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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

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 3 OF 3

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1 happened.

2 MS. DEAN: Objection, compound, leading,
3 misstates the testimony.

4 BY MR. RHENEY:

5 Q. You were not told that yesterday, when you were
6 asked the questions by Ms. Dean, were you?

7 A. Not that I recall.

8 MS. DEAN: Same objection.

9 BY MR. RHENEY:

10 Q. Okay. Let me ask you briefly, what can you tell
11 us, Jim, if anything, about your father's
12 asbestos-related disease or lung condition, whatever we
13 want to call it. What do you know of it?

14 A. Very little, other than he got sick in '78 and
15 was in the hospital, had numerous surgeries, and got
16 worse in the --

17 Q. Okay.

18 A. -- '80, '81, '82.

19 Q. All right. And the exact diagnosis, you don't
20 know what that was, be it meso, asbestosis, lung cancer,
21 anything else?

22 A. I've heard two stories. I've heard that it was
23 lung cancer, but I think they changed it to mesothelioma
24 later on.

25 Q. And I think you testified in a lawsuit following

1 his death; is that correct?

2 A. Yes.

3 Q. And that -- the executor -- the plaintiffs in
4 that case were Link, I think, did I see that right?

5 A. Yes. The executors of his estate.

6 Q. And do you remember who was sued in that case?

7 A. No, I don't.

8 Q. Okay. And was it a wrongful death claim for his
9 death due to a lung disease of one kind or another?

10 A. I believe so.

11 MR. RHENEY: All right. That's all the
12 questions I've got. I appreciate it.

13 THE WITNESS: Yes.

14 MS. DEAN: Am I tangled?

15 MS. DEAN: Ready when you are.

16 THE WITNESS: Okay.

17 EXAMINATION

18 BY MS. DEAN:

19 Q. Good morning.

20 A. Good morning.

21 Q. You just had an opportunity to answer some
22 questions that were asked by Covil's lawyer. I have some
23 follow ups, okay?

24 A. Okay.

25 Q. First of all, you understood that -- and this is

1 one of the very first things I asked you, that I was
2 interested in talking to Covil, not so much Jim Covil.
3 And we had a list of topics we cared about.

4 A. Correct.

5 Q. Do you remember that?

6 A. Yes.

7 Q. And it was your obligation to prepare yourself,
8 based on what was known or available to the company, and
9 you said you spent about 50 hours doing that, right?

10 A. Right.

11 Q. And I want to make sure we're not only getting
12 honest answers, but straightforward answers. And you'll
13 agree to do that, right?

14 A. Yes.

15 Q. And if you suggest that something doesn't exist
16 when you never even looked, that's not a straightforward
17 answer. Do you agree?

18 MR. RHENEY: Object to the form. Argumentative.

19 THE WITNESS: Could be. Depending on what it
20 is.

21 BY MS. DEAN:

22 Q. Let's get some examples. Goldsmith. Did you
23 even Google it to see if it exists?

24 A. No.

25 Q. Did you spend a second of effort to figure out

1 anything about Goldsmith?

2 A. No. It wasn't my job to do that.

3 Q. Huh?

4 A. It was not my job to do that.

5 Q. Okay. In terms of -- and let me object to
6 nonresponsive. But in terms of what your responsibility
7 is as a representative, you didn't understand that you
8 needed to spend any time to figure out anything about
9 Goldsmith, when you came here today?

10 A. True.

11 Q. Okay. Huckabee Hound. It was one of the
12 companies that were referenced in the exhibits.

13 A. Yes.

14 Q. Do you remember that?

15 A. Yes.

16 Q. And you were asked about what they bought and
17 what they didn't bought -- what they didn't buy, sorry.
18 Do you remember that?

19 A. Yes.

20 Q. And we certainly know what's written on that
21 one-page document that was looked at, right?

22 A. Right.

23 Q. But then you were asked this question about
24 whether you ever sold asbestos to Huckabee Hound. Do you
25 remember that?

1 MR. RHENEY: Object to the form.

2 THE WITNESS: I don't remember that.

3 BY MS. DEAN:

4 Q. Well, let me just ask you this question. Did
5 you spend even half of a second looking to see what was
6 sold to Huckabee Hound any time before I showed you that
7 exhibit?

8 A. No.

9 Q. You were also asked about Dwaine Waters. And I
10 want to kind of give context to why this came up. You
11 recall I asked you yesterday about which depositions you
12 reviewed and which ones you did not, right?

13 A. Right.

14 Q. And one of them who worked at some of the same
15 places as the individuals that we're asking about today
16 was Mr. Waters. And you said you weren't given that
17 deposition, right?

18 A. No, I did see his deposition.

19 Q. You did?

20 A. Yes.

21 Q. Okay. Were you provided the videotape?

22 A. No.

23 Q. Did you see in his deposition testimony, both
24 before and after page 1012, which is the page that is
25 Defendant's Exhibit 2, that he discussed doing work at

1 McGuire that involved asbestos-containing components?

2 A. Yes.

3 Q. Okay. And in terms of investigating that, what
4 I thought you said quite clearly yesterday, is that you
5 couldn't find documents to either confirm or deny his
6 memory?

7 A. His what?

8 Q. His memories.

9 A. I don't recall that.

10 Q. Okay. You don't recall us talking about that or
11 you don't recall --

12 A. I do remember you talking about it, I don't
13 remember -- I don't recall what you just asked.

14 Q. Okay. Were there records that were able to
15 confirm or deny that, that you could find and point to
16 me?

17 A. There is records, yes.

18 Q. What are you referring to?

19 A. His deposition.

20 Q. Okay. Anything else?

21 A. No.

22 Q. Okay. You were asked questions whether there
23 were any fines to Covil, any at all. Do you remember
24 that question?

25 A. I do.

1 Q. Did you spend even half a minute looking to
2 determine whether there were any fines?

3 A. No.

4 Q. You were asked whether there were any records
5 from Daniels that showed that there was asbestos used at
6 that place. Did the lawyers for Covil provide you a
7 single Daniel-generated document, so you could answer
8 that question with any basis?

9 A. I looked at many documents. I can't recall, yea
10 or nay.

11 Q. And I think I asked you yesterday whether you
12 were provided the Daniel records just provided to us in
13 this case, and you hadn't, correct?

14 A. Right.

15 Q. Similarly, you were asked whether there were any
16 Duke records that suggested asbestos was being used. To
17 your knowledge, have you been provided a single Duke
18 record?

19 A. No.

20 Q. It is your belief, as I understand it, that
21 asbestos-containing cloth is not an insulating material.
22 Did I understand that right?

23 A. That's my belief, yes.

24 Q. And in formulating that belief, what are you
25 relying on?

1 A. My dad's deposition.

2 Q. In terms of what the manufacturing companies for
3 insulation lines, whether it be Owens-Corning or
4 Johns-Manville or others, have you looked at any of their
5 materials to see how they classify that material?

6 A. No, I didn't -- have not.

7 Q. If you were right or if Palmer Covil was right,
8 that it is not an insulating material, that would confirm
9 that Covil, in addition to selling asbestos-containing
10 insulating materials, sold other asbestos materials to
11 their clients, right?

12 MR. RHENEY: Object to the form.

13 THE WITNESS: They sold a lot of materials.
14 Some of them had asbestos, some didn't. Now, if it was
15 past, say, '73 or '74, then I would have to answer no.

16 BY MS. DEAN:

17 Q. Let me object to form and see if I can tighten
18 the question.

19 A. Okay.

20 Q. I'll get into when later, but during the years
21 that the company admits selling asbestos-containing
22 components, it's your belief that their line of
23 components were not just limited to insulating material,
24 they sold other asbestos products as well?

25 A. They sold a lot of products, yes.

1 Q. If -- let me put it in context. You were
2 provided Exhibit 1 that says, "Produced by JM-83" at the
3 bottom, and it's dated November 13th, 1972. Do you
4 remember that?

5 A. Yes..

6 Q. And this is a document that I'd like to
7 paraphrase and see if you would agree. But it's one of
8 your major suppliers coming and indicating in written
9 form that they are going to discontinue the use of
10 asbestos insulation, right?

11 A. Yes.

12 Q. Do you have a document for any other company in
13 the list of companies that Covil distributed for that
14 suggests the same thing?

15 A. Yes. I recall seeing some of that in some
16 records, but I don't recall exactly which company it was.

17 Q. Can you give me anything -- if you don't know
18 the company, the date, the Bates number, anything, so
19 that I could look at that myself?

20 A. I'm thinking Johns-Manville was one of them.

21 Q. Anything else?

22 A. Not that I can recall.

23 Q. And when you say you think Johns-Manville, where
24 do you believe you found that out from?

25 A. I'm thinking it's in the exhibits from my dad's

1 tes- -- from my dad's deposition.

2 Q. Okay. Anything else you can tell me?

3 A. No.

4 Q. If J -- if Johns-Manville indicates that they
5 sold insulating materials into the '80s, would that
6 surprise you?

7 A. I know they sold insulating materials, but I
8 wouldn't think it would have asbestos in it.

9 Q. Oh.

10 A. I can't speak for all their --

11 Q. I asked a terrible question. Thank you for --
12 for illuminating that. If Johns-Manville indicated that
13 they had a supply of asbestos-containing insulating
14 materials until the '80s, would that surprise you?

15 A. It would depend on what material you're talking
16 about.

17 Q. If it depends on what insulating materials and
18 what company, then if you're asked a very broad question
19 as to all of the companies you distributed for for all of
20 the insulating products, how can you give me a clean
21 answer for when they stopped selling them?

22 MR. RHENEY: Object to form.

23 THE WITNESS: Just based on knowledge from most
24 of the companies, based on OSHA regulations, took it,
25 asbestos, out of their materials in the early, middle

1 '70s.

2 BY MS. DEAN:

3 Q. And even if we just limited it to -- let me
4 object to the speculative part. But even if we limited
5 it to Johns-Manville, if your last -- second to last
6 answer was it depends on the insulating material when
7 they took it out, then how can you know the precise date?

8 A. I don't know the precise date.

9 Q. Can you even tell me what decade it was in for
10 cement, for Johns-Manville, in asbestos-insulating
11 cement, the last year they were -- had asbestos in it?

12 A. For cement?

13 Q. Yes.

14 A. No, I cannot.

15 Q. For block?

16 A. If it was block, it would contain asbestos.
17 Therefore, it was in the middle '70s, I'm sure.

18 Q. How do you know that?

19 A. Just the knowledge that everybody took
20 insulate -- everybody took asbestos out of their calcium
21 silicate products in the middle '70s --

22 Q. Where is that --

23 A. -- around the middle '70s.

24 Q. And let me object to foundation, but ask you how
25 do you know that? I mean, where did that knowledge come

1 from?

2 A. By going through all the records and having
3 knowledge of the insulation industry.

4 Q. And you kind of told me what your personal
5 knowledge of the insulating industry was. So outside of
6 that, what are you -- what are you referencing?

7 A. That's all.

8 Q. And your personal knowledge of working with
9 insulating products was in the energy business in the
10 three-week time frame you told me about in the '60s?

11 MR. RHENEY: Object to the form.

12 THE WITNESS: No. I worked in the field for
13 roughly three to four weeks, when I was in high school.

14 BY MS. DEAN:

15 Q. For --

16 A. I worked in the energy division full time, when
17 I went full time with the company.

18 Q. And that's what I meant to --

19 A. All right.

20 Q. -- say. There was two different --

21 A. Okay.

22 Q. -- kind of chunks of time. The three- or
23 four-week period you told me about in the '60s and then
24 your time in the energy division, right?

25 A. Right.

1 Q. For Keene, can you tell me for each type of
2 insulating material they produced, when was the last date
3 they sold it? They sold it. Not when it was sold to the
4 public, but when they sold it?

5 A. Keene Corporation?

6 Q. Uh-huh.

7 A. When they -- the last time they sold it? I have
8 no idea.

9 Q. Raybestos. Can you tell me the time frame for
10 each one of their insulating materials, when was the last
11 time they sold it?

12 A. I have no idea.

13 Q. You were asked about gaskets and packing. Do
14 you recall that?

15 A. Yes.

16 Q. And those are the questions asked to you from
17 Covil's lawyer?

18 A. Right.

19 Q. Are you aware that gaskets and packing are both
20 identified as sealants?

21 A. No, I did not.

22 Q. Have you made any effort at all to determine
23 what line of sealants were sold by Covil, historically?

24 A. No, I haven't.

25 Q. In terms of just determining whether sealants

1 include gaskets and packing, when, for what years, and
2 what asbestos content they may have, is that something
3 you investigated at all?

4 A. They -- the sealants they sold or we sold was
5 mastics and wet type, cement type. Not with
6 asbestos-type cement, but like a mastic that you'd use
7 for, like, roofing and stuff like that. But we sold
8 no -- when I think of gaskets, I think of gaskets, like
9 you put on like a garden hose or a machine to keep the
10 air or particles from filtrating through it or something,
11 but we sold nothing like that.

12 Q. And let me object to foundation. That's what
13 I'm trying to figure out. Not in the -- not in the
14 energy division, but in -- in other areas where we see
15 indications sealants are being sold, what have you done
16 so that you know one way or another what was sold under
17 that line?

18 A. Can you repeat that?

19 Q. Sure. So I don't want to ask about the energy
20 division, I want to ask about what the insulating
21 contractors were selling, when they were selling
22 sealants. What have you done, so that you know one way
23 or another what that involved?

24 A. I haven't done anything, but I've been in and
25 out that warehouse many times throughout the years, and

1 pretty much know the type of materials that they sold.

2 Q. Okay.

3 A. And I never saw any packing or gaskets or
4 anything.

5 Q. In terms of even adhesives and mastics, have you
6 done any research for what the asbestos content is for
7 those products?

8 A. No.

9 Q. You indicated that you believed asbestos cloth
10 was approved and not illegal to sell based on your
11 father's testimony, when you were being asked questions
12 by Covil's lawyers. Do you remember that?

13 A. Right. Yes.

14 Q. And I had asked you yesterday, and, again, as of
15 the break, so I'll ask it a third time. When we actually
16 put that to the test, when we look at the Federal
17 Regulations which were attached as Exhibit 7, there's not
18 a single word that suggests asbestos cloth was approved
19 by OSHA. That's true, isn't it?

20 A. That is true.

21 Q. And you were asked a question about whether it
22 was illegal to sell the products that Covil was selling,
23 asbestos insulation, along with others. Do you remember
24 that?

25 A. I do.

1 Q. Are you a regulatory expert or even somebody
2 that has reviewed the regulations to know what they were
3 in the '60s and '70s?

4 A. No, I'm not.

5 Q. If I represented to you that selling of products
6 that released asbestos in amounts that were well-known
7 and established to be above the limits at the time was
8 against federal law, do you have any basis to dispute it
9 -- dispute that?

10 A. No.

11 Q. And I'll get more concrete. There were studies
12 done that indicated that both mixing, installing, and
13 removing asbestos insulation routinely exceeded OSHA
14 levels and were in violation of OSHA levels. Any basis
15 to deny or confirm that?

16 MR. RHENEY: Object to form, foundation.

17 THE WITNESS: We never did, that I know of, do
18 any abatement, as far as removing pipe insulation or
19 anything on any of the job sites that we were on.

20 BY MR. DEAN:

21 Q. Object to nonresponsive and come back to that.

22 But my question was just, there has been testing
23 that indicates that whether you were removing, installing
24 or cleaning up after asbestos insulation, that violates
25 OSHA levels, so that doing that work unprotected would be

1 a violation of federal law. Do you have any basis to
2 know whether that's true or not?

3 MR. RHENEY: Object to form.

4 THE WITNESS: I'm not a safety expert. I can't
5 say.

6 BY MS. DEAN:

7 Q. And so when you say, we -- we were not violating
8 any law, you're doing that -- you're saying that blindly.
9 I mean, you don't know one way or another?

10 MR. RHENEY: Object to form.

11 THE WITNESS: It was not against the law to sell
12 insulation materials.

13 BY MS. DEAN:

14 Q. How do you know that? In 1976, how do you know
15 that?

16 A. If it was, then every insulation contractor
17 would be fined or put in jail.

18 Q. Is that the basis of your belief? Is there
19 anything else that's the basis of that belief?

20 A. No. We sold to the general public.

21 Q. You were asked to look at Exhibit 43. And we
22 can pull that, if it's helpful. But it was the document
23 that showed that Covil was supplying asbestos abatement
24 materials to Crawford. Do you remember that?

25 A. Yes.

1 Q. Any idea why they were selling asbestos
2 abatement materials to other companies?

3 A. Other than -- if possibly another company was
4 getting into the spray-type insulation, they used
5 basically the same type of equipment and stuff for the
6 urethane, roofing-type spray that abatement people would
7 use, I would think.

8 Q. And that's just an assumption on your part of
9 why that might be happening?

10 A. Well, I know about the spray industry and I know
11 they used those quite a bit, when they were doing spray
12 work.

13 Q. And what I mean by that is, that's one use based
14 on your knowledge --

15 A. Right.

16 Q. -- but you don't know whether that was the
17 particular use in that case?

18 A. I don't know personally, no.

19 Q. Why would you buy a bunch of asbestos abatement
20 material and asbestos labels, if your use for it had
21 nothing to do with asbestos?

22 A. Can't answer that. I don't know.

23 Q. Do you know what abatement work means? I
24 mean --

25 A. The removal, tear out of certain -- whatever the

1 case might be -- walls, ceilings, insulation.

2 Q. Okay. So one example of asbestos abatement
3 would be the removal or tear out of asbestos insulation,
4 right?

5 A. Could be, yes.

6 Q. And if that's the definition of abatement,
7 nothing more, the idea that you are going to be removing
8 or tearing out asbestos, there were repair contracts and
9 jobs done by Covil, going all the way back to your dad's
10 testimony about his work in the '40s, that involved
11 ripping out or repairing insulation?

12 A. True.

13 Q. Do you know when Mr. Link became a director or
14 officer?

15 MR. RHENEY: Who? Sorry.

16 MS. DEAN: Mr. Link.

17 THE WITNESS: Rick Link?

18 BY MS. DEAN:

19 Q. Yes.

20 A. Because his dad worked there, too. I don't know
21 the year, no.

22 Q. Do you know about -- about middle or beginning
23 of or late part --

24 A. Latter part of '80s, I would say.

25 Q. I'm sorry?

1 A. Later. Late '80s.

2 Q. You were asked a question about different
3 leaders, as I think the lawyer -- the term that the
4 lawyer for Covil used, but he listed out different
5 directors and officers and their age. Do you recall
6 that?

7 A. Yes.

8 Q. And then he said, so basically that means
9 you're -- you're all that's left. Do you remember that
10 question?

11 A. I do.

12 MR. RHENEY: Object to the form.

13 BY MS. DEAN:

14 Q. That's fundamentally inaccurate. And what I
15 mean by that is, there are hundreds of employees for
16 Covil outside of the four or five people that you were
17 asked about, right?

18 MR. RHENEY: Object to the form, argumentative.

19 THE WITNESS: Possibly, yes.

20 BY MS. DEAN:

21 Q. And it's not just possible. We saw in the
22 records, sometimes it said there were 235 employees,
23 sometimes Palmer Covil said we had hundreds of employees
24 about 1977. The number might vary a little bit, but
25 there were lots of men in the '60s, and '70s, and '80s

1 that worked for Covil, other than the five you were asked
2 about?

3 A. Yes.

4 Q. You were then asked questions about only having
5 about 50 hours of free time in the last six weeks. Do
6 you remember that?

7 A. No. I said I used 50 hours to prepare for this,
8 roughly.

9 Q. And then it was -- the follow up is, you started
10 this about six weeks ago?

11 A. Right.

12 Q. And that's about all the free time you had?

13 A. True.

14 Q. Any idea at all why you didn't start two years
15 ago looking at these documents?

16 A. When I walked away from Covil at -- in '91, I
17 never looked back. Had no interest in it whatsoever.

18 Q. When was the first time the lawyers for Covil
19 said to you, hey, we took the deposition of Mr. Howe, he
20 indicated that he worked at these five places. Can you
21 start looking? We have to respond to discovery about it.

22 MR. RHENEY: Object to the form. Instruct him
23 not to answer, since she's asked about when your lawyer
24 said to you.

25 BY MS. DEAN:

1 Q. When is the first time you made any effort to
2 learn about Covil's interaction with the lives of these
3 three people, Mr. Howe's claim, Ms. Smith's claim, and
4 Mr. Sizemore's claim?

5 A. Specifically about these was about six weeks
6 ago.

7 Q. I'll represent to you that the locations
8 relevant to Mr. Howe's claim have been known for over 48
9 months. Did you know that?

10 A. I did not know that.

11 Q. I'll represent to you that the locations by Mr.
12 Childers were known in some instances years ago, because
13 he's been deposed several times, but certainly in this
14 case for over a year. Did you know that?

15 A. No.

16 Q. But you nonetheless admitted that one of the
17 reasons that the lawyer listed out for you for Covil, why
18 you answered I don't know to many of the questions, is
19 because you were only given six weeks to do this, right?

20 A. I wouldn't say only six weeks. That's the only
21 time that I used to learn about it and -- but I knew
22 nothing about these people before then. Had no reason
23 to.

24 Q. And I -- and I don't -- you believed, until six
25 week ago, that you had no reason to know that, right?

1 A. True.

2 MR. RHENEY: Object to the form.

3 BY MS. DEAN:

4 Q. It was brought up that you were deposed in a
5 matter with your father's estate. How did that
6 deposition come up? In other words, why were you asked
7 to be deposed?

8 A. I believe the attorney handling that asked me
9 to -- if I would give my deposition for that.

10 Q. Did it have anything to do with Covil?

11 A. No.

12 Q. Did it have anything to do with his cause of
13 death?

14 MR. RHENEY: I'm sorry, his what?

15 MS. DEAN: Cause of death.

16 MR. RHENEY: Thank you.

17 THE WITNESS: Possibly.

18 BY MS. DEAN:

19 Q. Okay. I'm going to request -- and if there's a
20 better or easier way to do it, I will also listen to that
21 as an alternative -- but either a copy of the deposition
22 or the death certificate or something, just so we can
23 nail down the cause of death. Is that something you have
24 available now?

25 A. Today?

1 Q. Yes.

2 A. No.

3 Q. Okay. But I think I understood that there was
4 two different understandings of what happened to him.
5 Earlier you believed it was lung cancer and then you
6 believed it was mesothelioma?

7 A. Well, talking to some of the doctors at the
8 hospital, one of them at some point in time said he had
9 lung cancer --

10 Q. Okay.

11 A. -- but I think the final diagnosis was
12 mesothelioma.

13 Q. Were you involved with his care?

14 A. Yes.

15 Q. Okay. Did you review all of the records that
16 were attached to the back of your father's deposition?

17 A. You mean the exhibits?

18 Q. Yes.

19 A. Yes, I went through them twice.

20 Q. Do you recall the records that were attached
21 that indicated that for many of the companies, not all,
22 but many of the companies that Covil distributed for
23 continued to sell and make asbestos-containing products
24 after 1973?

25 A. I don't recall which ones.

1 Q. Do you recall seeing that?

2 A. Not really.

3 MS. DEAN: I think subject to questions from
4 others, that's what I wanted to ask you.

5 MR. RHENEY: I just -- we don't need to change
6 seats. I've got just a very few questions.

7 EXAMINATION

8 BY MR. RHENEY:

9 Q. I had asked, I think, of Mr. Covil -- I think my
10 question wasn't about sealants, but my question was, did
11 Covil sell gaskets and packing for pumps and valves. So
12 I wasn't asking about sealants.

13 So my question is, to your knowledge, as Covil's
14 representative, did Covil ever sell gaskets and packing
15 for pumps and valves?

16 MS. DEAN: Objection, vague and confusing
17 because they are the same, and also speculation.

18 THE WITNESS: Not to my knowledge.

19 BY MR. RHENEY:

20 Q. Okay. Did Covil have an asbestos abatement
21 division or something at some point in time, for a
22 brief -- some period of time?

23 A. They did at one time.

24 Q. When was that, roughly?

25 A. I don't recall. Sometime in the '80s.

1 Q. Maybe '86?

2 A. Possibly.

3 MS. DEAN: Objection, leading.

4 BY MR. RHENEY:

5 Q. If it was there in '86, was it selling things
6 like -- I forget the exhibit, I'm not going to try and
7 dig it out -- but was it selling things like we saw in
8 that exhibit, asbestos labels and things like that?

9 A. It didn't sell. It was -- it was a removal
10 company. And it was only in business for a few years.

11 Q. All right. Would it have had those labels for
12 that reason, a sticker that says, "Asbestos"?

13 A. Yes.

14 Q. Okay.

15 A. And it wasn't a Covil company, it was a totally
16 different --

17 Q. Right. Right. And I said division. Was it
18 under the umbrella of Covil or was it a completely
19 separate and distinct company?

20 A. It was completely separate.

21 MR. RHENEY: All right. Thank you, sir.

22 THE WITNESS: Uh-huh.

23 EXAMINATION

24 BY MS. DEAN:

25 Q. You were asked about whether Covil had an

1 asbestos abatement division, and you indicated that it
2 was through a separate company. What company is that?

3 A. OxyTherm.

4 Q. What's the relationship with OxyTherm and Covil?

5 A. A lot of the same personnel that worked at Covil
6 went to work for OxyTherm.

7 Q. Did OxyTherm have independent insurance from --
8 both workmen's comp and general liability insurance from
9 Covil or was it under the same policies?

10 A. It was under their own separate policy.

11 Q. Was it a -- what was the -- what was the -- what
12 was the relationship of the two, between the two? Did
13 Covil own OxyTherm? Was it a parent, subsidiary of --

14 A. No, complete solely -- totally different
15 company.

16 Q. Why would Covil records then have information
17 that would be through -- relating to the separate
18 company?

19 A. Because some of the people that worked at Covil
20 started the company.

21 Q. Okay.

22 A. Such as, Rick Link's dad, Harry Link, went to
23 work for that company in --

24 Q. And were they sufficiently intermingled, that
25 you would have an exhibit like Exhibit 43 that said Covil

1 Corporation, even though they meant OxyTherm?

2 A. No.

3 Q. And so --

4 A. Totally different location, totally different
5 type of work.

6 Q. So if it was listing out Covil Corporation at
7 the Covil address, you believe that to be related to
8 Covil?

9 A. Yes.

10 Q. Did the two companies work in conjunction with
11 each other? And what I mean by that is, if Covil had a
12 contract to do insulation work after OxyTherm was
13 created, would OxyTherm come in and take the stuff out
14 before Covil put it in?

15 MR. RHENEY: Object to form.

16 THE WITNESS: They would have -- they had their
17 own salespeople. They went out after their own business.
18 BY MS. DEAN:

19 Q. Did Covil ever sub out to OxyTherm to take stuff
20 off before Covil came in or was that separate?

21 A. I can't -- I don't know.

22 Q. Are you aware of any period of time where Covil
23 went to OxyTherm in any of the jobs in Exhibit 1, 2, and
24 3, for OxyTherm to come in first before Covil did to
25 remove any kind of asbestos?

1 A. No.

2 Q. Are you aware of any time when they went to
3 OxyTherm to do what's called bulk sampling or air
4 analysis in order to evaluate the situation, how much
5 asbestos is there, where is it --

6 A. For a Covil job?

7 Q. Yeah, before Covil came in.

8 A. No.

9 Q. Do you know if any of the training materials,
10 licensing materials, education that's required of
11 somebody that starts an asbestos abatement work made it
12 from OxyTherm to Covil?

13 A. No.

14 Q. The only way I can think of, based on what
15 I -- what little I know so far, is that if you have
16 somebody that's working in both places, that person then
17 brings what they have in their head from one place to the
18 other, but are you aware of anything beyond that being
19 done to take the information learned by the asbestos
20 abatement contractors to the insulators that might be
21 working around old asbestos in their jobs at Covil?

22 A. No.

23 Q. Do you know of any documents or records
24 maintained by OxyTherm about their asbestos abatement
25 work that Covil has any access to?

1 A. No.

2 Q. Have you looked one way or another? I mean, I
3 don't -- in other words, do we know if what's on 410
4 includes any OxyTherm documents?

5 A. No.

6 MS. DEAN: Okay. Thank you.

7 THE WITNESS: Uh-huh.

8 MR. RHENEY: All done. All right. I think you
9 are free to go.

10 THE VIDEOGRAPHER: This then completes our
11 videotaped deposition. We created two media files.
12 We're going off the record at 11:55:35.

13 MS. DEAN: It's still our position that there's
14 outstanding information that wasn't reasonably searched.
15 Do we want to make any effort to either meet and confer
16 on that or talk about that today? I know we're getting
17 down to the point where he has to leave in two hours
18 anyway. Or do we want to circle back on that quickly and
19 then figure out whether we have any agreements as to the
20 court order?

21 MR. RHENEY: What's your preference?

22 MR. TATE: Well, I guess the offer remains --
23 this is Ron Tate. The offer, I'm sure, remains open for
24 you to review the records on the 10th floor in their
25 original status. And then we can, based on your review

1 of those records, determine whether we should meet and
2 confer, any additional steps that need to be taken to
3 address the issues that you believe remain outstanding.

4 MS. DEAN: I take from that, though, keeping the
5 witness here is not what you want to do?

6 MR. TATE: I think we probably prefer that he be
7 discharged for today, since his time is running short,
8 and he only has about two more hours before he has to
9 report to work.

10 MS. DEAN: Then let's complete the record for
11 today. Do we have an agreement that unless and until he
12 reads and signs, we can use this deposition for Motions
13 in Limine, summary judgment, you know, both sides
14 reserving the right to say, hey, there was an impression
15 that needs to be made, but otherwise being able to use it
16 just so that we can do stuff that has to be filed --

17 MR. TATE: Yes.

18 MS. DEAN: -- for you guys tomorrow and for us?

19 MR. RHENEY: Yeah, that's fine.

20 MS. DEAN: And then anything else that we need
21 to put on the written record?

22 MR. RHENEY: I don't think so.

23 (Deposition was adjourned at 11:57 a.m.)

24 (Signature Reserved)

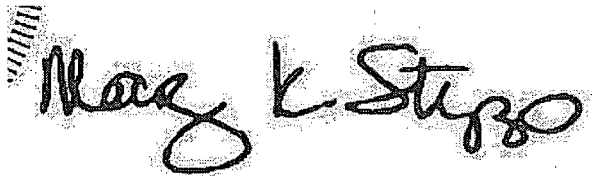
25

CERTIFICATE OF REPORTER

I, MARY K. STEPP, 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 12th day of February, 2018, at Campobello, Spartanburg County, South Carolina.

A handwritten signature in dark ink, reading "Mary K. Stepp". The signature is written in a cursive style with a small notary seal impression to the left.

Mary K. Stepp, Notary Public

SIGNATURE OF DEPONENT

DEPONENT: 30(b)(6) Covil Corporation
BY: James Covil
DEPOSITION DATE: February 8, 2018
REPORTER: MARY K. STEPP
CASE CAPTION: Howe vs. Air & Liquid Systems
Falls vs. CBS Corporation
Sizemore vs. Bowater Paper Mill

(Please return both Signature of Deponent pages)

I, the undersigned, JAMES 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

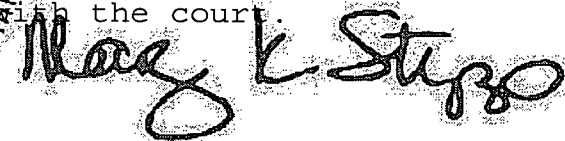
SIGNATURE OF DEPONENT (Continued)

DEPOSITION DATE: February 8, 2018
REPORTER: MARY K. STEPP
CASE CAPTION: Howe vs. Air & Liquid Systems
Falls vs. CBS Corporation
Sizemore vs. Bowater Paper Mill

PAGE	LINE	CHANGE	REASON

JAMES COVIL	DATE

I, Mary K. Stepp, 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.



Mary K. Stepp, Notary Public

David Rheney

From: David Rheney
Sent: Monday, January 29, 2018 2:23 PM
To: 'Toal, Jean'
Subject: RE: Proposed Protective Order.DOCX [GWB-IMANMAIN.FID61359]

Yes ma'am. I forgot about that. I am in no rush. We produced the Covil documents already today and are working on Duriron now.



T. David Rheney
Managing Partner
drheney@GWBlawfirm.com

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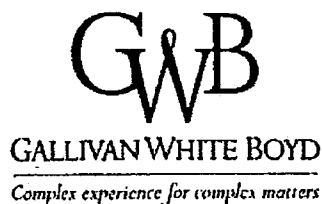
From: Toal, Jean [mailto:JToal@sccourts.org]
Sent: Monday, January 29, 2018 2:21 PM
To: David Rheney
Subject: RE: Proposed Protective Order.DOCX [GWB-IMANMAIN.FID61359]

David Thanks so much. In trial in Stewart in York. Will review this evening. Best, JHT

From: David Rheney [mailto:drheney@gwblawfirm.com]
Sent: Monday, January 29, 2018 11:55 AM
To: Toal, Jean <JToal@sccourts.org>
Subject: FW: Proposed Protective Order.DOCX [GWB-IMANMAIN.FID61359]

Judge Toal,

I apologize, I got your e-mail wrong on the 1st try, so I am re-sending the proposed order to you. It has been sent to the various plaintiff's counsel as well.



T. David Rheney
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From: David Rheney
Sent: Monday, January 29, 2018 11:32 AM
To: jtoallc@sccourts.org
Cc: Daniel White; Ron Tate; jdean@dobllp.com; jholder@dobllp.com; Theile McVey
Subject: FW: Proposed Protective Order.DOCX [GWB-IMANMAIN.FID61359]

Judge Toal,

Attached is the proposed order that you requested we prepare in the Howe, Falls/Smith and Sizemore cases. Please let us know if you wish for us to make any changes to the proposed order.

Thank you.



T. David Rheney
Managing Partner
drheney@GWBlawfirm.com

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From: Mary Beth Morgan
Sent: Monday, January 29, 2018 11:26 AM
To: David Rheney
Subject: Proposed Protective Order.DOCX [GWB-IMANMAIN.FID61359]

Good to go



Mary Beth Morgan
Legal Assistant
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STATE OF SOUTH CAROLINA

COUNTY OF YORK

ROXANNE FALLS, individually and as Personal  
Representative of the Estate of Charlotte Gaye  
Smith,

Plaintiff,

vs.

CBS Corporation, a Delaware corporation, f/k/a  
Viacom, Inc., successor by merger to CBS  
Corporation, Pennsylvania Corporation, f/k/a  
Westinghouse Electric Corporation, et al

Defendants.

---

IN THE COURT OF COMMON PLEAS

C.A. No.: 2015-CP-46-2155

**ORDER**

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

JAMES CALVIN SIZEMORE,

Plaintiff,

vs.

BOWATER PAPER MILL, *et al.*,

Defendants.

---

IN THE COURT OF COMMON PLEAS

C.A. No.: 2016-CP-25-440

**ORDER**



STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as  
Personal Representative of the Estate of WAYNE  
ERWIN HOWE, Deceased, and JEANETTE  
HOWE,

Plaintiff,

vs.

AIR & LIQUID SYSTEMS CORP., *et al.*,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2015-CP-46-3456

**ORDER**

These matters are before the Court on motions for protective order filed on behalf of the defendants, Covil Corporation and Flowserve Corporation, f/k/a The Duriron Company, Inc, and motions of the plaintiffs to compel production of documents from the defendants. A hearing was held in Columbia, South Carolina on January 24, 2018. Based upon the briefs submitted and arguments during the hearing, the Court rules as follows:

Covil's motion to preclude the taking of its Rule 30(b)(6) deposition in these matters is DENIED. Covil's motion to continue the 30(b)(6) deposition due to changes in the availability of Jim Covil since the originally agreed-upon date is GRANTED. The deposition will be continued until either February 7 or February 8, 2018, as mutually agreed upon by counsel. Covil's motion that the deposition be taken one time only for use in each of these cases is GRANTED.

The motion of Flowserve/Duriron to preclude the taking of its Rule 30(b)(6) deposition in Howe is DENIED. The deposition shall be taken on either February 7 or February 8, 2018, as mutually agreed upon by counsel.

The motions of the plaintiffs to compel production of relevant documents from Covil is GRANTED. Covil shall produce the requested documents in its possession by Monday, January 29, 2018.

The motion of the plaintiffs to compel production of documents from Flowserve/Duriron in Howe is GRANTED. Relevant documents responsive to the discovery requests for the Bowater, Crown Cork and Seal, American Enka and the two (2) Celanese plants at which the plaintiff worked, and which are in the possession of Flowserve/Duriron, shall be produced by Monday, January 29, 2018.

---

The Honorable Jean H. Toal  
Circuit Court Judge

Dated: \_\_\_\_\_

## Robin Seelbach

---

**From:** Elizabeth Moultrie <EMoultrie@kassellaw.com>  
**Sent:** Thursday, February 01, 2018 10:45 AM  
**To:** Jean Hoefer Toal, Chief Justice of the Supreme Court, Retired; 'G. Thomas Cooper Law Clerk'  
**Cc:** A. Timothy Jones; A. Walker Barnes; Andrew Shelby Rogers; Benjamin Joyce; Bobby Hood, Jr.; Brannon J. Arnold; Carolyn Blackwell; Christopher Austin Jaros; Daniel White; David Traylor - Nelson Mullins Riley & Scarborough LLP (david.traylor@nelsonmullins.com); Eric A. Ludwig; Eric K. Englehardt (Eric@greenvillesclaw.com); George Green; Gwyn L. Martin; James Glenn - Nelson Mullins Riley & Scarborough LLP (jase.glenn@nelsonmullins.com); James H. Elliott, Jr. - Richardson Plowden & Robinson, P.A. (jelliott@richardsonplowden.com); Jenna Brown; Jennifer Techman - Evert Weathersby Houff (JMTechman@ewhlaw.com); Joseph Lawrence Nelson; Josephine H. Hicks - Parker Poe Adams & Bernstein LLP (josephinehicks@parkerpoe.com); Joy P. Gragg, Secretary; Justin U. Ijei; Kathy D'Amico; Kathy Dawson; Kelli Eargle; Kim Westmoreland; Kimberly B. Taylor (Paralegal); Krista M. McGuire; Kurt Matthew Rozelsky; Lindarda Brown, Parlagal; Lynn S. Dunn; Mark H. Wall; Matthew A. Culp (mculp@rwdmlaw.com); Melinda Accardo; Michael Bogle - Womble Carlyle & Sandridge Rice, LLP (michael.bogle@wbd-us.com); Michael C. Griffin; Michael Kalwajtys; Moffatt G. McDonald, Esquire; Ollie M. Harton; Pauline Brown, Paralegal to Moffat McDonald; Rachel L. Huenefeld (Paralegal); Robert Meriwether - Nelson Mullins Riley & Scarborough LLP (robert.meriwether@nelsonmullins.com); Sam H. Nettles (snettles@richardsonplowden.com); Scott E. Frick - Haynsworth Sinkler Boyd P.A. (sfrick@hsblawfirm.com); Sheri Ackerman; Shubhra R. Mashelkar - Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC (smashelkar@wwhgd.com); Stephanie G. Flynn (Stephanie.Flynn@smithmoorelaw.com); Steven W. Ouzts, Esquire; Susan Collings, Paralegal; Susan Gladden; Sylvia Chisholm (Paralegal); Thomas F. Dougall; Thomas M. Kennaday, Esquire; W. David Conner - Haynsworth Sinkler Boyd P.A. (dconner@hsblawfirm.com); William A. Collins, Jr.; Allyson Twilley; Amy E. Melvin Esquire (amelvin@leathbouchlaw.com); Breon Walker; Courtney Pine; Dell P. Chappell, Esquire; Joseph E. Thoensen - Richardson Plowden (jthoensen@RichardsonPlowden.com); Kim Harbison; Louis P. Herns; Robin S. Spitz (Paralegal); Ron Tate; S. Pugh; Stacy Said; Timothy W. Bouch (tbouch@leathbouchlaw.com); V. Clark Price; Will Early; William A. Coates; Yaney A. McLeod III; Alexis Lindsay - Sowell Gray Stepp & Laffitte, LLC (alindsay@sowellgray.com); Amy Harmon Geddes; Brady A. Yntema Esq. (byntema@goldbergsegalla.com); Brenda Casey; C. Griffin; Cara Scott; Carole M. Pegler, Admin; Christopher R. Kinkade - Fox Rothschild LLP (ckinkade@foxrothschild.com); David L. Brown - Goldberg Segalla (dbrown@goldbergsegalla.com); Delores Catapano (Delores.Catapano@rtt-law.com); E. Chase Dressman, Esquire; E. Douglas Pratt-Thomas (Douglas.Pratt-Thomas@rtt-law.com); E. Elaine Shofner (eshofner@hptylaw.com); Gregory B. Collins, Esquire; J. Frazier; Joanna R. Doxey; Jovan Dungee; Julia Prince; Kelly Fesperman; Linda Wilson; Marsha Pritt; Michelle D. Laliberte, Legal Assistant; Nicholas W. Gladd, Esquire; Ren Wilkes; Richard Ashby Farrier, Jr.; Susan Miller; Timothy Peck; Tina Cundari - Sowell Gray Stepp & Laffitte, LLC (tcundari@sowellgray.com); Valerie Hampton; William Michael Starr; Kathy Hoffner; William Peele Early  
**Subject:** Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing  
**Attachments:** Howe -Order re disc motions - Covil.pdf; Howe -Order re disc motions - Marsulex Environmental.pdf; Howe -Order re disc mots - Cleaver Brooks, Inc.pdf; Sizemore - Order re disc Motions - Cleaver Brooks.pdf; Sizemore - Order re disc mots - Covil Corporation.pdf; Sizemore - Order re Pls and Defs discovery motions.pdf; Sizemore - Order re disc mots - Foster Wheeler Energy Corp.pdf; Smith - Order on disc motions - Cleaver Brooks.pdf; Smith - Order re disc mots - Covil.pdf; Smith - Order re disc mots - Foster Wheeler.pdf; Smith - Order re discovery motions - Daniel.pdf; Smith Order re disc motions - Union Carbide Corporation.pdf; Glenn - Order on MPO and MTC Motions.pdf; Glenn - Order re disc mot - Aurora.pdf; Glenn - Order re disc mots - Foster Wheeler.pdf; Glenn - Order re disc mots - Ingersoll Rand.pdf; Howe - Order on disc motoins - SPX Cooling Technologies, Inc.pdf; Howe - ORDER re disc mot - Flowserve (Durco).pdf; hOWE - Order re disc motions - The Gorman Rupp Co.pdf; Howe - Order re disc mots - Foster Wheeler.pdf; hOWE - Order re disc mots -- Ingersoll Rand.pdf; Howe - Order re discovery motions - Daniel and Fluor Entites.pdf; Howe - Order re discovery motions - DeZurick.pdf; Howe - Order re discovery motions re Union Carbide.pdf; Howe -Order on MPO and MTC Motions - Aurora.pdf

Dear Justice Toal:

Attached please find the Orders Plaintiffs have drafted based on your rulings during the March 24, 2018 Motions hearing. If the attached Orders meet with your approval, please sign them and have them filed with the Clerk of Court in the appropriate counties. By copy of this email, I am forwarding a copy of each of the Orders to counsel for Defendants.

Thank you for your kind consideration and attention. If you have any questions or concerns, or if you should need anything further, please do not hesitate to call me.

Yours very truly,

Elizabeth Cason Moultrie  
Senior Paralegal to John D. Kassel  
and Theile B. McVey  
KASSEL McVEY ATTORNEYS AT LAW  
1330 Laurel Street  
Post Office Box 1476  
Columbia, South Carolina 29202-1476  
803-256-4242  
803-256-1952 (Facsimile)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
Timothy W. Howe, Individually and as	)	Civil Action No.: 2015-CP-46-03456
Personal Representative of the Estate of	)	
Wayne Erwin Howe, deceased, and	)	
Jeanette Howe,	)	
	)	
Plaintiffs,	)	ORDER REGARDING
	)	COVIL CORPORATION
v.	)	DISCOVERY MOTIONS
	)	
Air & Liquid Systems, <i>et al.</i> ,	)	
	)	
Defendants.	)	

These matters are before the Court on Motions for Protective Order filed on behalf of Defendants and motions of Plaintiffs to complete production of documents and/or a 30(b)(6) deposition from Defendants. A hearing was held in Columbia, South Carolina on January 24, 2018. Based on the briefs submitted and arguments during the hearing, the Court rules as follows:

Defendant Covil Corporation's (hereinafter "Defendant") motion to preclude the taking of its Rule 30(b)(6) deposition in this matters is **DENIED**. Defendant shall produce a 30(b)(6) witness(es) by February 9, 2018, and continuing from day to day until complete. The deposition witness(es) shall be prepared on what is known or reasonably available to the company.

The motion of plaintiffs to compel production of documents from Defendant is **GRANTED**. Relevant documents responsive to the discovery requests for the Bowater, Crown Cork and Seal, American Enka and the two (2) Celanese plants at which Plaintiffs' decent worked, and which are in the possession or reasonably available to Defendant, shall be produced by January 30, 2018.

AND IT IS SO ORDERED.

Jean Hoefer Toal, Chief Justice of the
South Carolina Supreme Court,
Retired, Acting as Circuit Court Judge

February _____, 2018

Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
James Calvin Sizemore,	)	C/A No.: 2016-CP-25-440
	)	
Plaintiff,	)	
	)	
v.	)	ORDER REGARDING
	)	COVIL CORPORATION
Bowater Paper Mill, <i>et al.</i>	)	DISCOVERY MOTIONS
	)	
Defendants.	)	

These matters are before the Court on Motions for Protective Order filed on behalf of Defendants and motions of Plaintiffs to complete production of documents and/or a 30(b)(6) deposition from Defendants. A hearing was held in Columbia, South Carolina on January 24, 2018. Based on the briefs submitted and arguments during the hearing, the Court rules as follows:

Defendant Covil Corporation's (hereinafter "Defendant") motion to preclude the taking of its Rule 30(b)(6) deposition in this matters is **DENIED**. Defendant shall produce a 30(b)(6) witness(es) by February 9, 2018, and continuing from day to day until complete. The deposition witness(es) shall be prepared on what is known or reasonably available to the company.

The motion of plaintiffs to compel production of documents from Defendants is **GRANTED**. Relevant documents responsive to the discovery requests for the Daniel Building, Greenville, SC; Hoeschst Celanese, Spartanburg SC; Hoechst Celanese, Greer, SC; Hoechst Celanese, Greenville, SC; DuPont Camden Plant, Lugoff, SC; Duke Energy Oconee Plant, Seneca, SC; Carolina Power & Light Brunswick Plant, Southport, NC; Duke Energy W.S. Lee Steam Plant, Pelzer, SC; Bowater Paper Mill, Catawba, SC; Hoechst Celanese, Rock Hill, SC; South Carolina Electric & Gas Canady Plant, Walterboro, SC; Williams Power Station, Goose Creek, SC; Southland Exchange Joint Venture/Chambers Medical Technologies, Inc., Hampton, SC; Duke

Energy Buck Steam Station Salisbury, NC; Hoechst Celanese, Salisbury, NC; Duke Energy Cliffside Steam Plant, Cliffside, NC; DuPont, Brevard, NC; Buckeye Paper Mill, Perry, FL; Hoechst Celanese, Wilmington, NC; Duke Energy, Mount Holly, NC; Maritea Power, Miami, FL; Florida Power & Light, Cocoa Beach, FL; Florida Power & Light, Fort Lauderdale, FL; James River Paper Mill, Pennington, AL; Exxon Gas, Pennington, AL; Viking Distillers, Albany, GA; International Paper Mill, Southport, NC; International Paper Mill, Panama City, FL; International Paper Mill, Canton, NC; Waiau Power Plant, Honolulu, HI; Inland Orange Paper Mill, Orange, TX; Hunters Point Power Plant, San Francisco, CA; Willabrator Plant, Pompano Beach, FL; Fort Howard Paper Mill, Green Bay, WI; Mill Creek Generating Station, Louisville, KY; Moss Landing Power Plant, Moss Landing, CA; FPL Port Everglades Power Plant, Fort Lauderdale, FL; FPL Cape Canaveral Generating Station, Cocoa Beach, FL; Avondale Shipyard, New Orleans, LA; Halter Marine Shipyard, New Orleans, LA; American Marine Shipyard, New Orleans, LA; Domino Sugar, New Orleans, LA; and, Amoco Alliance Refinery, Belle Chase, LA, at which Plaintiff worked, and which are in the possession or reasonably available to Defendants, shall be produced by January 29, 2018.

AND IT IS SO ORDERED.

Jean Hoefer Toal, Chief Justice of the South
Carolina Supreme Court, Retired, Acting as
Circuit Court Judge

February _____, 2018

Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
	)	
Roxanne Falls, Individually and as	)	Civil Action No.: 2015-CP-46-02155
Personal Representative of the Estate of	)	
Charlotte Gaye Smith,	)	
	)	
Plaintiffs,	)	ORDER REGARDING
	)	COVIL CORPORATION
v.	)	DISCOVERY MOTIONS
	)	
CBS Corporation, <i>et al.</i> ,	)	
	)	
Defendants.	)	

These matters are before the Court on Motions for Protective Order filed on behalf of Defendants and motions of Plaintiffs to complete production of documents and/or a 30(b)(6) deposition from Defendants. A hearing was held in Columbia, South Carolina on January 24, 2018. Based on the briefs submitted and arguments during the hearing, the Court rules as follows:

Defendant Covil Corporation's (hereinafter "Defendant") motion to preclude the taking of its Rule 30(b)(6) deposition in this matter is **DENIED**. Defendant shall produce a 30(b)(6) witness(es) by February 9, 2018, and continuing from day to day until complete. The deposition witness(es) shall be prepared on what is known or reasonably available to the company.

The motion of plaintiffs to compel production of documents from Defendants is **GRANTED**. Relevant documents responsive to the discovery requests for Daniel Construction Company, Bowater Paper Mill, the multiple Fiber Industries plants, the Hoechst Celanese Plant (Spartanburg), Presnell Insulation, Inc., Cannon Mills, two Cone Mills plants, two Milliken Plants, and Duke Energy Plants: Allen Steam Station, Belews Creek, Catawba Nuclear, Cliffside Steam Plant, Dan River Steam Plant, Lee Steam Plant, McGuire Nuclear, Oconee Nuclear, and Riverbend,

at which Lewis Clifford Childers worked, and which are in the possession or reasonably available to Defendants, shall be produced by January 30, 2018.

AND IT IS SO ORDERED.

Jean Hoefer Toal, Chief Justice of the
South Carolina Supreme Court,
Retired, Acting as Circuit Court Judge

February _____, 2018

Columbia, South Carolina.

David Rheney

From: Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>
Sent: Friday, February 2, 2018 12:29 PM
To: David Rheney; Theile McVey; Toal, Jean
Cc: Daniel White; Ron Tate; Allyson Twilley; jholder@dobllp.com; jdean@dobllp.com
Subject: RE: Orders [GWB-IMANMAIN.FID17978]

Mr. Rheney,

I replied to the other email chain that you were not included on with the following message:

All,

The purpose of the hearing was to expedite and streamline these matters. As of now, it seems these discovery issues have only been complicated. The judge is not particularly pleased with the contention regarding these matters. Therefore, if there are any disagreements as to the proposed orders submitted by the parties that were told to provide proposed orders, then the opposing party can send in their own proposed order. Judge Toal will look at both proposed orders and make a decision as to what the orders will contain. No need for any further back and forth, which will only serve to delay this process and thus delay the cases for trial.

If there are any proposed orders that are agreed upon by the parties, please send them over marked as such so we can get them filed.

Thank you,

Jamie Rutkoski
Law Clerk to the Honorable G. Thomas Cooper, Jr. and the Honorable Jean Toal
Circuit Court of South Carolina
1121 Broad St., Rm. 313
Post Office Box 1557
Camden, SC 29021
Phone: (803) 425-7182
Fax: (803) 425-5529

From: David Rheney [mailto:drheney@gwblawfirm.com]
Sent: Friday, February 2, 2018 12:26 PM
To: Theile McVey <TMcVey@kassellaw.com>; Toal, Jean <JToal@sccourts.org>; Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>
Cc: Daniel White <Dwhite@gwblawfirm.com>; Ron Tate <Rtate@gwblawfirm.com>; Allyson Twilley <atwilley@gwblawfirm.com>; jholder@dobllp.com; jdean@dobllp.com
Subject: RE: Orders [GWB-IMANMAIN.FID17978]

Judge Toal,

I am not troubled by not getting the e-mail. I just wanted you to know why I did not respond until this morning. I have already shared why that was with Ms. McVay, but didn't think you would care about the details of that.

We respectfully disagree with several things mentioned in Ms. McVay's e-mail below. First, Covil moved to require that the deposition be taken once in all cases, which is what you ordered. I do not recall the plaintiffs ever agreeing to that at

the hearing. Second, at no point did Covil request an extension to respond to discovery until Tuesday. You originally ordered that it produce records by Friday the 26th, and after a discussion with Ms. Dean during the next break she agreed to allow that to be pushed to Monday the 29th, which was the date a number of other defendants were given. That is also what I included in Covil's proposed order sent to you on Monday the 29th. Third, Covil produced its records around mid-day on Monday the 29th, not on Tuesday the 30th as Ms. McVay said below and which would not have complied with what your order. That is important because in a deposition this week another 30(b)(6) deponent was threatened with a motion for sanctions because it produced documents after the 29th, so we would like to be very clear that was not the case with Covil.

We are uncomfortable with a written order including implicit matters beyond what you actually ordered during the hearing, as what is implicit to one lawyer may not be implicit to another. The fact of the matter is that you did not order the deposition to be continued day-to-day until it is done. As we said during the hearing, Mr. Covil is now required to work full time due to any injury sustained by his supervisor right about the turn of the year. He will be working full time until March and it is difficult for him to get time off. He does not have unlimited time and isn't being paid by his employer to testify on its behalf. It isn't anyone's fault, it just is what it is.

That said, Ms. Dean has offered to move as quickly as possible, and we are appreciative of that. Likewise, we have asked Mr. Covil to give us as much time as he can given his work schedule. Wednesday is his day off, and assuming he is able we will be glad to go beyond 5 o'clock to get as much done in one day as possible. He has also talked to his boss, and she has agreed to let him come in late on Thursday, but he has to be done with the deposition by 2 o'clock so he can report to work on time.

For all these reasons we believe the plaintiff's proposed order is not consistent with your order and we again request that you disregard that order in favor of the one which you requested that we provide.

Thank you.



T. David Rheney
Managing Partner
drheney@GWBlawfirm.com

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From: Theile McVey [mailto:TMcVey@kassellaw.com]
Sent: Friday, February 2, 2018 11:23 AM
To: David Rheney; Toal, Jean; gcooperlc@sccourts.org
Cc: Daniel White; Ron Tate; Allyson Twilley; jholder@dobllp.com; jdean@dobllp.com
Subject: RE: Orders [GWB-IMANMAIN.FID17978]

Chief Justice Toal:

My apologies that Mr. Rheney was left off the email, however, we did include all of his other partners. We will be sure to include Mr. Rheney going forward.

As it relates to Covil we believe either order (Covil's order with our proposed change or Plaintiff's proposed order) is in line with the court's rulings – especially taking in light your honor's earlier order that this discovery be complete by February 9th. For context, Plaintiff's agreed to consolidate all cases. The Court ordered records by Monday and we agreed to Tuesday given logistical problems for the Defendant. The deposition was to occur this week and Plaintiffs did not want to move the deposition. However, during the hearing, you ordered the deposition to occur next week before the discovery deadline.

The issue that is addressed in our order but was not explicitly addressed at the hearing is the length of the deposition. We have consolidated the notices for three cases, spanning a time frame of five decades and involving over 75 locations. Covil produced over 24,000 pages of documents on Tuesday. We were told the witness was available the 7th or 8th. We noticed for the 7th and made clear that our hope is to finish in one day. However, given the scope involved we may need a second day. We offered to do this on the 9th as well, if better for Mr. Covil, as long as the matter was complete by the Court's deadline. I think the Court's order is clear and was consistent for defendants – provide relevant documents and deposition for the depositions noticed in any case in the March block by the 9th. That is all we are seeking.

Please let me know if you have any questions or concerns.

Theile McVey
Kassel McVey
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From: David Rheney [<mailto:drheney@gwblawfirm.com>]
Sent: Friday, February 02, 2018 10:32 AM
To: Toal, Jean <JToal@sccourts.org>
Cc: Daniel White <Dwhite@gwblawfirm.com>; Ron Tate <Rtate@gwblawfirm.com>; Allyson Twilley <atwilley@gwblawfirm.com>; Theile McVey <TMcVey@kassellaw.com>; jholder@dobllp.com; idean@dobllp.com
Subject: Orders [GWB-IMANMAIN.FID17978]

Judge Toal,

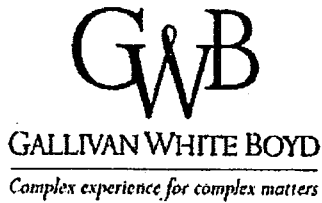
I assume you are still tied up with trial this week and I hate to add to your platter. However, I wanted to let you know that I did not receive a copy of all of the orders sent by Ms. Moultrie in her e-mail yesterday morning. It does not appear I am on that chain. I did not see them until this morning, so I am just now responding to them. I am only including the folks in my office and the plaintiff's attorneys in this response as I don't see any need to include 100 other lawyers in something that is specific to our clients.

During the hearing on 1/24 you asked me to draft orders related to Covil and Howe, not plaintiff's counsel. I submitted that to you on Monday, and plaintiff's counsel, Ms. Dean I think, requested one minor change which we do not disagree with.

We do not believe the orders submitted by plaintiff's counsel yesterday (3 for Covil and 1 for Flowserve) are consistent with your ruling, and therefore request that you disregard those. During the hearing you did not order that the depositions continue "day-to-day until complete" or instruct us how we are to prepare the deponents for their depositions. In addition, and as to Covil, you did say that the deposition would be taken once for use in all cases, and that portion of your order has not been included in the plaintiff's proposed orders.

The proposed order we submitted at your request is consistent with your order from the bench on 1/24, so we request that you disregard the ones submitted yesterday and sign the one we sent on Monday.

Thank you.



T. David Rheney
Managing Partner
drheney@GWBlawfirm.com

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## David Rheney

---

**From:** Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>  
**Sent:** Friday, February 2, 2018 1:51 PM  
**To:** Theile McVey; McDonald, Mott; Elizabeth Moultrie; Jennifer M. Techman; Robert Meriwether; David Rheney; Jessica Dean; Toal, Jean; Jonathan Holder  
**Cc:** A. Timothy Jones; A. Walker Barnes; Andrew S. Rogers; Benjamin Joyce; Bobby Hood, Jr.; Brannon J. Arnold; Carolyn Blackwell; Christopher Austin Jaros; Daniel White; David Traylor; Eric A. Ludwig; Eric K. Englehardt (Eric@greenvillesclaw.com); George Green; Gwyn L. Martin; Jase Glenn; James H. Elliott, Jr. - Richardson Plowden & Robinson, P.A. (jelliott@richardsonplowden.com); Jenna Brown; Joseph Lawrence Nelson; Josephine H. Hicks - Parker Poe Adams & Bernstein LLP (josephinehicks@parkerpoe.com); Joy P. Gragg, Secretary; Justin U. Ijei; Kathy D'Amico; Dawson, Kathy; Kelli Eargle; Kim Westmoreland; Kimberly B. Taylor (Paralegal); Krista M. McGuire; Kurt Matthew Rozelsky; Lindarda Brown, Parlagal; Dunn, Lynn; Mark H. Wall; Matthew A. Culp (mculp@rwdmlaw.com); Melinda Accardo; Michael Bogle - Womble Carlyle & Sandridge Rice, LLP (michael.bogle@wbd-us.com); Michael C. Griffin; Michael Kalwajtys; Ollie M. Harton; Dawson, Kathy; Rachel L. Huenefeld; Sam H. Nettles (snettles@richardsonplowden.com); Frick, Scott; Sheri Ackerman; Shubhra R. Mashelkar - Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC (smashelkar@wwhgd.com); Stephanie G. Flynn (Stephanie.Flynn@smithmoorelaw.com); Steven W. Ouzts, Esquire; Susan Collings; Susan Gladden; Sylvia Chisholm (Paralegal); Thomas F. Dougall; Thomas M. Kennaday, Esquire; Conner, David; William A. Collins, Jr.; Allyson Twilley; Amy E. Melvin Esquire (amelvin@leathbouchlaw.com); Breon Walker; Courtney Pine; Dell Chappell; Joseph E. Thoensen - Richardson Plowden (jthoensen@RichardsonPlowden.com); Kim Harbison; Louis P. Herns; Robin S. Spitz (Paralegal); Ron Tate; S. Pugh; Stacy Said; SILICA - Timothy Bouch; V. Clark Price; Will Early; SILICA - William Coates; Yaney A. McLeod III; Alexis Lindsay - Sowell Gray Stepp & Laffitte, LLC (alindsay@sowellgray.com); Amy Harmon Geddes; Brady A. Yntema Esq. (byntema@goldbergsegalla.com); Brenda Casey; C. Griffin; Cara Scott; Carole M. Pegler, Admin; Christopher R. Kinkade - Fox Rothschild LLP (ckinkade@foxrothschild.com); David L. Brown - Goldberg Segalla (dbrown@goldbergsegalla.com); Delores Catapano (Delores.Catapano@rtt-law.com); E. Chase Dressman, Esquire; E. Douglas Pratt-Thomas (Douglas.Pratt-Thomas@rtt-law.com); E. Elaine Shofner (eshofner@hptylaw.com); Gregory B. Collins, Esquire; J. Frazier; Joanna R. Doxey; Jovan Dungee; Julia Prince; Kelly Fesperman; Linda Wilson; Marsha Pritt; Michelle D. Laliberte, Legal Assistant; Nicholas W. Gladd, Esquire; Ren Wilkes; Richard Ashby Farrier, Jr.; Susan Miller; Timothy Peck; Tina Cundari - Sowell Gray Stepp & Laffitte, LLC (tcundari@sowellgray.com); Valerie Hampton; Bill Starr; Kathy Hoffner; William Peele Early  
**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

It would still be preferable for both sides to send a proposed order. The transcript will just supplement the proposed orders. If ANY of y'all can agree to a proposed order in regards to any of the issues presented, send that proposed order identified as being agreed to by the parties.

Thank you,

Jamie Rutkoski  
Law Clerk to the Honorable G. Thomas Cooper, Jr. and the Honorable Jean Toal  
Circuit Court of South Carolina  
1121 Broad St., Rm. 313  
Post Office Box 1557

Camden, SC 29021  
Phone: (803) 425-7182  
Fax: (803) 425-5529

**From:** Theile McVey [mailto:TMcVey@kassellaw.com]

**Sent:** Friday, February 2, 2018 1:45 PM

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal and Jamie:

After discussions with Counsel for the Defendants, it appears that the easiest and most efficient solution to all the back and forth is to do away with the proposed orders from both sides and rely on the transcript from the hearing. The transcript will reflect the arguments made and your rulings.

If you disagree and would like written Orders, we will work together over the weekend to agree on as much as possible. Thanks so much, Theile

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

All,

The purpose of the hearing was to expedite and streamline these matters. As of now, it seems these discovery issues have only been complicated. The judge is not particularly pleased with the contention regarding these matters. Therefore, if there are any disagreements as to the proposed orders submitted by the parties that were told to provide proposed orders, then the opposing party can send in their own proposed order. Judge Toal will look at both proposed orders and make a decision as to what the orders will contain. No need for any further back and forth, which will only serve to delay this process and thus delay the cases for trial.

If there are any proposed orders that are agreed upon by the parties, please send them over marked as such so we can get them filed.

Thank you,

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Judge Toal:

I understand the difficulties of drafting orders in a hearing as complex as last week's. However, my memory of the Court's rulings as to my particular clients is substantially at odds with the Orders that Plaintiffs' propose. The attached letter explains my position, and I leave the matter in your hands.

Good luck with your trial in York County.

**Haynsworth  
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**Sent:** Thursday, February 01, 2018 11:18 AM

**To:** Jennifer M. Techman; Robert Meriwether; Jessica Dean; Theile McVey; Jean Hoefer Toal, Chief Justice of the Supreme Court, Retired; 'G. Thomas Cooper Law Clerk'; Jonathan Holder

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal, please do not sign until counsel has a moment to review. I apologize for the confusion. I had Elizabeth send and did not make her aware of your instructions. This was my mistake.

Jennifer and Robert:

My apologies. I sent the proposed orders to Chief Justice Toal and to all defense counsel with the proposed order exactly how Covil sent their proposed order. They also copied the Judge. These are pretty simple orders, so look forward to your prompt review. I note that you and Robert represent the two clients who have already filed motions to reconsider on the Judge's Order compelling discovery. We sent those responses to you and the Chief Justice earlier.

Best, Theile

**From:** Jennifer M. Techman [<mailto:JMTechman@ewhlaw.com>]

**Sent:** Thursday, February 01, 2018 11:08 AM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

On behalf of my clients I join in the objection set out below and would ask that theses be withdrawn from consideration by the Court. We will review these promptly but we respectfully ask that we follow the instructions stated by Justice Toal in Court with regard to the handling of proposed orders.  
Thank you.



**Jennifer M. Techman**

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Sent: Thursday, February 01, 2018 11:01 AM

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Please allow me to register an objection to this method of proposing final Orders based on the Court's decisions at the recent hearing. It was my understanding that plaintiff's counsel were to circulate proposed Orders to defense counsel and coordinate before submitting any final proposed Order to Your Honor. This is the first we have seen of any proposed Orders. We will review them and provide any comment, but in the interest of compliance with what I believe was the clear direction of the Court, I would ask that these be withdrawn from consideration by the Court and considered to be proposed Orders circulated to defense counsel for comment. Thank you.

Robert O. Meriwether  
Partner  
Nelson Mullins Riley & Scarborough, L.L.P.  
DID: (803) 255-9469

**From:** Elizabeth Moultrie [mailto:EMoultrie@kassellaw.com]  
**Sent:** Thursday, February 1, 2018 10:45 AM  
**To:** Jean Hoefer Toal, Chief Justice of the Supreme Court, Retired <jtoal@sccourts.org>; 'G. Thomas Cooper Law Clerk' <GCooperLC@sccourts.org>  
**Cc:** A. Timothy Jones <tjones@hptylaw.com>; A. Walker Barnes <walker.barnes@hoodlaw.com>; Andrew Shelby Rogers <asrogers@ewhlaw.com>; Benjamin Joyce <ben.joyce@hoodlaw.com>; Bobby Hood, Jr. <bobbyjr.hood@hoodlaw.com>; Brannon J. Arnold <barnold@wwhgd.com>; Carolyn Blackwell <Carolyn.Blackwell@nelsonmullins.com>; Christopher Austin Jaros <christopher.jaros@klgates.com>; SILICA - Daniel White <dwhite@gwblawfirm.com>; David Traylor <david.traylor@nelsonmullins.com>; Eric A. Ludwig <eludwig@hptylaw.com>; Eric K. Englehardt (Eric@greenvillesclaw.com) <Eric@greenvillesclaw.com>; George Green <ggreen@wwhgd.com>; Gwyn L. Martin <gwyn.martin@klgates.com>; Jase Glenn <Jase.Glenn@nelsonmullins.com>; James H. Elliott, Jr. - Richardson Plowden & Robinson, P.A. (jelliott@richardsonplowden.com) <jelliott@richardsonplowden.com>; Jenna Brown <jbrown@turnerpadget.com>; Jennifer Techman - Evert Weathersby Houff (JMTechman@ewhlaw.com) <JMTechman@ewhlaw.com>; Joseph Lawrence Nelson <jnelson@dmclaw.com>; Josephine H. Hicks - Parker Poe Adams & Bernstein LLP (josephinehicks@parkerpoe.com) <josephinehicks@parkerpoe.com>; Joy P. Gragg, Secretary <jgragg@wwhgd.com>; Justin U. Ijei <jijeir@rwdmlaw.com>; Kathy D'Amico <kdamico@gwblawfirm.com>; Kathy Dawson <kdawson@hsblawfirm.com>; Kelli Eargle <kelli.eargle@nelsonmullins.com>; Kim Westmoreland <kwestmoreland@richardsonplowden.com>; Kimberly B. Taylor (Paralegal) <kim.taylor@klgates.com>; Krista M. McGuire <kristamcguire@parkerpoe.com>; Kurt Matthew Rozelsky <kurt.rozelsky@smithmoorelaw.com>; Lindarda Brown, Parlagal <lbrown@turnerpadget.com>; Lynn S. Dunn <ldunn@hsblawfirm.com>; Mark H. Wall <Mark.Wall@WallTempleton.com>; Matthew A. Culp (mculp@rwdmlaw.com) <mculp@rwdmlaw.com>; Melinda Accardo <melinda.accardo@hoodlaw.com>; Michael Bogle - Womble Carlyle & Sandridge Rice, LLP (michael.bogle@wbd-us.com) <michael.bogle@wbd-us.com>; Michael C. Griffin <mgriffin@babco.com>; Michael Kalwajtys <mkalwajtys@dougallfirm.com>; Moffatt G. McDonald, Esquire <mmcdonald@hsblawfirm.com>; Ollie M. Harton <oharton@hptylaw.com>; Pauline Brown, Paralegal to Moffat McDonald <pbrown@hsblawfirm.com>; Rachel L. Huenefeld (Paralegal) <RLHuenefeld@ewhlaw.com>; Robert Meriwether <robert.meriwether@nelsonmullins.com>; Sam H. Nettles (snettlles@richardsonplowden.com) <snettlles@richardsonplowden.com>; Scott E. Frick - Haynsworth Sinkler Boyd P.A. (sfrick@hsblawfirm.com) <sfrick@hsblawfirm.com>; Sheri Ackerman <Sheri.ackerman@walltempleton.com>; Shubhra R. Mashelkar - Weinberg,



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Subject: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Dear Justice Toal:

Attached please find the Orders Plaintiffs have drafted based on your rulings during the March 24, 2018 Motions hearing. If the attached Orders meet with your approval, please sign them and have them filed with the Clerk of Court in the appropriate counties. By copy of this email, I am forwarding a copy of each of the Orders to counsel for Defendants.

Thank you for your kind consideration and attention. If you have any questions or concerns, or if you should need anything further, please do not hesitate to call me.

Yours very truly,

*Elizabeth Cason Moultrie*  
 Senior Paralegal to John D. Kassel  
 and Theile B. McVey  
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David Rheney

From: David Rheney
Sent: Friday, February 2, 2018 4:24 PM
To: Toal, Jean; gcooperlc@sccourts.org
Cc: Daniel White; Ron Tate; Allyson Twilley; Theile McVey; jdean@dobllp.com; jholder@dobllp.com
Subject: Proposed Protective Order.DOCX [GWB-IMANMAIN.FID17978]
Attachments: Proposed Protective Order.DOCX

Judge Toal,

Attached is a proposed order, with changes proposed by Ms. Dean this past Monday and with changes for the defendants to produce a 30(b)(6) deponent "by 2/9/18", rather than "on 2/7 or 2/8".

Thank you. Have a good weekend.



GALLIVAN WHITE BOYD

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

ROXANNE FALLS, individually and as Personal
Representative of the Estate of Charlotte Gaye
Smith,

Plaintiff,

vs.

CBS Corporation, a Delaware corporation, f/k/a
Viacom, Inc., successor by merger to CBS
Corporation, Pennsylvania Corporation, f/k/a
Westinghouse Electric Corporation, et al

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2015-CP-46-2155

ORDER

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

JAMES CALVIN SIZEMORE,

Plaintiff,

vs.

BOWATER PAPER MILL, *et al.*,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2016-CP-25-440

ORDER

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of WAYNE
ERWIN HOWE, Deceased, and JEANETTE
HOWE,

C.A. No.: 2015-CP-46-3456

ORDER

Plaintiff,

vs.

AIR & LIQUID SYSTEMS CORP., *et al.*,

Defendants.

These matters are before the Court on motions for protective order filed on behalf of the defendants, Covil Corporation and Flowserve Corporation, f/k/a The Duriron Company, Inc, and motions of the plaintiffs to compel production of documents from the defendants. A hearing was held in Columbia, South Carolina on January 24, 2018. Based upon the briefs submitted and arguments during the hearing, the Court rules as follows:

Covil's motion to preclude the taking of its Rule 30(b)(6) deposition in these matters is DENIED. Covil's motion to continue the 30(b)(6) deposition due to changes in the availability of Jim Covil since the originally agreed-upon date is GRANTED. Covil will produce a 30(b)(6) deponent by February 9, 2018, as mutually agreed upon by counsel. Covil's motion that the deposition be taken one time only for use in each of these cases is GRANTED.

The motion of Flowserve/Duriron to preclude the taking of its Rule 30(b)(6) deposition in Howe is DENIED. Flowserve/Duriron will produce a 30(b)(6) deponent by February 9, 2018, as mutually agreed upon by counsel.

The motions of the plaintiffs to compel production of relevant documents from Covil is GRANTED. Covil shall produce the documents in its possession or reasonably available to it by Monday, January 29, 2018.

The motion of the plaintiffs to compel production of documents from Flowserve/Duriron in Howe is GRANTED. Relevant documents responsive to the discovery requests for the Bowater, Crown Cork and Seal, American Enka and the two (2) Celanese plants at which the plaintiff worked, and which are in the possession of, or reasonably available to, Flowserve/Duriron, shall be produced by Monday, January 29, 2018.

The Honorable Jean H. Toal
Circuit Court Judge

Dated: _____

Becky Wright

From: Ron Tate
Sent: Wednesday, February 21, 2018 6:56 PM
To: McDonald, Mott; Cooper, G. Thomas Law Clerk (Jamie Rutkoski); Robert Meriwether; Theile McVey; Elizabeth Moultrie; Jennifer M. Techman; David Rheney; Jessica Dean; Toal, Jean; Jonathan Holder
Cc: A. Timothy Jones; A. Walker Barnes; Andrew S. Rogers; Benjamin Joyce; Bobby Hood, Jr.; Brannon J. Arnold; Carolyn Blackwell; Christopher Austin Jaros; Daniel White; David Traylor; Eric A. Ludwig; Eric K. Englehardt (Eric@greenvillesclaw.com); George Green; Gwyn L. Martin; Jase Glenn; James H. Elliott, Jr. - Richardson Plowden & Robinson, P.A. (jelliott@richardsonplowden.com); Jenna Brown; Joseph Lawrence Nelson; Josephine H. Hicks - Parker Poe Adams & Bernstein LLP (josephinehicks@parkerpoe.com); Joy P. Gragg, Secretary; Justin U. Ijei; Dawson, Kathy; Kelli Eargle; Kim Westmoreland; Kimberly B. Taylor (Paralegal); Krista M. McGuire; Kurt Matthew Rozelsky; Lindarda Brown, Parlagal; Dunn, Lynn; Mark H. Wall; Matthew A. Culp (mculp@rwdmlaw.com); Melinda Accardo; Michael Bogle - Womble Carlyle & Sandridge Rice, LLP (michael.bogle@wbd-us.com); Michael C. Griffin; Michael Kalwajty; Ollie M. Harton; Dawson, Kathy; Rachel L. Huenefeld; Sam H. Nettles (snettles@richardsonplowden.com); Frick, Scott; Sheri Ackerman; Shubhra R. Mashelkar - Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC (smashelkar@wwhgd.com); Stephanie G. Flynn (Stephanie.Flynn@smithmoorelaw.com); Steven W. Ouzts, Esquire; Susan Collings; Susan Gladden; Sylvia Chisholm (Paralegal); Thomas F. Dougall; Thomas M. Kennaday, Esquire; Conner, David; William A. Collins, Jr.; Allyson Twilley; Amy E. Melvin Esquire (amelvin@leathbouchlaw.com); Breon Walker; Courtney Pine; Dell Chappell; Joseph E. Thoensen - Richardson Plowden (jthoensen@RichardsonPlowden.com); Kim Harbison; Louis P. Herns; Robin S. Spitz (Paralegal); S. Pugh; SILICA - Timothy Bouch; Will Early; SILICA - William Coates; Yaney A. McLeod III; Alexis Lindsay - Sowell Gray Stepp & Laffitte, LLC (alindsay@sowellgray.com); Amy Harmon Geddés; Brady A. Yntema Esq. (byntema@goldbergsegalla.com); Brenda Casey; C. Griffin; Cara Scott; Carole M. Pegler, Admin; Christopher R. Kinkade - Fox Rothschild LLP (ckinkade@foxrothschild.com); David L. Brown - Goldberg Segalla (dbrown@goldbergsegalla.com); Delores Catapano (Delores.Catapano@rtt-law.com); E. Chase Dressman, Esquire; E. Douglas Pratt-Thomas (Douglas.Pratt-Thomas@rtt-law.com); E. Elaine Shofner (eshofner@hptylaw.com); Gregory B. Collins, Esquire; J. Frazier; Joanna R. Doxey; Jovan Dungee; Kelly Fesperman; Linda Wilson; Marsha Pritt; Michelle D. Laliberte, Legal Assistant; Nicholas W. Gladd, Esquire; Ren Wilkes; Susan Miller; Timothy Peck; Tina Cundari - Sowell Gray Stepp & Laffitte, LLC (tcundari@sowellgray.com); Valerie Hampton; Bill Starr; Kathy Hoffner; William Peele Early; Daniel White; David Rheney; Jovan Dungee; Carla Towers
Subject: Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing [GWB-IMANMAIN.FID188614]
Attachments: Proposed Protective Order (2).docx; Letter to Honorable Jean H. Toal Re-Covil Corporation and Flowserve Corp....pdf

Judge Toal:

In compliance with your directions, attached are a proposed order relating to the January 24 discovery motions on behalf of our clients Flowserve Corp f/k/a Duriron and Covil Corp. and an explanatory letter.

Best regards,



GALLIVAN WHITE BOYD

Complex experience for complex matters

Ronald G. Tate, Jr.
Partner
rtate@GWBlawfirm.com

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This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

February 21, 2018

Via E-mail

Honorable Jean H. Toal
1231 Gervais Street
Columbia, SC 29201
jtoal@sccourts.org

Re: James Calvin Sizemore v. Bowater Paper Mill, et al
Case No. 2016-CP-25-440

Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, Deceased, and Jeanette Howe v. Air & Liquid Systems Corp., et al.
C.A. No.: 2015-CP-46-3456

Roxanne Falls, individually and as Personal Representative of the Estate of Charlotte Gaye Smith v. CBS Corporation, et al
Case No.: 2015-CP-46-2155

Dear Judge Toal:

On behalf of Covil Corporation and Flowserve Corporation, f/k/a The Duriron Company, we object to the proposed orders submitted by Ms. McVey on behalf of plaintiffs Howe, Sizemore and Falls/Smith. Those orders were submitted by Ms. McVey this past Friday, February 16, 2018, and relate to the hearing in Columbia on January 24, 2018.

Initially, we note that during the hearing you directed us to draft orders related to Covil and Duriron, not plaintiff's counsel. Your in-court order included only that Covil and Duriron produce documentation responsive to the plaintiff's discovery requests by January 29, 2018, that both clients produce 30(b)(6) witnesses by February 8, 2018, and that the Covil deposition be taken one time for use in all three cases. We submitted that proposed order to you by e-mail on January 29, 2018, and both Covil and Duriron produced the requested documents that same day.

On February 2, 2018, Ms. McVey submitted proposed orders as to both Covil and Duriron which we did not believe were consistent with the order you directed us to prepare. Specifically, Ms. McVey's proposed orders stated that the depositions were to continue day-to-day until complete and did not mention that the Covil deposition was to be taken one time only for use in all of these cases. We wrote you that day and asked that you disregard the proposed orders from the plaintiffs for those various reasons. Several e-mails were sent back and forth between counsel that same day, and later in the day Ms. McVey proposed that the Court simply rely on the transcript of the hearing and not sign orders.

That is where the matter rested until last Friday, when Ms. McVey submitted new proposed orders for your consideration. In the meantime, the Covil 30(b)(6) deposition was taken in Greenville on February 7th and 8th, and the Duriron 30(b)(6) deposition was taken on February 8, 2018, in Dayton Ohio. As such, by those dates both Covil and Duriron had complied with your order within the deadlines provided. However, in their newest proposed orders related to the January 24, 2018 hearing, the plaintiffs indicated that Covil made no effort to ascertain information that was available to the company related to locations identified in the deposition notices, and that it did not take reasonable efforts to determine the insurance coverage available to the company. In her e-mail to you, Ms. McVey also stated that Duriron had failed to comply with your order.

Aside from the fact that you did not request that plaintiffs submit proposed orders related to the January 24 hearing, there can be no doubt that your order did not include prospective findings and Duriron that Covil failed to comply with your order as to these issues, since neither the document production nor the depositions had taken place as of that date. As to Duriron, we do not believe that you indicated that it would be subject to sanctions for failure to comply. Essentially, the proposed orders of the plaintiffs grossly overreach the subject matter of the hearing on January 24, since the matters complained of, with which we strongly disagree, had not even occurred yet. In addition, the proposed orders attempt to find both that Covil violated your order and should be sanctioned, while at the same time denying Covil the opportunity to be heard on the matter. To say the least, this attempted overreach is concerning to us and, we believe, improper under the SCRCP.

For these reasons, we respectfully request that you disregard the proposed orders from the plaintiffs, as they do not reflect what you ordered that day. The proposed order we submitted on January 29, February 2 and again last week, accurately reflect what you ordered during the hearing, and we therefore request that you sign that order instead. A copy of that proposed order is again attached for your review.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.


Ronald G. Tate, Jr.

RGT/brw
Encl.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

ROXANNE FALLS, individually and as Personal
Representative of the Estate of Charlotte Gaye
Smith,

Plaintiff,

vs.

CBS Corporation, a Delaware corporation, f/k/a
Viacom, Inc., successor by merger to CBS
Corporation, Pennsylvania Corporation, f/k/a
Westinghouse Electric Corporation, et al

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2015-CP-46-2155

ORDER

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

JAMES CALVIN SIZEMORE,

Plaintiff,

vs.

BOWATER PAPER MILL, *et al.*,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2016-CP-25-440

ORDER

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of WAYNE
ERWIN HOWE, Deceased, and JEANETTE
HOWE,

C.A. No.: 2015-CP-46-3456

ORDER

Plaintiff,

vs.

AIR & LIQUID SYSTEMS CORP., *et al.*,

Defendants.

These matters are before the Court on motions for protective order filed on behalf of the defendants, Covil Corporation and Flowserve Corporation, f/k/a The Duriron Company, Inc, and motions of the plaintiffs to compel production of documents from the defendants. A hearing was held in Columbia, South Carolina on January 24, 2018. Based upon the briefs submitted and arguments during the hearing, the Court rules as follows:

Covil's motion to preclude the taking of its Rule 30(b)(6) deposition in these matters is DENIED. Covil's motion to continue the 30(b)(6) deposition due to changes in the availability of Jim Covil since the originally agreed-upon date is GRANTED. Covil will produce a 30(b)(6) deponent by February 9, 2018, as mutually agreed upon by counsel. Covil's motion that the deposition be taken one time only for use in each of these cases is GRANTED.

The motion of Flowserve/Duriron to preclude the taking of its Rule 30(b)(6) deposition in Howe is DENIED. Flowserve/Duriron will produce a 30(b)(6) deponent by February 9, 2018, as mutually agreed upon by counsel.

The motions of the plaintiffs to compel production of relevant documents from Covil is GRANTED. Covil shall produce the documents in its possession or reasonably available to it by Monday, January 29, 2018.

The motion of the plaintiffs to compel production of documents from Flowserve/Duriron in Howe is GRANTED. Relevant documents responsive to the discovery requests for the Bowater, Crown Cork and Seal, American Enka and the two (2) Celanese plants at which the plaintiff worked, and which are in the possession of, or reasonably available to, Flowserve/Duriron, shall be produced by Monday, January 29, 2018.

The Honorable Jean H. Toal
Circuit Court Judge

Dated: _____

David Rheney

From: Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>
Sent: Wednesday, February 14, 2018 5:14 PM
To: Theile McVey; McDonald, Mott; Elizabeth Moultrie; Jennifer M. Techman; Robert Meriwether; David Rheney; Jessica Dean; Toal, Jean; Jonathan Holder
Cc: A. Timothy Jones; A. Walker Barnes; Andrew S. Rogers; Benjamin Joyce; Bobby Hood, Jr.; Brannon J. Arnold; Carolyn Blackwell; Christopher Austin Jaros; Daniel White; David Traylor; Eric A. Ludwig; Eric K. Englehardt (Eric@greenvillesclaw.com); George Green; Gwyn L. Martin; Jase Glenn; James H. Elliott, Jr. - Richardson Plowden & Robinson, P.A. (jelliott@richardsonplowden.com); Jenna Brown; Joseph Lawrence Nelson; Josephine H. Hicks - Parker Poe Adams & Bernstein LLP (josephinehicks@parkerpoe.com); Joy P. Gragg, Secretary; Justin U. Ijei; Kathy D'Amico; Dawson, Kathy; Kelli Eargle; Kim Westmoreland; Kimberly B. Taylor (Paralegal); Krista M. McGuire; Kurt Matthew Rozelsky; Lindarda Brown, Parlagal; Dunn, Lynn; Mark H. Wall; Matthew A. Culp (mculp@rwdmlaw.com); Melinda Accardo; Michael Bogle - Womble Carlyle & Sandridge Rice, LLP (michael.bogle@wbd-us.com); Michael C. Griffin; Michael Kalwajtys; Ollie M. Harton; Dawson, Kathy; Rachel L. Huenefeld; Sam H. Nettles (snettles@richardsonplowden.com); Frick, Scott; Sheri Ackerman; Shubhra R. Mashelkar - Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC (smashelkar@wwhgd.com); Stephanie G. Flynn (Stephanie.Flynn@smithmoorelaw.com); Steven W. Ouzts, Esquire; Susan Collings; Susan Gladden; Sylvia Chisholm (Paralegal); Thomas F. Dougall; Thomas M. Kennaday, Esquire; Conner, David; William A. Collins, Jr.; Allyson Twilley; Amy E. Melvin Esquire (amelvin@leathbouchlaw.com); Breon Walker; Courtney Pine; Dell Chappell; Joseph E. Thoensen - Richardson Plowden (jthoensen@RichardsonPlowden.com); Kim Harbison; Louis P. Herns; Robin S. Spitz (Paralegal); Ron Tate; S. Pugh; Stacy Said; SILICA - Timothy Bouch; V. Clark Price; Will Early; SILICA - William Coates; Yaney A. McLeod III; Alexis Lindsay - Sowell Gray Stepp & Laffitte, LLC (alindsay@sowellgray.com); Amy Harmon Geddes; Brady A. Yntema Esq. (byntema@goldbergsegalla.com); Brenda Casey; C. Griffin; Cara Scott; Carole M. Pegler, Admin; Christopher R. Kinkade - Fox Rothschild LLP (ckinkade@foxrothschild.com); David L. Brown - Goldberg Segalla (dbrown@goldbergsegalla.com); Delores Catapano (Delores.Catapano@rtt-law.com); E. Chase Dressman, Esquire; E. Douglas Pratt-Thomas (Douglas.Pratt-Thomas@rtt-law.com); E. Elaine Shofner (eshofner@hptylaw.com); Gregory B. Collins, Esquire; J. Frazier; Joanna R. Doxey; Jovan Dungee; Julia Prince; Kelly Fesperman; Linda Wilson; Marsha Pritt; Michelle D. Laliberte, Legal Assistant; Nicholas W. Gladd, Esquire; Ren Wilkes; Richard Ashby Farrier, Jr.; Susan Miller; Timothy Peck; Tina Cundari - Sowell Gray Stepp & Laffitte, LLC (tcundari@sowellgray.com); Valerie Hampton; Bill Starr; Kathy Hoffner; William Peele Early
Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Good evening everyone,

Some of the issues that arose out of the hearing on January 24th may now be moot, but if there are any other issues that need to be ruled upon, Judge Toal wants the proposed orders submitted to her no later than next Wednesday, February 21st.

Thanks all,

Jamie Rutkoski
Law Clerk to the Honorable G. Thomas Cooper, Jr. and the Honorable Jean H. Toal

Circuit Court of South Carolina
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From: Theile McVey [mailto:TMcVey@kassellaw.com]

Sent: Friday, February 2, 2018 1:45 PM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal and Jamie:

After discussions with Counsel for the Defendants, it appears that the easiest and most efficient solution to all the back and forth is to do away with the proposed orders from both sides and rely on the transcript from the hearing. The transcript will reflect the arguments made and your rulings.

If you disagree and would like written Orders, we will work together over the weekend to agree on as much as possible. Thanks so much, Theile

Theile McVey
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From: Cooper, G. Thomas Law Clerk (Jamie Rutkoski) [<mailto:GCooperLC@sccourts.org>]
Sent: Friday, February 02, 2018 12:00 PM
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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

All,

The purpose of the hearing was to expedite and streamline these matters. As of now, it seems these discovery issues have only been complicated. The judge is not particularly pleased with the contention regarding these matters. Therefore, if there are any disagreements as to the proposed orders submitted by the parties that were told to provide proposed orders, then the opposing party can send in their own proposed order. Judge Toal will look at both proposed orders and make a decision as to what the orders will contain. No need for any further back and forth, which will only serve to delay this process and thus delay the cases for trial.

If there are any proposed orders that are agreed upon by the parties, please send them over marked as such so we can get them filed.

Thank you,

Jamie Rutkoski
Law Clerk to the Honorable G. Thomas Cooper, Jr. and the Honorable Jean Toal
Circuit Court of South Carolina
1121 Broad St., Rm. 313
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From: McDonald, Mott [<mailto:mmcdonald@hsblawfirm.com>]

Sent: Thursday, February 1, 2018 4:02 PM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Judge Toal:

I understand the difficulties of drafting orders in a hearing as complex as last week's. However, my memory of the Court's rulings as to my particular clients is substantially at odds with the Orders that Plaintiffs' propose. The attached letter explains my position, and I leave the matter in your hands.

Good luck with your trial in York County.

**Haynsworth
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Sent: Thursday, February 01, 2018 11:18 AM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal, please do not sign until counsel has a moment to review. I apologize for the confusion. I had Elizabeth send and did not make her aware of your instructions. This was my mistake.

Jennifer and Robert:

My apologies. I sent the proposed orders to Chief Justice Toal and to all defense counsel with the proposed order exactly how Covil sent their proposed order. They also copied the Judge. These are pretty simple orders, so look forward to your prompt review. I note that you and Robert represent the two clients who have already filed motions to reconsider on the Judge's Order compelling discovery. We sent those responses to you and the Chief Justice earlier.

Best, Theile

From: Jennifer M. Techman [<mailto:JMTechman@ewhlaw.com>]
Sent: Thursday, February 01, 2018 11:08 AM
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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

On behalf of my clients I join in the objection set out below and would ask that theses be withdrawn from consideration by the Court. We will review these promptly but we respectfully ask that we follow the instructions stated by Justice Toal in Court with regard to the handling of proposed orders.

Thank you.



Jennifer M. Techman

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Sent: Thursday, February 01, 2018 11:01 AM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Please allow me to register an objection to this method of proposing final Orders based on the Court's decisions at the recent hearing. It was my understanding that plaintiff's counsel were to circulate proposed Orders to defense counsel and coordinate before submitting any final proposed Order to Your Honor. This is the first we have seen of any proposed Orders. We will review them and provide any comment, but in the interest of compliance with what I believe was the clear direction of the Court, I would ask that these be withdrawn from consideration by the Court and considered to be proposed Orders circulated to defense counsel for comment. Thank you.

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Subject: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Dear Justice Toal:

Attached please find the Orders Plaintiffs have drafted based on your rulings during the March 24, 2018 Motions hearing. If the attached Orders meet with your approval, please sign them and have them filed with the Clerk of Court in the appropriate counties. By copy of this email, I am forwarding a copy of each of the Orders to counsel for Defendants.

Thank you for your kind consideration and attention. If you have any questions or concerns, or if you should need anything further, please do not hesitate to call me.

Yours very truly,

Elizabeth Cason Moultrie
 Senior Paralegal to John D. Kassel

and Theile B. McVey
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## David Rheney

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**Sent:** Friday, February 16, 2018 11:45 AM  
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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing  
**Attachments:** Glenn - Aurora.doc; Glenn - Air & Liquid System (Buffalo).docx; Howe - Sterling Fluid (Peerless).wbk; Howe - Aurora.doc; Howe - Cleaver Brooks, Inc.doc; Howe - Covil.doc; Howe - Covil.pdf; Howe - Flowserve (Durco).doc; Howe - Sterling Fluid (Peerless).pdf; Howe - The Gorman Rupp Co.doc; Howe - Union Carbide.doc; Howe -Air & Liquid System (Buffalo).wbk

Chief Justice Toal and Jamie:

As you know, following the discovery hearing on January 24, 2018, we circulated to everyone proposed orders. Numerous defendants objected. Since that hearing, many defendants complied with your orders, therefore we have not included proposed orders for those Defendants who have complied.

Attached is a list of proposed orders in word for to reflect Plaintiffs understanding of your rulings from the 1/24 hearing. We have limited the orders to those who, at this point, we believe did not follow your order.

For those where we have the deposition transcript back we have also provide short portions of that transcript to evidence believed noncompliance and specify the specific sanctions sought. For defendants where we are still waiting on transcripts we'd like to provide the court with a letter by end of next week with the evidence of the violation and specific request for sanction so that these orders can be supplemented when and if necessary.

You should see an order for each of the following parties.

- Aurora pumps (Howe & Glenn)
- Cleaver Brooks (Howe, Smith/Falls & Sizemore)
- Covil (Howe, Smith/Falls & Sizemore)
- Flowserve Corporation (Durco) (Howe)
- Air & Liquid (Buffalo) (Howe & Glenn)
- The Gorman-Rupp Co. (Howe)
- Sterling Fluid Systems (Peerless pumps)(Howe)
- UCC (Howe and Smith)
- SCANA (Sizemore)
- CBS (Smith/Falls)

Because of the number of attachments, there will be multiple emails with attachments. All of these orders are in Word. I have also included Orders for both Covil and Sterling in PDF which also has the deposition pages cited in the proposed order, for easy reference.

I also note that we have a motion to compel filed for USFG. I expect that we will file additional Motions to compel on Monday for: DuPont, Viking, GPC, Weir and Mundet.

If possible, we would like to have these motions to compel heard. I believe we could do the hearing via telephone if agreeable to the Court.

I have copied all defense counsel on this email. I expect they will propose their own orders.

If the Court would prefer, we can deliver the all of the attached in notebooks as well. Please let me know if you have any questions or concerns.

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Good evening everyone,

Some of the issues that arose out of the hearing on January 24<sup>th</sup> may now be moot, but if there are any other issues that need to be ruled upon, Judge Toal wants the proposed orders submitted to her no later than next Wednesday, February 21<sup>st</sup>.

Thanks all,

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal and Jamie:

After discussions with Counsel for the Defendants, it appears that the easiest and most efficient solution to all the back and forth is to do away with the proposed orders from both sides and rely on the transcript from the hearing. The transcript will reflect the arguments made and your rulings.

If you disagree and would like written Orders, we will work together over the weekend to agree on as much as possible. Thanks so much, Theile

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

All,

The purpose of the hearing was to expedite and streamline these matters. As of now, it seems these discovery issues have only been complicated. The judge is not particularly pleased with the contention regarding these matters. Therefore, if there are any disagreements as to the proposed orders submitted by the parties that were told to provide proposed orders, then the opposing party can send in their own proposed order. Judge Toal will look at both proposed orders and make a decision as to what the orders will contain. No need for any further back and forth, which will only serve to delay this process and thus delay the cases for trial.

If there are any proposed orders that are agreed upon by the parties, please send them over marked as such so we can get them filed.

Thank you,

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 Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Judge Toal:

I understand the difficulties of drafting orders in a hearing as complex as last week's. However, my memory of the Court's rulings as to my particular clients is substantially at odds with the Orders that Plaintiffs' propose. The attached letter explains my position, and I leave the matter in your hands.

Good luck with your trial in York County.

**Haynsworth  
Sinkler Boyd, PA.**

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**Sent:** Thursday, February 01, 2018 11:18 AM

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal, please do not sign until counsel has a moment to review. I apologize for the confusion. I had Elizabeth send and did not make her aware of your instructions. This was my mistake.

Jennifer and Robert:

My apologies. I sent the proposed orders to Chief Justice Toal and to all defense counsel with the proposed order exactly how Covil sent their proposed order. They also copied the Judge. These are pretty simple orders, so look forward to your prompt review. I note that you and Robert represent the two clients who have already filed motions to reconsider on the Judge's Order compelling discovery. We sent those responses to you and the Chief Justice earlier.

Best, Theile

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

On behalf of my clients I join in the objection set out below and would ask that theses be withdrawn from consideration by the Court. We will review these promptly but we respectfully ask that we follow the instructions stated by Justice Toal in Court with regard to the handling of proposed orders.

Thank you.



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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Please allow me to register an objection to this method of proposing final Orders based on the Court's decisions at the recent hearing. It was my understanding that plaintiff's counsel were to circulate proposed Orders to defense counsel and coordinate before submitting any final proposed Order to Your Honor. This is the first we have seen of any proposed Orders. We will review them and provide any comment, but in the interest of compliance with what I believe was the clear direction of the Court, I would ask that these be withdrawn from consideration by the Court and considered to be proposed Orders circulated to defense counsel for comment. Thank you.

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**Subject:** Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Dear Justice Toal:

Attached please find the Orders Plaintiffs have drafted based on your rulings during the March 24, 2018 Motions hearing. If the attached Orders meet with your approval, please sign them and have them filed with the Clerk of Court in the appropriate counties. By copy of this email, I am forwarding a copy of each of the Orders to counsel for Defendants.

Thank you for your kind consideration and attention. If you have any questions or concerns, or if you should need anything further, please do not hesitate to call me.

Yours very truly,

*Elizabeth Cason Moultrie*

Senior Paralegal to John D. Kassel  
and Theile B. McVey

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

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

Plaintiffs,

v.

Air & Liquid Systems, *et al.*,

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) FOR THE SIXTEENTH JUDICIAL
) CIRCUIT

) Civil Action No.: 2015-CP-46-03456

)
) ORDER REGARDING
) COVIL CORPORATION
) DISCOVERY MOTIONS

A hearing was held in Columbia, South Carolina on January 24, 2018. The Court ordered the Defendant to produce documents requested in Plaintiff's 30(b)(6) deposition notice by Monday, January 29, 2018. The Court further ordered to produce a witness on or before February 9, 2018 to discuss the noticed topics based on what was known or reasonably available to the company.

The deposition of Jim Covil demonstrates that the company made no effort to ascertain what was available to the company regarding multiple locations identified in Plaintiff's notice. Additionally, a reasonable effort to ascertain insurance coverage and limits for the company was not made despite a properly noticed deposition request.

"The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial." *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). "Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice," sanctions must be imposed. *Id.*

While Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result, over leniency must be avoided. *Id.* "If a party fails to obey an order or provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).

"In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice." *Id.* at 199, 511 S.E.2d at 719. In *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), the South Carolina Court of Appeals stated "[t]he entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party." *Id.* "Discovery sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent." *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 123, 512 S.E.2d 510, 524 (Ct. App. 1998).

Defendant has failed to produce a witnesses to discuss what is known to the company regarding the location and nature of its work as an insulation supplier and contractor. This information was sought in the corporate representative deposition notice as well as in this Court's Standing Order Discovery. Defendant repeatedly failed to produce relevant and requested information. Thereafter, Defendant failed to comply with this Court's order on January 24, 2018. Trial is set for March 12, 2018. The failure to produce records prevents the parties from preparing for trial. Plaintiff alleges injuries as a result of exposure from insulation. Defendant is an insulation contractor who failed to comply with this Court's order to ascertain

what is known or reasonably available to the company about the location of its work. As such, the court will strike Defendant's pleadings.

In addition, the Court orders Covil to produce a witness regarding Topic 21 who has researched the issue of what insurance coverage exists for the company. This request, requires Covil to obtain information from your insurers regarding the nature and limit of the policies at issue. This deposition is to occur on or before March 2, 2018.

AND IT IS SO ORDERED.

Jean Hoefer Toal, Chief Justice of
the South Carolina Supreme Court,
Retired, Acting as Circuit Court
Judge

February ____, 2018

Columbia, South Carolina.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF YORK

COURT OF COMMON PLEAS

3 SIXTEENTH JUDICIAL CIRCUIT

4 TIMOTHY W. HOWE,
5 as Personal Representative
6 of the Estate of WAYNE E.
7 HOWE, deceased, and
8 JEANETTE HOWE, surviving
9 spouse,

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

10 Plaintiffs,

In Re:

11 vs.

Asbestos Personal Injury
Litigation Coordinated
Docket

12 AIR & LIQUID SYSTEMS
13 CORPORATION, et al.,

14 Defendants.

15 VIDEOTAPED

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

18 DATE: February 7, 2018

19 TIME: 9:22 a.m.

20 LOCATION: Gallivan White Boyd
21 55 Beattie Place
22 Suite 1200
23 Greenville, South Carolina

24 TAKEN BY: Counsel for the Plaintiffs

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

1 STATE OF SOUTH CAROLINA
2 COUNTY OF YORK COURT OF COMMON PLEAS
3 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, In Re:
11 et al., Asbestos Personal Injury
12 Litigation Coordinated
13 Defendants. Docket
14
15 STATE OF SOUTH CAROLINA
16 COUNTY OF YORK COURT OF COMMON PLEAS
17 SEVENTH JUDICIAL CIRCUIT
18 JAMES COLEMAN SIZEMORE, as
19 Personal Representative
20 of the Estate of JAMES CALVIN
21 SIZEMORE, decedent,
22 Plaintiffs, C/A NO.: 2016-CP-25-0440
23 vs. In Re:
24 BOWATER PAPER MILL, Asbestos Personal Injury
25 Docket, et al, Litigation Coordinated
26 Defendants. Mesothelioma Death
(Jury Trial Demanded)

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I N D E X

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(JAMES P. COVIL)

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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 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 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 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 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 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF YORK FOR THE SIXTEENTH JUDICIAL
CIRCUIT
3 TIMOTHY W. HOWE,
as Personal Representative
4 of the Estate of WAYNE E.
HOWE, deceased, and
5 JEANETTE HOWE, surviving
spouse, C/A NO.: 2015-CP-46-03456
6 Plaintiffs,
7 vs. In Re:
Asbestos Personal Injury
Litigation Coordinated Docket
8
9 AIR & LIQUID SYSTEMS
CORPORATION, et al.,
Defendants.
10
11 VIDEOTAPED
DEPOSITION OF: 30(B)(6) OF COVIL CORPORATION
12 (BY JAMES P. COVIL) - Volume II
13 DATE: February 8, 2018
14 Time: 9:06 a.m.
15 LOCATION: Gallivan White Boyd
55 Beattie Place
16 Suite 1200
Greenville, South Carolina
17
18 TAKEN BY: Counsel for the Plaintiffs
19 REPORTED BY: Mary K. Stepp, Court Reporter
20
21
22
23
24
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, In Re:
9 et al., 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
15 of the Estate of JAMES CALVIN
SIZEMORE, decedent,
16 Plaintiffs, C/A NO.: 2016-CP-25-0440
17 vs. In Re:
18 BOWATER PAPER MILL, Asbestos Personal Injury
et al., Litigation Coordinated Docket
19 Defendants. Mesothelioma Death
(Jury Trial Demanded)
20
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I N D E X

Page

30(b)6 OF COVIL CORPORATION
(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 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 lone 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

STATE OF SOUTH CAROLINA

COUNTY OF YORK

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

Plaintiffs,

v.

Air & Liquid Systems, *et al.*,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FOR THE SIXTEENTH JUDICIAL CIRCUIT

) Civil Action No.: 2015-CP-46-03456

) ORDER REGARDING
) FLOWSERVE CORPORATION (DURCO)
) DISCOVERY MOTIONS

A hearing was held in Columbia, South Carolina on January 24, 2018. The Court ordered the Defendant to produce documents requested in Plaintiff's 30(b)(6) deposition notice. The Court further ordered to produce a witness on or before February 9, 2018 to discuss the noticed topics based on what was known or reasonably available to the company. Failure to comply with this order will result in sanctions.

AND IT IS SO ORDERED.

Jean Hoefer Toal, Chief Justice of
the South Carolina Supreme Court,
Retired, Acting as Circuit Court
Judge

February ____, 2018

Columbia, South Carolina.

David Rheney

From: Theile McVey <TMcVey@kassellaw.com>
Sent: Friday, February 16, 2018 11:46 AM
To: Cooper, G. Thomas Law Clerk (Jamie Rutkoski); McDonald, Mott; Elizabeth Moultrie; Jennifer M. Techman; Robert Meriwether; David Rheney; Jessica Dean; Toal, Jean; Jonathan Holder
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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing
Attachments: Sizemore - Cleaver Brooks.doc; Sizemore - Covil Corporation.doc; Sizemore - Covil Corporation.pdf; Sizemore - SCANA.doc; Smith - CBS.doc; Smith - Covil.doc; Smith - Covil.pdf; Smith - Cleaver Brooks.doc; Smith - Union Carbide Corporation.doc

First email included orders from Glenn and Howe. This second email contains the proposed order from Sizemore and Smith.

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Good evening everyone,

Some of the issues that arose out of the hearing on January 24th may now be moot, but if there are any other issues that need to be ruled upon, Judge Toal wants the proposed orders submitted to her no later than next Wednesday, February 21st.

Thanks all,

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Sent: Friday, February 2, 2018 1:45 PM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal and Jamie:

After discussions with Counsel for the Defendants, it appears that the easiest and most efficient solution to all the back and forth is to do away with the proposed orders from both sides and rely on the transcript from the hearing. The transcript will reflect the arguments made and your rulings.

If you disagree and would like written Orders, we will work together over the weekend to agree on as much as possible. Thanks so much, Theile

Theile McVey

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

All,

The purpose of the hearing was to expedite and streamline these matters. As of now, it seems these discovery issues have only been complicated. The judge is not particularly pleased with the contention regarding these matters. Therefore, if there are any disagreements as to the proposed orders submitted by the parties that were told to provide proposed orders, then the opposing party can send in their own proposed order. Judge Toal will look at both proposed orders and make a decision as to what the orders will contain. No need for any further back and forth, which will only serve to delay this process and thus delay the cases for trial.

If there are any proposed orders that are agreed upon by the parties, please send them over marked as such so we can get them filed.

Thank you,

Jamie Rutkoski
Law Clerk to the Honorable G. Thomas Cooper, Jr. and the Honorable Jean Toal
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From: McDonald, Mott [mailto:mmcdonald@hsblawfirm.com]
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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Judge Toal:

I understand the difficulties of drafting orders in a hearing as complex as last week's. However, my memory of the Court's rulings as to my particular clients is substantially at odds with the Orders that Plaintiffs' propose. The attached letter explains my position, and I leave the matter in your hands.

Good luck with your trial in York County.

**Haynsworth
Sinkler Boyd, P.A.**

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From: Elizabeth Moultrie [<mailto:EMoultrie@kassellaw.com>]

Sent: Thursday, February 01, 2018 11:18 AM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal, please do not sign until counsel has a moment to review. I apologize for the confusion. I had Elizabeth send and did not make her aware of your instructions. This was my mistake.

Jennifer and Robert:

My apologies. I sent the proposed orders to Chief Justice Toal and to all defense counsel with the proposed order exactly how Covil sent their proposed order. They also copied the Judge. These are pretty simple orders, so look forward to your prompt review. I note that you and Robert represent the two clients who have already filed motions to reconsider on the Judge's Order compelling discovery. We sent those responses to you and the Chief Justice earlier.

Best, Theile

From: Jennifer M. Techman [mailto:JMTechman@ewhlaw.com]

Sent: Thursday, February 01, 2018 11:08 AM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

On behalf of my clients I join in the objection set out below and would ask that theses be withdrawn from consideration by the Court. We will review these promptly but we respectfully ask that we follow the instructions stated by Justice Toal in Court with regard to the handling of proposed orders.
 Thank you.



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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Please allow me to register an objection to this method of proposing final Orders based on the Court's decisions at the recent hearing. It was my understanding that plaintiff's counsel were to circulate proposed Orders to defense counsel and coordinate before submitting any final proposed Order to Your Honor. This is the first we have seen of any proposed Orders. We will review them and provide any comment, but in the interest of compliance with what I believe was the clear direction of the Court, I would ask that these be withdrawn from consideration by the Court and considered to be proposed Orders circulated to defense counsel for comment. Thank you.

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From: Elizabeth Moultrie [mailto:EMoultrie@kassellaw.com]

Sent: Thursday, February 1, 2018 10:45 AM

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Subject: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Dear Justice Toal:

Attached please find the Orders Plaintiffs have drafted based on your rulings during the March 24, 2018 Motions hearing. If the attached Orders meet with your approval, please sign them and have them filed with the Clerk of Court in the appropriate counties. By copy of this email, I am forwarding a copy of each of the Orders to counsel for Defendants.

Thank you for your kind consideration and attention. If you have any questions or concerns, or if you should need anything further, please do not hesitate to call me.

Yours very truly,

Elizabeth Cason Moultrie

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|                                   |   |                              |
|-----------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS |
|                                   | ) |                              |
| COUNTY OF HAMPTON                 | ) | FOR THE FOURTEENTH JUDICIAL  |
|                                   | ) | CIRCUIT                      |
| James Calvin Sizemore,            | ) |                              |
|                                   | ) | C/A No.: 2016-CP-25-440      |
| Plaintiff,                        | ) |                              |
|                                   | ) |                              |
| v.                                | ) | ORDER REGARDING              |
|                                   | ) | COVIL CORPORATION            |
| Bowater Paper Mill, <i>et al.</i> | ) | DISCOVERY MOTIONS            |
|                                   | ) |                              |
| Defendants.                       | ) |                              |

---

A hearing was held in Columbia, South Carolina on January 24, 2018. The Court ordered the Defendant to produce documents requested in Plaintiff's 30(b)(6) deposition notice by Monday, January 29, 2018. The Court further ordered to produce a witness on or before February 9, 2018 to discuss the noticed topics based on what was known or reasonably available to the company.

The deposition of Jim Covil demonstrates that the company made no effort to ascertain what was available to the company regarding multiple locations identified in Plaintiff's notice. Additionally, a reasonable effort to ascertain insurance coverage and limits for the company was not made despite a properly noticed deposition request.

"The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial." *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). "Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice," sanctions must be imposed. *Id.* While Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result,

over leniency must be avoided. *Id.* “If a party fails to obey an order or provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment.” *Griffin Grading & Clearing, Inc. v. Tire Serv. Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).

“In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice.” *Id.* at 199, 511 S.E.2d at 719. In *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), the South Carolina Court of Appeals stated “[t]he entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party.” *Id.* “Discovery sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent.” *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 123, 512 S.E.2d 510, 524 (Ct. App. 1998).

Defendant has failed to produce a witnesses to discuss what is known to the company regarding the location and nature of its work as an insulation supplier and contractor. This information was sought in the corporate representative deposition notice as well as in this Court’s Standing Order Discovery. Defendant repeatedly failed to produce relevant and requested information. Thereafter, Defendant failed to comply with this Court’s order on January 24, 2018. Trial is set for March 12, 2018. The failure to produce records prevents the parties from preparing for trial. Plaintiff alleges injuries as a result of exposure from insulation. Defendant is an insulation contractor who failed to comply with this Court’s order to ascertain what is known or reasonably available to the company about the location of its work. As such, the court will strike Defendant’s pleadings.

In addition, the Court orders Covil to produce a witness regarding Topic 21 who has researched the issue of what insurance coverage exists for the company. This request, requires Covil to obtain information from your insurers regarding the nature and limit of the policies at issue. This deposition is to occur on or before March 2, 2018.

**AND IT IS SO ORDERED.**

---

Jean Hoefer Toal, Chief Justice of  
the South Carolina Supreme Court,  
Retired, Acting as Circuit Court  
Judge

February \_\_\_\_\_, 2018

Columbia, South Carolina.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF YORK

COURT OF COMMON PLEAS

3 SIXTEENTH JUDICIAL CIRCUIT

4 TIMOTHY W. HOWE,  
5 as Personal Representative  
6 of the Estate of WAYNE E.  
7 HOWE, deceased, and  
8 JEANETTE HOWE, surviving  
9 spouse,

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

10 Plaintiffs,

In Re:

11 vs.

Asbestos Personal Injury  
Litigation Coordinated  
Docket

12 AIR & LIQUID SYSTEMS  
13 CORPORATION, et al.,

14 Defendants.

---

15 VIDEOTAPED

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

18 DATE: February 7, 2018

19 TIME: 9:22 a.m.

20 LOCATION: Gallivan White Boyd  
21 55 Beattie Place  
22 Suite 1200  
23 Greenville, South Carolina

24 TAKEN BY: Counsel for the Plaintiffs

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

1 STATE OF SOUTH CAROLINA  
2 COUNTY OF YORK COURT OF COMMON PLEAS  
3 SIXTEENTH JUDICIAL CIRCUIT  
4 ROXANNE FALLS, Individually  
5 and as Personal Representative  
6 of the Estate of CHARLOTTE GAYE  
SMITH, deceased,  
7 Plaintiff,  
8 vs. C/A NO.: 2015-CP-46-02155  
9 CBS CORPORATION, In Re:  
et al., Asbestos Personal Injury  
10 Defendants. Litigation Coordinated  
Docket  
11  
12 STATE OF SOUTH CAROLINA  
13 COUNTY OF YORK COURT OF COMMON PLEAS  
14 SEVENTH JUDICIAL CIRCUIT  
15 JAMES COLEMAN SIZEMORE, as  
16 Personal Representative  
of the Estate of JAMES CALVIN  
17 SIZEMORE, decedent,  
18 Plaintiffs, C/A NO.: 2016-CP-25-0440  
19 vs. In Re:  
20 BOWATER PAPER MILL, Asbestos Personal Injury  
Docket, et al, Litigation Coordinated  
21 Defendants. Mesothelioma Death  
22 (Jury Trial Demanded)  
23  
24  
25

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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 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 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 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 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 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF YORK FOR THE SIXTEENTH JUDICIAL  
CIRCUIT  
3 TIMOTHY W. HOWE,  
as Personal Representative  
4 of the Estate of WAYNE E.  
HOWE, deceased, and  
5 JEANETTE HOWE, surviving  
spouse, C/A NO.: 2015-CP-46-03456  
6  
Plaintiffs, In Re:  
7 vs. Asbestos Personal Injury  
Litigation Coordinated Docket  
8  
AIR & LIQUID SYSTEMS  
9 CORPORATION, et al.,  
Defendants.  
10  
11 VIDEOTAPED  
DEPOSITION OF: 30(B)(6) OF COVIL CORPORATION  
12 (BY JAMES P. COVIL) - Volume II  
13 DATE: February 8, 2018  
14 Time: 9:06 a.m.  
15 LOCATION: Gallivan White Boyd  
55 Beattie Place  
16 Suite 1200  
Greenville, South Carolina  
17  
TAKEN BY: Counsel for the Plaintiffs  
18  
REPORTED BY: Mary K. Stepp, Court Reporter  
19  
20  
21  
22  
23  
24  
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, In Re:  
9 et al., 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  
15 of the Estate of JAMES CALVIN  
SIZEMORE, decedent,  
16 Plaintiffs, C/A NO.: 2016-CP-25-0440  
17 vs. In Re:  
18 BOWATER PAPER MILL, Asbestos Personal Injury  
et al., Litigation Coordinated Docket  
19 Defendants. Mesothelioma Death  
(Jury Trial Demanded)  
20  
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22  
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I N D E X

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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 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 lone 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

|                                   |   |                              |
|-----------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS |
|                                   | ) |                              |
| COUNTY OF HAMPTON                 | ) | FOR THE FOURTEENTH JUDICIAL  |
|                                   | ) | CIRCUIT                      |
| James Calvin Sizemore,            | ) |                              |
|                                   | ) | C/A No.: 2016-CP-25-440      |
| Plaintiff,                        | ) |                              |
|                                   | ) |                              |
| v.                                | ) | ORDER REGARDING              |
|                                   | ) | COVIL CORPORATION            |
| Bowater Paper Mill, <i>et al.</i> | ) | DISCOVERY MOTIONS            |
|                                   | ) |                              |
| Defendants.                       | ) |                              |

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A hearing was held in Columbia, South Carolina on January 24, 2018. The Court ordered the Defendant to produce documents requested in Plaintiff's 30(b)(6) deposition notice by Monday, January 29, 2018. The Court further ordered to produce a witness on or before February 9, 2018 to discuss the noticed topics based on what was known or reasonably available to the company.

The deposition of Jim Covil demonstrates that the company made no effort to ascertain what was available to the company regarding multiple locations identified in Plaintiff's notice. Additionally, a reasonable effort to ascertain insurance coverage and limits for the company was not made despite a properly noticed deposition request.

"The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial." *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). "Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice," sanctions must be imposed. *Id.* While Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result,

over leniency must be avoided. *Id.* “If a party fails to obey an order or provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment.” *Griffin Grading & Clearing, Inc. v. Tire Serv. Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).

“In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice.” *Id.* at 199, 511 S.E.2d at 719. In *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), the South Carolina Court of Appeals stated “[t]he entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party.” *Id.* “Discovery sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent.” *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 123, 512 S.E.2d 510, 524 (Ct. App. 1998).

Defendant has failed to produce a witnesses to discuss what is known to the company regarding the location and nature of its work as an insulation supplier and contractor. This information was sought in the corporate representative deposition notice as well as in this Court’s Standing Order Discovery. Defendant repeatedly failed to produce relevant and requested information. Thereafter, Defendant failed to comply with this Court’s order on January 24, 2018. Trial is set for March 12, 2018. The failure to produce records prevents the parties from preparing for trial. Plaintiff alleges injuries as a result of exposure from insulation. Defendant is an insulation contractor who failed to comply with this Court’s order to ascertain what is known or reasonably available to the company about the location of its work. As such, the court will strike Defendant’s pleadings.

In addition, the Court orders Covil to produce a witness regarding Topic 21 who has researched the issue of what insurance coverage exists for the company. This request, requires Covil to obtain information from your insurers regarding the nature and limit of the policies at issue. This deposition is to occur on or before March 2, 2018.

**AND IT IS SO ORDERED.**

---

Jean Hoefer Toal, Chief Justice of  
the South Carolina Supreme Court,  
Retired, Acting as Circuit Court  
Judge

February \_\_\_\_\_, 2018

Columbia, South Carolina.



|                                       |   |                                    |
|---------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS       |
|                                       | ) |                                    |
| COUNTY OF YORK                        | ) | FOR THE SIXTEENTH JUDICIAL CIRCUIT |
|                                       | ) |                                    |
| Roxanne Falls, Individually and as    | ) | Civil Action No.: 2015-CP-46-02155 |
| Personal Representative of the Estate | ) |                                    |
| of Charlotte Gaye Smith,              | ) |                                    |
|                                       | ) |                                    |
| Plaintiffs,                           | ) | ORDER REGARDING                    |
|                                       | ) | COVIL CORPORATION                  |
| v.                                    | ) | DISCOVERY MOTIONS                  |
|                                       | ) |                                    |
| CBS Corporation, <i>et al.</i> ,      | ) |                                    |
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February \_\_\_\_, 2018

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|                                       | ) |                                    |
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the South Carolina Supreme Court,  
Retired, Acting as Circuit Court  
Judge

February \_\_\_\_, 2018

Columbia, South Carolina.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF YORK

COURT OF COMMON PLEAS

3 SIXTEENTH JUDICIAL CIRCUIT

4 TIMOTHY W. HOWE,  
5 as Personal Representative  
6 of the Estate of WAYNE E.  
7 HOWE, deceased, and  
8 JEANETTE HOWE, surviving  
9 spouse,

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

10 Plaintiffs,

In Re:

11 vs.

Asbestos Personal Injury  
Litigation Coordinated  
Docket

12 AIR & LIQUID SYSTEMS  
13 CORPORATION, et al.,

14 Defendants.

15 VIDEOTAPED

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

18 DATE: February 7, 2018

19 TIME: 9:22 a.m.

20 LOCATION: Gallivan White Boyd  
21 55 Beattie Place  
22 Suite 1200  
23 Greenville, South Carolina

24 TAKEN BY: Counsel for the Plaintiffs

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

1 STATE OF SOUTH CAROLINA  
2 COUNTY OF YORK COURT OF COMMON PLEAS  
3 SIXTEENTH JUDICIAL CIRCUIT  
4 ROXANNE FALLS, Individually  
5 and as Personal Representative  
6 of the Estate of CHARLOTTE GAYE  
SMITH, deceased,  
7 Plaintiff,  
8 vs. C/A NO.: 2015-CP-46-02155  
9 CBS CORPORATION, In Re:  
et al., Asbestos Personal Injury  
10 Defendants. Litigation Coordinated  
Docket  
11  
12 STATE OF SOUTH CAROLINA  
13 COUNTY OF YORK COURT OF COMMON PLEAS  
14 SEVENTH JUDICIAL CIRCUIT  
15 JAMES COLEMAN SIZEMORE, as  
16 Personal Representative  
of the Estate of JAMES CALVIN  
17 SIZEMORE, decedent,  
18 Plaintiffs, C/A NO.: 2016-CP-25-0440  
19 vs. In Re:  
20 BOWATER PAPER MILL, Asbestos Personal Injury  
Docket, et al, Litigation Coordinated  
21 Defendants. Mesothelioma Death  
22 (Jury Trial Demanded)  
23  
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(JAMES P. COVIL)

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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 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 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 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 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 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF YORK FOR THE SIXTEENTH JUDICIAL  
CIRCUIT  
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5 JEANETTE HOWE, surviving  
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6 C/A NO.: 2015-CP-46-03456  
7 Plaintiffs,  
In Re:  
8 vs. Asbestos Personal Injury  
Litigation Coordinated Docket  
9 AIR & LIQUID SYSTEMS  
CORPORATION, et al.,  
Defendants.

10  
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  
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18 TAKEN BY: Counsel for the Plaintiffs  
19 REPORTED BY: Mary K. Stepp, Court Reporter  
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1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF YORK FOR THE SEVENTH JUDICIAL  
CIRCUIT  
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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, In Re:  
9 et al., Asbestos Personal Injury  
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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  
15 of the Estate of JAMES CALVIN  
SIZEMORE, decedent,  
16 Plaintiffs, C/A NO.: 2016-CP-25-0440  
17 vs. In Re:  
18 BOWATER PAPER MILL, Asbestos Personal Injury  
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19 Defendants. Mesothelioma Death  
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I N D E X

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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 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 lone 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

## David Rheney

---

**From:** Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>  
**Sent:** Friday, February 16, 2018 2:53 PM  
**To:** Theile McVey; McDonald, Mott; Elizabeth Moultrie; Jennifer M. Techman; Robert Meriwether; David Rheney; Jessica Dean; Toal, Jean; Jonathan Holder  
**Cc:** A. Timothy Jones; A. Walker Barnes; Andrew S. Rogers; Benjamin Joyce; Bobby Hood, Jr.; Brannon J. Arnold; Carolyn Blackwell; Christopher Austin Jaros; Daniel White; David Traylor; Eric A. Ludwig; Eric K. Englehardt (Eric@greenvillesclaw.com); George Green; Gwyn L. Martin; Jase Glenn; James H. Elliott, Jr. - Richardson Plowden & Robinson, P.A. (jelliott@richardsonplowden.com); Jenna Brown; Joseph Lawrence Nelson; Josephine H. Hicks - Parker Poe Adams & Bernstein LLP (josephinehicks@parkerpoe.com); Joy P. Gragg, Secretary; Justin U. Ijei; Kathy D'Amico; Dawson, Kathy; Kelli Eargle; Kim Westmoreland; Kimberly B. Taylor (Paralegal); Krista M. McGuire; Kurt Matthew Rozelsky; Lindarda Brown, Parlagal; Dunn, Lynn; Mark H. Wall; Matthew A. Culp (mculp@rwdmlaw.com); Melinda Accardo; Michael Bogle - Womble Carlyle & Sandridge Rice, LLP (michael.bogle@wbd-us.com); Michael C. Griffin; Michael Kalwajtys; Ollie M. Harton; Dawson, Kathy; Rachel L. Huenefeld; Sam H. Nettles (snettles@richardsonplowden.com); Frick, Scott; Sheri Ackerman; Shubhra R. Mashelkar - Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC (smashelkar@wwhgd.com); Stephanie G. Flynn (Stephanie.Flynn@smithmoorelaw.com); Steven W. Ouzts, Esquire; Susan Collings; Susan Gladden; Sylvia Chisholm (Paralegal); Thomas F. Dougall; Thomas M. Kennaday, Esquire; Conner, David; William A. Collins, Jr.; Allyson Twilley; Amy E. Melvin Esquire (amelvin@leathbouchlaw.com); Breon Walker; Courtney Pine; Dell Chappell; Joseph E. Thoensen - Richardson Plowden (jthoensen@RichardsonPlowden.com); Kim Harbison; Louis P. Herns; Robin S. Spitz (Paralegal); Ron Tate; S. Pugh; Stacy Said; SILICA - Timothy Bouch; V. Clark Price; Will Early; SILICA - William Coates; Yaney A. McLeod III; Alexis Lindsay - Sowell Gray Stepp & Laffitte, LLC (alindsay@sowellgray.com); Amy Harmon Geddes; Brady A. Yntema Esq. (byntema@goldbergsegalla.com); Brenda Casey; C. Griffin; Cara Scott; Carole M. Pegler, Admin; Christopher R. Kinkade - Fox Rothschild LLP (ckinkade@foxrothschild.com); David L. Brown - Goldberg Segalla (dbrown@goldbergsegalla.com); Delores Catapano (Delores.Catapano@rtt-law.com); E. Chase Dressman, Esquire; E. Douglas Pratt-Thomas (Douglas.Pratt-Thomas@rtt-law.com); E. Elaine Shofner (eshofner@hptylaw.com); Gregory B. Collins, Esquire; J. Frazier; Joanna R. Doxey; Jovan Dungee; Julia Prince; Kelly Fesperman; Linda Wilson; Marsha Pritt; Michelle D. Laliberte, Legal Assistant; Nicholas W. Gladd, Esquire; Ren Wilkes; Richard Ashby Farrier, Jr.; Susan Miller; Timothy Peck; Tina Cundari - Sowell Gray Stepp & Laffitte, LLC (tcundari@sowellgray.com); Valerie Hampton; Bill Starr; Kathy Hoffner; William Peele Early  
**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

For those who are in disagreement with the proposed orders submitted by Ms. McVey, please have your own proposed Orders submitted within 24 hours. Judge Toal will be signing and submitting final orders for these matters no later than Monday morning.

If you have any questions or concerns, please let me know.

Thank you,

Jamie Rutkoski  
Law Clerk to the Honorable G. Thomas Cooper, Jr. and the Honorable Jean H. Toal

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**Sent:** Friday, February 16, 2018 11:46 AM

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

First email included orders from Glenn and Howe. This second email contains the proposed order from Sizemore and Smith.

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Good evening everyone,

Some of the issues that arose out of the hearing on January 24<sup>th</sup> may now be moot, but if there are any other issues that need to be ruled upon, Judge Toal wants the proposed orders submitted to her no later than next Wednesday, February 21<sup>st</sup>.

Thanks all,

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal and Jamie:

After discussions with Counsel for the Defendants, it appears that the easiest and most efficient solution to all the back and forth is to do away with the proposed orders from both sides and rely on the transcript from the hearing. The transcript will reflect the arguments made and your rulings.

If you disagree and would like written Orders, we will work together over the weekend to agree on as much as possible. Thanks so much, Theile

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

All,

The purpose of the hearing was to expedite and streamline these matters. As of now, it seems these discovery issues have only been complicated. The judge is not particularly pleased with the contention regarding these matters. Therefore, if there are any disagreements as to the proposed orders submitted by the parties that were told to provide proposed orders, then the opposing party can send in their own proposed order. Judge Toal will look at both proposed orders and make a decision as to what the orders will contain. No need for any further back and forth, which will only serve to delay this process and thus delay the cases for trial.

If there are any proposed orders that are agreed upon by the parties, please send them over marked as such so we can get them filed.

Thank you,

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Judge Toal:

I understand the difficulties of drafting orders in a hearing as complex as last week's. However, my memory of the Court's rulings as to my particular clients is substantially at odds with the Orders that Plaintiffs' propose. The attached letter explains my position, and I leave the matter in your hands.

Good luck with your trial in York County.

**Haynsworth  
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**Sent:** Thursday, February 01, 2018 11:18 AM

**To:** Jennifer M. Techman; Robert Meriwether; Jessica Dean; Theile McVey; Jean Hoefer Toal, Chief Justice of the Supreme Court, Retired; 'G. Thomas Cooper Law Clerk'; Jonathan Holder

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal, please do not sign until counsel has a moment to review. I apologize for the confusion. I had Elizabeth send and did not make her aware of your instructions. This was my mistake.

Jennifer and Robert:

My apologies. I sent the proposed orders to Chief Justice Toal and to all defense counsel with the proposed order exactly how Covil sent their proposed order. They also copied the Judge. These are pretty simple orders, so look forward to your prompt review. I note that you and Robert represent the two clients who have already filed motions to reconsider on the Judge's Order compelling discovery. We sent those responses to you and the Chief Justice earlier.

Best, Theile

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

On behalf of my clients I join in the objection set out below and would ask that theses be withdrawn from consideration by the Court. We will review these promptly but we respectfully ask that we follow the instructions stated by Justice Toal in Court with regard to the handling of proposed orders.  
Thank you.



**Jennifer M. Techman**

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From: Robert Meriwether [<mailto:robert.meriwether@nelsonmullins.com>]

Sent: Thursday, February 01, 2018 11:01 AM

To: Elizabeth Moultrie <[EMoultrie@kassellaw.com](mailto:EMoultrie@kassellaw.com)>; Jean Hoefer Toal, Chief Justice of the Supreme Court, Retired <[jtoal@sccourts.org](mailto:jtoal@sccourts.org)>; 'G. Thomas Cooper Law Clerk' <[GCooperLC@sccourts.org](mailto:GCooperLC@sccourts.org)>

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Please allow me to register an objection to this method of proposing final Orders based on the Court's decisions at the recent hearing. It was my understanding that plaintiff's counsel were to circulate proposed Orders to defense counsel and coordinate before submitting any final proposed Order to Your Honor. This is the first we have seen of any proposed Orders. We will review them and provide any comment, but in the interest of compliance with what I believe was the clear direction of the Court, I would ask that these be withdrawn from consideration by the Court and considered to be proposed Orders circulated to defense counsel for comment. Thank you.

Robert O. Meriwether  
Partner  
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From: Elizabeth Moultrie [mailto:EMoultrie@kassellaw.com]  
Sent: Thursday, February 1, 2018 10:45 AM  
To: Jean Hoefer Toal, Chief Justice of the Supreme Court, Retired <jtoal@sccourts.org>; 'G. Thomas Cooper Law Clerk' <GCooperLC@sccourts.org>  
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**Subject:** Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Dear Justice Toal:

Attached please find the Orders Plaintiffs have drafted based on your rulings during the March 24, 2018 Motions hearing. If the attached Orders meet with your approval, please sign them and have them filed with the Clerk of Court in the appropriate counties. By copy of this email, I am forwarding a copy of each of the Orders to counsel for Defendants.

Thank you for your kind consideration and attention. If you have any questions or concerns, or if you should need anything further, please do not hesitate to call me.

Yours very truly,

*Elizabeth Cason Moultrie*

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 and Theile B. McVey  
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Ron Tate

From: Ron Tate
Sent: Friday, February 16, 2018 3:52 PM
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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing [GWB-IMANMAIN.FID188614]

For Covil, I join Mr. Meriwether, in light of the request for opposing proposed orders within 24 hours, in noting that a proposed order regarding Covil would be premature, as no motion for sanctions regarding the company representative's deposition answers has been served. Like Mr. Meriwether, we are happy to provide a proposed order, but do believe it is premature and the record has not been developed for any such motion. Thank you for any guidance on this issue.



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Sent: Friday, February 16, 2018 3:27 PM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Thank you for the update, Jamie, and Justice Toal. If I understand correctly, the earlier request that proposed Orders be submitted by next Wednesday is now moot, and you are requesting that Orders be submitted by tomorrow, i.e. Saturday. May I draw the court's attention to the unique situation regarding Aurora Pump Company, which has a pending Motion for Reconsideration and Motion for Protective Order, covering the very issues addressed in Plaintiff's proposed Order. These pending motions have not yet been heard, and we believe they should be heard prior to any decision on plaintiff's Motion To Compel. In addition, we have tendered our corporate witness to allow Plaintiff to more fully explore the issues related to document production in this case, but Plaintiff's counsel elected not to depose that witness. We have, therefore, submitted an Affidavit from that corporate witness to the Court and Plaintiff's Counsel, to help shed some

light on the substance of Plaintiff's conflict with Aurora. That Affidavit has likewise not been discussed with the Court. I am also concerned that Plaintiff's counsel have not actually moved for the draconian sanctions -- striking the Defendant's pleadings-- which they now incorporate in their proposed Order. I would ask that we have an opportunity to be heard on the pending motions, and to have the court fully apprised of all the circumstances surrounding this controversy, before any Order is entered. If your honor would like, we can propose our own Order by tomorrow, covering these matters, but that seems premature in this case.

Thank you for your consideration.

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

For those who are in disagreement with the proposed orders submitted by Ms. McVey, please have your own proposed Orders submitted within 24 hours. Judge Toal will be signing and submitting final orders for these matters no later than Monday morning.

If you have any questions or concerns, please let me know.

Thank you,

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

First email included orders from Glenn and Howe. This second email contains the proposed order from Sizemore and Smith.

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Sent: Wednesday, February 14, 2018 5:14 PM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Good evening everyone,

Some of the issues that arose out of the hearing on January 24th may now be moot, but if there are any other issues that need to be ruled upon, Judge Toal wants the proposed orders submitted to her no later than next Wednesday, February 21st.

Thanks all,

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal and Jamie:

After discussions with Counsel for the Defendants, it appears that the easiest and most efficient solution to all the back and forth is to do away with the proposed orders from both sides and rely on the transcript from the hearing. The transcript will reflect the arguments made and your rulings.

If you disagree and would like written Orders, we will work together over the weekend to agree on as much as possible. Thanks so much, Theile

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

All,

The purpose of the hearing was to expedite and streamline these matters. As of now, it seems these discovery issues have only been complicated. The judge is not particularly pleased with the contention regarding these matters. Therefore, if there are any disagreements as to the proposed orders submitted by the parties that were told to provide proposed orders, then the opposing party can send in their own proposed order. Judge Toal will look at both proposed orders and make a decision as to what the orders will contain. No need for any further back and forth, which will only serve to delay this process and thus delay the cases for trial.

If there are any proposed orders that are agreed upon by the parties, please send them over marked as such so we can get them filed.

Thank you,

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Judge Toal:

I understand the difficulties of drafting orders in a hearing as complex as last week's. However, my memory of the Court's rulings as to my particular clients is substantially at odds with the Orders that Plaintiffs' propose. The attached letter explains my position, and I leave the matter in your hands.

Good luck with your trial in York County.

**Haynsworth
Sinkler Boyd, P.A.**

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From: Elizabeth Moultrie [mailto:EMoultrie@kassellaw.com]

Sent: Thursday, February 01, 2018 11:18 AM

To: Jennifer M. Techman; Robert Meriwether; Jessica Dean; Theile McVey; Jean Hoefer Toal, Chief Justice of the Supreme Court, Retired; 'G. Thomas Cooper Law Clerk'; Jonathan Holder

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal, please do not sign until counsel has a moment to review. I apologize for the confusion. I had Elizabeth send and did not make her aware of your instructions. This was my mistake.

Jennifer and Robert:

My apologies. I sent the proposed orders to Chief Justice Toal and to all defense counsel with the proposed order exactly how Covil sent their proposed order. They also copied the Judge. These are pretty simple orders, so look forward to your prompt review. I note that you and Robert represent the two clients who have already filed motions to reconsider on the Judge's Order compelling discovery. We sent those responses to you and the Chief Justice earlier.

Best, Theile

From: Jennifer M. Techman [mailto:JMTechman@ewhlaw.com]

Sent: Thursday, February 01, 2018 11:08 AM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

On behalf of my clients I join in the objection set out below and would ask that theses be withdrawn from consideration by the Court. We will review these promptly but we respectfully ask that we follow the instructions stated by Justice Toal in Court with regard to the handling of proposed orders.
 Thank you.



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Sent: Thursday, February 01, 2018 11:01 AM
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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Please allow me to register an objection to this method of proposing final Orders based on the Court's decisions at the recent hearing. It was my understanding that plaintiff's counsel were to circulate proposed Orders to defense counsel and coordinate before submitting any final proposed Order to Your Honor. This is the first we have seen of any proposed Orders. We will review them and provide any comment, but in the interest of compliance with what I believe was the clear direction of the Court, I would ask that these be withdrawn from consideration by the Court and considered to be proposed Orders circulated to defense counsel for comment. Thank you.

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Partner
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From: Elizabeth Moultrie [mailto:EMoultrie@kassellaw.com]
Sent: Thursday, February 1, 2018 10:45 AM
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Subject: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Dear Justice Toal:

Attached please find the Orders Plaintiffs have drafted based on your rulings during the March 24, 2018 Motions hearing. If the attached Orders meet with your approval, please sign them and have them filed with the Clerk of Court in the appropriate counties. By copy of this email, I am forwarding a copy of each of the Orders to counsel for Defendants.

Thank you for your kind consideration and attention. If you have any questions or concerns, or if you should need anything further, please do not hesitate to call me.

Yours very truly,

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 and Theile B. McVey
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## David Rheney

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**Sent:** Friday, February 16, 2018 4:31 PM  
**To:** Robert Meriwether; Theile McVey; McDonald, Mott; Elizabeth Moultrie; Jennifer M. Techman; David Rheney; Jessica Dean; Toal, Jean; Jonathan Holder  
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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

All,

Justice Toal has agreed to allow until next Wednesday, February 21<sup>st</sup>, for all proposed orders to come back in regards to the January 24<sup>th</sup> hearing, as originally asked. My apologies for confusing dates, there are a lot of moving parts! There will be no extension after that. There will be no hearing in furtherance of the rulings made at the January 24<sup>th</sup> hearing. Any and all arguments that you wish to make in regards to those rulings can be sent in writing by Wednesday, February 21<sup>st</sup> with your proposed orders. The judge would like to reiterate that many of these issues are in regards to 30(b)(6)s that are routine and should not create so much dispute.



I understand new Motions to Compel will be filed. Once they're filed and the parties have all had a chance to see them, Justice Toal will then consider if she thinks a hearing, via telephone or otherwise, is required.

I hope you all have a wonderful weekend.

Thank you,

Jamie Rutkoski  
Law Clerk to the Honorable G. Thomas Cooper, Jr. and the Honorable Jean H. Toal  
Circuit Court of South Carolina  
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**From:** Robert Meriwether [mailto:robert.meriwether@nelsonmullins.com]

**Sent:** Friday, February 16, 2018 3:27 PM

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Thank you for the update, Jamie, and Justice Toal. If I understand correctly, the earlier request that proposed Orders be submitted by next Wednesday is now moot, and you are requesting that Orders be submitted by tomorrow, i.e. Saturday. May I draw the court's attention to the unique situation regarding Aurora Pump Company, which has a pending Motion for Reconsideration and Motion for Protective Order, covering the very issues addressed in Plaintiff's proposed Order. These pending motions have not yet been heard, and we believe they should be heard prior to any decision on plaintiff's Motion To Compel. In addition, we have tendered our corporate witness to allow Plaintiff to more fully explore the issues related to document production in this case, but Plaintiff's counsel elected not to depose that witness. We have, therefore, submitted an Affidavit from that corporate witness to the Court and Plaintiff's Counsel, to help shed some light on the substance of Plaintiff's conflict with Aurora. That Affidavit has likewise not been discussed with the Court. I am also concerned that Plaintiff's counsel have not actually moved for the draconian sanctions -- striking the Defendant's pleadings-- which they now incorporate in their proposed Order. I would ask that we have an opportunity to be heard on the pending motions, and to have the court fully apprised of all the circumstances surrounding this controversy, before any Order is entered. If your honor would like, we can propose our own Order by tomorrow, covering these matters, but that seems premature in this case.

Thank you for your consideration.

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

For those who are in disagreement with the proposed orders submitted by Ms. McVey, please have your own proposed Orders submitted within 24 hours. Judge Toal will be signing and submitting final orders for these matters no later than Monday morning.

If you have any questions or concerns, please let me know.

Thank you,

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

First email included orders from Glenn and Howe. This second email contains the proposed order from Sizemore and Smith.

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Good evening everyone,

Some of the issues that arose out of the hearing on January 24<sup>th</sup> may now be moot, but if there are any other issues that need to be ruled upon, Judge Toal wants the proposed orders submitted to her no later than next Wednesday, February 21<sup>st</sup>.

Thanks all,

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal and Jamie:

After discussions with Counsel for the Defendants, it appears that the easiest and most efficient solution to all the back and forth is to do away with the proposed orders from both sides and rely on the transcript from the hearing. The transcript will reflect the arguments made and your rulings.

If you disagree and would like written Orders, we will work together over the weekend to agree on as much as possible. Thanks so much, Theile

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

All,

The purpose of the hearing was to expedite and streamline these matters. As of now, it seems these discovery issues have only been complicated. The judge is not particularly pleased with the contention regarding these matters. Therefore, if there are any disagreements as to the proposed orders submitted by the parties that were told to provide proposed orders, then the opposing party can send in their own proposed order. Judge Toal will look at both proposed orders and make a decision as to what the orders will contain. No need for any further back and forth, which will only serve to delay this process and thus delay the cases for trial.

If there are any proposed orders that are agreed upon by the parties, please send them over marked as such so we can get them filed.

Thank you,

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**Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing**

Judge Toal:

I understand the difficulties of drafting orders in a hearing as complex as last week's. However, my memory of the Court's rulings as to my particular clients is substantially at odds with the Orders that Plaintiffs' propose. The attached letter explains my position, and I leave the matter in your hands.

Good luck with your trial in York County.

**Haynsworth  
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**Sent:** Thursday, February 01, 2018 11:18 AM

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal, please do not sign until counsel has a moment to review. I apologize for the confusion. I had Elizabeth send and did not make her aware of your instructions. This was my mistake.

Jennifer and Robert:

My apologies. I sent the proposed orders to Chief Justice Toal and to all defense counsel with the proposed order exactly how Covil sent their proposed order. They also copied the Judge. These are pretty simple orders, so look forward to your prompt review. I note that you and Robert represent the two clients who have already filed motions to reconsider on the Judge's Order compelling discovery. We sent those responses to you and the Chief Justice earlier.

Best, Theile

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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

On behalf of my clients I join in the objection set out below and would ask that these be withdrawn from consideration by the Court. We will review these promptly but we respectfully ask that we follow the instructions stated by Justice Toal in Court with regard to the handling of proposed orders.  
Thank you.



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**Subject:** RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Please allow me to register an objection to this method of proposing final Orders based on the Court's decisions at the recent hearing. It was my understanding that plaintiff's counsel were to circulate proposed Orders to defense counsel and coordinate before submitting any final proposed Order to Your Honor. This is the first we have seen of any proposed Orders. We will review them and provide any comment, but in the interest of compliance with what I believe was the clear direction of the Court, I would ask that these be withdrawn from consideration by the Court and considered to be proposed Orders circulated to defense counsel for comment. Thank you.

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**Subject:** Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Dear Justice Toal:



Attached please find the Orders Plaintiffs have drafted based on your rulings during the March 24, 2018 Motions hearing. If the attached Orders meet with your approval, please sign them and have them filed with the Clerk of Court in the appropriate counties. By copy of this email, I am forwarding a copy of each of the Orders to counsel for Defendants.

Thank you for your kind consideration and attention. If you have any questions or concerns, or if you should need anything further, please do not hesitate to call me.

Yours very truly,

*Elizabeth Cason Moultrie*

Senior Paralegal to John D. Kassel  
and Theile B. McVey

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David Rheney

From: David Rheney
Sent: Friday, February 16, 2018 5:48 PM
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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing
Attachments: Proposed Protective Order (2).DOCX

Jamie,

Attached is the proposed order previously sent to Judge Toal on 2/2/18, which was been prepared in accordance with her instructions during the January 24th hearing.

Thank you. Have a good weekend.



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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

For those who are in disagreement with the proposed orders submitted by Ms. McVey, please have your own proposed Orders submitted within 24 hours. Judge Toal will be signing and submitting final orders for these matters no later than Monday morning.

If you have any questions or concerns, please let me know.

Thank you,

Jamie Rutkoski
Law Clerk to the Honorable G. Thomas Cooper, Jr. and the Honorable Jean H. Toal
Circuit Court of South Carolina

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From: Theille McVey [<mailto:TMcVey@kassellaw.com>]

Sent: Friday, February 16, 2018 11:46 AM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

First email included orders from Glenn and Howe. This second email contains the proposed order from Sizemore and Smith.

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Good evening everyone,

Some of the issues that arose out of the hearing on January 24th may now be moot, but if there are any other issues that need to be ruled upon, Judge Toal wants the proposed orders submitted to her no later than next Wednesday, February 21st.

Thanks all,

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal and Jamie:

After discussions with Counsel for the Defendants, it appears that the easiest and most efficient solution to all the back and forth is to do away with the proposed orders from both sides and rely on the transcript from the hearing. The transcript will reflect the arguments made and your rulings.

If you disagree and would like written Orders, we will work together over the weekend to agree on as much as possible. Thanks so much, Theile

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Sent: Friday, February 02, 2018 12:00 PM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

All,

The purpose of the hearing was to expedite and streamline these matters. As of now, it seems these discovery issues have only been complicated. The judge is not particularly pleased with the contention regarding these matters. Therefore, if there are any disagreements as to the proposed orders submitted by the parties that were told to provide proposed orders, then the opposing party can send in their own proposed order. Judge Toal will look at both proposed orders and make a decision as to what the orders will contain. No need for any further back and forth, which will only serve to delay this process and thus delay the cases for trial.

If there are any proposed orders that are agreed upon by the parties, please send them over marked as such so we can get them filed.

Thank you,

Jamie Rutkoski
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From: McDonald, Mott [mailto:mmcdonald@hsblawfirm.com]

Sent: Thursday, February 1, 2018 4:02 PM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Judge Toal:

I understand the difficulties of drafting orders in a hearing as complex as last week's. However, my memory of the Court's rulings as to my particular clients is substantially at odds with the Orders that Plaintiffs' propose. The attached letter explains my position, and I leave the matter in your hands.

Good luck with your trial in York County.

**Haynsworth
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Sent: Thursday, February 01, 2018 11:18 AM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Chief Justice Toal, please do not sign until counsel has a moment to review. I apologize for the confusion. I had Elizabeth send and did not make her aware of your instructions. This was my mistake.

Jennifer and Robert:

My apologies. I sent the proposed orders to Chief Justice Toal and to all defense counsel with the proposed order exactly how Covil sent their proposed order. They also copied the Judge. These are pretty simple orders, so look forward to your prompt review. I note that you and Robert represent the two clients who have already filed motions to reconsider on the Judge's Order compelling discovery. We sent those responses to you and the Chief Justice earlier.

Best, Theile

From: Jennifer M. Techman [<mailto:JMTEchman@ewhlaw.com>]

Sent: Thursday, February 01, 2018 11:08 AM

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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

On behalf of my clients I join in the objection set out below and would ask that theses be withdrawn from consideration by the Court. We will review these promptly but we respectfully ask that we follow the instructions stated by Justice Toal in Court with regard to the handling of proposed orders.
Thank you.



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Subject: RE: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Please allow me to register an objection to this method of proposing final Orders based on the Court's decisions at the recent hearing. It was my understanding that plaintiff's counsel were to circulate proposed Orders to defense counsel and coordinate before submitting any final proposed Order to Your Honor. This is the first we have seen of any proposed Orders. We will review them and provide any comment, but in the interest of compliance with what I believe was the clear direction of the Court, I would ask that these be withdrawn from consideration by the Court and considered to be proposed Orders circulated to defense counsel for comment. Thank you.

Robert O. Meriwether
Partner
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Subject: Glenn, Howe, Sizemore and Smith -- Orders from January 24 Motions Hearing

Dear Justice Toal:

Attached please find the Orders Plaintiffs have drafted based on your rulings during the March 24, 2018 Motions hearing. If the attached Orders meet with your approval, please sign them and have them filed with the Clerk of Court in the appropriate counties. By copy of this email, I am forwarding a copy of each of the Orders to counsel for Defendants.

Thank you for your kind consideration and attention. If you have any questions or concerns, or if you should need anything further, please do not hesitate to call me.

Yours very truly,

Elizabeth Eason Moultrie

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

ROXANNE FALLS, individually and as Personal  
Representative of the Estate of Charlotte Gaye  
Smith,

Plaintiff,

vs.

CBS Corporation, a Delaware corporation, f/k/a  
Viacom, Inc., successor by merger to CBS  
Corporation, Pennsylvania Corporation, f/k/a  
Westinghouse Electric Corporation, et al

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2015-CP-46-2155

**ORDER**

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

JAMES CALVIN SIZEMORE,

Plaintiff,

vs.

BOWATER PAPER MILL, *et al.*,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2016-CP-25-440

**ORDER**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as  
Personal Representative of the Estate of WAYNE  
ERWIN HOWE, Deceased, and JEANETTE  
HOWE,

Plaintiff,

vs.

AIR & LIQUID SYSTEMS CORP., *et al.*,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2015-CP-46-3456

**ORDER**

These matters are before the Court on motions for protective order filed on behalf of the defendants, Covil Corporation and Flowserve Corporation, f/k/a The Duriron Company, Inc, and motions of the plaintiffs to compel production of documents from the defendants. A hearing was held in Columbia, South Carolina on January 24, 2018. Based upon the briefs submitted and arguments during the hearing, the Court rules as follows:

Covil's motion to preclude the taking of its Rule 30(b)(6) deposition in these matters is DENIED. Covil's motion to continue the 30(b)(6) deposition due to changes in the availability of Jim Covil since the originally agreed-upon date is GRANTED. Covil will produce a 30(b)(6) deponent by February 9, 2018, as mutually agreed upon by counsel. Covil's motion that the deposition be taken one time only for use in each of these cases is GRANTED.

The motion of Flowserve/Duriron to preclude the taking of its Rule 30(b)(6) deposition in Howe is DENIED. Flowserve/Duriron will produce a 30(b)(6) deponent by February 9, 2018, as mutually agreed upon by counsel.

The motions of the plaintiffs to compel production of relevant documents from Covil is GRANTED. Covil shall produce the documents in its possession or reasonably available to it by Monday, January 29, 2018.

The motion of the plaintiffs to compel production of documents from Flowserve/Duriron in Howe is GRANTED. Relevant documents responsive to the discovery requests for the Bowater, Crown Cork and Seal, American Enka and the two (2) Celanese plants at which the plaintiff worked, and which are in the possession of, or reasonably available to, Flowserve/Duriron, shall be produced by Monday, January 29, 2018.

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The Honorable Jean H. Toal  
Circuit Court Judge

Dated: \_\_\_\_\_

## David Rheney

---

**From:** Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>  
**Sent:** Friday, February 23, 2018 4:24 PM  
**To:** Kennaday, Tom; Toal, Jean; Theile McVey; McDonald, Mott; Elizabeth Moultrie; Jennifer M. Techman; Robert Meriwether; David Rheney; Jessica Dean; Jonathan Holder  
**Cc:** A. Timothy Jones; A. Walker Barnes; Andrew S. Rogers; Benjamin Joyce; Bobby Hood, Jr.; Brannon J. Arnold; Carolyn Blackwell; Christopher Austin Jaros; Daniel White; David Traylor; Eric A. Ludwig; Eric K. Englehardt (Eric@greenvillesclaw.com); George Green; Gwyn L. Martin; Jase Glenn; James H. Elliott, Jr. - Richardson Plowden & Robinson, P.A. (jelliott@richardsonplowden.com); Brown, Jenna C; Joseph Lawrence Nelson; Josephine H. Hicks - Parker Poe Adams & Bernstein LLP (josephinehicks@parkerpoe.com); Joy P. Gragg, Secretary; Justin U. Ijei; Kathy D'Amico; Dawson, Kathy; Kelli Eargle; Kim Westmoreland; Kimberly B. Taylor (Paralegal); Krista M. McGuire; Kurt Matthew Rozelsky; Brown, Linarda C.; Dunn, Lynn; Mark H. Wall; Matthew A. Culp (mculp@rwdmlaw.com); Melinda Accardo; Michael Bogle - Womble Carlyle & Sandridge Rice, LLP (michael.bogle@wbd-us.com); Michael C. Griffin; Michael Kalwajtys; Ollie M. Harton; Dawson, Kathy; Rachel L. Huenefeld; Sam H. Nettles (snettlles@richardsonplowden.com); Frick, Scott; Sheri Ackerman; Shubhra R. Mashelkar - Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC (smashelkar@wwhgd.com); Stephanie G. Flynn (Stephanie.Flynn@smithmoorelaw.com); Ouzts, Steven W.; Susan Collings; Susan Gladden; Sylvia Chisholm (Paralegal); Thomas F. Dougall; Conner, David; William A. Collins, Jr.; Allyson Twilley; Amy E. Melvin Esquire (amelvin@leathbouchlaw.com); Breon Walker; Courtney Pine; Dell Chappell; Joseph E. Thoensen - Richardson Plowden (jthoensen@RichardsonPlowden.com); Kim Harbison; Louis P. Herns; Robin S. Spitz (Paralegal); Ron Tate; S. Pugh; Stacy Said; SILICA - Timothy Bouch; V. Clark Price; Will Early; SILICA - William Coates; Yaney A. McLeod III; Alexis Lindsay - Sowell Gray Stepp & Laffitte, LLC (alindsay@sowellgray.com); Amy Harmon Geddes; Brady A. Yntema Esq. (byntema@goldbergsegalla.com); Brenda Casey; C. Griffin; Cara Scott; Carole M. Pegler, Admin; Christopher R. Kinkade - Fox Rothschild LLP (ckinkade@foxrothschild.com); David L. Brown - Goldberg Segalla (dbrown@goldbergsegalla.com); Delores Catapano (Delores.Catapano@rtt-law.com); E. Chase Dressman, Esquire; E. Douglas Pratt-Thomas (Douglas.Pratt-Thomas@rtt-law.com); E. Elaine Shofner (eshofner@hptylaw.com); Gregory B. Collins, Esquire; J. Frazier; Joanna R. Doxey; Jovan Dungee; Julia Prince; Kelly Fesperman; Linda Wilson; Marsha Pritt; Michelle D. Laliberte, Legal Assistant; Gladd, Nicholas W.; Ren Wilkes; Richard Ashby Farrier, Jr.; Susan Miller; Timothy Peck; Tina Cundari - Sowell Gray Stepp & Laffitte, LLC (tcundari@sowellgray.com); Valerie Hampton; Bill Starr; Kathy Hoffner; William Peele Early; Dolores Catapano  
**Subject:** RE: March Block Cases

All,

It appears we have been able to sort through all of the proposed orders and objections in regards to the disputed discovery issues from the January 24<sup>th</sup> hearing. I will get the signed Orders sent off as soon as possible to be filed with the respective Courts for each case.

On Friday March 9th, we will hear everything that is before the court in the Howe, Smith/Falls, and Sizemore cases to include pretrial motions and Motions for Summary Judgment. Parties can stand down on the Glenn case as a whole, as we have not scheduled anything with the Anderson court house.

Justice Toal intends to read through all of the motions and memorandums prior to the March 9th hearing so I urge the parties to provide hard copies to us at the Richland County Courthouse to ensure that hearing goes smoothly.

I believe this covers everything not previously communicated by Justice Toal. But, per usual, please feel free to contact me with any questions or concerns.

Thank y'all and have a great weekend!

Jamie Rutkoski  
Law Clerk to the Honorable G. Thomas Cooper, Jr. and the Honorable Jean H. Toal  
Circuit Court of South Carolina  
1121 Broad St., Rm. 313  
Post Office Box 1557  
Camden, SC 29021  
Phone: (803) 425-7182  
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**From:** Kennaday, Tom [mailto:TKennaday@TurnerPadget.com]

**Sent:** Friday, February 23, 2018 3:42 PM

**To:** Toal, Jean <JToal@sccourts.org>; Theile McVey <TMcVey@kassellaw.com>; Cooper, G. Thomas Law Clerk (Jamie Rutkoski) <GCooperLC@sccourts.org>; McDonald, Mott <mmcdonald@hsblawfirm.com>; Elizabeth Moultrie <EMoultrie@kassellaw.com>; Jennifer M. Techman <JMTechman@ewhlaw.com>; Robert Meriwether <robert.meriwether@nelsonmullins.com>; David Rheney <drheney@gwblawfirm.com>; Jessica Dean <jdean@dobllp.com>; Jonathan Holder <jholder@dobllp.com>

**Cc:** A. Timothy Jones <tjones@hptylaw.com>; A. Walker Barnes <walker.barnes@hoodlaw.com>; Andrew S. Rogers <ASRogers@ewhlaw.com>; Benjamin Joyce <ben.joyce@hoodlaw.com>; Bobby Hood, Jr. <bobbyjr.hood@hoodlaw.com>; Brannon J. Arnold <barnold@wwhgd.com>; Carolyn Blackwell <Carolyn.Blackwell@nelsonmullins.com>; Christopher Austin Jaros <christopher.jaros@klgates.com>; SILICA - Daniel White <dwhite@gwblawfirm.com>; David Traylor <david.traylor@nelsonmullins.com>; Eric A. Ludwig <eludwig@hptylaw.com>; Eric K. Englehardt (Eric@greenvillesclaw.com) <Eric@greenvillesclaw.com>; George Green <ggreen@wwhgd.com>; Gwyn L. Martin <gwyn.martin@klgates.com>; Jase Glenn <Jase.Glenn@nelsonmullins.com>; James H. Elliott, Jr. - Richardson Plowden & Robinson, P.A. (jelliott@richardsonplowden.com) <jelliott@richardsonplowden.com>; Brown, Jenna C <JBrown@TurnerPadget.com>; Joseph Lawrence Nelson <jnelson@dmclaw.com>; Josephine H. Hicks - Parker Poe Adams & Bernstein LLP (josephinehicks@parkerpoe.com) <josephinehicks@parkerpoe.com>; Joy P. Gragg, Secretary <jgragg@wwhgd.com>; Justin U. Ijei <jijei@rwdmlaw.com>; Kathy D'Amico <kdamico@gwblawfirm.com>; Dawson, Kathy <kdawson@hsblawfirm.com>; Kelli Eargle <kelli.eargle@nelsonmullins.com>; Kim Westmoreland <kwestmoreland@richardsonplowden.com>; Kimberly B. Taylor (Paralegal) <kim.taylor@klgates.com>; Krista M. McGuire <kristamcguire@parkerpoe.com>; Kurt Matthew Rozelsky <kurt.rozelsky@smithmoorelaw.com>; Brown, Linarda C. <LBrown@TurnerPadget.com>; Dunn, Lynn <ldunn@hsblawfirm.com>; Mark H. Wall <Mark.Wall@WallTempleton.com>; Matthew A. Culp (mculp@rwdmlaw.com) <mculp@rwdmlaw.com>; Melinda Accardo <melinda.accardo@hoodlaw.com>; Michael Bogle - Womble Carlyle & Sandridge Rice, LLP (michael.bogle@wbd-us.com) <michael.bogle@wbd-us.com>; Michael C. Griffin <mgriffin@babco.com>; Michael Kalwajtys <mkalwajtys@dougallfirm.com>; Ollie M. Harton <oharton@hptylaw.com>; Dawson, Kathy <kdawson@hsblawfirm.com>; Rachel L. Huenefeld <RLHuenefeld@ewhlaw.com>; Sam H. Nettles (snettles@richardsonplowden.com) <snettles@richardsonplowden.com>; Frick, Scott <sfrick@hsblawfirm.com>; Sheri Ackerman <Sheri.ackerman@walltempleton.com>; Shubhra R. Mashelkar - Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC (smashelkar@wwhgd.com) <smashelkar@wwhgd.com>; Stephanie G. Flynn (Stephanie.Flynn@smithmoorelaw.com) <Stephanie.Flynn@smithmoorelaw.com>; Ouzts, Steven W. <SOuzts@TurnerPadget.com>; Susan Collings <susan.collings@nelsonmullins.com>; Susan Gladden <sgladden@richardsonplowden.com>; Sylvia Chisholm (Paralegal) <schisholm@goldbergsegalla.com>; Thomas F. Dougall <tdougall@dougallfirm.com>; Conner, David <dconner@hsblawfirm.com>; William A. Collins, Jr. <wcollins@dougallfirm.com>; Allyson Twilley <atwilley@gwblawfirm.com>; Amy E. Melvin Esquire (amelvin@leathbouchlaw.com) <amelvin@leathbouchlaw.com>; Breon C.M. Walker - Gallivan, White & Boyd, P.A. (bwalker@gwblawfirm.com) <bwalker@gwblawfirm.com>; Courtney Pine <cpine@wallacegraham.com>; Dell Chappell <dell.chappell@nelsonmullins.com>; Joseph E. Thoensen - Richardson

Plowden (jthoensen@RichardsonPlowden.com) <jthoensen@RichardsonPlowden.com>; K. Harbison (kharbison@gwblawfirm.com) <kharbison@gwblawfirm.com>; Louis P. Herns <louispherns@phswlaw.com>; Robin S. Spitz (Paralegal) <robinspitz@phswlaw.com>; Ron Tate <rtate@gwblawfirm.com>; S. Pugh <spugh@richardsonplowden.com>; Stacy Said <ssaid@gwblawfirm.com>; SILICA - Timothy Bouch <tbouch@leathbouchlaw.com>; V. Clark Price <vcp@roecassidy.com>; Will Early <willearly@phswlaw.com>; SILICA - William Coates <wac@roecassidy.com>; Yaney A. McLeod III <ymcleod@leathbouchlaw.com>; Alexis Lindsay - Sowell Gray Stepp & Laffitte, LLC (alindsay@sowellgray.com) <alindsay@sowellgray.com>; Amy Harmon Geddes <ageddes@nexsenpruet.com>; Brady A. Yntema Esq. (byntema@goldbergsegalla.com) <byntema@goldbergsegalla.com>; Brenda Casey <brendacasey@phswlaw.com>; C. Griffin <cgriffin@hptylaw.com>; Cara Scott <cscott@leathbouchlaw.com>; Carole M. Pegler, Admin <cpegler@roecassidy.com>; Christopher R. Kinkade - Fox Rothschild LLP (ckinkade@foxrothschild.com) <ckinkade@foxrothschild.com>; David L. Brown - Goldberg Segalla (dbrown@goldbergsegalla.com) <dbrown@goldbergsegalla.com>; Delores Catapano (Delores.Catapano@rtt-law.com) <Delores.Catapano@rtt-law.com>; E. Chase Dressman, Esquire <cdressman@taftlaw.com>; E. Douglas Pratt-Thomas (Douglas.Pratt-Thomas@rtt-law.com) <Douglas.Pratt-Thomas@rtt-law.com>; E. Elaine Shofner (eshofner@hptylaw.com) <eshofner@hptylaw.com>; Gregory B. Collins, Esquire <gcollins@mgclaw.com>; J. Frazier <jfrazier@leathbouchlaw.com>; Joanna R. Doxey <jdoxey@hptylaw.com>; Jovan Dungee <jdungee@gwblawfirm.com>; Julia Prince <jprince@gwblawfirm.com>; Kelly Fesperman <kfesperman@goldbergsegalla.com>; Linda Wilson <linda.wilson@nelsonmullins.com>; Marsha Pritt <mpritt@dmclaw.com>; Michelle D. Laliberte, Legal Assistant <mlaliberte@mgclaw.com>; Gladd, Nicholas W. <NGLadd@TurnerPadget.com>; Ren Wilkes <ren@cs-law.com>; Richard Ashby Farrier, Jr. <Richard.FarrierJr@klgates.com>; Susan Miller <susan.miller@cs-lwa.com>; Timothy Peck <tim.peck@smithmoorelaw.com>; Tina Cundari - Sowell Gray Stepp & Laffitte, LLC (tcundari@sowellgray.com) <tcundari@sowellgray.com>; Valerie Hampton <vhampton@sowellgray.com>; Bill Starr <bill.starr@nelsonmullins.com>; Kathy Hoffner <khoffner@wallacegraham.com>; William Peele Early <willearly@phsm.net>

**Subject:** RE: March Block Cases

Dear Judge Toal,

Viking Pump, Inc. received a motion to compel for the first time this past Wednesday, Feb. 21, two days ago, and it was filed in the Glenn case which Your Honor just took off the March 12 docket. With the additional time now afforded in the Glenn case, Viking and the Plaintiff's counsel might be able to resolve this motion without court intervention. We would ask that Your Honor not hear this motion on March 9, 2018, and that Viking be relieved from submitting a response until sometime after the March 12 docket runs its course. If Your Honor still wants to hear this motion on March 9, Viking requests that it be allowed until Tuesday, March 6 to file a response.

Respectfully, Tom Kennaday.

Tom Kennaday  
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---

**From:** Toal, Jean [mailto:JToal@sccourts.org]

**Sent:** Friday, February 23, 2018 3:23 PM

**To:** Theile McVey; Cooper, G. Thomas Law Clerk (Jamie Rutkoski); McDonald, Mott; Elizabeth Moultrie; Jennifer M. Techman; Robert Meriwether; David Rheney; Jessica Dean; Jonathan Holder

**Cc:** A. Timothy Jones; A. Walker Barnes; Andrew S. Rogers; Benjamin Joyce; Bobby Hood, Jr.; Brannon J. Arnold; Carolyn Blackwell; Christopher Austin Jaros; SILICA - Daniel White; David Traylor; Eric A. Ludwig; Eric K. Englehardt



(Eric@greenvillesclaw.com); George Green; Gwyn L. Martin; Jase Glenn; James H. Elliott, Jr. - Richardson Plowden & Robinson, P.A. (jelliott@richardsonplowden.com); Brown, Jenna C; Joseph Lawrence Nelson; Josephine H. Hicks - Parker Poe Adams & Bernstein LLP (josephinehicks@parkerpoe.com); Joy P. Gragg, Secretary; Justin U. Ijei; Kathy D'Amico; Dawson, Kathy; Kelli Eargle; Kim Westmoreland; Kimberly B. Taylor (Paralegal); Krista M. McGuire; Kurt Matthew Rozelsky; Brown, Linarda C.; Dunn, Lynn; Mark H. Wall; Matthew A. Culp (mculp@rwdmlaw.com); Melinda Accardo; Michael Bogle - Womble Carlyle & Sandridge Rice, LLP (michael.bogle@wbd-us.com); Michael C. Griffin; Michael Kalwajty; Ollie M. Harton; Dawson, Kathy; Rachel L. Huenefeld; Sam H. Nettles (snettles@richardsonplowden.com); Frick, Scott; Sheri Ackerman; Shubhra R. Mashelkar - Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC (smashelkar@wwhgd.com); Stephanie G. Flynn (Stephanie.Flynn@smithmoorelaw.com); Ouzts, Steven W.; Susan Collings; Susan Gladden; Sylvia Chisholm (Paralegal); Thomas F. Dougall; Kennaday, Tom; Conner, David; William A. Collins, Jr.; Allyson Twilley; Amy E. Melvin Esquire (amelvin@leathbouchlaw.com); Breon C.M. Walker - Gallivan, White & Boyd, P.A. (bwalker@gwblawfirm.com); Courtney Pine; Dell Chappell; Joseph E. Thoensen - Richardson Plowden (jthoensen@RichardsonPlowden.com); K. Harbison (kharbison@gwblawfirm.com); Louis P. Herns; Robin S. Spitz (Paralegal); Ron Tate; S. Pugh; Stacy Said; SILICA - Timothy Bouch; V. Clark Price; Will Early; SILICA - William Coates; Yaney A. McLeod III; Alexis Lindsay - Sowell Gray Stepp & Laffitte, LLC (alindsay@sowellgray.com); Amy Harmon Geddes; Brady A. Yntema Esq. (byntema@goldbergsegalla.com); Brenda Casey; C. Griffin; Cara Scott; Carole M. Pegler, Admin; Christopher R. Kinkade - Fox Rothschild LLP (ckinkade@foxrothschild.com); David L. Brown - Goldberg Segalla (dbrown@goldbergsegalla.com); Delores Catapano (Delores.Catapano@rtt-law.com); E. Chase Dressman, Esquire; E. Douglas Pratt-Thomas (Douglas.Pratt-Thomas@rtt-law.com); E. Elaine Shofner (eshofner@hptylaw.com); Gregory B. Collins, Esquire; J. Frazier; Joanna R. Doxey; Jovan Dungee; Julia Prince; Kelly Fesperman; Linda Wilson; Marsha Pritt; Michelle D. Laliberte, Legal Assistant; Gladd, Nicholas W.; Ren Wilkes; Richard Ashby Farrier, Jr.; Susan Miller; Timothy Peck; Tina Cundari - Sowell Gray Stepp & Laffitte, LLC (tcundari@sowellgray.com); Valerie Hampton; Bill Starr; Kathy Hoffner; William Peele Early

**Subject:** RE: March Block Cases

Dear Ms. McVey and Counsel: When I conducted the hearing on the 30(b)(6) matters on Jan. 24, 2017, I indicated to all of you that these depositions are routine, not subject to objections on relevancy and all should be conducted forthwith. I am very disappointed in the continuing non-cooperation being exhibited by some of the defendants. All materials from all parties, dealing with motions to compel and defendants contentions must be sent to me no later than Monday at 2pm. All matters will be heard on Friday, Mar. 9, 2018 at 10am in the Richland County Courthouse. I will consider sanctions for failure to abide by the Rules of Discovery and my orders. Howe, Falls/Smith and Sizemore are the cases scheduled for trial on Mar. 12, 2018. They will go forward to trial, in that order, unless settled. Glenn has not been coordinated in Anderson with the Clerk's office so it will be rescheduled. My law clerk, Jamie Rutkoski, will provide further details. Best regards, Jean Toal

**From:** Theile McVey [mailto:TMcVey@kassellaw.com]

**Sent:** Friday, February 23, 2018 2:45 PM  
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**Subject:** March Block Cases

Chief Justice Toal and Jamie:

There are two types of issues before the court – the proposed orders relating to the discovery issues brought up on the hearing on January 24<sup>th</sup> and new motions to compel filed after that hearing. Plaintiffs intend to file four proposed orders (one for each case) that will drastically streamline this process by consolidating plaintiffs requests, which routinely overlap for various defendants. Plaintiff would also request an opportunity to updated evidence of discovery violations from depositions that occurred very recently. We request to have until Monday to provide these proposed orders to the court.

Plaintiffs also request that any response to Plaintiffs outstanding motions to compel be provided to the court by Monday so that the court can be in a position to address these orders in time for any subsequent discovery ordered by the court.

We apologize for the need for continued motion practice but are running into repeat issues of parties, in our opinion, violating discovery rules and want to be heard in the most streamline way possible.

Thanks so much, Theile

Theile McVey  
Kassel McVey  
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[tmcvey@kassellaw.com](mailto:tmcvey@kassellaw.com)  
[www.kasselmcvay.com](http://www.kasselmcvay.com)

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

ROXANNE FALLS, individually and as
Personal Representative of the Estate of
Charlotte Gaye Smith,

Plaintiff,

vs.

CBS Corporation, a Delaware corporation,
f/k/a Viacom, Inc., successor by merger to
CBS Corporation, Pennsylvania
Corporation, f/k/a
Westinghouse Electric Corporation, et al

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2015-CP-46-2155

AFFIDAVIT OF JAMES P. COVIL

Personally appeared before me James P. Covil, who being duly sworn, deposes and states:

1. I am over the age of 18 and I am competent to make this affidavit.
2. After college, I was employed on a full-time basis by Covil Corporation beginning in 1974. I am the son of the company's founder, Palmer Covil, who died in 1984. By the time I joined Covil Corporation, asbestos containing insulation material was no longer being sold by the company.
3. Covil Corporation has been out of business since 1991. It has no employees or assets. To the best of my knowledge, due to the passage of time and the deaths and old age of former employees, there are no former employees who are available to testify concerning the matters requested in the First Amended Notice of Deposition served in this case. I am willing to represent the company and provide a deposition if required to do so, but it will require

considerable time and effort to become knowledgeable about the issues requested in the Notice in order to provide a deposition because I have very little personal knowledge of the issues raised in the Notice.

4. I am currently employed by Hamricks' as a product loss specialist. While I was working in this position on a part-time basis until December of 2017 and intended to only work part-time in 2018, my supervisor at Hamrick's injured his knee in late December and had to have knee surgery. His absence has forced me to now work in a full-time capacity and work close to 40 hours per week. My schedule is erratic at times, and I begin working at different times each day.

5. Due to my supervisor's absence, I have limited availability to take any days off to prepare for and provide testimony in a 30(b)(6) deposition of Covil Corporation.

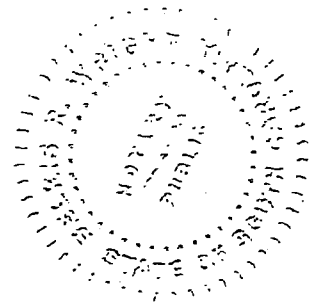
6. I anticipate continuing to work in this full-time capacity until at least mid-March when my supervisor will return.

FURTHER AFFIANT SAYETH NOT.

James P. Covil
James P. Covil

Sworn to and subscribed before
me this 19 day of January, 2018.

[Signature]
Notary Public for South Carolina
My Commission Expires: 3/31/2026



STATE OF SOUTH CAROLINA

COUNTY OF YORK

TIMOTHY W. HOWE, Individually and as
Personal Representative of the Estate of
WAYNE ERWIN HOWE, Deceased, and
JEANETTE HOWE,

Plaintiff,

VS.

AIR & LIQUID SYSTEMS CORP., *et al.*,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2015-CP-46-3456

AFFIDAVIT OF JAMES P. COVIL

Personally appeared before me James P. Covil, who being duly sworn, deposes and states:

1. I am over the age of 18 and I am competent to make this affidavit.
2. After college, I was employed on a full-time basis by Covil Corporation beginning in 1974. I am the son of the company's founder, Palmer Covil, who died in 1984. By the time I joined Covil Corporation, asbestos containing insulation material was no longer being sold by the company.
3. Covil Corporation has been out of business since 1991. It has no employees or assets. To the best of my knowledge, due to the passage of time and the deaths and old age of former employees, there are no former employees who are available to testify concerning the matters requested in the First Amended Notice of Deposition served in this case. I am willing to represent the company and provide a deposition if required to do so, but it will require considerable time and effort to become knowledgeable about the issues requested in the Notice in order to provide a deposition because I have very little personal knowledge of the issues raised

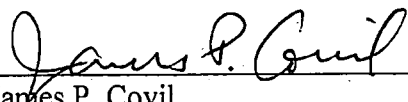
in the Notice.

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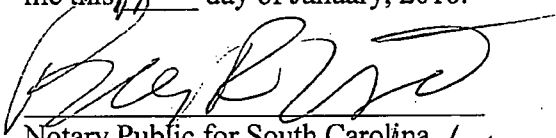
5. Due to my supervisor's absence, I have limited availability to take any days off to prepare for and provide testimony in a 30(b)(6) deposition of Covil Corporation.

6. I anticipate continuing to work in this full-time capacity until at least mid-March when my supervisor will return.

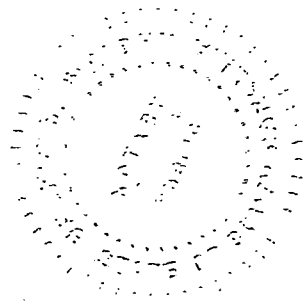
FURTHER AFFIANT SAYETH NOT.


James P. Covil

Sworn to and subscribed before
me this 18 day of January, 2018.


Notary Public for South Carolina

My Commission Expires: 3/31/26



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	
	)	
JAMES CALVIN SIZEMORE,	)	Civil Action No. 2016-CP-25-440
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF JAMES P. COVIL
	)	
BOWATER PAPER MILL, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
	)	

Personally appeared before me James P. Covil, who being duly sworn, deposes and states:

1. I am over the age of 18 and I am competent to make this affidavit.
2. After college, I was employed on a full-time basis by Covil Corporation beginning in 1974. I am the son of the company's founder, Palmer Covil, who died in 1984. By the time I joined Covil Corporation, asbestos containing insulation material was no longer being sold by the company.
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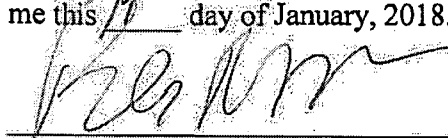
5. Due to my supervisor's absence, I have limited availability to take any days off to prepare for and provide testimony in a 30(b)(6) deposition of Covil Corporation.

6. I anticipate continuing to work in this full-time capacity until at least mid-March when my supervisor will return.

FURTHER AFFIANT SAYETH NOT.


James P. Covil

Sworn to and subscribed before
me this 17 day of January, 2018.


Notary Public for South Carolina
My Commission Expires: 3/31/28

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

Case No. 2018-000385

RECEIVED
NOV 26 2018
SC Court of Appeals

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

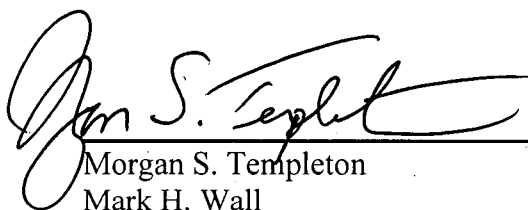
Waste Management of South Carolina, Inc., as successor by merger to USA Waste of South

Carolina, Inc., successor by merger to Chambers Medical Technologies, Inc., . . . Defendants
Of which Covil Corporation is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material, complying with Rule 210, *SCACR*.

WALL TEMPLETON & HALDRUP, P.A.

A handwritten signature in black ink, appearing to read "Morgan S. Templeton", is written over a horizontal line.

Morgan S. Templeton

Mark H. Wall

145 King Street, Ste. 300

Post Office Box 1200

Charleston, South Carolina 29402

843-329-9500

Attorneys for the Appellant