanese job sites for their insulators to
3 do the work; is that correct?

4 A. Yes.

5 Q. And by their insulators, I'm referring to Covil
6 insulators to do the work?

7 A. Right.

8 Q. And Covil trucks would bring the insulation
9 materials to the Celanese facilities?

10 MR. RHENEY: Object to the form.

11 THE WITNESS: Most time they would. Just
12 depends on the situation.

13 BY MR. RAINSFORD:

14 Q. And the individual Covil workers, the insulators
15 and other Covil employees, they were supervised entirely
16 by Covil, foreman and road supervisors at those jobs
17 sites; is that correct?

18 A. That's true.

19 Q. Would you agree with me, generally, that Covil
20 was an expert in its field as an insulating contractor?

21 MR. RHENEY: Object to the form of the question.

22 THE WITNESS: We did insulation work. I can't
23 say whether we were experts or not, but...

24 BY MR. RAINSFORD:

25 Q. Now I'm going to switch gears and ask you a few

1 questions about safety.

2 A. Okay.

3 Q. Covil was solely responsible for training its
4 insulators and other employees; is that correct?

5 A. That is correct.

6 Q. And so you'd never have a Celanese employee, for
7 example, telling a Covil insulator how to do his job,
8 right?

9 MR. RHENEY: Object to the form.

10 THE WITNESS: I would not know that.

11 BY MR. RAINSFORD:

12 Q. And yesterday we talked a little bit about OSHA.
13 Did Covil train its employees how to handle insulation
14 products in accordance with OSHA safety standards?

15 MS. DEAN: Objection to the form. Speculation.

16 THE WITNESS: Yes.

17 BY MR. RAINSFORD:

18 Q. And even before OSHA became law around 1971,
19 Covil trained and looked after the safety of its
20 employees, correct?

21 A. Yes, they did.

22 MS. DEAN: Same objection.

23 MR. RAINSFORD: That's all I have for you, sir.

24 Thank you very much.

25 THE WITNESS: Thank you.

EXAMINATION

BY MS. DEAN:

Q. Outside of your father's deposition and the records or absence of records about safety, do you have any personal knowledge about what was and was not done by Covil, as it relates to OSHA compliance and/or safety?

A. Personally, I do not.

MS. DEAN: Okay. That's it.

MR. RHENEY: Anybody on the phone got any questions?

(No response.)

MR. RHENEY: All right. I've got a few. I'm not going to take overly long, but I have a few, so I'm going to swapped out and get settled back in here.

THE VIDEOGRAPHER: Going off the record at 10:23:23.

(Recess was taken from 10:23 a.m. to 10:25 a.m.)

THE VIDEOGRAPHER: At 10:25:35 we're back on the record.

EXAMINATION

BY MR. RHENEY:

Q. Jim, this is -- for the record, this is David Rheney. I am one of your counsel in this case, right?

A. Yes.

Q. "Your," being Covil. You're here to testify on

1 behalf of Covil, correct?

2 A. Yes.

3 Q. All right. Let me get a little bit of
4 background information on Covil. You mentioned it a time
5 or two, but I just want to revisit this briefly. Covil
6 has been out of business since 1991; is that correct?

7 A. Correct.

8 MS. DEAN: Objection, leading.

9 BY MR. RHENEY:

10 Q. The senior-level workers that we have talked
11 about -- that's my phrase -- but the folks that we have
12 talked about that were upper management at the company in
13 the '70s and '80s, some are deceased, correct, like Mr.
14 Johnson?

15 A. Yes.

16 Q. Your father, of course?

17 A. Yes.

18 Q. I think you said he died in '84?

19 A. Yes.

20 Q. Mr. McWhorter is here, is alive, but is not --
21 to your knowledge, is down in Myrtle Beach, although he
22 has a house in Easley?

23 A. Yes.

24 Q. And he is into his 90s by now?

25 A. He is 86.

1 Q. Okay. And then I think you said Link is still
2 alive. How old is Link now?

3 A. He would be in his middle 60s.

4 Q. Okay. And then you also mentioned one other
5 person just a few minutes ago. Mr. Cash. He is also, I
6 think you said, pretty elderly?

7 A. He's in his 90s.

8 Q. Okay. So to the extent that folks are available
9 even to testify as Covil here in 2018, you're -- you're
10 about it, right?

11 A. That's about it.

12 MS. DEAN: Objection, leading.

13 BY MR. RHENEY:

14 Q. Of course, the last time you worked for the
15 company was 1991?

16 A. Correct.

17 Q. And I think when it went out of business, you
18 had actually -- had you guaranteed some loans that you
19 had to make good on behalf of the company?

20 A. I did, yes.

21 MS. DEAN: Objection, leading.

22 BY MR. RHENEY:

23 Q. Did -- have you had -- now, you told us a little
24 bit, I think this morning, that you received -- have
25 received over the years from time to time certified mail

1 with complaints in it for claims against Covil for lung
2 disease of one kind or another; is that correct?

3 A. That's true.

4 Q. Other than that, have you done anything -- have
5 you had anything to do with Covil or its affairs since
6 1991 until beginning to prepare for this deposition?

7 A. Not at all.

8 Q. And I think you said early on that your
9 preparation began about six weeks ago?

10 A. Correct.

11 Q. You put in about 50 hours or so in preparing?

12 A. Or so, yes.

13 Q. And now you've got a full-time job, at least
14 currently, right?

15 A. Currently.

16 Q. Tell us a little bit about why you're currently
17 working full time.

18 A. I've been working for roughly 15 years part time
19 with a retail company here in Greenville as a
20 loss-prevention agent. And just on a part-time basis,
21 roughly 25 to 28 hours a week. And back in December, the
22 full-time guy I worked with had an accident at his home
23 and messed his knee up, so he's had surgery and he's been
24 out for -- well, since Christmas. And he will not be
25 back to work till roughly around March. So they have

1 bumped me into full-time employment. So I've been
2 working full time there ever since.

3 Q. You said you've been doing that for 15 years.
4 Did you have another job, another full-time job?

5 A. When I left Covil, I -- well, I'll back up. In
6 1980, I was a volunteer firefighter and got all my
7 training and everything. I was a volunteer firefighter
8 up till '91, when we closed Covil. And so in '91, I put
9 out applications to pursue a full-time position as a
10 firefighter, in which I got one in '91. And I just
11 recently retired in the end of December with 26 years.
12 36 total, counting my volunteer time, 26 with that
13 department.

14 Q. All right. So until five or six weeks ago, you
15 did not plan to be working full time in January and
16 February of 2018; is that correct?

17 A. That was not my plan, no.

18 Q. Okay. You said that you put about 50 hours in.
19 Is that about all the free time that you've had to get
20 prepared for this deposition?

21 A. Pretty much.

22 Q. And as you've indicated previously, you're
23 probably -- as far as anybody that could testify on
24 behalf of Covil, at this point in time, you're pretty
25 much it?

1 MS. DEAN: Objection, form..

2 THE WITNESS: I would imagine.

3 BY MR. RHENEY:

4 Q. Okay. You've said, I think, several times in
5 the deposition that you have not -- you've not memorized
6 things, but you've reviewed a lot of things?

7 A. True.

8 Q. And I think you said this morning something
9 about thousands and thousands of pages of documents; is
10 that correct?

11 A. That is true.

12 Q. You -- have you reviewed records of other
13 companies, too, that have been involved in this industry,
14 be it -- by that I mean, construction insulation, that
15 type of work. In the course of reviewing all these
16 documents, have you reviewed some from other companies as
17 well?

18 A. Yes.

19 MS. DEAN: Objection. Overly broad.

20 BY MR. RHENEY:

21 Q. And would that include Daniel --

22 A. Yes.

23 MS. DEAN: Leading.

24 BY MR. RHENEY:

25 Q. -- and other companies involved in this

1 litigation?

2 A. Yes.

3 MS. DEAN: Vague and confusing.

4 BY MR. RHENEY:

5 Q. You've also reviewed, I think, multiple
6 depositions. You've testified to those?

7 A. I have.

8 Q. And are those depositions oftentimes 500 to a
9 thousand pages?

10 A. Yes.

11 Q. You've reviewed Palmer's deposition, your
12 father, and I think that was very nearly 500 pages?

13 A. Yes.

14 MS. DEAN: Leading.

15 BY MR. RHENEY:

16 Q. And you said you reviewed that a couple of
17 times?

18 A. Yes.

19 Q. And except for, of course, the depositions, the
20 more recent depositions, most of these records and things
21 are 40, 50, sometimes 60 years old; is that correct?

22 A. True.

23 MS. DEAN: Objection, leading.

24 BY MR. RHENEY:

25 Q. You were not a senior executive with the

1 company, with Covil, that is, in the '60s or '70s; is
2 that correct?

3 A. Correct.

4 Q. You mentioned earlier this morning that at some
5 point you were chairman of the board, but were you
6 involved, even at that time, in the day to day
7 senior-level, executive decision-making --

8 A. No, I was not.

9 Q. -- at the time?

10 So was a large part of the information that
11 you've reviewed in the past six weeks to prepare for this
12 new news to you?

13 A. Very much so.

14 Q. You've been asked a lot of questions to which
15 you've responded, "I don't know." Are all the things
16 that we just talked about, the length of time involved,
17 the company being defunct now for 27 years, old, old
18 records, a lot of very new records, as far as depositions
19 and that type thing, is that the reason that you don't
20 know this stuff?

21 MS. DEAN: Objection, form, overly broad and
22 leading.

23 THE WITNESS: Yes, that would be part of it.

24 BY MR. RHENEY:

25 Q. And you were asked a number of times if you've

1 done additional research into a matter or an issue. Are
2 all the things that we just talked about, the length of
3 time involved, the death of a lot of people, company
4 going defunct, is that at least some of the reason you've
5 been unable to further investigate some issues?

6 A. Yes.

7 MS. DEAN: Same objection.

8 BY MR. RHENEY:

9 Q. Let me ask you a little bit about your dad.
10 We've talked about his deposition, which was given -- my
11 phrase -- my phrase here -- in real time in 1977, when a
12 lot of this stuff was actually going on. Did you read
13 his deposition?

14 A. Yes.

15 Q. Did you see anything in his deposition with
16 which you disagreed, as we sit here now?

17 A. No.

18 Q. Would you defer to your father's testimony from
19 1977 about information he provided about the company and
20 its knowledge of various things that were discussed in
21 that deposition up -- at least up to 1977, would you
22 defer to his knowledge?

23 A. Yes.

24 Q. Let me ask you some about use of asbestos
25 products by -- or asbestos insulation-containing products

1 by Covil. In his deposition in 1977, your father said
2 that with the exception of asbestos cloth -- and we'll
3 talk some more about that in just a minute -- that Covil
4 was no longer selling or installing products that
5 contained asbestos by about 1973. Do you remember that?

6 A. Yes.

7 MS. DEAN: Let me -- I'm sorry, let me object to
8 leading, misstates the testimony -- directly misstates
9 the testimony. The best you got in that regard was
10 mostly -- and there were several documents that were
11 discussed at length that evidenced it wasn't until '76.
12 So if we're going to use the deposition, I think it can
13 only be used as a sword, not as a shield. But it needs
14 to be used and not represented in a leading fashion by
15 your own counsel.

16 BY MR. RHENEY:

17 Q. Mr. Covil, did I just say anything that you
18 don't recall from your father's deposition?

19 MS. DEAN: Same objection.

20 THE WITNESS: He stated that most of the
21 asbestos was out of their materials by '73.

22 BY MR. RHENEY:

23 Q. Okay. Do you remember him talking about asbestos
24 cloth still being used --

25 A. Yes.

1 Q. -- in 1977?

2 MS. DEAN: Objection, leading.

3 BY MR. RHENEY:

4 Q. Do you have any reason to disagree with that
5 testimony?

6 A. No.

7 Q. Okay.

8 MS. DEAN: Leading.

9 BY MR. RHENEY:

10 Q. Let me ask you this: Covil did not manufacture
11 asbestos-containing insulation, did it?

12 A. No.

13 Q. So at least as far as fiber count percentages,
14 that type of thing, it would not have known the formula
15 for production of this asbestos insulation by any
16 company, be it Owens-Corning, Johns-Manville or any of
17 them, would it?

18 A. No.

19 MS. DEAN: Objection, overly broad, compound,
20 leading.

21 BY MR. RHENEY:

22 Q. It simply bought it and/or either sold it,
23 resold it or perhaps may have installed it itself; is
24 that correct?

25 A. True.

1 MS. DEAN: Objection, compound, leading.

2 BY MR. RHENEY:

3 Q. And you were asked yesterday about why would a
4 company go to a middleman like Covil. And is that, in
5 fact, what Covil was, a middleman, at least as far as
6 asbestos insulation sales is concerned?

7 A. Yes.

8 Q. Okay. And I guess it occurred to me during that
9 questioning that a company like Owens-Corning or
10 Johns-Manville, they wouldn't know about all the various
11 jobs going on around the country compared to, say, a
12 Covil or another insulation company; is that correct?

13 MS. DEAN: Objection, form.

14 THE WITNESS: I can't speak for them.

15 MS. DEAN: Leading.

16 BY MR. RHENEY:

17 Q. When jobs were spec'd for Covil, would the
18 general contractor or the owner generally tell Covil what
19 it was it wanted?

20 A. Yes.

21 MS. DEAN: Objection, overly broad, vague as to
22 time --

23 BY MR. RHENEY:

24 Q. And would --

25 MS. DEAN: -- leading.

1 MR. RHENEY: I'm sorry, I didn't mean to
2 interrupt you. I apologize.

3 BY MR. RHENEY:

4 Q. And would then -- Covil then go out into the
5 marketplace to try and find what was wanted by the
6 customer?

7 A. True.

8 MS. DEAN: Objection.

9 BY MR. RHENEY:

10 Q. And if it couldn't provide what the customer
11 wanted, then it wouldn't get the job, would it?

12 MS. DEAN: Same objection.

13 THE WITNESS: Either that or try to substitute
14 another product.

15 BY MR. RHENEY:

16 Q. To your knowledge, Jim, were any of the products
17 that Covil either ordered or sold or installed that
18 contained asbestos, were they illegal at the time that
19 they were ordered or sold or installed by the company?

20 A. No, sir.

21 MS. DEAN: Objection, foundation. Time,
22 leading.

23 BY MR. RHENEY:

24 Q. So let me just state it another way, then. Were
25 the products that contained asbestos back in the '70s,

1 early '70s, legal to your knowledge to be ordered or sold
2 or bought, at the time that Covil did that, to your
3 knowledge?

4 MS. DEAN: Same objection.

5 THE WITNESS: To my knowledge.

6 MS. DEAN: And here he's admitted no knowledge.

7 BY MR. RHENEY:

8 Q. Let me show you a letter, Jim.

9 MR. RHENEY: And we'll mark this -- you want to
10 go consecutively or do you want to go -- start a new
11 round of defense?

12 MS. DEAN: I'm happy either way.

13 MR. RHENEY: For my purposes, let me go with
14 just Defendant's Exhibit 1. I'm going to just write that
15 for the time being.

16 (Defendant's Exhibit No. 1 was marked for
17 identification.)

18 BY MR. RHENEY:

19 Q. All right. Have you ever seen this letter
20 before, Jim?

21 A. Yes, I have.

22 Q. Tell the jury, to the extent the jury may see
23 this, as opposed to you personally, what is this?

24 A. This is a letter from Owens-Corning Fiberglas,
25 dated November 13th, 1972, advising all of

1 Owens-Corning's customers that as of November of 1972
2 that they will be discontinuing the manufacture of Kaylo
3 calcium silicate pipe and block insulation using asbestos
4 reinforcement.

5 Q. Okay. As of when?

6 A. As of Sunday, November 12.

7 Q. Of that same year, 1972?

8 A. 1972.

9 Q. The people at the top, Mr. J.S. Royer with NICA.
10 And I think you've already told us what NICA is?

11 A. Yes.

12 Q. And then it says, "OSHA Task Force." So, was
13 there a -- did the NICA have a task force to deal with
14 OSHA regulations that had come into existence roughly a
15 year or two before this letter?

16 MS. DEAN: Objection, foundation.

17 THE WITNESS: I cannot answer that. I wasn't
18 involved with them.

19 BY MR. RHENEY:

20 Q. All right. Was Owens-Corning a big supplier of
21 asbestos-containing insulation for Covil?

22 A. Yes.

23 Q. Now, this letter goes on to say, "As you can
24 well imagine, we will be shipping materials from our
25 Kaylo inventory, which contains asbestos fibers for the

1 next several months."

2 Let me ask you, first, about the word "Kaylo."
3 Once Owens-Corning quit manufacturing asbestos -- I'm
4 sorry, insulation with asbestos in it, did it change the
5 name of the product from Kaylo to something else?

6 A. It stayed Kaylo for a long time. I'm not --

7 Q. So even --

8 A. I can't remember if it changed at all.

9 Q. I'm sorry. Is it your understanding that even
10 after the production of asbestos-containing insulation
11 with the trade name Kaylo, even after they got -- took
12 the asbestos out of it, they continued to use the name
13 Kaylo?

14 A. Yes.

15 MS. DEAN: Objection.

16 BY MR. RHENEY:

17 Q. Did that continue, to your knowledge, for a
18 number of years?

19 A. That I can recollect, yes.

20 Q. And it says that they are going to -- my word is
21 deplete -- but it says they are going to be shipping
22 Kaylo inventory containing asbestos fibers for the next
23 several months. To your knowledge, was there anything
24 improper about that?

25 A. No.

1 MS. DEAN: First, objection leading, foundation,
2 the word depleted is commentary of counsel.

3 BY MR. RHENEY:

4 Q. Were they being above board about their
5 intentions to deplete their inventory of previously
6 asbestos-containing insulation manufactured prior to
7 November the 12th?

8 A. That's what they stated in their letter.

9 MS. DEAN: Object to and -- I'm sorry.
10 Especially when I start, let me try to finish without --

11 MR. RHENEY: No problem.

12 MS. DEAN: -- driving our poor court reporter
13 nuts. Certainly gives you another perspective to sit
14 here and watch it.

15 I'll object to the same objections made in the
16 prior, but it is also not stated in the record the word
17 "deplete." And asking about whether another company was
18 trying to be above board is the definition of calling for
19 speculation.

20 BY MR. RHENEY:

21 Q. And as far as you know, Jim, was it legal for
22 Covil to keep buying asbestos-containing insulation that
23 had been manufactured by Owens-Corning, say, for example,
24 prior to November 12? Was it legal for a company like
25 Covil to continue buying it and installing it?

1 A. Yes.

2 MS. DEAN: Absolutely no foundation.

3 BY MR. RHENEY:

4 Q. And do you believe that other manufacturers like
5 Johns-Manville and Raybestos Manhattan, also at about
6 this same time, began taking asbestos out of insulation?

7 MS. DEAN: Foundation, compound.

8 THE WITNESS: Somewhere around that time frame.

9 BY MR. RHENEY:

10 Q. Okay. Once those companies -- and just, for the
11 record, as far as suppliers, to your knowledge, to Covil,
12 Owens-Corning was one?

13 A. Yes.

14 Q. Is that correct?

15 A. Yes.

16 Q. Johns-Manville?

17 A. Yes.

18 Q. Do you know of any others? Raybestos Manhattan?

19 A. Yes.

20 Q. I think that there was a letter entered into
21 evidence, maybe Pabco?

22 A. Pabco.

23 Q. All right. So there were a number out there?

24 A. Yes.

25 Q. And to your knowledge, did they all take

1 asbestos out of their insulation around this same time?

2 MS. DEAN: Objection, compound, speculation.

3 THE WITNESS: Yes, somewhere around that time,
4 from my understanding.

5 BY MR. RHENEY:

6 Q. Once they quit manufacturing insulation that had
7 asbestos in it at about that time, Covil and other
8 companies -- insulation companies like it couldn't even
9 get asbestos -- I'm sorry, insulation with asbestos,
10 could they?

11 A. True.

12 MS. DEAN: Objection to form, overly broad,
13 speculation. Not if it's kept in your warehouse.

14 BY MR. RHENEY:

15 Q. Do you remember your dad's testimony about
16 the -- Covil going through inventory in the warehouse in
17 roughly a year, give or take?

18 MS. DEAN: Objection, leading.

19 THE WITNESS: He said it would take about a year
20 to deplete the inventory in the warehouse.

21 BY MR. RHENEY:

22 Q. Okay. So is his testimony consistent? And by
23 that I mean, Owens-Corning -- with Owens-Corning and
24 other companies like that that used to manufacture
25 insulation with asbestos in it, quitting that roughly

1 late 1972, depleting their inventory over a several-month
2 period, Covil at the same time buying what may have been
3 left and then depleting its inventory, is all that pretty
4 consistent with your dad's testimony in 1977 that Covil
5 was no longer buying or selling or installing insulation
6 that contained asbestos after about 1973?

7 A. That's true.

8 MS. DEAN: I need to be able to make an
9 objection here --

10 THE WITNESS: That's my understanding.

11 MS. DEAN: -- before you answer, Jim. Yeah.
12 Because the way this reads is that I didn't start talking
13 first. And even though I only got half a word in, I
14 tried. So, first, referencing the testimony and
15 representing what it says is inappropriate. Using
16 deposition testimony as a shield is inappropriate.
17 Leading, overly broad, compound as to multiple
18 manufacturers. And leading is sometimes innocent, but
19 when an attorney is leading their own witness and
20 representing facts that are objectively untrue, it's
21 particularly problematic. The notion that a host of
22 companies, some identified and others, stopped selling
23 asbestos insulation in their entire line by late 1972
24 time frame, no foundation for that was ever given. It
25 was suggested by an attorney. It's objectively false.

1 This line of questioning is very problematic.

2 MR. RHENEY: Problematic?

3 MS. DEAN: Yes.

4 MR. RHENEY: Means you don't like it?

5 MS. DEAN: I mean -- it means that I think
6 there's ethical problems representing leading questions
7 to your clients that aren't true.

8 MR. RHENEY: Okay. Well, we'll come back around
9 to that in just a minute.

10 BY MR. RHENEY:

11 Q. And then I think you've already testified that
12 Covil had a fire at its warehouse and office here in
13 Greenville in May of 1973; is that correct?

14 A. That is correct.

15 Q. And did that fire destroy the inventory in
16 Covil's warehouse in May of 1973?

17 A. It did.

18 MS. DEAN: Objection, vague, as to what is meant
19 by the inventory. Compound, if they are trying to claim
20 it's for all inventory. And the foundation for that
21 claim has never been provided.

22 BY MR. RHENEY:

23 Q. Would the destruction of that inventory have
24 included any insulation, be it asbestos containing or
25 nonasbestos containing, in 19 -- May of 1973?

1 MS. DEAN: Same objection.

2 THE WITNESS: Yes.

3 BY MR. RHENEY:

4 Q. Okay. As well as records of the company, of
5 jobs, employee files, things like that?

6 MS. DEAN: Same objections. It's overly broad,
7 particularly when we know for both warehouse materials
8 and records it's not true for the entire category.

9 MR. RHENEY: Okay.

10 MS. DEAN: In other words, it can't be lumped
11 together accurately.

12 BY MR. RHENEY:

13 Q. Is that correct?

14 A. That is correct.

15 Q. So is all that consistent with what your dad
16 said about Covil's not using asbestos-containing
17 insulation after about 1973?

18 MS. DEAN: Leading, improper use of deposition
19 testimony by Mr. Palmer Covil.

20 BY MR. RHENEY:

21 Q. Is that correct?

22 A. Yes.

23 Q. All right. Let me ask you a little bit about
24 Mr. Waters' testimony that you were asked about by
25 Ms. Dean yesterday. You were told yesterday that Mr.

1 Waters -- who's another plaintiff represented by Ms. Dean
2 and her firm -- testified that Covil used insulation that
3 contained asbestos at the Duke Power plants, and in
4 particular McGuire Nuclear and Catawba Nuclear in the
5 late 1970s and early 1980s. Do you remember that?

6 MS. DEAN: Objection, misstates testimony.

7 THE WITNESS: I remember the question.

8 BY MR. RHENEY:

9 Q. Okay. And that would have been years after when
10 insulation was made that contained asbestos?

11 A. Yes.

12 MS. DEAN: Objection, foundation, leading.

13 BY MR. RHENEY:

14 Q. And that would have been years after the
15 warehouse fire at Covil here in Greenville; is that
16 correct?

17 A. Yes.

18 Q. That would have been years after Palmer's, your
19 father's testimony in 1977; is that correct?

20 MS. DEAN: Objection. He suggested the time
21 frame, which I never stated was the late '70s and '80s.
22 And he's now asking, I guess, a compound question about
23 whether '77 is years after the late '70s. So leading,
24 vague and confusing, misstates your own testimony.

25 BY MR. RHENEY:

1 Q. I think that -- so is that correct, that would
2 be --

3 A. Yes.

4 Q. -- years after Palmer's testimony; is that
5 correct?

6 A. It would be.

7 MS. DEAN: Same objection.

8 BY MR. RHENEY:

9 Q. And I think you were even asked, would that be,
10 quote, "terrible," close quote, by Ms. Dean, if that was,
11 in fact, done by Covil; is that correct?

12 A. Yes.

13 BY MR. RHENEY:

14 Q. Okay. Well, let's talk about Mr. Waters'
15 testimony. This will be Exhibit 2. Defense Exhibit 2.

16 Did Ms. Dean tell you that Mr. Waters, toward
17 the end of his deposition, basically recanted all of that
18 previous testimony?

19 A. No.

20 Q. She didn't?

21 MS. DEAN: Objection, leading, misstates the
22 testimony.

23 BY MR. RHENEY:

24 Q. All right. Let's look at page --

25 MS. DEAN: I'll ask again, and I understand you

1 get into a rhythm, but once I've talked, it's already
2 really difficult when there's three of us, but to not
3 pause so that she can get this down, I think --

4 MR. RHENEY: Okay.

5 MS. DEAN: I think --

6 MR. RHENEY: I apologize.

7 MS. DEAN: -- is a problem.

8 BY MR. RHENEY:

9 Q. Look at page 1012 of his deposition. That's the
10 first page that I've handed you there. I've handed you
11 three pages total.

12 A. Okay.

13 Q. Line 20, my question to Mr. Waters was:

14 "Is it possible -- and, again, I'll ask this
15 question. I asked it a moment ago. Is it possible that
16 you just got your dates mixed up on when asbestos
17 insulation was being used and the supply was being
18 exhausted?"

19 On page 1013, after an objection, the answer
20 was: "Well, I wasn't involved in it. Like I told you
21 before, you know, that all this has been so long ago. I
22 do not remember the dates. Especially as a child and
23 Alvin coming over to my mother's. I just don't remember
24 the dates on things like that. And I'm sorry, I'm giving
25 you all I have."

1 My question is: "That's fine. And I do
2 understand. And I appreciate that. You had mentioned
3 that -- you had mentioned that Sonny Cumby told you --
4 and I tried to write this down accurately, when you said
5 it -- that they changed the law, and Covil had a certain
6 amount of time to do away with asbestos insulation
7 completely. Do you remember that testimony?"

8 His answer was: "Yes, sir."

9 My next question: "Do you have any recollection
10 when Sonny told you that?"

11 On the next -- excuse me, next page.

12 Answer: "No, sir. I sure don't."

13 "Question: It could have been --"

14 Then he answered -- continued his answer. "It
15 would have been on one of the small jobs that was done."

16 "Question: Not McGuire, Catawba?"

17 Answer: No. Because we all would get
18 transferred to do a little small job.

19 Question: Sure.

20 Answer: Meet up like that and go to another.

21 Question: Right. So it wasn't at McGuire,
22 Catawba, it was a small job somewhere, right?

23 Answer: Probably. Yeah, probably.

24 Question: And when in time that was, in your 11
25 years, be it 1972 or 1983, you just don't remember when

1 that was?"

2 And his answer was: "No."

3 Were you told that yesterday, when you were
4 asked those questions about Mr. Waters' testimony.

5 A. No.

6 MS. DEAN: Objection to form.

7 BY MR. RHENEY:

8 Q. You were not told yesterday, when you were asked
9 those questions about Mr. Waters' testimony, that Mr.
10 Waters had testified that this didn't happen at McGuire?

11 A. No.

12 MS. DEAN: Same objection.

13 Q. Or Catawba?

14 A. No.

15 MS. DEAN: Same.

16 BY MR. RHENEY:

17 Q. But that it was a small job that he couldn't
18 identify?

19 MS. DEAN: Same objection, improper use --

20 THE WITNESS: No.

21 MS. DEAN: -- of testimony.

22 BY MR. RHENEY:

23 Q. And it was some unknown time between 1972 and
24 1983? He had no idea when?

25 A. No.

1 MS. DEAN: Same objection, option (sic)
2 completeness.

3 BY MR. RHENEY:

4 Q. You were asked yesterday if you had further
5 investigated Mr. Waters' testimony, as it was recounted
6 to you at that time by Ms. Dean. Do you have any idea
7 how you would go about investigating what someone said 40
8 years after the fact without a witness?

9 A. No.

10 MS. DEAN: Objection to form, overly broad.

11 BY MR. RHENEY:

12 Q. There's no record --

13 MS. DEAN: I move to suggest -- let me please
14 try to get it out.

15 MR. RHENEY: I'm sorry.

16 MS. DEAN: I move to suggest one idea would be
17 what we did for the other four witnesses. Read his
18 testimony and in this case the testimony over the course
19 of weeks that talked about it in detail, as opposed to a
20 three page given to you after, for some reason, the
21 deposition, hand picked by the lawyers, so you could see
22 the hundreds of pages of testimony about it, where it was
23 talked about indepth and where it was discussed indepth.

24 MR. RHENEY: I'm asking --

25 MS. DEAN: That would be my suggestion.

1 MR. RHENEY: Ms. Dean, I'm asking the questions.
2 I think we agreed at the outset of this deposition that
3 we would go with an objection to the form of a question,
4 not a running objection like you've been doing for the
5 last 30 minutes or so.

6 MS. DEAN: You asked an overly broad question of
7 a witness --

8 MR. RHENEY: Well, then you object.

9 MS. DEAN: -- about what he can do to learn
10 about 40 years of testimony and you keep 1008 pages of
11 1012 testimony to try to tell him something other than
12 the plain truth that was written down, I'm going to
13 correct the record.

14 MR. RHENEY: And you're welcome to object to the
15 form, as we agreed to at the outset of this deposition.
16 If you would like to add that it's overly broad, I
17 certainly have no problem with that. But a one-minute
18 long objection I think is violating the rules somewhat.

19 MS. DEAN: It wasn't a minute.

20 MR. RHENEY: So --

21 MS. DEAN: And I think there's a much deeper
22 concern of violating the rules here.

23 MR. RHENEY: All right.

24 BY MR. RHENEY:

25 Q. So, Mr. Covil, are you aware of any witnesses to

1 that testimony by Mr. Waters?

2 A. Not that I'm aware of.

3 Q. Are you aware of any records that support it?

4 A. No, I don't.

5 Q. In the course of preparing for this deposition,
6 you've at least looked over thousands of pages of
7 records?

8 A. Yes.

9 Q. Do you understand those records have been
10 produced to all the parties in this case?

11 MS. DEAN: Objection to form.

12 THE WITNESS: Yes.

13 MS. DEAN: Overly broad, depending on what
14 records he's talking about, verify them to be true.

15 BY MR. RHENEY:

16 Q. Have you seen any records from Covil to suggest
17 that it was doing what Ms. Dean said Mr. Waters'
18 testified to?

19 A. No.

20 MS. DEAN: Objection to form. Overly broad.

21 BY MR. RHENEY:

22 Q. Have you seen any records from Duke that support
23 that?

24 A. I have not.

25 MS. DEAN: Objection to form.

1 BY MR. RHENEY:

2 Q. Duke being the owner of the power plant.

3 I'm sorry, I did not mean to interrupt. Go
4 ahead.

5 MS. DEAN: Objection, he indicated that he
6 wasn't provided, so asking whether he's seen something
7 that wasn't provided is a misleading question.

8 BY MR. RHENEY:

9 Q. Okay. Again, I asked, have you seen any records
10 from Covil that support that?

11 A. I have not.

12 Q. Have you seen any records from Duke, the owner
13 of Catawba and McGuire, that supports that?

14 MS. DEAN: Same objection about Duke.

15 THE WITNESS: I have not.

16 BY MR. RHENEY:

17 Q. Have you seen any records from Daniel
18 Construction that would support that?

19 MS. DEAN: Let me object here. Again, I ask
20 whether he was provided them. So asking whether he's
21 seen things that he has not been provided and that has
22 been established as such is intentionally misleading.

23 BY MR. RHENEY:

24 Q. Have you seen any records from Daniel that
25 support that?

1 A. No.

2 MS. DEAN: Same objection.

3 BY MR. RHENEY:

4 Q. A nuclear power plant, I believe, is a -- would
5 be a fairly heavily-regulated project; is that correct?

6 MS. DEAN: Foundation.

7 THE WITNESS: I would think so.

8 BY MR. RHENEY:

9 Q. Do you have any knowledge of federal inspections
10 of the construction process, as it goes along?

11 A. From Duke? Or from --

12 Q. The federal government inspecting, as things go
13 along, since it's a nuclear power plant?

14 A. Oh, I would assume they do.

15 Q. Okay. To your knowledge, was Covil ever fined
16 by the federal government for using asbestos on
17 noninsulation -- I'm sorry, nonasbestos job like Catawba
18 and McGuire?

19 MS. DEAN: Objection, no foundation. When you
20 asked if he had knowledge, he doesn't have any.
21 Misleading.

22 BY MR. RHENEY:

23 Q. To your knowledge, as the corporate designee of
24 Covil in this deposition, do you know of any fines ever
25 levied against Covil by the federal government for using

1 asbestos on Catawba, McGuire or any other nonasbestos
2 job?

3 A. No.

4 MS. DEAN: Same objection.

5 BY MR. RHENEY:

6 Q. All right. Let me -- I'm going to push those
7 over to you. Those are the original exhibits. I want to
8 ask you about some of the exhibits that you were asked
9 about. It might take you a minute to pull those.

10 Would you find Exhibit 43, which should have at
11 the top "Crawford Insulation."

12 A. (Witness complies.) 43?

13 Q. Yes, sir.

14 MS. DEAN: Let me pause for one second, so I can
15 grab my exhibits.

16 MR. RHENEY: Okay.

17 MS. DEAN: You don't have to go off, just as
18 long as I can cross over.

19 MR. RHENEY: And while we're doing that, let's
20 go ahead and mark that deposition testimony as Exhibit 2,
21 Defense Exhibit 2. And I don't have the little -- okay.

22 (Defendant's Exhibit No. 2 was marked for
23 identification.)

24 (Off-record discussion between counsel and the
25 reporter regarding exhibits.)

1 BY MR. RHENEY:

2 Q. All right. You got Exhibit 43? It's got the --

3 A. Yes.

4 Q. Okay. This is the one that has Crawford
5 Insulation at the top. Now, is this an order from
6 Crawford -- let me restate that. Is Crawford ordering
7 from Covil here?

8 MS. DEAN: Objection.

9 THE WITNESS: It appears so.

10 BY MR. RHENEY:

11 Q. Okay. And do you have -- you were asked about
12 the entry for 75 asbestos labels. Do you have any idea,
13 as we sit here now, over 40 years later, why Crawford
14 wanted asbestos insulations (sic) from Covil?

15 A. No.

16 Q. Let me ask you this: When Covil and other
17 companies like Covil quit selling asbestos and
18 contractors and owners quit specing for insulation that
19 contained asbestos, it's still in -- it was still in the
20 buildings previously built to that, right?

21 A. Yes.

22 Q. Okay. Like power plants. Hot -- particularly,
23 buildings that would generate a lot of heat?

24 A. True.

25 Q. Okay. And to your knowledge, is it still even

1 in some buildings to this very day?

2 A. I'm sure it is.

3 Q. When companies would abate or remove asbestos,
4 they are generally going to put an asbestos label on what
5 they have torn off, right?

6 MS. DEAN: Objection.

7 BY MR. RHENEY:

8 Q. To warn people or to tell people to stay out of
9 that area?

10 MS. DEAN: Objection to form, overly broad,
11 speculation, foundation, leading.

12 THE WITNESS: I would think so, yes.

13 BY MR. RHENEY:

14 Q. Okay. And that would be true even today. If a
15 company is tearing out asbestos that's been in place for
16 40 or 50 years, they are going to warn people around that
17 there's asbestos in the area and stay away?

18 A. Yes.

19 MS. DEAN: Same objection, except the last one
20 was vague as to time, this one is --

21 BY MR. RHENEY:

22 Q. So labels like that may vary well --

23 MS. DEAN: Again --

24 MR. RHENEY: I'm sorry.

25 MS. DEAN: -- I can't fathom trying to do this

1 job, but you keep talking over me and that makes this
2 difficult.

3 MR. RHENEY: I'm sorry. Your -- I don't mean to
4 be doing that. I hear you stop and then I think you're
5 done, but go -- if you've got more to add to that,
6 feel -- feel free.

7 MS. DEAN: No, it's just you clipped off the
8 last two words and --

9 MR. RHENEY: I apologize for that.

10 MS. DEAN: -- cut that.

11 BY MR. RHENEY:

12 Q. So at least as far as warning people,
13 identifying asbestos, that's a label that could be used
14 in '86, '96, 2006, even to today, right?

15 MS. DEAN: Objection, calls for speculation.

16 THE WITNESS: Possibly so.

17 BY MR. RHENEY:

18 Q. All right. So it's simply just an asbestos
19 label that was being ordered in '86, not asbestos, right?

20 A. Yes.

21 MS. DEAN: Leading.

22 BY MR. RHENEY:

23 Q. Let me get you to pull Exhibit 32 out of that
24 stack.

25 A. (Witness complies.)

1 Q. Okay. You got that?

2 A. Yes.

3 Q. That is the H.K. Porter exhibit that was marked
4 yesterday. And, now, I think you said something
5 yesterday -- and I could be mistaken -- but I think there
6 was an objection lodged to your response, saying that it
7 was -- your response was speculative. So let me ask
8 this. What has been ordered -- well, first of all, is
9 H.K. Porter ordering from Covil?

10 A. Yes.

11 Q. Okay. Or selling to Covil?

12 A. Selling to Covil.

13 Q. All right. What is the item being ordered?

14 A. AAA plain asbestos cloth.

15 Q. So, that's not speculation, that's what was --
16 asbestos cloth is being ordered, correct?

17 A. Yes.

18 MS. DEAN: Objection to the argumentative.

19 BY MR. RHENEY:

20 Q. And that was in May of 1973, right about the
21 time of this fire --

22 A. Yes.

23 Q. -- in Greenville; is that correct?

24 A. Correct.

25 MS. DEAN: Objection, form. What exhibit are

1 you using?

2 MR. RHENEY: 32, I believe it is. It's the H.K.
3 Porter --

4 MS. DEAN: Give me one second. I thought you
5 said 42.

6 MR. RHENEY: Okay.

7 MS. DEAN: Okay. I'm with you.

8 BY MR. RHENEY:

9 Q. Okay. So there's no doubt, I mean at least as
10 far as this order form, if it reads, as it plainly reads,
11 there's no asbestos insulation being ordered in 19 -- May
12 of '90 -- '73, is there?

13 MS. DEAN: Let me object to the argumentative,
14 let me object to speculation. He may not know that cloth
15 is an insulating material. And let me object to leading.

16 BY MR. RHENEY:

17 Q. It's not insulation, is it?

18 A. It's not insulation.

19 MS. DEAN: Same objection.

20 BY MR. RHENEY:

21 Q. What is being --

22 A. Asbestos -- plain asbestos cloth.

23 Q. Okay. And is that consistent with what Palmer
24 said in his deposition in 1977, that the only products
25 that were being used by it that had asbestos in it, at

1 that time, was asbestos cloth?

2 A. Yes.

3 MS. DEAN: Let me object to the representation
4 of what another deposition says and let me object to
5 leading --

6 BY MR. RHENEY:

7 Q. And what -- what --

8 MS. DEAN: -- and foundation.

9 MR. RHENEY: I'm sorry.

10 BY MR. RHENEY:

11 Q. Tell me again what you recall Palmer saying in
12 that deposition about asbestos cloth in 1977.

13 A. He said asbestos cloth was encapsulated and
14 posed no dust problem in the surrounding area.

15 Q. Okay.

16 A. And he also stated that it was OSHA approved.

17 Q. Okay.

18 MS. DEAN: Hearsay. And speculation from the
19 hearsay person, actually.

20 BY MR. RHENEY:

21 Q. And as we sit here now, do you have any reason
22 to disagree with that testimony?

23 A. I do not.

24 Q. Let me -- a couple times -- not much, but a
25 couple times the issues of pumps and valves or pumps and

1 valves have been mentioned in the last couple days. Not
2 a lot, but a little bit. And there was a mention of
3 gaskets and packing. Do you understand what gaskets and
4 packing and pumps and valves is?

5 A. Yes.

6 Q. Did Covil ever manufacture
7 asbestos-containing -- well, first of all, let me ask you
8 this: Did Covil ever manufacture gaskets or packing?

9 A. Covil never manufactured anything.

10 Q. Did Covil ever sell gaskets and packing?

11 A. No.

12 Q. So would that -- the same, therefore, be true
13 that Covil never manufactured or sold or installed
14 asbestos gaskets and packing that contained asbestos?

15 A. Right.

16 MS. DEAN: Objection to form. Sorry. Objection
17 to form, compound. As to the last portion in particular,
18 the foundation, time frame, location, basis of the
19 knowledge, unknown.

20 BY MR. RHENEY:

21 Q. So, to the extent that plaintiffs in these cases
22 may have suffered exposure to asbestos gaskets and
23 packing, that doesn't have anything to do with Covil,
24 does it?

25 A. No.

1 MS. DEAN: Objection, lack of foundation, overly
2 broad, leading.

3 BY MR. RHENEY:

4 Q. Let me ask you to look at Exhibit 44.

5 A. (Witness complies.)

6 Q. And this one has at the top, "Covil Insulation
7 Company."

8 A. Got it.

9 Q. All right. Now, is this -- this is dated
10 February the 19th of 1982. Hah. Older folks like me in
11 this room will remember this. It looks like the name of
12 the company doing the ordering is Huckabee Hound; is that
13 correct?

14 A. That's what it looks like.

15 Q. Okay. Hadn't seen that commercial in a lot of
16 years -- or that cartoon in a lot of years, but let me
17 ask you just a couple questions.

18 You were asked about this document. And is this
19 a -- it's -- was this a Covil order form?

20 A. It's not the order form I'm familiar with, so I
21 don't know exactly what -- what kind of order.

22 MS. DEAN: Objection, then, to foundation.

23 BY MR. RHENEY:

24 Q. Was anything asbestos containing ordered by
25 Huckabee Hound from Covil in February of 1982?

1 MS. DEAN: Objection, foundation.

2 THE WITNESS: Could you repeat your question?

3 BY MR. RHENEY:

4 Q. What's being ordered by Huckabee Hound here?

5 A. It appears to be insulating material, mineral
6 wool, batts, batting or blankets.

7 Q. Okay. At the top -- and I think you were
8 specifically asked, and I won't try and repeat the
9 questions -- but there's a mention of insulating
10 material, silicate calcium and asbestos combined, et
11 cetera, et cetera. I think you were asked, you know, why
12 would that be there.

13 A. Yes.

14 Q. To your knowledge, was any order placed by
15 Huckabee Hound for any such thing from Covil in February
16 of '82?

17 MS. DEAN: Objection, misleading. When you say,
18 to your knowledge, it presumes that he does. And he
19 indicated that he didn't know.

20 BY MR. RHENEY:

21 Q. To your knowledge as a representative of Covil,
22 Jim, was Huckabee Hound ordering anything containing
23 asbestos from Covil --

24 A. No.

25 MS. DEAN: Same --

1 Q. -- in February of '82?

2 MS. DEAN: I'm sorry, same objection. And when
3 you add as the corporation, it suggests that he learned
4 something more that hasn't been established and is
5 factually interpreted.

6 BY MR. RHENEY:

7 Q. Okay. Same question. What's your answer?

8 A. No.

9 Q. Did Covil even have insulation that contained
10 asbestos, at that time --

11 MS. DEAN: Objection, foundation.

12 BY MR. RHENEY:

13 Q. -- in February of '82?

14 A. No.

15 MS. DEAN: Same objection.

16 BY MR. RHENEY:

17 Q. Could it have gotten it, even if it wanted it,
18 by February of '82?

19 MS. DEAN: Objection, speculation.

20 BY MR. RHENEY:

21 Q. And by it -- I'm sorry. Go ahead. Let me reask
22 the question.

23 Could Covil have gotten insulation that
24 contained asbestos, even if it wanted it, in February of
25 '82?

1 MS. DEAN: Objection, vague and compound as to
2 what he means by insulation. Overly broad, speculation.

3 THE WITNESS: No.

4 BY MR. RHENEY:

5 Q. Okay. All right. And yesterday you were asked
6 about a budget. Let me see if I can find that exhibit.
7 Yeah. Exhibit 30 -- hang on one second. I believe it's
8 Exhibit 39. And it's an accountant's report from 1974.

9 A. (Witness complies.) Okay.

10 Q. Got it?

11 A. Yes.

12 Q. Turn to page 22663.

13 A. (Witness complies.)

14 Q. And do you see the entry that you were asked
15 about yesterday for training and education, \$5.10?

16 A. Yes.

17 Q. Do you even know what that was?

18 A. Have no idea.

19 Q. Let me ask you this: You testified yesterday
20 that I think your space at the office was very near a
21 locker that had respirators, masks, goggles, things like
22 that in it?

23 A. Yes.

24 Q. Okay. And that when they -- when a foreman
25 asked for that, you would get it and you would hand it

1 out?

2 A. Yes.

3 Q. And I don't know that I've covered the full
4 range of everything that was in there, but my question
5 is, could you have bought a bunch of boxes of approved
6 respirators, the kind that we're talking about is the
7 rubber gasket with the two filters --

8 A. Yes.

9 MS. DEAN: Objection, leading.

10 BY MR. RHENEY:

11 Q. -- like we see in all the movies? ET is the
12 last one I remember.

13 MS. DEAN: Objection to commentary.

14 BY MR. RHENEY:

15 Q. Could you buy a bunch of boxes of those
16 respirators for \$5.10?

17 A. No.

18 Q. Could you buy even a box of them?

19 A. No.

20 Q. Could you even buy one for \$5.10?

21 A. No.

22 Q. Could you buy goggles for \$5.10?

23 A. Possibly.

24 Q. Could you buy a bunch of goggles for \$5.10?

25 A. No.

1 Q. Could you buy a box of paper masks, like we see
2 painters use sometimes, for \$5.10?

3 A. No.

4 Q. Okay. So am I correct, then, that at least as
5 far as just those three types of items are concerned,
6 over the years Covil spent much, much more than \$5.10
7 providing safety equipment to its employees?

8 MS. DEAN: Objection. Vague as to time,
9 leading.

10 BY MR. RHENEY:

11 Q. I'm sorry?

12 A. Yes.

13 Q. Okay. Let me ask you this: What is -- do you
14 know what a gangbox meeting is?

15 A. Yes.

16 Q. What is it?

17 A. Before the workers start work, they put their
18 supplies and equipment, tools, so forth, in the gangbox
19 or toolbox. And there's -- they would hold safety
20 meetings before they start work and whatever else they
21 had to discuss.

22 Q. Okay. Is that a budgeted line item for safety
23 or education at Covil or -- strike that.

24 Was that a budgeted line item for Covil in
25 safety and education?

1 MS. DEAN: Objection, foundation. He indicated
2 he didn't know.

3 THE WITNESS: For safety equipment it was.

4 BY MR. RHENEY:

5 Q. Okay. No, I'm asking about was the gangbox
6 meeting itself --

7 A. No.

8 Q. -- where they gathered up in the morning and
9 talked, was that a budgeted item, safety item --

10 A. No.

11 Q. -- for Covil?

12 MS. DEAN: Object to leading, and to the extent
13 that it presumes that this occurred in any location
14 that's relevant.

15 BY MR. RHENEY:

16 Q. Would Covil budget for Mr. Johnson or a job
17 foreman to observe workers and tell them when they might
18 be doing something unsafe?

19 A. No.

20 MS. DEAN: Objection, assumes it ever occurred
21 in a location that matters.

22 BY MR. RHENEY:

23 Q. That -- that wasn't a budgeted line item for
24 Covil. Would there be any way to budget --

25 A. No.

1 Q. -- for such a thing?

2 MS. DEAN: Objection.

3 BY MR. RHENEY:

4 Q. I think you were shown yesterday -- do you
5 remember seeing Dusty Trade cards?

6 A. Yes.

7 Q. What -- what was the Dusty Trades? What -- why
8 was Covil -- and one of those was for Mr. Waters, I think
9 we saw, as well as Neely -- what is his name?

10 A. I believe so.

11 Q. What is Dusty Trade? Why was Covil involved
12 with Dusty Trades? And I think it was North Carolina; is
13 that correct?

14 A. The --

15 MS. DEAN: Objection to form, to the extent he's
16 asking what North Carolina would define as Dusty Trade.
17 Unclear, vague, and confusing, combined with speculation.

18 BY MR. RHENEY:

19 Q. And you're here testifying as Covil. So what's
20 your knowledge of -- as Covil of the North Carolina Dusty
21 Trades? What is it?

22 A. North Carolina --

23 MS. DEAN: Objection.

24 THE WITNESS: -- has different rules and
25 regulations based on their insulators that do work in the

1 North Carolina area. Therefore, they have to acquire a
2 Dusty Trade card and go through whatever procedure they
3 have to go through in order to get the card, whether it
4 be physicals or x-rays or whatever.

5 BY MR. RHENEY:

6 Q. Okay. Could be physicals, could be x-rays?

7 A. Could be.

8 Q. And was that paid for by Covil?

9 MS. DEAN: Objection to form, speculation,
10 leading.

11 THE WITNESS: I don't know.

12 BY MR. RHENEY:

13 Q. You don't have any idea one way or the other?

14 A. No.

15 Q. I think you testified to this. I had written
16 this down to ask you real quick and you may have
17 testified. There's been some discussion of Crain. Is it
18 Sam Crain?

19 A. Yes.

20 Q. Okay. Sam Crain Agency. Some of the documents
21 indicate that that would have been the insurance broker
22 for Covil back in the, maybe, '60s or '70s?

23 A. Yes.

24 Q. And is the owner of that company from that time,
25 Mr. Crain -- I'll call him Mr. Crain -- is he dead now?

1 A. Yes.

2 Q. And did the son take over the company after
3 that?

4 A. Yes.

5 Q. And is he also deceased?

6 A. He is.

7 Q. And is the company gone?

8 A. Yes.

9 Q. Is there anybody to call at Crain that you know
10 about to check on insurance issues?

11 A. Not that I know of.

12 MS. DEAN: Objection.

13 BY MR. RHENEY:

14 Q. Same question for the Goldsmith Agency. Do you
15 know anything about it?

16 A. I don't know anything about it.

17 Q. Do you know if it even exists anymore?

18 A. I have no idea.

19 MS. DEAN: That's the point.

20 THE REPORTER: I'm sorry, what?

21 MS. DEAN: That's the point.

22 BY MR. RHENEY:

23 Q. Do you know anybody that works or even worked
24 there?

25 A. No.

1 Q. Okay. Would you know who to call at Goldsmith
2 to find out anything -- if it even exists, to find out
3 anything about it?

4 A. I would not.

5 MR. RHENEY: All right. And I think the
6 videographer said he needed a break in five minutes. I
7 think we're there, so let's take a break.

8 THE VIDEOGRAPHER: This completes media unit
9 number 1. We're going off the record at 11:14:40. Thank
10 you, sir.

11 (Recess taken from 11:14:40 a.m. to 11:24 a.m.)

12 THE VIDEOGRAPHER: This is the start of
13 media unit number 2. We're back on the record at 11:24.
14 BY MR. RHENEY:

15 Q. Okay. Just a very, very few more questions,
16 Jim. And just to revisit Mr. Waters for a second.
17 Yesterday you were asked questions about Mr. Waters'
18 testimony and use of asbestos, at some point in time?

19 A. Yes.

20 Q. My point in asking you questions was, you were
21 not told yesterday that Mr. Waters then changed his
22 testimony to say that it wasn't used at Catawba,
23 asbestos-containing insulation was not used at either
24 Catawba or McGuire or that he didn't know. That it was a
25 small job, and he didn't even know when in time it