

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable Jean H. Toal  
Acting Circuit Court Judge

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

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APPENDIX TO RECORD ON APPEAL

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

v.

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

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

of whom

Cleaver-Brooks, Inc. is the ..... Appellant.

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Portion of John Tornetta Deposition I .....1612

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1 A Correct.

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

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

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

9 A I don't know.

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

12 MS. SPARDONE: Object to form.

13 DEFENSE COUNSEL: Object to form.

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

20 BY MS. STONE:

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

23 MS. SPARDONE: Object to form.

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

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

6 BY MS. STONE:

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

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

11 A Correct.

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

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

16 Q Right.

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

22 Q Okay. Turn with me to BPM20.  
23 A Okay.  
24 Q It's talking about the Wholesaler and Shipping Data,  
25 right?

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

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

6 A Correct.

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

9 A Correct.

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

12 A Yes.

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

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

18 Q That's where I was going.

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

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

25 A Well --

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1 DEFENSE COUNSEL: Object to form.

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

5 BY MS. STONE:

6 Q Do you know what Crane Company is?  
7 MS. SPARDONE: Object to form.

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

12 BY MS. STONE:

13 Q Do you know Crane Co. generally makes valves?  
14 MS. SPARDONE: Object to form, assumes  
15 facts.

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

18 BY MS. STONE:

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

21 A Yes.

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

25 MS. SPARDONE: Object to form.

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1 A I don't think it does for me one way or the other  
 2 where it was. I remember looking at that and  
 3 wondering if it really told me anything. But I  
 4 believe the whole facility is a paper mill, or most  
 5 people I believe would refer to the whole facility as  
 6 a paper mill. So I just -- to me it wasn't anything  
 7 that gave me much information.  
 8 BY MS. STONE:  
 9 Q And then on BPM25, it says Assembly Checklist,  
 10 correct?  
 11 A Correct.  
 12 Q And this is basically confirming the model, the  
 13 pounds, that sort of thing, of the boiler that is  
 14 being shipped to Bowater?  
 15 MS. SPARDONE: Object to form.  
 16 A Yes. I believe this is something that someone in a  
 17 Cleaver-Brooks manufacturing plant filled out.  
 18 BY MS. STONE:  
 19 Q So it included a motor, heating coils, a Kunkle  
 20 valve; is that fair to say?  
 21 A Yeah, I would just correct that the -- you said  
 22 heating coils. They're actually heater coils, and  
 23 that's related to the motor starter and the overload  
 24 heaters which are electrical safety devices on a  
 25 motor starter. But, yes, it calls out a Kunkle valve

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1 for the safety valve and at least one gas valve and a  
 2 Maxitrol gas regulator.  
 3 MS. STONE: All right. Stephanie, do you  
 4 want to keep going? I know you said you like to do  
 5 an hour. I'm about to go to the next set of  
 6 documents.  
 7 MS. SPARDONE: We -- let's just go off the  
 8 record for a minute.  
 9 (Discussion off the record.)  
 10 BY MS. STONE:  
 11 Q All right. John, we're moving through. The next  
 12 thing I want you to look at is Exhibit 5.  
 13 A Okay. I have those in front of me.  
 14 Q And this is BPM000026 through BPM000044. And what  
 15 would you classify these documents from our  
 16 discussion earlier? Would they be the manufacturing  
 17 documents?  
 18 A Yeah. Or the manufacturing drawings. Basically they  
 19 were the drawings used by our manufacturing operation  
 20 to build the boiler.  
 21 Q And the first one is BPM26.  
 22 A Correct.  
 23 Q And it says this is for Model P15 through 40.  
 24 A Correct.  
 25 Q Our model number we have here is P723 or 700-30S.

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1 Tell me how those relate to each other.  
 2 A The 15 through 40 is in reference to the horsepower  
 3 of the boiler part of the model. And if -- what you  
 4 said was the Model P723-30, the 30 is the horsepower  
 5 part of the model number. So this is -- the drawing  
 6 on BPM26 is for the P boiler, meaning Progress, which  
 7 is the name of the model line, 15 through 40  
 8 horsepower, and it's LP which is low pressure meaning  
 9 the 15 pounds per square inch. And it says gas only  
 10 which that gas only fits the 700 part of the model  
 11 number meaning it was designed to burn natural gas.  
 12 Q This blueprint applies to the boiler that was sent to  
 13 Bowater?  
 14 A Correct.  
 15 Q So if you look with me on the top left, I think we  
 16 went through this a little bit, it has the insulation  
 17 and lagging which we just went through, correct?  
 18 A Yes. That's what we were talking about with the  
 19 invoice, the Microlite information and the sheet  
 20 metal lagging. And I would just point out that when  
 21 we use the term "lagging," it might be different than  
 22 the term "lagging" you're used to. We're talking  
 23 about sheet metal.  
 24 Q Right. And if you look at item 17.  
 25 A Correct. Yes, I am. Sorry.

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1 Q And it says -- it says gasket asbestos rope 5/8th  
 2 inch diameter; is that correct?  
 3 A Yes, it does say that. I think it's 5/8th. It could  
 4 be 3/8ths, but I believe it's 5/8ths.  
 5 Q I'll go with either interpretation. It's a little  
 6 hard to read. So an asbestos rope gasket went to  
 7 Bowater from Cleaver-Brooks, correct?  
 8 A Yes. That was used, if you look at the drawing, it  
 9 was used across what we call the baffle of the rear  
 10 door between the baffle and the tube sheet internally  
 11 to the boiler.  
 12 Q So to get into the boiler to do work inside the  
 13 boiler, that gasket would have to be removed and  
 14 replaced, correct?  
 15 MS. SPARDONE: Object to form.  
 16 A It certainly would be -- the seal between it and the  
 17 tube sheet would be broken when the rear door was  
 18 opened.  
 19 BY MS. STONE:  
 20 Q So that gasket would have to be replaced?  
 21 A Fairly normal that someone would. But I certainly  
 22 can't say that every time someone did.  
 23 Q Okay. And then the next line is 18, it says cement  
 24 asbestos JM number 40 five pounds?  
 25 A I think it's actually JM number 450.

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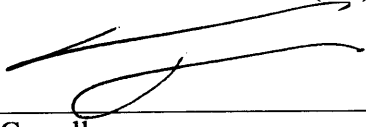
Cleaver-Brooks, Inc. is the ..... Appellant.

CERTIFICATE OF COUNSEL

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

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PROOF OF SERVICE

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I, the undersigned Legal Secretary of the law offices of Womble Bond Dickinson (US) LLP, Attorneys for Appellant, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):


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June 7, 2019