THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

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SC Court of Appeals

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

RECORD ON APPEAL
(VOLUME IV)

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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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of **WAYNE ERVIN HOWE**, deceased, and **JEANETTE HOWE,**	)	**C/A NO. 15-CP-46-03456**
Plaintiffs,	)	**PLAINTIFFS' MOTION FOR SANCTIONS AGAINST CLEAVER BROOKS, INC.**
v.	)	
AIR & LIQUID SYSTEMS CORPORATION, et al.,	)	
Defendants.	)	

Plaintiffs Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe ("Plaintiffs") move for sanctions against Defendant Cleaver Brooks, Inc. ("Cleaver Brooks") for its abuse of the discovery and trial processes.

INTRODUCTION

As this Court is well aware, throughout the course of discovery and significantly into the trial, Cleaver Brooks engaged in a course of failing to disclose key evidence. These are precisely the machinations for which discovery sanctions are designed. Given Cleaver Brooks' serious discovery misconduct in this case, Plaintiffs ask this Court to award sanctions consisting of the costs incurred by Timothy Howe in taking time off from work to attend trial, as well as costs, expenses, and attorneys' fees incurred in trying this case and in Plaintiffs' counsel's efforts to secure the missing documents from Cleaver Brooks throughout the course of discovery. As an additional sanction, Plaintiffs request that this Court deny Cleaver Brooks' cost application.

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BACKGROUND

The key issue at trial and during discovery was the location and number of Cleaver Brooks boilers; specifically, the issue was the presence, or absence, of Cleaver Brooks' boilers in the powerhouse at the Bowater plant where Howe worked. Throughout the entire course of discovery and throughout trial until the night before Cleaver Brooks' corporate representative was designated to take the stand, Cleaver Brooks withheld critical evidence that was readily ascertainable and central to the primary dispute in the case.

When Plaintiffs took the initial deposition of Cleaver Brooks on February 1, 2018, the corporate representative, John Tornetta, was unprepared to adequately discuss the Bowater plant. At his second deposition just days before trial, on March 6, 2018, Tornetta represented that there was nothing in Cleaver Brooks' records that would identify where its boiler was located at Bowater. Plaintiffs were forced to file a motion to compel, and later a motion for sanctions for Cleaver Brooks' failure to comply with this Court's order regarding the production of documents. This Court held a hearing on the motion for sanctions, with Plaintiffs requesting a presumption that Cleaver Brooks' boiler was in the powerhouse at the Bowater plant. Although the Court did not rule on the issue, Plaintiffs' motion and argument of counsel for both sides made clear that the location of Cleaver Brooks' boilers was the key issue for trial.

At the start of trial, a document was produced showing that one Cleaver Brooks boiler was in the administration building at Bowater. Since there were two unit numbers indicating two boilers, even with one boiler in the administration building, the evidence demonstrated that one Cleaver Brooks building was in the powerhouse, where Howe worked with and around on every boiler over the course of years.

It was not until several days later, near midnight on the night before Cleaver Brooks' corporate representative was scheduled to testify, that Cleaver Brooks for the first time produced documents indicating that, in addition to the one boiler in the administration building at Bowater, the second boiler was sent to some unheard of plant in Illinois, not Bowater, in South Carolina. Cleaver Brooks' evidence, produced for the first time after the middle of trial, strongly suggested that none of its boilers was located in the powerhouse at Bowater, where Howe worked. This evidence was extremely prejudicial to Plaintiffs' trial strategy and fundamentally changed the analysis of Plaintiffs' case, resulting in tremendous trial expenses and costs.

In conjunction with these documents, Cleaver Brooks' corporate representative offered new opinions that he had not held in either of his two depositions, including the second deposition conducted just days before trial. For example, he testified at trial that a consequential typo ran repeatedly throughout the 25 pages that Cleaver Brooks had produced in discovery. He offered multiple justifications for this erratum. Ultimately, however, such errors could have been discovered through earlier, timely production of the documents, and not ambush production in the middle of trial.

ARGUMENT

The selection of a sanction for discovery violations is within the trial court's discretion. *Kershaw County Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990). Sanctions can range up to default or dismissal, and "[i]n 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." *Griffin Grading & Clearing, Inc. v. Tire Service Equip. Mfg. Co.*, 334 S.C. 193, 199, 511 S.E.2d 716, 719 (Ct. App. 1999) (citing *Laney v. Hefley*, 262 S.C. 54, 202 S.E.2d 12 (1974)). The sanction should be aimed at the

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specific conduct of the party sanctioned. *Id.* (citing *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990)).

A court may award reasonable expenses, including attorneys' fees, for a party's failure to make or cooperate in discovery. SCRCP 37(b); *see, e.g., Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014) (affirming award of attorneys' fees and costs as sanctions for refusal to comply with discovery rulings); *Arnal v. Arnal*, 363 S.C. 268, 297, 609 S.E.2d 821, 836 (Ct. App. 2005), *aff'd as modified*, 371 S.C. 10, 636 S.E.2d 864 (2006) (court imposed sanctions awarding attorneys' fees for discovery abuse); *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 644, 579 S.E.2d 151, 154 (Ct. App. 2003) (trial court granted attorneys' fees for failure to participate in discovery); *Hundley ex rel. Hundley v. Rite Aid of S.C., Inc.*, 339 S.C. 285, 305, 529 S.E.2d 45, 56 (Ct. App. 2000) (trial court assessed attorneys' fees for discovery abuses); *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999) (trial court awarded attorneys' fees for failure to comply with discovery order).

Here, the Court cannot award such sanctions as striking pleadings or entering default judgment as verdict has been rendered. The most appropriate sanction in this case is an award of costs, expenses, and attorneys' fees, as well as a denial of Cleaver Brooks' application for costs.

CONCLUSION

WHEREFORE, Plaintiff prays that the Court grant sanctions against Cleaver Brooks in the amount of costs incurred by Timothy Howe in taking time off from work for trial, as well as costs, expenses, and attorneys' fees incurred in trying this case and in Plaintiffs' counsel's efforts to secure the missing documents from Cleaver Brooks throughout the course of discovery. Plaintiffs further request that this Court deny Cleaver Brooks' cost application.

This motion will be supported by a memorandum of law and evidence of costs, expenses,

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and attorneys' fees to be filed after the trial transcript has been completed and made available to Plaintiffs. Plaintiffs will file their memorandum in support in 30 days, by April 27, 2018.

Respectfully submitted,

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March 31, 2018

Columbia, South Carolina.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of **WAYNE ERVIN HOWE**, deceased, and **JEANETTE HOWE,**	)	**C/A NO. 15-CP-46-03456**
Plaintiffs,	)	**PLAINTIFFS' MOTION FOR SANCTIONS WITH STATEMENTS OF FEES AND COSTS AGAINST CLEAVER BROOKS, INC.**
v.	)	
AIR & LIQUID SYSTEMS CORPORATION, et al.,	)	
Defendants.	)	

Plaintiffs Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe ("Plaintiffs") file this statement of fees and costs in support of their motion for sanctions against Defendant Cleaver Brooks, Inc. ("Cleaver Brooks") for its abuse of the discovery and trial processes.

INTRODUCTION

As this Court is well aware, throughout the course of discovery and significantly into the trial, Cleaver Brooks engaged in a course of failing to disclose key evidence. These are precisely the machinations for which discovery sanctions are designed. On March 31, 2018, Plaintiffs submitted a Motion for Sanctions Against Cleaver Brooks for its course of failing to disclose key evidence throughout discovery and significantly into the trial. Given Cleaver Brooks' serious misconduct in this case, Plaintiffs seek (1) the costs incurred by Timothy Howe and Wende Myers in taking time off from work to attend trial, and (2) the costs, expenses, and attorneys' fees incurred in trying this case. In addition, Plaintiffs request that this Court deny Cleaver Brooks' cost

application. Plaintiffs now submit this memorandum of law and evidence of such costs, expenses, and attorneys' fees.

STATEMENT OF FACTS

Wayne Howe was diagnosed with malignant mesothelioma, as cancer caused by asbestos, on May 19, 2015. Howe and his wife filed this suit on November 9, 2015. Howe died one year after his diagnosis, on March 7, 2016.

Howe gave a deposition before his death. He testified that he worked at Bowater from 1978 to 1985 for a contractor, after which he began a 22-year career working directly for Bowater as a pipefitter and mechanic. Exhibit 1, Deposition of Wayne Ervin Howe, Vol. 2 (Feb. 2, 2016), at 19:21-20:7, 21:17-22:3, 78:13-15. Howe believed that he was exposed to asbestos while working on the boilers at Bowater. *Id.* at 22:7-18. In particular, Howe worked on boilers in the powerhouse at Bowater. *Id.* at 34:6-12, 35:22-36:4. Howe testified that he worked on *all* of the equipment in the powerhouse. Exhibit 2, Deposition of Wayne Ervin Howe, Vol. 3, at 33-34.

Gil Small worked with Howe at Bowater starting in 1968. Exhibit 3, Deposition of Gilbert C. Small, Jr. (Dec. 5, 2017), at 4:9-11. Small testified that the boilers were located in the powerhouse at Bowater. *Id.* at 19:20-23. Small saw Howe work on *all* of the equipment located in the powerhouse. *Id.* at 29:25-30:4. Thus, the evidence established that to the extent that there was a Cleaver Brooks boiler at Bowater, it would have been in the powerhouse, and Howe would have worked on it.

It is undisputed that the central issue at trial and during discovery was the location and number of Cleaver Brooks boilers; specifically, the issue was the presence of Cleaver Brooks boilers in the powerhouse at Bowater. Throughout the entire course of discovery and trial until the night before Cleaver Brooks' corporate representative was designated to take the stand, Cleaver

Brooks failed to produce critical evidence. It was only at that late date that Cleaver Brooks produced records which fundamentally altered the course of the trial. The result was a staggering waste of judicial resources, the abuse of 14 citizens' time, and an injustice to the Howe family.

Plaintiffs proceeded to trial because counsel recognized a compelling reason to believe that there were at least two boilers at Bowater. In order to reach this conclusion, counsel's understanding of Cleaver Brooks' document-labeling system was key. Cleaver Brooks made clear that every unit number for a boiler represented a discrete independent boiler. Based on this, the presence of two unit numbers at Bowater meant – according to Cleaver Brook's document system – there were two boilers. The testimony and documents claiming this was in error, that the second number was a repeated typo/mistake, was not disclose until the middle of trial. The documents that evidenced this theory were index cards that were easily accessible to defendant, requested by Plaintiff and critical to the trial. The production mid-trial resulted is trial by ambush.

On January 11, 2018 (over two years after this case was filed), Cleaver Brooks produced 25 pages of "commercial records." Exhibit 4, Bates labels BPM 000001-25. Plaintiffs recognized that the records pertained to two boilers identified by unit numbers – one unit number ending in "43" and one unit number ending in "44." *Id.* Since, as Cleaver Brooks' corporate representative testified, a unit number is a unique identifier for a specific boiler, the presence of two unit numbers in the commercial records indicated that two boilers were at Bowater. Thus, Plaintiffs' trial strategy was premised upon their understanding that two Cleaver Brooks boilers were at Bowater. It was not until the middle of trial, however, that Cleaver Brooks produced documents that indicated that there was only one boiler at Bowater, and it was in the administration building; the other boiler reference in the commercial records was sent to Illinois and was never at Bowater.

Cleaver Brooks' refusal to cooperate in discovery in this case commenced long before trial

and resulted in the ambush that brought Plaintiffs' case-in-chief to a halt. Plaintiffs had a properly-noticed deposition for Cleaver Brooks set for January 19, 2018, a date that Cleaver Brooks itself had offered. Cleaver Brooks unilaterally moved the deposition to February 2, 2018, a time closer to trial and thus more hectic. Plaintiffs objected.

Plaintiffs were forced to file a motion to compel Cleaver Brooks to (1) produce a Rule 30(b)(6) corporate representative for deposition, and (2) produce fully responsive documents to Plaintiffs' requests for production served months earlier. Exhibit 5, Plaintiffs' Motion to Compel Defendant (Jan. 23, 2018). Specifically, Cleaver Brooks had not provided a deposition date for its corporate representative on or before the date requested and had not provided responsive documents properly sought in the deposition notice.

A hearing was held on January 24, 2018. Exhibit 6, Transcript of Record (Jan. 24, 2018). The motion to compel became moot when counsel for Cleaver Brooks represented that Cleaver Brooks would produce all responsive documents that day. *Id.* at 59:12-20. The Court's Order explains that "Counsel for Cleaver Brooks represented that an order was not needed because it would produce requested documents on January 24, 2018 and produce a corporate representative witness prepared to discuss what was known or reasonably available to the company on February 2, 2018." Exhibit. 7 Order. The Court cautioned, "*Failure to comply with these representations will result in sanctions.*" *Id.* (emphasis added)

Cleaver Brooks failed to produce critical document, both index cards and commercial files, as it had represented to this Court that it would do. Exhibit 17, Affidavit of Jessica Dean (April 30, 2018).

When on February 2, 2018, Plaintiffs took the initial deposition of Cleaver Brooks, the corporate representative, John Tornetta, was unprepared to adequately discuss the Bowater plant.

He admitted that Cleaver-Brooks sold and shipped an asbestos-containing boiler to Bowater in 1957. Exhibit 8, Deposition of John Tornetta (Feb. 2, 2018), at 42:18-25. Tornetta confirmed that when the boiler was shipped to Bowater, it had asbestos-containing components. *Id.* at 43:6-21. Tornetta repeatedly represented that there was nothing in Cleaver-Brooks' records that would tell him where the boiler was physically located at Bowater. *Id.* at 9:17-21. 53:7-12.

Tornetta explained that to obtain the 25 pages that Cleaver Brooks had produced, he first looked at a set of index cards, which he called the "first layer" of research and which list the unit numbers of boilers at each site where Cleaver Brooks had boilers. *Id.* at 26:8-28:11. Using that unit number, Tornetta would obtain the commercial records (in this case, the 25 pages that Cleaver Brooks produced) which are on microfiche, which Tornetta called the "second layer." *Id.*

Tornetta admitted that Cleaver Brooks had not produced the index cards. *Id.* at 45:2-5, 50:11-20. He represented that the index cards have "all the same information" on them that is within the 25 pages of commercial records that Cleaver Brooks produced. *Id.* at 50:16-20. Tornetta further admitted that even though Cleaver Brooks doubted that its boiler was in the powerhouse, Cleaver Brooks' own corporate representative would not "get involved in" trying to find evidence of where the boiler was actually located. *Id.* at 59:4-11.

Tornetta's admitted lack of preparation to discuss the Bowater plant lead to the need for a second deposition. Despite Plaintiffs' efforts to conduct Tornetta's deposition sooner, his second deposition was held just six days before trial. At his second deposition, Tornetta still failed to give his trial opinions that the reference to a second boiler was a repeated error or provide the index records he claimed were unneeded but ultimately showed that the second boiler was not shipped to Bowater at all. *See generally*, Exhibit 9, Deposition of John Tornetta, Vol. II.

On March 8, 2018, Plaintiffs filed a motion for sanctions against Cleaver Brooks for its

abuse of the discovery process, including its repeated and deliberate failure to produce documents that Cleaver Brooks represented to counsel and the Court it would produce. Exhibit 10, Plaintiffs' Supplemental Response in Opposition to Defendant Cleaver Brooks, Inc.'s Motions for Summary Judgment and Plaintiffs' Motion for Sanctions, with exhibits (Mar. 8, 2018). A hearing was held on March 9, 2018 on the motion for sanctions. Exhibit 11, Transcript of Record (Mar. 9, 2018). Plaintiffs explained that on January 11, 2018 Cleaver Brooks for the first time admitted that one of its boilers was sent to Bowater. *Id.* at 16:8-16. Cleaver Brooks initially contended that its boiler was in the powerhouse, but wanted to limit the documents to exclude internal documents claiming Mr. Howe never worked inside of boilers. *Id.*; *see also* Affidavit of Jessica Dean. When Plaintiffs provided evidence that Howe had worked both inside and out of the boilers in the powerhouse, Cleaver Brooks changed its story and claimed that its boiler had never been in the powerhouse. *Id.*; *see also* Affidavit of Jessica Dean.

Plaintiffs requested a presumption that a Cleaver Brooks boiler was in the powerhouse. Exhibit 11, Transcript of Record (Mar. 9, 2018), at 18:16-19. The Court acknowledged that Cleaver Brooks had engaged in a "business of not giving [Plaintiffs] sufficient information about where [Cleaver Brooks'] boilers were located until late in the game." *Id.* at 20:8-11. The Court noted Cleaver Brooks' "very late disclosure that this boiler was in the power house." *Id.* 20:21-22.

The Court did not rule on this issue, *id.* at 28:23-24, but the motion and hearing illustrates what had long been known to the parties and the Court – the trial hinged on Plaintiffs' ability to prove that there was a Cleaver Brooks boiler into the powerhouse where Mr. Howe worked "on every boiler." This was clear by argument of Plaintiffs and Cleaver Brooks, by discussion had off the record by all counsel, and by the remaining facts of the case – specifically, Cleaver Brooks' admission of sales of asbestos and release of asbestos, as well as Cleaver Brooks' decision not to

call a single expert but focus entirely on product identification.

By the morning of Sunday, March 11, 2018 – Plaintiffs resolved their suits with all remaining Defendants except Cleaver Brooks. Exhibit 17, Affidavit of Jessica Dean. As of that time, there were no other defendants in the case except Cleaver Brooks. Thus, the only reason Plaintiffs were expending time and money to take the case to trial was to try the case against Cleaver Brooks. Plaintiffs would not have proceeded to trial had Plaintiffs been aware of the midnight document. Exhibit 17, Affidavit of Jessica Dean.

Trial was held over a seven-day period from March 12 to 21, 2018. Cleaver Brooks held to their settlement position contending their boiler was not in the powerhouse. Plaintiffs knew that even if one of the boilers were in the administration building at Bowater the presence of the two unit numbers meant that even with one boiler in the administration building, the evidence supported Plaintiffs' theory that one Cleaver Brooks boiler was in the powerhouse, where Howe worked. This presumption was supported by the testimony of Bowater's corporate representative who testified the only locations of boilers at Bowater that he was aware of after hundreds of hours of research were the administration buildings and powerhouse.

On the fourth day of trial, Bowater's corporate representative, Arthur Welker, testified that the main place a boiler would be located is the powerhouse. Exhibit 13, Trial Transcription[1] (Mar. 15, 2018) at 14:15-18. The only other place where a boiler would be located was the administrative building. *Id.* at 15:15-21. He further testified that of all of the documents he had reviewed, he found only one referencing Cleaver Brooks, and it showed that a Cleaver Brooks boiler went into the administration building, which is not the powerhouse. *Id.* at 35:25-36:7. Given that the documents produced by Cleaver Brooks indicated two Cleaver Brooks boilers at the Bowater

[1] The attached trial transcriptions are rough drafts, because the final versions are not available as of the time of the filing of this brief.

facility, if only one of them was in the administrative building, then the other one must have been in the powerhouse.

At 11:35 on the night before Cleaver Brooks' corporate representative was scheduled to testify, Cleaver Brooks ambushed Plaintiffs with the production of numerous never-before-produced documents ("the midnight documents"). Exhibit 17, Affidavit of Jessica Dean. The next day, Tornetta testified that the midnight documents included the index cards which he had testified about a month earlier and which were the "first step" in identifying which boiler was at a certain location. Exhibit 14, Trial Transcript (Mar. 16, 2018), at 114:8-16. Tornetta admitted that Plaintiffs had explicitly asked for those index cards during his deposition, and he had testified that Cleaver Brooks did not produce its index cards. *Id.* at 121:12-122:11. It was not until the day before his testimony that Tornetta realized that two boilers were referenced in the commercial records – units 43 and 44 – and he finally looked back to the index cards to find out what happened to the second boiler. As a result, Cleaver Brooks produced new documents which indicated that, in addition to the one boiler in the administration building at Bowater, the second boiler was sent to Illinois, not Bowater. *Id.* at 115:24-116:7. Tornetta scrambled to explain his error as "a written error that became a typographical error." *Id.* at 116:18-118:15

In short, Cleaver Brooks' evidence, produced for the first time in the middle of trial, showed that none of its boilers was located in the powerhouse at Bowater, where Howe worked. This evidence was extremely prejudicial to Plaintiffs' trial strategy and fundamentally changed the analysis of Plaintiffs' case, resulting in tremendous trial expenses and costs, the waste of judicial resources, and the squandering of citizens' time in serving on a jury.

Finding that Cleaver Brooks' behavior was "sloppy" and noting its corporate representative's "dereliction," this Court granted Plaintiffs' motion to exclude the late-produced

documents:

> THE COURT: All right. This is nothing on lawyers on either side of this case, but the concept that Mr. Tornetta has the repository of all the material and the guy that's got them right in his office would never have taken a look at these index cards and these files and looked in the file for 1843 -- 18343, to begin with, and looked at that entire file and seen that there was a 18344 mentioned on several of the documents in that file, the fact that he would not have done that, and then turns it around and says, they're to blame for not asking you about that, it's been known for some time that the lynchpin of this case was going to be whether there was Cleaver Brooks boiler there that Wayne Howe worked. That's been -- we've known that from jump street about this case that's what the fuss was going to be. And Mr. Tornetta has all those records there, and he's been deposed twice, and he doesn't look at these -- at the commercial records, the 25 pages he had available to him, just like they were available to the plaintiff. Several months before he ever was examined even first time, much less the second time as the 30(b)6 witness, and not noticed that disparity himself and then taken it upon himself to look at 344 and see that is something that I find a dereliction on his part, if that's what it was. I don't know that he was actively trying to deceit. I'm not accusing anybody of doing that, but I am saying that is incredibly sloppy on his part to have never looked at those documents. Beyond the technical ability of any of you lawyers, including the lawyers for the defense, the corporate representative deals with these things every day; that's all he does. And to have not looked at these records to see that there was that numerical disparity and then give them everything that was right -- I mean, I would have wanted -- if I had been Cleaver Brooks and I had taken the time to look at this and say hey we've got this information, and we've got 844, but let us just tell you that's a typographical error; why? Because that had to be done by doing one thing and only one thing because of the way that Cleaver Brooks records are set up. You had to have

these index cards to be able to do this, and he deliberately did not give those index cards out, saying it was simply duplicative. But for him, it was the map, the roadmap to first -- to looking at the 843 -- or 343 file and seeing hey there's something about 344 in here. Oh, man, that could suggest a second boiler; I better go check that out. And then suddenly to have this come up at this stage in the trial, I think there's a very simple answer to that is violated the rules of discovery, and I am not going to permit it to be introduced. I'm going to protect Ms. O'Neill every way I can. This is not the fault of the attorneys in this case whatsoever. Now, I was kind of you, Ms. O'Neill. I thought they had gotten very creative, had figured out an alternative formula after they got the Bowater's documents and had Mr. Welker on the stand. But Ms. McVey and all of you have been as truthful as you possibly could be with me. What they say is, they noticed that disparity and they're the folks that do notice those kind of things. I'll tell y'all that they had one little something that they were going to hang their hat on and try to say there were two boilers here, and they've done a good job of illustrating that theory yesterday, and I think they were entitled to do that without violating any of the rules of how to disclose their theory because you all had these records just like they did. But the person I put the finger to big time is Mr. Tornetta for letting this occur. I'm not saying it was sin of active commission, but I'm going to say it was terrible lapse in doing his job of checking these records because this is the lynchpin of them getting out of case. And he could have nailed the door shut by checking this out and bringing it to his lawyer's attention. The worst part about it -- I think you've got two of the finest lawyers in the United States dealing with asbestos cases, and you don't put this in their hands. So anyway, I will calm down and simply say that, frankly, I don't know you didn't give them the card on 18343 because I would have struck that too. I am striking –

* * *

THE COURT: I'm striking all these things. They're not going to the jury. Whatever

> you do about talking about it, it's something you did. I can't unlock that door. But I'm not allowing this thing to be put into evidence and I'm not letting it go to the jury, and the basis for it is violation of the South Carolina rules of evidence regarding production.

Trial Transcript (Mar. 16, 2018), at 149:12-153:7 (emphasis added). This Court directed Plaintiffs to move for sanctions within 10 days, with full briefing thirty days thereafter. Exhibit 15, Trial Transcript (Mar. 21, 2018), at 158:1-159:16.

ARGUMENT

A. Cleaver Brooks Should Be Sanctioned for Its Abuse of the Discovery and Trial Processes.

Rule of Civil Procedure 26(b)(1) provides that a party is entitled to discovery on

> any matter, not privileged, which is relevant to the subject matter involved in the pending action whether it relates to a claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

Rule 34, SCRCP provides that a party shall produce documents within their "possession, custody or control." As the language of Rule 34 makes clear and as the courts have confirmed, a request for production need not be confined to documents or other items in a party's possession, but instead may properly extend to items that are in that party's "control." Rule 34(a)(1), SCRCP. In interpreting the identical provision of the Federal Rules, courts have held that documents are deemed to be within the "control" of a party if it "has the legal right to obtain the documents on demand." *In re Bankers Trust Co.,* 61 F.3d 465-69 (6th Cir. 1995); *Mercy Catholic Med. Cntr. v. Thompson,*380 F.3d 142, 160 (3d Cir. 2004); *Searock v. Stripling,* 736 F.2d 650, 653 (11th Cir. 1984).

This rule includes the duty of a corporate representative to identify pertinent documents

prior to the time of deposition. In order to comply with Rule 30(b)(6), the corporation has an affirmative duty to ensure that its designee has knowledge of all information on the noticed topics reasonably available to the corporation and is prepared to provide complete, binding answers on that information. Exhibit 16, *Ethox Chem., LLC v. Coca–Cola Co.*, No. 6:12-cv-1682-TMC, 2014 WL 2719214, at *2 (D.S.C. June 16, 2014). In particular, the rule requires a corporation to respond to a deposition notice by designating and producing someone familiar with the topics listed in the notice. *Id.* (citations omitted). In order to comply with the rule, the corporation has an affirmative duty to ensure that its designee has knowledge of all information on the noticed topics reasonably available to the corporation and is prepared to provide complete, binding answers on that information. *Id.*

Pursuant to Rule 37(b)(2)(C), SCRCP, when a party fails to obey an order to provide or permit discovery, the court may "make such orders in regard to the failure as are just," including an order dismissing the action or proceeding, or any part thereof. *Temple v. Tec-Fab, Inc.,* 370 S.C. 383, 390, 635 S.E.2d 541, 544 (Ct. App. 2006). "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, or a resulting verdict must be reversed. *Id.* While "[t]he imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court, ... whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules." *Id.* Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result, overleniency 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), a party failed to disclose the existence of a videotape of the plaintiff in a personal injury case which was relevant to the issue of damages. The Court of Appeals stated that "[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).

Here, sanctions are appropriate given the egregious nature of Cleaver Brooks' production of key documents in the middle of trial. Plaintiffs had specifically asked Cleaver Brooks' corporate representative about those documents in his first deposition two months before trial. Had Tornetta searched for the documents at that time, and not waited until the day before he was scheduled to take the stand, he would have discovered the missing files. Those files would have been tremendously consequential in Plaintiffs' decision whether or not to pursue the litigation against Cleaver Brooks to trial. Thus, the belated production of the midnight documents not only deprived Plaintiffs of executing their trial strategy, but also resulted in a tremendous waste of the time and resources of this Court, the Howe family, and the citizen jurors. Cleaver Brooks' conduct is open to extreme sanction.

B. The Appropriate Sanction is to Order Cleaver Brooks to Pay Plaintiffs' Trial Attorneys' Fees and Costs, to Pay the Howes' Costs, and to Deny Cleaver Brooks' Application for Costs.

The selection of a sanction for discovery violations is within the trial court's discretion.

Kershaw County Bd. of Educ. v. United States Gypsum Co., 302 S.C. 390, 396 S.E.2d 369 (1990). Sanctions can range up to default or dismissal, and "[i]n 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." *Griffin Grading & Clearing, Inc. v. Tire Service Equip. Mfg. Co.*, 334 S.C. 193, 199, 511 S.E.2d 716, 719 (Ct. App. 1999) (citing *Laney v. Hefley*, 262 S.C. 54, 202 S.E.2d 12 (1974)). The sanction should be aimed at the specific conduct of the party sanctioned. *Id.* (citing *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990)).

A court may award reasonable expenses, including attorneys' fees, for a party's failure to make or cooperate in discovery. SCRCP 37(b); *see, e.g., Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014) (affirming award of attorneys' fees and costs as sanctions for refusal to comply with discovery rulings); *Arnal v. Arnal*, 363 S.C. 268, 297, 609 S.E.2d 821, 836 (Ct. App. 2005), *aff'd as modified*, 371 S.C. 10, 636 S.E.2d 864 (2006) (court imposed sanctions awarding attorneys' fees for discovery abuse); *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 644, 579 S.E.2d 151, 154 (Ct. App. 2003) (trial court granted attorneys' fees for failure to participate in discovery); *Hundley ex rel. Hundley v. Rite Aid of S.C., Inc.*, 339 S.C. 285, 305, 529 S.E.2d 45, 56 (Ct. App. 2000) (trial court assessed attorneys' fees for discovery abuses); *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999) (trial court awarded attorneys' fees for failure to comply with discovery order).

Cleaver Brooks' failure to cooperate with the discovery process and eleventh-hour disclosure of critical documents irrevocably prejudiced Plaintiffs' ability to present their claims against Cleaver Brooks to the jury and deprived Plaintiffs of the choice whether to proceed to trial in the first place. The harm from the misrepresentations and late discovery are clear. An

appropriate sanction is an award of costs, expenses, and attorneys' fees, as well as a denial of Cleaver Brooks' application for costs. A statement of costs is attached hereto, and such costs are limited strictly to costs incurred as a result of Cleaver Brooks' late disclosure of the midnight documents. Statements of attorneys' fees for the trial lawyers are detailed in the Affidavits of Dean, Exhibit 17, McVey, Exhibit 18, and Holder, Exhibit 19.

As a general rule, the amount of attorneys' fees to be awarded is within the discretion of the trial judge. *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 357, 594 S.E.2d 888, 898 (Ct. App. 2004) (citing *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989)). The award, however, must be reasonable and supported by adequate findings. *Id.* There are six factors for the court to consider when determining an award of attorneys' fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Burton*, 358 S.C. at 358, 594 S.E.2d at 898. When evaluating the reasonableness of an award, "[c]onsideration should be given to all six factors; none of the factors is controlling." *Taylor v. Medenica,* 331 S.C 575, 580, 503 S.E.2d 458, 461 (1998). "On appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor." *Id.* The factors here support the fees requested.

1. The nature, extent, and difficulty of the case.

Plaintiffs were represented by Dean Omar Branham and Kassel McVey, both of which specialize in complex asbestos litigation, as in this case. Analyzed from the perspective of the events surrounding Cleaver Brooks' failure to produce evidence, the case was exceptionally complex. The issue of the existence or non-existence of Cleaver Brooks' documents required a motion to compel and a motion for sanctions. Plaintiffs were forced to depose Cleaver Brooks'

corporate representative twice as he was unprepared to discuss the company's commercial records in his first deposition. Those records were apparently befuddling to Cleaver Brooks, because it was not until the middle of trial that it allegedly discovered files that it had not previously produced. That left Plaintiffs in the impossible position of forging ahead with their case even after their key theory had been severely undermined.

But for that late disclosure, Plaintiffs would not have taken this case to trial. Exhibit 17, Affidavit of Jessica Dean. By its nature, the case is complex, requiring years of discovery, thousands of documents produced, scores of depositions conducted, countless motions, and seven days of trial. Both of Plaintiffs' firms spent considerable time and effort preparing for a trial that would not have gone forward given a timely production by Cleaver Brooks. The complexity of issues involved in this case, coupled with Cleaver Brooks' machinations in defending this litigation, warrants the time expended by Dean Omar Branham and Kassel McVey in bringing this matter to an ultimate resolution.

2. The time necessarily devoted to the case.

As the sanctionable conduct resulted in Plaintiffs proceeding to a trial based on a lack of information, Plaintiffs seek attorneys' fees only for time at trial or directly preparing for trial. An argument could be made that Plaintiffs are entitled to fees for time spent filing a motion to compel and a motion for sanctions as well as other effort to obtain the documents from Cleaver Brooks. Plaintiffs, however, have kept their request for fees modest and limited to the trial.

3. Professional standing of counsel.

Plaintiffs' counsel and firms are well-known and highly respected in their fields and their communities. Jessica Dean is a name partner at Dean Omar Branham. Exhibit 17, Affidavit of Jessica Dean. Dean has been practicing law since 2003 and has won numerous multi-million dollar verdicts in asbestos litigation similar to the lawsuit at issue here. *Id.* She has been selected as a

Rising Star attorney by Texas Super Lawyers every year from 2009 to 2017. *Id.* Dean has been honored to receive the awards of the Top Young Lawyers in Texas as well as the Top 40 Under 40 Lawyers in Dallas. *Id.* Finally, Dean is a member of the prestigious American Board of Trial Advocates and the International Academy of Dispute Resolution. *Id.*

Thiele McVey is a name partner at the Kassel McVey law firm. Exhibit 18, Affidavit of Theile B. McVey. She has been practicing law in South Carolina since 2000 and has won several multi-million dollar verdicts in asbestos litigation similar to the lawsuit at issue here. *Id.* McVey has been selected as a South Carolina Super Lawyer from 2013-2018. *Id.* In 2017, McVey received the 2017 Gold Compleat Lawyer Award from the USC School of Law (the highest award given to alumnae of the school). Id. She am a member of the prestigious American Board of Trial Advocates Finally, McVey is currently the President-Elect of the South Carolina Association of Justice. *Id.*

Jonathan Holder has for a decade represented individuals harmed by occupational exposure to asbestos. Exhibit 19, Affidavit of Jonathan Holder. He has tried three cases involving mesothelioma to verdict. Holder obtained his J.D. from the Charleston School of Law, where he was a teaching fellow in legal writing and research as well as a member of the Dean's List. *Id.* Holder has a bachelor's degree in political science from Wofford College, where he was on the Honor Council. *Id.*

4. Contingency of compensation.

Regarding the contingency of compensation factor, the contingency to be considered is whether the party on whose behalf the services were rendered will be able to pay the attorney's fee if the award is not made. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991). This factor does not directly apply to this case, since Plaintiffs' counsel undertook this representation on a contingency fee basis. However, Plaintiffs' counsel has devoted significant time and resources to this litigation, including during trial. Plaintiffs' counsel has not been compensated for attorneys' fees in the litigation against Cleaver Brooks and is entitled to such compensation as a sanction against Cleaver Brooks.

5. Beneficial results obtained.

Although Plaintiffs did not prevail in the verdict of the case, they did prevail with respect to Cleaver Brooks' sanctionable conduct. First, the Court denied Cleaver Brooks' motion for directed verdict on Cleaver Brooks' claim that Plaintiffs could not show that Howe had been frequently, regularly, and proximately exposed to asbestos from a Cleaver Brooks boiler. Exhibit 14, Trial Transcript (Mar. 16, 2018), at 136:25-139:13. Specifically, the Court found more than a scintilla of evidence that would allow the jury to conclude that there was a Cleaver Brooks boiler that was moved into the powerhouse, or that there was a second Cleaver Brooks boiler in the powerhouse, notwithstanding the late-disclosed documents. *Id.* at 139:7-13. Second, the Court granted Plaintiffs' motion to strike the newly-disclosed documents. Trial Transcript (Mar. 16, 2018), at 149:12-153:7. Accordingly, Plaintiffs prevailed in the matters directly pertinent to the wrongful conduct that is the subject of this motion. This factor weighs in favor of attorneys' fees. Finally, it bears noting that this factor "merely aids in determining whether an award is appropriate," not whether the award should be a certain amount. *See Glasscock v. Glasscock,* 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

6. Customary legal fees for similar services.

Plaintiffs' counsel do not bill hourly, but rather work on a contingency fee basis. Nevertheless, as set forth in their affidavits, reasonable hourly rates are $ 550 for Dean and McVey and $ 400 for Holder. The prevailing market rate may be established through evidence of fees that counsel with similar qualifications have received in comparable cases. See *Spell v. McDaniel,* 824 F.2d 1380, 1402 (4th Cir. 1987); *National Association of Concerned Veterans v. Secretary of Defense,* 219 U.S. App. D.C. 94, 675 F.2d 1319, 1325 (D.C. Cir. 1982). In an action under the Fair Labor Standards Act, lead counsel, who is now a name partner in Dean's firm, was awarded attorneys' fees at a rate of $475/hour and associates were awarded attorneys' fees at a rate of $350/hour. Exhibit 20, Order, *Brian Parker, et al. v. ABC Debt Relief, Ltd. Co., et al.*, No. 3:10-cv-1332-P (N.D. Tx. Apr. 9, 2014). The *Parker* case was four years ago, such that a higher rate is warranted today.

In sum, the attorneys' fees requested in this case are reasonable. When evaluated under the

factors outlined above, Plaintiffs' request for attorneys' fees should be granted. All of the *Jackson* factors weigh in favor of Plaintiffs and are supported with substantial record evidence.

C. The Costs Requested Are Reasonable.

SCRC 54(d) provides that a party may move for costs with a motion " supported by an affidavit that the costs are correct and were necessarily incurred in the action. . .." Taxable costs shall include:

> (1) Costs Authorized by Statute and Sanctions Imposed in Favor of Prevailing Party. All sanctions including reasonable attorneys' fees, if ordered, imposed upon another party and in favor of the prevailing party under any statute or Rule of Civil Procedure are taxable;
>
> (2) Fees of the Clerk. All filing and recording fees charged by the clerk of the court in which the action was pending, or fees or costs taxed under > Rule 222, SCACR, are taxable;
>
> (3) Fees of the Sheriff. All fees and costs chargeable by the sheriff for service of summons and complaint, or subpoenas for trial witnesses who testified at trial or for the production of documents and materials actually used at trial, and all costs actually incurred by the sheriff in serving other process necessarily required in the case, including costs incurred attaching property, in caring for property attached, or in conducting the sale of attached property, including any bond, guarantee, sales commissions or insurance premiums, if required, are taxable;
>
> (4) Fees Incurred in Service of Process. All fees and costs incurred in the service of summons and complaint, or subpoenas for the witnesses who testified at trial, or for the production of documents and materials actually used at trial, in an amount not to exceed that which may be charged by the sheriff for comparable services, are taxable;
>
> (5) Witnesses' Fees. All witness fees and mileage actually traveled as specified in Rule 45(b)(1), paid to persons who were subpoenaed and testified at trial, are taxable;
>
> (6) Fees for Exemplification and Copies of Papers Necessarily Obtained for Trial. The costs of one copy of a document introduced in evidence in lieu of the original; the fees of officials for certification of proof of the non-existence of documents; the cost of securing translation if the document translated is taxable or the translation is necessary for exemplification of matters before the court; the cost of maps and one copy of a photograph introduced into evidence, are taxable.

SCRC 54(e). Plaintiffs' costs incurred as a result of the late production of the midnight papers is attached as Exhibit 21. Dean further verifies that the costs are correct and were necessarily incurred in the action. *Id.*; Exhibit 17.

D. Plaintiffs Seek Costs for Timothy Howe and Wende Myer's Time Off from Work to Attend Trial.

This Court has the discretion to impose appropriate sanctions for Cleaver Brooks' abuse of the discovery and trial process. *Temple v. Tec-Fab, Inc.,* 370 S.C. 383, 390, 635 S.E.2d 541, 544 (Ct. App. 2006). But for the late production of Cleaver Brooks' documents, Timothy Howe and Wende Myers would not have had to take time off from work to attend a trial that would not have occurred. Setting aside the emotional toll this took on them, they should be compensated for the time they were forced to take off from work, as set forth in the Affidavits of Timothy Howe and Wende Myers. Exhibit 22 & 23.

E. The Court Should Deny Cleaver Brooks' Cost Application.

Plaintiffs would not have pursued this action to trial had they been aware of the midnight documents. Exhibit 17, Affidavit of Jessica Dean (April 30, 2018).The only reason that Cleaver Brooks incurred any trial costs was of its own making in belatedly producing documents that had been requested months earlier. As a final sanction, Plaintiffs respectfully request that the Court deny any costs that may be sought by Cleaver Brooks.

CONCLUSION

WHEREFORE, Plaintiffs pray that the Court grant sanctions against Cleaver Brooks in the amount of costs incurred by Timothy Howe and Wende Myers in taking time off from work for trial, as well as costs, expenses, and attorneys' fees incurred in trying this case, as set forth in the accompanying exhibits. Plaintiffs further request that this Court deny Cleaver Brooks' cost application.

Respectfully submitted,

/s/ Jonathan M. Holder

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ATTORNEYS FOR PLAINTIFFS

April 30, 2018

Exhibit 2 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Wayne Howe Deposition (Feb. 3, 2016)

1 STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
2 COUNTY OF YORK
3
4 WAYNE ERVIN HOWE,
5 Plaintiff(s),
6 vs. Case No.: 2015-CP-46-3456
7 AIR & LIQUID SYSTEMS CORP.,
INDIVIDUALLY AND AS SUCCESSOR-IN-
8 INTEREST TO
9 BUFFALO PUMPS, INC. ET AL.,
Defendant(s).
10
11
12 D E P O S I T I O N
13 WITNESS: WAYNE ERVIN HOWE
14 DATE: Wednesday, February 3, 2016
15 TIME: 10:31 a.m.
16 LOCATION: Baxter M. Hood Center
452 Anderson Road
17 Rock Hill, South Carolina
18 TAKEN BY: Attorneys for the Defendants
19 REPORTED BY: SHERI L. BYERS
Registered Professional Reporter
20 -
21 COMPUSCRIPTS, INC.
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1 Q. So that was the last site that you worked at
2 for AME?
3 A. Right.
4 Q. Okay. Okay. Do you remember anything in
5 particular about working at that foundry in Greenwood?
6 A. I mean, no, I don't -- I wasn't there but
7 about three months.
8 Q. Okay.
9 A. I don't remember too much about it. All I
10 know is they were pouring -- I guess whatever they were
11 making. I don't know what material they were using or
12 what. Pouring, I guess steel, some kind of aluminum,
13 alloy or something.
14 Q. During that three months at the foundry in
15 Greenwood, do you think you were exposed to asbestos in
16 any way?
17 A. No, I don't think so.
18 Q. Okay. So then after Ace Mechanical, the next
19 job site I think -- or the next employer I have is Beta
20 Construction.
21 A. Beta Construction, yes, that's right.
22 Q. Okay. All right. Let's start with Beta
23 then. In the paperwork I have it says you started
24 there in 1978 and stopped working there in 1985. Does
25 that sound about right?

1 A. '78 to '85?
2 Q. Yes, sir.
3 A. Have you got them changing names of the
4 company during those times?
5 Q. Well, I don't have any -- well, maybe I do.
6 Beta is from 1978 to 1985. The next thing I have is a
7 Resolute FP.
8 A. We have to back up.
9 Q. Okay. Let's back up.
10 A. I worked for Industrial Textile Piping before
11 I worked with Beta because they changed names. But
12 that was the same company. Industrial Textile Piping
13 changed their name to Beta.
14 Q. Okay. But Beta is different than Resolute?
15 A. Yes.
16 Q. Okay. All right. Let's do this then. Let's
17 call Industrial Textile Piping and Beta, I'm just going
18 to call that Beta.
19 A. Okay. Yes, I worked for them about nine
20 years --
21 Q. All right. Let's just --
22 A. -- down there.
23 Q. -- keep it simple like that.
24 A. Yeah.
25 Q. When you started with Beta, what did you come

1 in as? Was it a mechanic, a supervisor? What was your
2 title?
3 A. Mechanic.
4 Q. And did you stay --
5 A. Or steel rigger. Basically whatever they
6 wanted me to do. Because we wasn't unionized. Just do
7 everything.
8 Q. So just sort of a laborer?
9 A. Well, I was top -- I was top mechanic. I
10 made top pay, but I wasn't restricted to what I could
11 do.
12 Q. And then working for Beta, what was your
13 typical work week? Five days, eight hours?
14 A. Four tens.
15 Q. Four tens?
16 A. Four ten-hour days.
17 Q. Yeah. And at Beta, were you sent out to
18 specific job sites or did you work, you know, at one
19 place exclusively?
20 A. We were a subcontractor for Bowater and we
21 stayed. That's where we worked all the time. We
22 stayed there. We got assignments every day for
23 wherever to go out within Bowater. Just like the
24 maintenance department but we were contractors.
25 Q. Okay. And the Bowater facility is the one --

1 is it still here in Rock Hill, or did they tear it
2 down?
3 A. No, it is still here.
4 Q. Okay. And what did that plant manufacture
5 during the time that you were there?
6 A. Paper.
7 Q. During your time at Beta, do you believe you
8 were exposed to asbestos in any way?
9 A. Yes, absolutely.
10 Q. How so?
11 A. We had asbestos on all that pipe down there.
12 We tore out a lot of pipe. We tore off the insulation
13 off of it, and we tore out a lot of ductwork. We
14 worked on those precipitators, boilers, and had
15 asbestos on them. And we installed a new precipitator
16 down there. I don't know whether that had asbestos or
17 not. But anyway, there's a lot of asbestos in Bowater
18 that I worked on.
19 Q. Did you do any hands-on work or maintenance
20 with any other types of equipment?
21 A. Any other type what?
22 Q. Let me ask that a better way.
23 A. Say that again.
24 Q. Did you do any other repair work on any other
25 kinds of equipment other than what you told me so far?

1 equipment that's inside the boiler.
2 Q. Firebrick or refractory?
3 A. Oh, yeah. I didn't have to do that, but we
4 was around a lot of that that was done. And sometimes
5 I had to -- I was close to it.
6 Q. How frequently would you be working on or in
7 a boiler during your time at Beta?
8 A. At least major once a year and then other
9 times would be small things that we would do to the
10 boiler probably once every month or so. Then at times
11 I worked over there in the powerhouse constantly, every
12 day for, say, a year or so.
13 Q. But working in the powerhouse for the year,
14 are you working only on boilers or other equipment in
15 the powerhouse?
16 A. All equipment. Every equipment that the
17 powerhouse has got.
18 Q. So let's take the work that happens during a
19 shutdown.
20 A. Yeah.
21 Q. If I could go back in time and follow you
22 around, what would I see you doing on a boiler in that
23 instance?
24 A. Well, first of all, we get boiler opened up
25 and everything, and then probably we would -- some of

1 us would start pulling the gaskets off the doors and
2 replacing all them. Some of us would go in the boiler
3 and start cutting tubes out, replacing tubes. And then
4 I might be on crew. There was a welding, a lot of
5 welding a lot of seems up. Doing a lot of patch work.
6 Might have been -- changed a lot of valves. Changed a
7 lot of valves.
8 Q. Do you remember the name brand or trade name
9 of any of the boilers that you might have worked on
10 during a shutdown?
11 A. I don't remember names of them.
12 Q. And when you would do one of these things
13 once a -- what I call once-a-year shutdown work on a
14 boiler, how long would the project take?
15 A. Usually I think we went two weeks on those
16 boilers. I'm going to say two weeks. I'm going to say
17 two weeks.
18 Q. The boilers that you worked on during annual
19 work, were they all in the powerhouse or were they
20 dispersed throughout the plant?
21 A. No, they were all in the powerhouse.
22 Q. How many boilers do they have in the
23 powerhouse, if you remember?
24 A. Six, I think. Yeah, six. I'm not real
25 positive about that number.

1 Q. And these boilers, can you describe how tall
2 they are, how wide they are generally?
3 A. I'd say a couple -- maybe 40-, 50-foot high
4 by maybe 40-, 50-foot wide and deep.
5 Q. And they all sat vertically?
6 A. Yes. Some of them were smaller than others.
7 Number one was a smaller boiler. It might not be quite
8 that wide.
9 Q. So all of these boilers are what we would
10 call field erected, they were built at the plant?
11 A. Yeah, they were.
12 Q. These are not package boilers?
13 A. No. We had package boilers, a couple of
14 them. There may be one package boiler down there.
15 Q. That was in the powerhouse?
16 A. Yeah.
17 Q. Did you ever have occasion to work on that
18 package boiler?
19 A. Yeah.
20 Q. Do you know when any of those boilers were
21 installed at the Bowater facility?
22 A. I'm going to say -- they weren't all
23 installed at one time. I'm going to say in the '50s.
24 Installed Bowater, what, '56, '57. I'm thinking that's
25 the year they installed Bowater, maybe '52.

1 Q. Yes. When you -- in 1985, are you now an
2 employee of Bowater directly?
3 A. Yeah.
4 Q. How did that transition occur? Why did you
5 do that?
6 A. I worked contract. I worked contract so
7 long, and I made more money and a better job, better
8 benefits, everything. And they hired me.
9 Q. When you come on at Bowater as an actual
10 employee, at that point was the labor force at Bowater
11 unionized?
12 A. Yes.
13 Q. So what trade did they drop you in in light
14 of the union divisions?
15 A. Pipefitter.
16 Q. As a pipefitter at Bowater, what were your
17 job duties?
18 A. Valves, pipe. Anything containing the
19 pipework, I did it. Hangers, you know, anything
20 that ...
21 Q. And are you still working four ten-hour days?
22 A. No.
23 Q. What has it moved --
24 A. Five eights.
25 Q. Five eights. You come in as a pipefitter,

Exhibit 3 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Gilbert Small Deposition (Dec. 5, 2017)

1 STATE OF SOUTH CAROLINA IN THE COURT OF
COMMON PLEAS
2 COUNTY OF YORK C/A No. 2015-CP-46-03456
3 TIMOTHY W. HOWE, as Personal)
Representative of the Estate of)
4 WAYNE E. HOWE, deceased, and)
JEANETTE HOWE, surviving spouse,)
5)
Plaintiffs,)
6)
-vs-)
7)
AIR & LIQUID SYSTEMS CORP.,)
8 individually and as)
successor-in-interest to)
9 Buffalo Pumps, Inc.;)
)
10 ALBANY INTERNATIONAL CORP.;)
)
11 ASTEN-JOHNSON, INC.;)
)
12 AURORA PUMP COMPANY;)
)
13 A.W. CHESTERTON COMPANY;)
)
14 BORG WARNER MORSE TEC, INC., as)
successor to Borg-Warner)
15 Corporation;)
)
16 CBS CORPORATION, a Delaware)
Corporation f/k/a Viacom, Inc.,)
17 successor by merger to CBS)
Corporation, a Pennsylvania)
18 Corporation, f/k/a Westinghouse)
Electric Corporation;)
19)
CGR PRODUCTS, INC., f/k/a)
20 Carolina Gasket and Rubber)
Company;)
21)
CNA HOLDINGS, INC., f/k/a)
22 Hoechst Celanese Corporation;)
)
23 CELANESE CORPORATION, f/k/a)
Hoechst Celanese Corporation)
24 (sued individually and as)
successor-in-interest to Fiber)
25 Industries, Inc.);)

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

1 STERLING FLUID SYSTEMS (USA) LLC;)
2 TRANE U.S., INC., f/k/a American Standard, Inc., f/k/a)
3 American Radiator & Standard
4 Manufacturing Company;)
5 UNIROYAL, INC., f/k/a United States Rubber Company, Inc.;)
6 UNITED CONVEYOR CORPORATION;)
7 VELAN VALVE CORP.;)
8 VIKING PUMP, INC.;)
9 WARREN PUMPS, LLC; and)
10 ZURN INDUSTRIES,)
11 Defendants.)
12 _____
13
14
15 Deposition of GILBERT C. SMALL, JR., taken
16 on behalf of the Plaintiffs, pursuant to the
17 stipulations agreed to herein, before SANDRA
18 BERKELAND, Certified Court Reporter and Notary
19 Public, at Fairfield Inn & Suites, 578 Galleria
20 Boulevard, Rock Hill, South Carolina, on the 5th day
21 of December 2017 commencing at the hour of 8:07 a.m.
22
23
24
25 JOB NO.: 2766402

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24 843-937-8811
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25

Page 18

1 bring it to the window and give it to us and
2 then -- that's what I refer to as buying.
3 Q. Okay. And this storeroom, would that be
4 on the Bowater premises?
5 A. Yes. It was at the far end of our shop.
6 Q. And is that where you would go to
7 predominantly to get any of the replacement parts
8 that you might need for overhauling this type of
9 work?
10 A. Right. Storeroom contained everything
11 we needed.
12 Q. Okay.
13 A. Storeroom and warehouse.
14 Q. Now, when you went -- got one of these
15 replacement gaskets, would these be original
16 equipment for whatever pump that was or would it just
17 be a generic or do you know?
18 DEFENSE COUNSEL: Objection to the form.
19 A. Basically generic but because they -- we
20 had so many pumps of the same variety throughout the
21 mill, different style pumps, but the gaskets --
22 eventually the gaskets were manufactured and we --
23 all we had to do was go get the gasket. Wouldn't
24 have to make it, but the gaskets did fit that
25 particular pump.

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1 Q. Okay.
2 A. And that particular flange.
3 Q. Sure. Do you remember any of the
4 manufacturers of the gasket material y'all used?
5 A. No, sir. Not right off.
6 Q. Can you describe what -- what it looked
7 like, any characteristics, color of the gasket
8 material?
9 A. The ones that come to mind mostly were
10 the green material, about eighth of an inch thick,
11 and of course that thickness varied depending on the
12 application. Most of it was green.
13 Q. Okay. What other colors were there?
14 A. That was just the dominant color that I
15 remember.
16 Q. Sure.
17 A. We did use red rubber gaskets too on
18 some applications.
19 Q. Okay.
20 A. Some cases.
21 Q. Okay.
22 A. Used black rubber also.
23 Q. Sure. Sure. When you had to install
24 the new flange gasket onto the flange, you said that
25 you would use a hammer to peen it on?

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1 DEFENSE COUNSEL: Object to the form.
2 Q. Go ahead.
3 A. We would take -- I would take a
4 ball-peen hammer, a ball-peen hammer and use the
5 rounded end -- not the head part of the hammer but
6 the rounded end and you'd tap it around those holes
7 and it would break that gasket --
8 Q. Okay.
9 A. -- where those holes needed to be and
10 the outer edge of it too.
11 Q. Okay. So, the facing of the flange
12 would cut through the gasket material as you hit the
13 hammer?
14 A. That's correct.
15 Q. Okay. And would that also -- that work
16 practice also release debris or dust?
17 DEFENSE COUNSEL: Objection to the form.
18 A. That's correct. It would. That was not
19 the only way also. We had what we call hole punches.
20 Q. Uh-huh.
21 A. And if you laid your gasket material up
22 on it and then took a pencil or pen and made all the
23 circles, then you could take a hammer and that hole
24 punch and you could punch it out.
25 Q. Now, when you began describing this

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1 gasket work, you said that you did this type of
2 cutting your own gaskets initially. Around what
3 point in time do you believe that they changed from
4 you having to cut your own gaskets?
5 A. That was so gradual that it --
6 Q. Even if it's just a decade.
7 A. Yeah. I can only guess it was in the
8 '90s.
9 Q. Okay.
10 A. Late '80s, '90s.
11 Q. Okay. Now, would this -- would you have
12 to do the -- or replace the internal gaskets as well
13 on the pumps that you would overhaul?
14 DEFENSE COUNSEL: Objection to the form.
15 A. Explain internal gasket.
16 Q. Okay. Would you, after -- during the
17 overhaul of a pump, would you -- first let me ask
18 you, would you break it down and take it apart?
19 DEFENSE COUNSEL: Objection to the form.
20 A. Yes. Yes.
21 Q. Okay. Would you remove the packing?
22 DEFENSE COUNSEL: Objection to the form.
23 A. Yes.
24 Q. Okay. When you removed the packing,
25 what did you remove it with?

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718-983-1234

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1 you see that? You can just pass it on over there.
2 It's just marked for the record.
3 Now, you and I have met before today.
4 Is that correct?
5 A. Yes.
6 Q. And, in fact, I have come to your house
7 and we talked together; isn't that correct?
8 A. That's correct.
9 Q. Okay. And one of the things that you
10 did for me was draw a map --
11 A. I did.
12 Q. -- of the Bowater paper mill?
13 A. That's correct.
14 Q. I am going to mark as Exhibit 2 the
15 handwritten birds-eye view map of Bowater paper mill
16 that you drew, and I'm going to hand it to you and
17 have you take a look at it and tell me, is that the
18 same map that you drew for me yesterday and if there
19 are any additions to it or anything like that that
20 you notice.
21 (Court Reporter marks Hand Drawn Map
22 Exhibit No. 2.)
23 DEFENSE COUNSEL: While he's looking at
24 it, can we make a copy at some point?
25 MR. HOLDER: Yes.

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1 A. This is the one I drew for you, yes.
2 Q. Okay. Now, you can hand it back to me.
3 We may use this during the questioning to point out
4 certain areas, but to start out with, did you, when
5 you were working doing overhauls of pumps in your
6 work as a millwright and all the way through master
7 craftsman, were you sectioned off in one part of the
8 plant?
9 A. Yeah. My basic assignment was in the
10 powerhouse.
11 Q. Okay. Did your tasks take you all over
12 the mill?
13 A. Something broke down, especially the
14 paper machines, forget about what's going on in the
15 powerhouse and get the paper machine running.
16 Q. Okay. And was that something that was
17 true for pipefitters as well as millwrights?
18 A. That's correct, yes.
19 Q. Okay. And do you have knowledge that
20 Wayne Howe worked all over the paper mill as well?
21 DEFENSE COUNSEL: Object to form.
22 A. Definitely, yes.
23 Q. Okay. Where specifically -- strike
24 that.
25 You mentioned the powerhouse?

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1 A. Correct.
2 Q. Okay. What kind of equipment did you
3 work on in the powerhouse?
4 A. Before I retired, my primary assignment
5 was to the IKs, the upper part of boilers. If you
6 want me to describe that I can.
7 Q. Sure. What's an IK?
8 A. An IK can be mechanical -- it has
9 mechanical parts to it. Some are driven by steam.
10 Some were driven by electric motor. But the whole
11 thing is you have steam that goes through a feed tube
12 and a lance tube that pushes into the boiler. It's
13 got nozzles on the end of the outer tube and it
14 cleans in between the tubes. The boiler's got to
15 breathe or it will stop up.
16 So that's what the whole purpose of this
17 thing is to you're burning salt in recovery boilers
18 and you're burning bark in our other two boilers and
19 it will collect. You have to keep them clean. You
20 have to keep the boiler -- the air moving through the
21 boiler.
22 That's the primary purpose of this.
23 It's under high pressure steam, 900 pounds.
24 Q. Okay.
25 A. So is that's the reasoning for those.

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1 Q. When did you -- when did the IKs become
2 your primary responsibility?
3 A. My primary?
4 Q. Or just the thing that you were working
5 on the majority of the time?
6 A. I had to work on them when I was on
7 shift work as a shift millwright. That was only on
8 occasion if one tore up. Other times I started on
9 that job every day, let's see, about 1995, '6.
10 Q. Okay.
11 A. Somewhere on there.
12 Q. Around the time you became a master
13 craftsman?
14 A. Yeah.
15 Q. Okay.
16 A. Little bit before, as a matter of fact.
17 Q. When I asked you about valves, I didn't
18 ask you about packing. I asked you about packing on
19 pumps, but when you had occasion to work on valves,
20 did you have to remove packing from valves?
21 A. Yeah. Most -- most valves the system
22 that you turn to close or open a valve, you have to
23 have packing there otherwise your product is going to
24 come up through around that system. You had to pack
25 that.

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1 Q. And did the removal of packing from the
2 valves release debris and dust?
3 DEFENSE COUNSEL: Objection.
4 A. Yes.
5 Q. All right. Back to the powerhouse, you
6 said you worked on the IKs. Did you also -- did you
7 also work on pumps in the powerhouse?
8 DEFENSE COUNSEL: Objection to the form.
9 A. Yes.
10 Q. Were there loss of pumps in the
11 powerhouse?
12 DEFENSE COUNSEL: Objection to the form.
13 A. Many.
14 Q. Okay.
15 A. Many.
16 Q. Did you work on valves in the
17 powerhouse?
18 A. Yes, occasionally. Yes.
19 Q. Were there any valves in the powerhouse?
20 A. Many.
21 Q. Did you have occasion to work on
22 precipitators?
23 A. Yes, I did.
24 Q. Was that in the powerhouse as well?
25 A. Yes.

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1 Q. Did you have occasion to work on --
2 strike that.
3 What different kinds of boilers were
4 present in the powerhouse?
5 A. The type of operation that they did?
6 Q. Uh-huh.
7 A. We had --
8 Q. Actually, just the names of them that
9 you indicated on the map.
10 A. Okay.
11 Q. That might be most helpful.
12 A. I'll start on the combination boiler,
13 which to me, looking at the back of the mill in the
14 far outside room was the No. 2 combination boiler.
15 It burned bark. They even started burning some
16 rubber mixing it in.
17 Then you had No. 1 combination right
18 beside it, and it burned the same type material,
19 bark, and even planing mill dust. That was a mess.
20 There was an old No. 1 recovery boiler,
21 which had been shut down, and it was -- it burned
22 natural gas and it was basically used for building
23 heat just to keep enough steam going. Right beside
24 it was No. 1 -- No. 2 recovery. No. 2 recovery, it
25 was already operating when -- I forgot when they

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1 installed it.
2 And then outside of that, No. 3
3 recovery. And both of No. 2 and No. 3 recovery
4 burned black liquor. It was sprayed into the boiler.
5 There was cleats welded on the tubes in the inside of
6 the boiler and that liquor, we call it heavy liquor
7 then, it was blown into the boiler and it would smelt
8 down those tubes and go to the bottom. Once it
9 smelted all the way down, it became green liquor.
10 Q. Okay.
11 A. It had another purpose.
12 Q. Sure. All righty. Just to make sure
13 that I am on the same page, the powerhouse as far as
14 boilers go, you identified a No. 1 combo boiler, a
15 No. 2 combo boiler, a No. 1 recovery boiler, a No. 2
16 recovery boiler and a No. 3 recovery boiler. Is that
17 correct?
18 A. That's correct.
19 Q. Now, do you remember if you worked on
20 any evaporators in the powerhouse?
21 A. We had pumps in the evaporators that we
22 had that we worked on them and we also had to go
23 inside of the evaporators. There was plates in the
24 evaporators and we had -- if a plate broke loose or
25 something on that order, we would have to reweld them

Page 33

1 and that kind of thing.
2 Q. Okay. How about precipitators? Did you
3 work on precipitators in the powerhouse?
4 A. Oh, yeah, definitely. Our job was to
5 change packing on the screws on the precipitators.
6 We would have to go inside and had plates all in the
7 precipitators and they went -- in operation, those
8 plates were electrified and it was like a magnet and
9 all that dust and stuff, it was designed to collect
10 on those plates.
11 And then you would have a vibrator, or
12 some form of mechanical thing, to shake those plates.
13 It was on a frequency-type thing and it would shake
14 those plates and clean them off, and all that debris
15 would fall to the bottom. Screws at the bottom. We
16 had to pack all those screws.
17 Q. Uh-huh.
18 A. And that debris would go into a tank,
19 which had pumps on it, and they added water to it to
20 pump it to the waste treatment for it to settle out.
21 Q. I gotcha. Would these precipitators be
22 insulated?
23 A. Oh, definitely. Yes. Everything. A
24 simple thing. There is so much steam and so much
25 heat. You have to capture it all just about

Exhibit 4 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Commercial Records for Cleaver-Brooks Boiler O-18343

BOWATERS-CAROLINA CORPORATION 15#
CATAWBA, SOUTH CAROLINA P723-305
SO-P-1170 0-18343
CO-2023-220

FILED
NUMERICALLY

FILED/CARDED 1/5/10

PROCESSED PC 9/5/10

BPM 000001

Danny Syfrett

P723-30

#0-18343

Conv to #2-gas w/FIA

Basic — 625.

FIA — 1425

2050.00

FIA

CODS — 50

Timer — 80

RA390 — 500

M-RHCPC — 50

Bell — 50

GASLINE — 895

1425

6-7-73

BPM 000002

Rec. 1200

Danny Seyfreth

P723-30

#0-18343

Conv to Comb #2-gas

Extra F.M.

Basic — 625.00

F.M — 690.00

$1,315.00

F.M

HCGPS — 125

L Plug — 40

Hyd Lin dia — 125

COPS — 50

MR-ILPC — 50

RA890 — 300

690

Danny Siffrett

P 723-30 S
0-18343

$1055.03

12-1-70

BPM 000004

Rec. 1202

Cleaver Brooks

REMITTANCE REQUEST

REFERENCE	PAYABLE	DATE
Invoice No. 2-196-58		MAR 5 1958

PAY TO: Applied Engineering Co., Inc.
468 Carolina Avenue, N.
P. O. Box 506
Orangeburg, S. C.

3 SIGNATURES REQUIRED

Description		Amount
Job Reference: Carolina Bowaters Corporation Catawba, S. C.	Unit Size P 203-30 S Unit No(s) 0-183144 Shipped 11/5/57	
FILE		
Substantiating paper and/or work involved: For starting service per field report of Mr. Robert Tiner, dated 2/11/58		
2% of $2620.00		$52.40

Accounting Department Code To: 931-682

ACCOUNT	DISTRIBUTION	

DISTRIBUTION
WHITE - ACCOUNTING DEPT.
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C21-199A

APPLIED ENGINEERING COMPANY

ORANGEBURG, S. C.

RECEIVED FEB 24 1958

INVOICE NO. 2-196-58

INVOICE DATE February 20, 1958

SOLD TO Cleaver-Brooks Company
326 E. Keefe Avenue
Milwaukee 12, Wisconsin

SHIPPED TO Job:
Daniel Construction
% Carolina Bowaters Corp.
Catawba, S. C.

From: Orangeburg

OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	SHIPPED VIA	PPD. OR COLL.
Service	Verbal		Labor: Net 10 days	Our Serviceman	

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	Starting service by our Engineer, R. M. Tiner on Cleaver-Brooks Boiler Model P723-30S, Unit #0-18344 on February 10 & 11, 1958 located at Carolina Bowaters Corp. in Catawba, S. C.		
	2% of $2,620.00		$52.40
	Report Attached		
	order Complete		

Rec. 1204

BPM 000006

Cleaver-Brooks Company
326 East Keefe Avenue
Milwaukee 12, Wisconsin

Date 2-11-58

FIELD REPORT

Name Carolina Bowates Corp.

Address

City & State Catawba S. C.

Telephone Number

Name and initials of owner, or General Manager, or General Superintendent, (one only)

Unit Started For Daniel Construction Co.

Model No. P-723-30S	REASON FOR CALL - (check one only)
Serial No. 0-18344	Starting Service ✓
Pressure 15# Max. W.P. 4#	Recheck on Starting
If oil operation - state grade of oil	Customer Request
	Agent Request
If gas operation - state B.T.U. content of gas 2300 LP Gas	Milw. Request
	Conversion

All dimensions for the following to represent inches above lowest visible portion of gauge glass.

	Master Control #42 CB	Auxiliary
Pump Off	1 1/4"	
Pump On	3/4"	
Low Whistle Alarm		
Low Water Cut-off	1/2"	
Mfg. M&M #42 CB		

Combustion Test Results				
Fire	CO_2	O_2	CO	Stack Temp.
Lo	10.6%			
Hi	10.6%			

Settings	
Oper. Steam Press.	4#
Relay Safety Timing	Sec.
Safety Valve Setting	15#

SERVICE CHECK LIST

Blow down Valves - Shell	✓
Blow down Valves - Columns	✓
Operating Manual - Given to (initial & name)	Lane at Starting
Verbal operating & maintenance instructions to	Mr Jones (Daniel Const. Co.)
Boiler water treatment discussed with (initial & name)	Mr Jones (Daniel Const. Co.)

FORM NO. 217 C10-265A (1)

Cleaver-Brooks Company
326 East Keefe Avenue
Milwaukee 12, Wisconsin

TIME AND TRAVEL

Date	From	To	Miles	Travel Time	Job Time
2-10-58	Ofc.	CATAWBA Rock #N	122	2 1/2	4
2-11-58					8 1/2

Is call to be paid for by customer? No
If call is to be paid for by customer, Form No. 216 must accompany this report.

Accepted:
By: J. E. Jones
R. M. Ginter
Field Representative

Note to Field Representative:

Because signatures are seldom legible, PRINT, on following line, name and initial of person signing report.

Note to Customer:

The following comments are a part of this report. Cleaver-Brooks Company suggest you initial the end of this report indicating comments have been read.

If customer desires copy of this report, so state here and give us initials, name, and title of person to whom same should be mailed.

Please Print:

Initial	Name	Title

If new starting job, Supplemental form must accompany this report. In event unit is combination, use both oil and gas forms.

Comments, material changes, instructions to Milwaukee, etc., to be noted on following pages.

C10-265A (2)

Cleaver-Brooks Company
326 East Keefe Avenue
Milwaukee 12, Wisconsin

Checked out all Gas lines and regulators from LP tanks to Boiler. Set pressures + checked Pump on + off + Low Water cut off switches. Started unit and let heat up slowly. Set pressure controls and put Unit on plant Load Found it to perform very nicely. Unit is being slightly over fired as Main trol regulator will not cut pressure low enough.

Set up on Gas at Main trol regulator 2" W.C.
When unit is running pressure is 3" W.C.
CB Piping 1/2"

This unit will be properly fired on natural Gas 1000 BTU in about 2 or 3 weeks.

C10-265A (3)

SUPPLEMENTAL FIELD REPORT

CB-15 – 150 UNITS.

Job Name Carolina Beverage Corp. Date 2-10-58

Model P-723-305 Unit No. 0-18344 Pressure 15#

Complete all items. If for any reason, readings of any one or more items cannot be taken, fill in after each item reason for non-completion.

1. Oil Suction Line Size _____ 2. Oil Return Line Size _____

3. Length of Horizontal Suction Line Run _____ 4. Length of Vertical Lift of Suction Line _____

5. Type of Check Valve Used _____

6. Where Is Check Valve Located _____

7. Inches of Vacuum at Terminal Block with Unit Running _____

8. How Fast Does Fuel Oil Pressure Come Up to Running Pressure?
   a. CB15-40 _____ No. of Seconds b. CB50-150 _____ No. of Seconds

9. Is Fuel Supply Tank Above or Below Level of Boiler _____

10. Is There a Day Storage Tank or Any Other Means of Oil Storage Installed to Aid in Faster Lighting? _____

11. Was Operator Shown How to Adjust Belts _____ (Burner Motor to Fuel and Air Pumps)

12. Was Burner Removed Before Firing _____

13. Indicate Number and Sizes of
    a. Nozzles Installed in Burner _____ b. Air Purge Nozzle (CB50-150) _____

14. Was Strainer (Fuel Oil) Removed from Body and Customer Shown How to Clean _____ 15. In Case of Strainer Built-In Fuel Pump Was Operator Told How to Remove and Clean _____

16. Was Ignition (Straight Electric) Explained to Operator with Burner Removed from unit _____ Shown How to Clean and Set Properly _____

17. Did Operator Remove Burner and Clean and Adjust Same _____

18. Was the Positive Positioning of Electrodes Explained to Operator _____ Give Dimensions
    a. From Nozzle Face to Electrode _____ b. From Center (Orifice Hole) to Electrode _____
    c. Arc (Spark) Gap _____

19. In case of Gas or Oil-Fired Pilots, Was Front Door Opened (By Operator) and Pilot Removed _____
    a. Electrode, Cleaned and Set _____ b. Nozzles (Gas or Oil) Cleaned _____
    c. Bonnet Tightened _____ d. Size of Air Inlet Orifice _____

20. Were Inserts of Rajah Terminals Tightened _____

21. While the Front Door was Open, Did you Explain or Show the Following: Also Give Dimensions.
    a. Burner Nozzle, Position to Diffuser Plate _____ b. Plate, Diffuser, Position to Gas Ring _____
    c. Orifice, Scanner, Cleanliness for Good Sight of Flame _____
    d. Gaskets, Importance of Sealing _____ e. Wash Coating Brick _____

22. Was Scanner Removed and Functions of Same Explained to Operator _____ Importance of Keeping Clean _____

23. Is Scanner Properly Aligned? _____

Form 234 C10-280A (1)

24. When Starting Unit Was Selector Switch Turned to Manual Position and Potentiometer in Closed Position? _____

a. At What Steam Pressure or Temperature Was Burner Turned to Automatic Position? _____

25. What CO_2 is Obtained on:

a. CB15-40 Lo Fire _____ Hi Fire 10.6 %

b. CB50-150 1 _____ 2 _____ 3 _____ 4 _____ 5 _____ 6 _____ 7 _____

8 _____ 9 _____ 10 _____ 11 _____

26. Was Air Filter and Importance of Oil Level Explained to Operator? _____

27. Was Atomizing Air Pressure Adjustment Explained to Operator and Its Effect on Lighting and Combustion? _____

28. Has Secondary Air Adjustment Been Explained to Operator and Effect on Lighting and Combustion? _____

29. Was Lube Oil Strainer Removed and Importance of Being Clean Explained? _____

30. Was Lube Oil Level – Max. and Min. Explained? _____

31. Was Operation of Metering Oil Valve and Cam Explained to Operator? _____

a. Adjustment Screws In Cam for More or Less Oil _____ b. Tightening Packing Screw on Metering Valve _____

32. Was Air Switch and Its Interlocking with Fuel Oil Valve Explained? _____

33. Air Pressuretrol Set at _____

34. Oil Pressure at Burner Set at Lo Fire _____ Hi Fire _____

35. Air Pressure (Atomizing) Lo Fire _____ Hi Fire _____

36. Gas Pressure for Pilot – a. Closed Solenoid Valve _____ b. Open Solenoid Valve _____

37. Light Oil Pilot Pressure Set at _____ lbs.

38. Was Operation and Contact Cleaning of Fireye Explained and Demonstrated to Operator? _____

Fireye Model No. _____ Serial No. _____ Code _____

39. Safety Timing (Fireye) of Relay Drops Out (Flame Failure) _____ Sec.

Latchout (Safety Switch Warps Out) _____ Sec.

40. Injector Operation _____

41. Water Level, at 0° Glass of Water in Gauge Glass, There is _____" of Water Over Tubes _____

42. Blower Motor Voltage _____ Blower Motor Current Draw _____ Amps.

a. Fuses Used: Type _____ Size _____

43. Control Circuit Voltage _____

44. Load on Unit (Circle One) Moderate Heavy Light Extremely Light Extremely Heavy

45. Is Relief Door Tight? _____

46. Are Safety Valves Properly Piped and Provided with Proper Drains? _____

47. Are Column and Low Water Cutoff Blowdown Valves Tight? _____

48. Is Boiler Level? _____

49. Are Proper Blowdown Valves Provided on Boiler Shell? Front _____ Rear _____

50. Feedwater Inlet Temperature _____

51. Have All Handholes Been Tightened? _____

52. Do Any Handholes Leak? _____

53. Has Unit Been Boiled Out? _____

54. If More Than One Unit, Does Each Unit Have Individual Suction Line or Is It Common to Both? _____

55. Have Low Water Readings Been Taken Under Pressure As Well as Cold? _____

Are They Noted on Page One of Field Report? _____

56. If Day-Nite Control is Installed, Have They Been Set According to Customer's Requirements? _____

57. Type of Return System Used _____

58. Pressuretrol Settings – Low Fire Cut-In _____ Cut-Out _____

High Fire Cut-In _____ Cut-Out _____

C10-280A (2)

COMBINATION GAS AND OIL OR STRAIGHT GAS

59. Was Customer Shown how to engage clutch in center of motor for oil operation? _____
and disengage clutch for gas operation? _____ so compressor and oil pump will not run.

60. Does Gas Valve Close Tight on Shutdown? yes

61. Is there Combustion Noise on Gas Fire? No

62. General Information:
1. Name of gas company Unit Fried on Butane Gas
2. B.T.U. value of gas 2300
3. Pressure in gas main 10"

63. Gas Piping System:
1. Gas Meter
Name Fisher
Size 1"
Capacity 1000 cu. ft. Per hr.
Gas Pressure Entering Meter None
Does meter furnish gas for any equipment other than this unit? No
If so, describe briefly No
2. Gas Piping
Length and Size of pipe from meter to regulator No Meter
Length and Size of pipe from regulator to boiler 1/2" about 80'
Is gas line provided with filter? No
Size of Cleaver-Brooks piping 1 1/2"

64. Gas Regulator:
1. Name Fisher LP Appliance Reg.
2. Size 1"
3. Capacity
4. Type
5. Regulator furnished and specified by
6. Is regulator properly piped?
7. If more than one unit, does each unit have individual regulators?
8. Gas pressure upstream of regulator
9. Gas pressure downstream of regulator
10. Is operation of regulator satisfactory?

65. Gas Booster:
1. Name None
2. Size
3. Capacity
4. Booster furnished and specified by
5. Pressure at booster discharge
6. Does booster operate continuously or with starting and stopping of boiler?
7. Is operation of booster satisfactory?

66. Operating Gas Pressures:
1. Gas pressure at boiler — Low Fire —
2. Gas pressure at boiler — High Fire 8"
3. Gas pressure at boiler — Lock-up 2 1/2"
4. Gas pressure at boiler — On Pilot 8"
5. Gas consumption — Low Fire
6. Gas consumption — High Fire

Operating Characteristics:
1. Is pilot adjustment critical?
2. Ignition gap in pilot

Form 234 C10-280A (3)

PRINTED IN U.S.A.

THE STANDARD CONDITIONS OF SALE ON REVERSE SIDE ARE PART OF THIS INVOICE.

CUSTOMER'S FILE

aqua-chem, Inc.

MILWAUKEE, WISCONSIN 53201

PLEASE PAY FROM INVOICE
To: AQUA-CHEM, INC.
P.O. Box 421
Milwaukee, Wis. 53201

TELEPHONE: 414 - 962-0100
D-U-N-S 608-3927

CLEAVER-BROOKS DIV [X] PG
WATER TECHNOLOGIES DIV [ ]
DAVIS ENGINEERING DIV [ ]

VIA: $151 50 PP UPS

DATE SHIPPED	UNIT NUMBER	B/L	INVOICE DATE	INVOICE NO.
8/29/69	18343		9/9/69	61697

P.O.	AGENT	DATE ENTERED	APPROX. SHIP. FROM FACTORY	CB ORDER NO.
53369		8/28/69	53569	38440

SOLD TO:
0101
APPLIED ENGINEERING COMPANY
P.O. BOX 505
ORANGEBURG, SOUTH CAROLINA 29115

SHIP TO:
BOWATERS CAROLINA CORP.
CATAWBA, SOUTH CAROLINA 29704
H/F T-24283

TERMS: N/30-DATE OF SHIPMENT, FINANCE CHARGE ON OVERDUE ACCOUNTS

F.O.B. SHIPPING POINT

PREPAID	COLLECT	TRUCK	RAIL
X			

ITEM NO.	QUANTITY ORDERED	PART NO.	DESCRIPTION	CPU	QUANTITY BACK ORDERED	QUANTITY SHIPPED	UNIT PRICE	AMOUNT
1	10	330-210	SWITCH TOGGLE CH7320K3			10	2.25	22.50
							LESS 15%	(3.38)
								19.12
							PLUS PPD CHARGES	.61
								$19.73

THANK YOU

ACCOUNT	DISTRIBUTION	COMMISSION

NET COMMISSION DUE

FORM C21-714A REV. 6/69

Rec. 1211

BPM 000013

FORM A-38
REV. 3-57

326 EAST KEEFE AVENUE

Cleaver Brooks
COMPANY

MILWAUKEE 12, WISCONSIN

TELEPHONE WOodruff 2-0100

CP

SALES ORDER NO. 11784

CUSTOMER'S ORDER NO.		DATE	CREDIT NO.
16390	CREDIT MEMO	5-9-58	58-[illegible]875

CREDIT TO: APPLIED ENGINEERING COMPANY
P. O. BOX 506
ORANGEBURG, SOUTH CAROLINA

SHIP TO: DANIEL CONSTRUCTION COMPANY
C/O BOWATERS PLANT
CATAWBA, SOUTH CAROLINA

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
	WE CREDIT YOUR ACCOUNT TO CANCEL INVOICE #30044 DATED 2-5-58, COVERING REPLACEMENT PARTS FOR STEAM BOILER MODEL P723-305, UNIT #0-18343 IN ITS ENTIRETY, FOR MATERIALS RETURNED ON R. R. 3076 OF 3-18-58		
			66.05
	LESS 25-15%		23.94
	CREDIT DUE		$42.11

CUSTOMER FILE

Rec. 1212

BPM 000014

CUSTOMER'S FILE

Cleaver Brooks

COMPANY

326 EAST KEEFE AVENUE — MILWAUKEE 12, WISCONSIN — TELEPHONE WO odruff 2-0100

DW

INVOICE NO. 30044

CUSTOMER'S ORDER NO.	DATE ENTERED	APPROXIMATE DELIVERY	AGENT	DATE SHIPPED	INVOICE DATE	SALES ORDER NO.
16390	1-28-58		F.P. 2515	1-28-58	2-3-58	11784

A22

SOLD TO APPLIED ENGINEERING COMPANY
P. O. BOX 506
ORANGEBURG, SOUTH CAROLINA

SHIP TO DANIEL CONSTRUCTION COMPANY
% BOWATERS PLANT
CATAWBA, SOUTH CAROLINA

TERMS: N/30 - DATE OF INV. — F.O.B. ~~SHIPPING POINT~~ FOREST PARK, ILLINOIS — VIA AIR EXPRESS

PREPAID [ ] COLLECT [X]

ITEM NO.	QUANTITY ORDERED	DESCRIPTION	PART NO.	QUANTITY BACK ORDERED	QUANTITY SHIPPED	UNIT PRICE	AMOUNT
		FOR: STEAM BOILER					
1	1	CONTROL, PUMP AND LOW WATER CUT-OFF MC M, 42-CB	817-401		1	66.05	66.05
					LESS 25-15%		-23.94
							$42.11

PLEASE PAY BY INVOICE - MONTHLY STATEMENTS ARE NOT FURNISHED - INTEREST CHARGED ON OVERDUE ACCOUNTS.
SELLER REPRESENTS THAT WITH RESPECT TO THE PRODUCTION OF THE ARTICLES AND/OR THE PERFORMANCE OF THE SERVICES COVERED BY THIS INVOICE IT HAS FULLY COMPLIED WITH SECTION 12 (A) OF THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED.

COMMISSION DUE	AMOUNT

ac

BPM 000015

Rec. 1213

CUSTOMER'S FILE

Cleaver Brooks

326 EAST KEEFE AVENUE

TELEPHONE WO edruff 2-0100

COMPANY EMK

MILWAUKEE 12, WISCONSIN

INVOICE NO. P-24598

CUSTOMER'S ORDER NO.	DATE ENTERED	APPROXIMATE DELIVERY	AGENT	DATE SHIPPED	INVOICE DATE	SALES ORDER NO.
2023-220 9-3-57	9-23-57 (10-14-57)		APPLIED ENG.CO.	11-5-57	11-11-57	P-1170

A-23

SOLD TO CRANE COMPANY
836 SOUTH MICHIGAN AVE.
CHICAGO 5, ILLINOIS

SHIP TO BOWATERS-CAROLINA CORP.
C/O DANIEL CONSTRUCTION CORP.
CATAWBA, SOUTH CAROLINA

TERMS: [illegible] F.O.B. SHIPPING POINT MILWAUKEE, WIS.

2% cash discount if [illegible] 15th inclusive, if paid be[illegible] Invoices dated [illegible] to last day of month inclusive; if paid on or before 10th of following month.

VIA FRED OLSON TO CHICAGO C/O MC LEAN TRUCK LINE

PREPAID [X] COLLECT [ ]

ITEM NO.	QUANTITY ORDERED	DESCRIPTION	PART NO.	QUANTITY BACK ORDERED	QUANTITY SHIPPED	UNIT PRICE	AMOUNT
		P723-30S 15# 0-18343					
	1	P-700-30S CLEAVER-BROOKS PROGRESS BOILER, UNIT #0-18343, 15# DESIGN PRESSURE, INCLUDING GAS BURNING EQUIPMENT, INSULATED AND LAGGED; ELECTRIC CURRENT: 440 VOLT, 3 PHASE, 60 CYCLE PRICE F.O.B. MILWAUKEE, WISCONSIN			1	2,620.00	
						LESS 10% & 15%	2004.30
		EXTRA FOR 440/3/60				55.00	
						LESS 10% & 15%	42.07
							$2,046.37
		PLUS PREPAID FREIGHT.. 3,250# @$2.75/100#				89.38	
		TAX				2.68	
							92.06
							$2,138.43
		SEE ATTACHED COPY OF FREIGHT BILL.					
		CRANE CO. 223 W.MC BEE AVE. GREENVILLE, SOUTH CAROLINA					

INVOICE IN DUPLICATE.

PLEASE PAY BY INVOICE - MONTHLY STATEMENTS ARE NOT FURNISHED - INTEREST CHARGED ON OVERDUE ACCOUNTS. SELLER REPRESENTS THAT WITH RESPECT TO THE PRODUCTION OF THE ARTICLES AND/OR THE PERFORMANCE OF THE SERVICES COVERED BY THIS INVOICE, IT HAS FULLY COMPLIED WITH SECTION 12 (A) OF THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED.

COMMISSION DUE	AMOUNT
12% OF $2,046.37	$245.56

Rec. 1214

BPM 000016

Escalator 2023-220 9/3/57

S.O. #P-1170

Ship: TO BE ADVISED

Date: 9/23/57

PRICE WORK SHEET

Sold To:
Crane Company
836 South Michigan Avenue
Chicago 5, Illinois

Ship To:
Bowaters-Carolina Corp.
C/O DANIEL CONSTRUCTION CORP.
Catawba, South Carolina

1 1700-305 15# NAT GAS 2620.00 LESS 10-15
440/3/60 ENSUL & LAG
1 EXTRA FOR 440/3/60 55.00 LESS 10-15

SHOW

FOB Final Destination

Crane Co
223 W. McBee Ave
Greenville, South Carolina

Terms PROGRESS

Freight MOTOR FREIGHT PREPAID

1290↓

Commission APPLIED ENGINEERING (ALL)

Clause I-2

I-2

By Bert Thomas 10/3/57

C9-149A

INTER-OFFICE CORRESPONDENCE

Cleaver-Brooks
COMPANY

MILWAUKEE 12, WISCONSIN

RECEIVED SEP 27 1957

Sent P1170 1930

TO Cleaver-Brooks Company Milwaukee, Wisconsin

ATTENTION Elmer Follnow

FROM Applied Engineering Company Orangeburg, S. C.

DATE September 19, 1957

SUBJECT Crane Company
Order #2023-220
Daniel Construction Co.
C/o Bowater-Carolina Corp.
Catawba, S. C.

Dear Elmer:

Enclosed please find purchase order and boiler data sheet covering one Progress P-700-30S, 30 HP, 15# steam, for 440 Volt 3 phase, 60 cycle operation.

We have forwarded the contractor standard progress prints and winding diagrams for approval.

We believe that the gas will be bottle gas since this is a new job site and natural gas is not yet available.

Do not ship until approval is received.

Yours very truly,

APPLIED ENGINEERING COMPANY

George K. Foss

George K. Foss

GKM/gs

Enclsoure

SHOW OUR PURCHASE ORDER NUMBER ON ALL INVOICES AND PACKAGES.

FOUNDED BY R. T. CRANE, 1855

CRANE CO.

223 W. McBEE AVE.
GREENVILLE, S. C.

PURCHASE ORDER

№ 2023-220

DATE: September 3, 1957

TO:

Cleaver Brooks Co.,
Milwaukee 12, Wisconsin

SHIP TO:

Daniel Construction Co.,
c/o Bowaters-Carolina Corporation
Catawba, South Carolina

MARK PACKAGES:
Order 10,016

SHIP VIA: (Cheapest way unless otherwise specified herein:)
Motor Freight

This purchase is to be charged to and will be paid by—
CRANE CO., 836 S. Michigan Ave., Chicago 5, Ill.

Please prepare invoice in duplicate and mail as follows:
CRANE CO., 836 S. Michigan Ave., Chicago 5, Ill.
Original Invoice.
CRANE CO., 223 W. McBee Ave., Greenville, South Carolina
Duplicate Invoice with Shipping Memorandum and Original Bill of Lading.

Please observe the following when shipment is subject to:
Full Freight Allowance—ship PREPAID.
Partial Freight Allowance—ship PREPAID.
Itemize on invoice transportation charge and allowance showing weight, rate, and name of carrier, or attach paid freight bill.
No Freight Allowance—ship COLLECT unless otherwise specified.
Show on invoice whether shipment was prepaid or collect.

The following material purchased for resale unless otherwise specified

QUANTITY		PRICE
1	- Cleaver-Brooks Progress P700-30S, 30 HP boiler, 15 lb. steam, gas fired to be of four pass construction, guaranteed 80% efficiency, insulation and insulation and lagging with metal jacket, forced draft, complete with main gas regulator piped and assembled as in integral part of the boiler. One day starting service included with this order. Unit for 440 volt, 3 phase, 60 cycle current.	

SUBMITTED BY G.R. MOSS

Please submit six (6) copies of certified prints, parts list, operating maintenance instructions.

RECEIVED
SEP 7 1957
APPLIED ENGINEERING CO.
ORANGEBURG, S. C.

By acceptance of this order, Seller agrees to and shall be bound by the terms and conditions appearing on the back hereof.

[x] SOLD ORDERS
CUSTOMER

[ ] STOCK
ORDER NO.

Register 46253-220

CRANE CO.

George B. Reed

5246C-3M-L57

Rec. 1217

BPM 000019

BOILER ORDER DATA

Cleaver-Brooks
Progress
Packaged Boiler

Cleaver-Brooks AGENCY: Applied Engineering Co

Signed by (for Agent): George Dras

Date: Sept 10, 1957

Approved by (Wholesaler): George Dras

Title:

Note to Agent: Send white copy to Cleaver-Brooks Co., Milwaukee, Wis., return yellow copy to wholesaler after checking and countersigning, and retain blue copy for your files.

WHOLESALER & SHIPPING DATA

Purchased by Crane Co. (Wholesaler) on Purchase Order No. 2023-220

Street Address 223 W. Bolles Avenue City Greenville State S. C.

Ship to Bowaters-Carolina Corp. (Name of Job)

c/o Daniel Construction Co. (Name of Heating Contractor)

Address

Catawba City State S. C.

Type of Building Paper Mill

Delivery Carrier Specify "best way" unless contractor advises otherwise. In all cases specify delivery carrier. (Check access doors to see that they will pass boiler.)

Prepaid [✓], or Collect [ ] Earliest Date Delivery Acceptable now Del. Date Desired

BOILER DATA

1. **Size and Type**

Quantity 1 Model P- 700-30-S [✓] 15 psi steam [ ] 30 psi water (Check one)

Altitude (feet above sea level) * To be installed in State of

* *Standard boilers are for altitudes from 0 to 3000'. For others, contact your agent.*

2. **Type of Fuel**

Light oil is understood to conform with specifications of Commercial Standard No. 12-48.

(Check which applies)

Light Oil No. 2

Gas-Type BTU/cubic feet Specific Gravity

Gas Pressure at Point of Service Connection to Burner

Note: Where pressure at burner is below the minimum pressure required, the customer must furnish a booster. Check with local Gas Company.

Rec. 1218

BPM 000020

3. Current Characteristics

Standard current* is 230 volt, single phase, 60 cycle for motor. If other than standard, see current price sheet for addition and indicate.

440 Volts 3 Phase 60 Cycle

* *Control circuit is 115 volt, single phase, 60 cycle.*

4. Optional Trim

Must be specified if required. See current price sheet for addition and indicate.

a. Steam Boiler

☐ Feed pump control* McDonnell-Miller No.42CB in place of standard No.64CB Low water cutoff.

* *42CB includes low water cutoff.*

☐ Water feeder McDonnell-Miller No.247 in addition to standard No.64CB Low water cutoff.

b. Hot Water Boiler

☐ Low water cutoff McDonnell-Miller No.64CB.

5. General Data

Name of Fire Insurance Company (Fire Insurance does not refer to Boiler, but to Building including Boiler Room.)

_____

Important: Boilers insured by companies affiliated with Factory Mutual or Fire Insurance Association require special unit approval prior to shipment.

Is it known that building openings are adequate or will be provided to move boiler into boiler room?

Yes ☐ No ☐

Has provision been made for future tube removal and cleaning and adequate aisle space around boiler?

Yes ☐ No ☐

In sizing boiler have possible customer plans for future plant expansion been taken into consideration?

Yes ☐ No ☐

Has piping loss, pickup load, and hot water load been added to radiation load?

Yes ☐ No ☐

6. Miscellaneous (for Cleaver-Brooks office use)

_____

_____

_____

_____

_____

_____

C9-2962

Bowaters-Carolina Corp.
Catawba, South Carolina

Unit No. 0-18343
S.O. No. P-1170 Kohoss

P-30, 15 lb Steam
30 lb Water

FORM P-2 **MANUFACTURERS' DATA REPORT – ALL TYPES OF BOILERS EXCEPT WATER-TUBE**
As Required by the Provisions of the A.S.M.E. Code Rules and National Board 524-556 (D)

C18-3114(1)

1. Manufactured by Cleaver-Brooks Company, Milwaukee, Wisconsin

2. Manufactured for

3. Type Internally Fired (H.R.T.–Loco.–Compact–Marine) Boiler No. 10509 (Mfrs. Serial No.) (State and State No.) Natl. Board No. Year Built 1957

4. The chemical and physical properties of all parts meet the requirements of material specifications of the ASME Boiler Code. The design, construction, and workmanship conform to ASME Rules Section IV (I, III, IV, or V)

Remarks: Manufacturer's Data Reports properly identified and signed by Commissioned Inspectors, have been furnished for the following items of this report: None (Name of part–item number, manufacturer's name, and identifying stamp)

We certify the statement in this data report to be correct.

Date October 22, 19 57 Signed Cleaver-Brooks Co. (Manufacturer) By (Representative)

Certificate of Authorization Expires December 31 19 58

CERTIFICATE OF BOILER SHOP INSPECTION

Insurance Companies' Serial Number H.S.B. 10509

BOILER WORKS OF Cleaver-Brooks Company at Milwaukee, Wisconsin

I, the undersigned, inspector of steam boilers employed by Hartford Steam Boiler Inspection & Insurance Co. of Hartford, Conn. have inspected the boiler referred to as data items 1-9, 11, 16, & 19-24 incl. and have examined manufacturers' data for items None and certify that the material, construction, and workmanship are in accordance with ASME Boiler Code Rules.

DATE October 22, 19 57 H. E. Mussett Inspector Commissions NB State or Natl. Board and No.

H. E. Mussett

CERTIFICATE OF FIELD ASSEMBLY INSPECTION

I, the undersigned, inspector of steam boilers employed by

of , have compared the statement in this manufacturer's data report with the completed boiler and certify that parts referred to as data items ; not included in certificate of shop inspection, are in accordance with the requirements of the ASME Boiler Code. The completed boiler was inspected and subjected to a hydrostatic test of psi.

DATE , 19 Inspector Commissions State or Natl. Board and No.

IMPORTANT THIS COPY CANNOT BE REMOVED FROM FILE

5. Boiler Shells or Drums: No. 1 Diam. 36" Length _____ Ft. 70-7/8" In. Diam. _____ Length _____ Ft. _____ In.

6. Shell Plates: Flange SA-212B 1/4" IN.
(For each Drum, state: Steel Manufacturer's Brand; Material Specification Number; Thickness)

7. (a) Longitudinal Joint: Fusion double welded butt
(Seamless, Fusion or Forge Welded, Riveted—Lap or Butt—Single, Double, Triple or Quadruple)

Rivets: _____ (Diameter and Material Specification No.) Rivet Holes: _____ (Diameter and Pitch) Eff. of Long. Joint: 72 % (% compared to shell plates)

8. (a) Tube Sheet: F. B. SA285C 3/8" Flange SA-285C 3/8" (Brand, Mat. Spec. No.; Thickness) Reinforcement: _____ (No. and Thickness of Straps) Rivets: Fillet weld (No. Rows; Mat. Spec. No.; Hole Diam. and Pitch)

(b) Tube Holes: 2.020" (Diameter) Pitch: _____ (Longitudinal and Girth) Eff. of Tube Ligament: _____ % (Compared to shell plate)

9. Girth Joints: _____ (Seamless, Fusion or Forge Welded, Riveted—Lap or Butt) Rivet Holes: _____ (No. rows — Diam. and Pitch) No. of Courses: 1

10. Heads: _____

11. Boiler Tubes: No. SA 178A, 44, Straight (Mat. Spec. No.—Straight or Bent) Diam. 2" Length 71-3/8" (If various, give maximum and minimum lengths) Gage .095" (or thickness)

12. Headers: No. _____ Heads or Ends _____ Hydro. Test _____ lb.
13. Mud Drum: _____ Heads or Ends _____ Hydro. Test _____ lb.
14. (a) Waterwall Headers, No. _____ Heads or Ends _____ Hydro. Test _____ lb.
(b) Tube Holes _____ Tubes _____ Gage _____ Heating Surface _____ sq. ft.
15. (a) Superheater Headers, No. _____ Heads or Ends _____ Hydro. Test _____ lb.
(b) Tube Holes _____ Tubes _____ Gage _____

16. Stays or Braces	Material Spec. No.	Type	No.	Size	Welded or Seamless	Total Net Area	C Fig. P-28 L/r	Dist. Tube to Shell	Area to be Stayed	Max. S.W.P.
(a) F.H. above tubes			0					10-3/16"	0	15# S.
(b) R.H. above tubes			0					10-3/16"	0	30# W.
(c) F.H. below tubes										
(d) R.H. below tubes										
(e) Through below tubes										
(f) Dome braces										

17. Staybolts: _____ Pitch _____ Max. S.W.P. _____
18. (a) Dome: Diam. _____ Longitudinal Seam _____ Eff. _____ % How secured to shell _____
(b) Opening in shell _____ Head _____

19. (a) Furnace: No. 1 Size 12-3/4" OD (Int. Diam. or L x W x H) Length, each Section, front _____ In., rear _____ In. Total 71-1/8" Type Plain (Plain, Adamson, or Cone)

SA 53, .330" (Brand, Mat. Spec. No.; Thickness) (b) Seams: Type Seamless (Seamless, Fusion or Forge Welded, Riveted, Lap, or Butt) Location _____ (Seam)

20. Openings: (a) Steam 1 @ 4" NPT (No., Size, and Type of Nozzles or Outlets) (b) Safety Valve 1 @ 2" NPT (No., Size, and Type of Nozzles or Outlets)

(c) Blowoff 1 @ 1" NPT Bottom Ø Rear. 1 @ 1-1/2" NPT Bottom Ø Front (No., Size, Type, and Location of Outlets) (d) Feed 2 @ 1" NPT, R & L Bottom 1/4" (No., Size, Type, and Location of Connections)

(e) Return Connections 1 @ 4" NPT (f) Relief Valve (g) Controls 3 @ 1/2" NPT

(g) Manholes: No. None Size _____ Location _____ (How Reinforced)

(h) Handholes: No. 3 Size 2-3/4" x 3-1/2" Location Shell (How reinforced)

21. Fusible Plug (If Used) _____ (No., Diam., Location, Mfrs. Stamp) Boiler Supports: No. 4 Legs (Hangers or Legs; Riveted or Welded)

22. Fusion Welding Complies With Paragraphs: H-69 thru 82

23. Bursting Pressure: 694 (Indicate Weakest Part) psi. Max. S.W.P. 15# S / 30# W psi. F.S. 166.2/23.1 Heating Surface 162 (Total) sq. ft.

24. Hydrostatic Test: (a) _____ (Welded Drums) lb. (b) _____ (Riveted Drums) lb. (c) 60 (Completed Boiler) lb.

C18-3114(2)

MASTER SHEET

SALES ORDER P-1170 SHIPPING DATE REQUIRED W.A. DATE 9/25.

FIRM NAME Bowaters-Carolina Corp. SHIP TO:

Catawba, South Carolina

Routing

QUANTITY 1 MODEL P110-30 S H.P. 30

DES. PRESS. 15 OPER. PRESS. ____ POPS ____

DESIGNED FOR S.C. STATE ALTITUDE ____

FUEL ____ OIL and/or Bottle GAS ____ BTU @ ____ W.C.

CURRENT 440/3/60 COLUMN: LEFT ____ RIGHT ✓

BOILER FEED: PUMP CONT. ____ WATER FEED ____

WATER PRESSURE ____ INS. & LAG. ____

DAY-NITE SYSTEM: YES ____ NO ____

LOW OPER. PRESS. ____ HEAT LOAD ____

INSURANCE: ____

RETURN SYSTEM: YES ____ NO ____

____ PUMP ASSY. ____ H.P. @ ____ PSI

RECEIVER ASSY. ____ x ____ FOR ____ H.P.

DATE	CHANGE ORDER

PRINTS:

DIMENSION ____ FEED PUMP ____

WIRING ____ RECEIVER ____

OIL PUMP ____

QUICK OPENING B.O. VALVE	NO. ____	SIZE ____	MAKE ____	FIG. ____
SLOW OPENING B.O. VALVE	NO. ____	SIZE ____	MAKE ____	FIG. ____
MAIN STEAM VALVE	NO. ____	SIZE ____	MAKE ____	FIG. ____
NON RETURN VALVE	NO. ____	SIZE ____	MAKE ____	FIG. ____
FEED VALVE, GLOBE	NO. ____	SIZE ____	MAKE ____	FIG. ____
FEED VALVE, CHECK	NO. ____	SIZE ____	MAKE ____	FIG. ____

MISCELLANEOUS:

Per Dore Buechler
SALES DEPARTMENT

Witness Test ____

C9-9A

Cleaver Brooks COMPANY

971-9

ASSEMBLY CHECK SHEET

MODEL P 723-30 DP 154 DATE 11-1-57

CURRENT CHARACTERISTICS: VOLTS 440 PHASE 3 CY 60 NAME Mountain Carolina

CONTROL CIRCUIT: VOLTS 115 PHASE 1 CY 60 ADDRESS Santeeley S. Car.

WIRING DIAGRAM NO. 630-2026 (Rev. 1)

BOILER UNIT NO. 0-18343 JOB NO. 8770 (8745) SALES ORDER NO. P-1170

ITEM	DESCRIPTION
MOTOR, BLOWER	MAKE Marathon H.P. 3/4 VOLT 208/220 PH. 3 CY. 60/50 AMPS. 2.8/1.4 RPM 3450/2850 ~~SERIAL~~
CONTROL, M-H	TYPE M.H. MODEL PA790C ~~CODE~~ SERIAL
HEATER COILS	(BLOWER STARTER) #1021 A C.H.
RELAY, MOTOR	MAKE C.H. TYPE deg. C VOLTAGE 110 to 550
~~PUMP, OIL~~	MAKE MODEL SERIAL
CABLE, IGNITION	QTY. Two LENGTH 19"-20"
VALVE, SAFETY	QTY. one MAKE Kunkle SIZE 1 1/2" FIG. 34
	CAPACITY: 1036 LBS/HR. BTU/HR. Adapt 15#
	QTY. MAKE SIZE FIG.
	CAPACITY: LBS/HR. BTU/HR.
VALVE, GAS	MAKE M.H. TYPE 45A SIZE 1 1/2" SERIAL
REGULATOR, GAS	MAKE Mafitch TYPE RV 81 SIZE 1 1/2"
OIL PUMP, (AUX.)	MAKE MODEL SERIAL
MOTOR, OIL PUMP	MAKE H.P. VOLT PH. CY.
	AMPS. RPM SERIAL FRAME
FEED PUMP	MAKE MODEL SERIAL
MOTOR, FEED PUMP	MAKE H.P. VOLT PH. CY.
	AMPS. RPM FRAME SERIAL

REMARKS Jo-8770

0-18343

CHECKED BY E. J.

C25-118A

Exhibit 5 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Plaintiffs' Motion to Compel Several Defendants and Exhibits

(See Record Page 873)

Exhibit 6 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Transcript of January 24, 2018 Hearing

(See Record Page 581)

Exhibit 7 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Order Regarding Cleaver-Brooks Discovery Motions

(See Record Page 32)

Exhibit 8 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

John Tornetta Deposition (Feb. 2, 2018)

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL
2 COUNTY OF YORK CIRCUIT
3 TIMOTHY W. HOWE, as Personal
Representative of the Estate
4 of WAYNE E. HOWE, deceased,
and JEANETTE HOWE, surviving
5 spouse,
6 Plaintiffs,
vs. C/A No. 2015-CP-46-03456
7
AIR & LIQUID SYSTEMS CORPORATION,
8 et al.,
9 Defendants.

10
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
11 COUNTY OF YORK FOR THE SEVENTH JUDICIAL CIRCUIT
12 Roxanne Falls, individually and
as Personal Representative of the
13 Estate of CHARLOTTE GAYE SMITH,
Deceased,
14 Plaintiff,
vs. C/A No. 2015-CP-46-02155
15
CBS CORPORATION, et al.,
16
Defendants.
17

---

18 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON FOR THE SEVENTH JUDICIAL CIRCUIT
19
JAMES CALVIN SIZEMORE,
20
Plaintiff,
21 vs. C/A No. 2016-CO-25-0440
22 BOWATER PAPER MILL, et al.,
23 Defendants.

---

24 30(b)(6) DEPOSITION OF CLEAVER-BROOKS February 2, 2018
THROUGH THE TESTIMONY OF JOHN TORNETTA 10:09 a.m.
25 Job No. 2809927

1 VERITEXT-NJ, LLC 800-567-8658
Reported by Lynn Peppey Bayer, RPR, CM
2
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3 UNION CARBIDE CORPORATION, GORMAN-RUPP COMPANY, STERLING FLUID SYSTEMS (USA) LLC IN THE HOWE CASE;
4 DANIEL INTERNATIONAL CORPORATION, FLUOR ENTERPRISES, INC., FLUOR DANIEL SERVICES CORPORATION, UNION CARBIDE
5 CORPORATION IN THE FALLS (CHARLOTTE SMITH) CASE; DANIEL INTERNATIONAL CORPORAION, FLUOR ENTERPRISES, INC.,
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18
PREVIOUSLY MARKED EXHIBITS
19
NUMBER PAGE IDENTIFIED
20
(None mentioned.)
21
22 REQUESTS
23 REQUEST PAGE LINE
24 (No requests to produce documents were made.)
25

1 (Exhibit Nos. 1 through 3 were marked.)
2 JOHN TORNETTA, called as a witness herein,
3 having been first duly sworn, was examined and
4 testified as follows:
5 EXAMINATION
6 BY MS. STONE:
7 Q Good morning, how are you?
8 A I'm good. How are you today?
9 Q I'm good. My name's Sabrina Stone and I represent
10 the plaintiffs in this case, in these cases which is
11 the Howe, Smith and Sizemore cases. Can you state
12 your full name for the record.
13 A John F. Tornetta.
14 Q Is it all right if I call you John?
15 A It absolutely is.
16 Q Okay. Because my Texas accent may mess up the Torn
17 part.
18 A That's okay.
19 MS. STONE: I just want to make sure with
20 counsel that we got our agreements on the record as
21 to one objection being good for all?
22 MS. SPARDONE: Yes, that's agreed.
23 MS. STONE: And I spoke with Joe
24 yesterday, and we have an agreement that although I
25 don't have my pro hac entered, there's no objection

1 to me taking the deposition and I also agree the
2 same for Stephanie.
3 MS. SPARDONE: That's acceptable. Thank
4 you.
5 MS. STONE: And, finally, that all
6 objections are reserved until trial except as to
7 form.
8 MS. SPARDONE: Agree.
9 BY MS. STONE:
10 Q All right, John. Sorry about that. You know you're
11 here to talk as the corporate representative for
12 Cleaver-Brooks today; is that fair?
13 A Yes, it is.
14 Q And you speak for Cleaver-Brooks?
15 MS. SPARDONE: Object to form, overbroad.
16 A Yes, I suppose, unless you ask me a question related
17 to my personal opinion, yes.
18 MS. SPARDONE: And, Counsel, I don't have
19 an actual hard copy here. I'm going to get it at
20 the break. But we do have objections to the notices
21 that I'd like to attach as -- I'll attach it at the
22 end just to keep your order in place. So he's here
23 subject to the objections that we've lodged.
24 MS. STONE: And, just for the record, the
25 objections by Cleaver-Brooks to the notices will be

1 Exhibit 9, 10 and 11.
2 MS. SPARDONE: Thank you.
3 MS. STONE: Is that correct?
4 MS. SPARDONE: We didn't go ahead and put
5 stickers on everything you ticked off because you
6 did it kind of quickly; but if that's what you have,
7 I'm fine with that.
8 MS. STONE: Okay.
9 Q The first case I want to talk with you about is the
10 Howe case. Are you aware that in all three of these
11 cases, Mr. Sizemore's case -- Ms. Smith's case and
12 Mr. Sizemore's case, they had somebody that worked at
13 Bowater?
14 A Yes, as I'm pretty sure is at least one of their
15 sites, yes.
16 Q I'm just going to make that a little clearer
17 question. You're aware that Mr. Sizemore worked at
18 Bowater?
19 A I believe so. I -- quite frankly, I didn't spend a
20 very large amount of time reviewing Mr. Sizemore's
21 testimony. But I believe there was some information
22 on Bowater in that, yes.
23 Q Are you aware that Ms. Smith's ex-husband also worked
24 at Bowater?
25 A I believe so, yes. I don't know if he worked for

1 Bowater or for a contractor, but I believe he was at
2 that site.
3 Q And you are aware that Mr. Howe also worked at
4 Bowater?
5 A Yes.
6 Q And Mr. Howe worked at Bowater from 1977 until 2008?
7 A That sounds familiar. But I certainly didn't commit
8 his testimony to memory, but it sounds proper. I
9 think it may have been with a couple of different
10 employers and then eventually the Bowater Paper Mill
11 itself. But that sounds at least close to what I
12 recollect.
13 Q And you know that there's a Cleaver -- or was a
14 Cleaver-Brooks boiler at Bowater?
15 A Yes. I think we found a small 30 horsepower Progress
16 model package boiler shipped in 1957.
17 Q And do you know where that boiler was located at
18 Bowater?
19 A Specifically on the site or what building, I couldn't
20 find anything in our records that indicated
21 specifically where it was, no.
22 Q And you said it was purchased in 1957?
23 A I know it was shipped in '57. I would have to look
24 and see if the purchase was -- you know, it could
25 have been six months before that with the actual

1 MS. SPARDONE: Object to form.
2 A We went through an awful lot of different materials.
3 But certainly gaskets when the rear -- front or rear
4 door is opened, normally the gasket is being
5 replaced. I don't know if I'd call it wearing out,
6 but it certainly is beyond -- it wouldn't be
7 something someone would normally reuse if they're
8 opening up every year.
9 When it gets to the refractory and that
10 Vee Block insulation material we were just talking
11 about, over time; however, when we're talking about a
12 boiler this small, it's much less common that those
13 types of materials are, say, wearing out on a, you
14 know, every-five-year, ten-year, whatever basis it
15 might be.
16 Q So is it fair to say it would be at least foreseeable
17 that these items would be removed and replaced?
18 MS. SPARDONE: Object to form, asked and
19 answered.
20 A At least some of them, yes.
21 BY MS. STONE:
22 Q So you talked about gaskets, they would be removed
23 and replaced. Is that correct?
24 MS. SPARDONE: Asked and answered.
25 A The ones we were talking about, absolutely, yes.

1 BY MS. STONE:
2 Q The internal insulation, would that be removed and
3 replaced?
4 MS. SPARDONE: Object to form.
5 A If the internal insulation we're talking about is
6 that Vee Block mix, that would depend upon the life
7 span of the boiler, how it was treated; and, again,
8 talking about a boiler this size and the small
9 diameter of it, very well could have gone 20 years
10 and depending on how the boiler was used no one ever
11 replaced it. I really don't have any information on
12 this one whether or not it did or didn't.
13 BY MS. STONE:
14 Q Generally on a Cleaver-Brooks boiler, it's
15 foreseeable to Cleaver-Brooks that these materials
16 would have to be removed and replaced due to wear and
17 tear or use, correct?
18 MS. SPARDONE: Object to form, asked and
19 answered.
20 A Certainly we would have expected some of those
21 materials to be replaced. But, again, I would be a
22 little careful generally because if we're using
23 generally in looking at this particular one, I don't
24 believe we would see all of them replaced on a
25 regular basis and in some cases maybe not at all. So

1 it's difficult to really generalize like that. And,
2 again, I didn't see any evidence of that in our
3 records, but we wouldn't necessarily have that in our
4 records.
5 BY MS. STONE:
6 Q So I understand the problem with the generally. What
7 in Cleaver-Brooks' opinion would not be foreseeable
8 to be removed and replaced?
9 MS. SPARDONE: Object to form, vague,
10 overbroad, compound, asked and answered.
11 A Well, I guess I think the example I gave you of the
12 Vee Block mix or the refractory in this particular
13 boiler may not. I'm not saying it wasn't. I'm just
14 saying I don't have any way to know. But knowing the
15 type of boiler this is and the size of this boiler, I
16 couldn't say for certain it was.
17 BY MS. STONE:
18 Q Okay. Anything else?
19 MS. SPARDONE: Object to form.
20 A Not that I can think of off the top of my head. As
21 we go through some of the records, we might run into
22 a material here and there that would be unlikely to
23 be.
24 BY MS. STONE:
25 Q Okay. I want to talk to you a little bit about

1 Cleaver-Brooks' record retention. Can you tell me
2 how the records are kept?
3 MS. SPARDONE: Overbroad, form.
4 A I guess it would help if I knew exactly what records
5 you're talking about first and then I could probably
6 start with that.
7 BY MS. STONE:
8 Q Okay. That was one of my questions, if there were
9 different types of records. And it's my
10 understanding that when records are searched, you
11 search to see first if a boiler was even located at a
12 location; is that correct?
13 A Yes.
14 Q And how long does it take for you to determine
15 whether a boiler was at a certain location?
16 MS. SPARDONE: Object to form.
17 A I guess it depends a great deal on the complexity of
18 the name or names I'm asked to search. But in
19 general, I -- or on average, I'd say it's probably in
20 the -- probably roughly 30 minutes per site to look
21 for it and it somewhat depends on what I find. The
22 more indications in our index cards of boilers at a
23 site for multiple boilers, the longer it takes
24 because the more commercial records I have to look at
25 to see what the model was, whether -- when it

Rec 1231

1 shipped, if the index card was correct or not, that
2 type of thing.
3 BY MS. STONE:
4 Q Okay. And then the second layer would be to
5 determine if there's internal components --
6 information on the internal components; is that fair?
7 MS. SPARDONE: Object to form.
8 A No. I guess -- and now I have a better feel for what
9 records you're looking at. So maybe I can go through
10 a little bit of what it is. Kind of using your
11 terminology, the first layer would be the index cards
12 that I just referred to. So we have a --
13 BY MS. STONE:
14 Q Okay.
15 A -- series of index cards that are kept
16 alphabetically. They are first separated into
17 categories of types, very broad types of boilers or
18 models of boilers. So our fire-tube boilers, our
19 commercial water tubes, our industrial water tubes
20 and a few other smaller categories.
21 So within each of those, they are listed
22 by -- they're physical roughly 4-by-6-inch index
23 cards and they're kept alphabetically by the job site
24 name. So when somebody says look for Bowater Paper
25 Mill or whatever other names I was given for that, I

1 would look first under B and look for Bowater.
2 If I found something, on that index card
3 is normally a city and state type thing. So if
4 there's 50 Bowater sites around the country, I would
5 then have to see if it was a particular city and
6 state that I was looking for. If I found the city
7 and state I was looking for, on that card is normally
8 a model number which gives me an idea, but not too
9 much more information than that. And then ultimately
10 a unit number of the boiler.
11 That unit number is what I would use to
12 get to what I refer to as our commercial records.
13 Those are kept on microfiche sheets that have
14 multiple images on them. That would have been --
15 back in the day of the boiler being sold in this
16 case, 1957, that would have been the folder or file
17 that the sales records and things of that sort were
18 kept.
19 So within that -- those commercial
20 records, I would verify that the job site I found on
21 the index card matches the job site in the commercial
22 records and the unit number, it gives me a little
23 more information on when it was shipped. And
24 ultimately that -- those records -- that would be
25 what I think what you referred to as the second

1 level. Those records would get me to the -- some
2 manufacturing documents or lead me to those
3 manufacturing documents that show the components and
4 bills of materials for the various assemblies that
5 were used to put together that boiler.
6 And those drawings then get me to the part
7 descriptions which is another layer, another
8 potential layer for some of them, or just the drawing
9 that shows that part. So I think that ends my
10 dissertation, I'll call it, on the specific boiler
11 records we would have.
12 Q No, and that helps a lot, and I apologize for my
13 terminology being confusing. That helps a lot. So
14 I'm going to ask you a few questions about each step.
15 The index cards, are they at all kept
16 electronically?
17 A No.
18 Q Where are they located?
19 A In my office. And just --
20 Q And you physically -- go ahead.
21 A I just wanted to add one thing. Beyond the index
22 cards -- the index cards cover a period of time from
23 roughly the first, which would be 1932-ish, through
24 the mid to late 1980s. They were still making those
25 index cards. There's also a printout of at that time

1 in the late 1980s our information off of our order
2 entry system. It's a stack of pages a couple feet
3 high, I believe. Those are also alphabetical as
4 well. So I would search that as well.
5 And then for current boilers we would look
6 in our electronic order entry system today to see if
7 there's any record of it. But those would just cover
8 boilers -- that printout would cover boilers from the
9 mid to late 1980s through roughly late '90s, early
10 2000s. And then our electronic systems today would
11 cover any boiler post the year 2000.
12 Q Are the index cards handwritten?
13 A No. They're typed.
14 Q Has Cleaver-Brooks looked into how much it would cost
15 to digitize them or get them copied electronically?
16 MS. SPARDONE: Object to form, beyond the
17 scope of the notice, irrelevant.
18 A No.
19 BY MS. STONE:
20 Q Who typed up these note cards?
21 MS. SPARDONE: Object to form.
22 BY MS. STONE:
23 Q Index cards. Let me put it that way.
24 A Probably a lot of people. It was something that was
25 ongoing for probably 60 years nearly.

1 BY MS. STONE:
2 Q Is there an index card for every single boiler that
3 was sold by Cleaver-Brooks?
4 MS. SPARDONE: Object to form.
5 A Short of the limitations I told you
6 post-1980-whatever, late '80s, I would say probably.
7 I can't say I've ever looked at every one to verify
8 that every one's there and I'm not sure how I could
9 tell that it wasn't. So I would say yes.
10 BY MS. STONE:
11 Q So you believe Cleaver-Brooks' records related to
12 where those boilers were located is complete?
13 A As complete as they could be, yes. I -- we -- if we
14 were told a boiler was moved from one place to
15 another, we actually produced -- at the time, if it
16 was back in the times of making the index cards, they
17 would have typed up a second index card and placed
18 that alphabetically where the second job name would
19 be or if the job name changed.
20 I've seen many, many examples of that in
21 the more than 15 years I've been doing this. So it
22 was very common for someone to have said boiler
23 number X moved from location Z to location Y and we
24 made that change, we kept the old card as reference
25 and we added a new card in every one I've come

1 across.
2 Q So is it your position that if Cleaver-Brooks does
3 not have an index card for a specific site, there was
4 no Cleaver-Brooks boiler there?
5 MS. SPARDONE: Object to form.
6 A I don't believe I could ever take that position with
7 certainty. Certainly I could say that we don't have
8 record of it. But I think I would -- or if someone
9 else was looking at it, they would look at other
10 avenues to see if there's other things that could say
11 that one way or the other.
12 BY MS. STONE:
13 Q Okay. So I'm going to move to the next level, the
14 unit numbers, related to the unit numbers which you
15 called the commercial records, right?
16 A Correct.
17 Q How long would it take to do a search, let's say in
18 this case you found that there was a Cleaver-Brooks
19 boiler at Bowater. How long does it take you to find
20 a commercial record related to that unit number?
21 MS. SPARDONE: Object to form.
22 A If I have the unit number, I can go right to the
23 microfiche. The microfiche jackets, I'll call them,
24 are kept somewhat segregated by product type similar
25 to the index cards, but not exact. So they're kept

1 like that but they are kept by numbers. So if
2 it's -- I don't remember the actual unit number in
3 this case, but I'll look at it. It was 0-18343 and I
4 knew it was a Progress model boiler, so I know that's
5 in the fire-tube microfiche. So I would have gone to
6 the fire-tube microfiche and looked at number 18343.
7 Q So how long would that generally take you?
8 A The actual finding the fiche, relatively quickly.
9 It's literally going in the drawer and pulling out
10 the fiche. Going through the records which I would
11 need to do to verify the job name and look for the
12 ship date and the model number and things of that
13 sort, that's -- depending a lot on the size of the
14 records, that can take anywhere from, you know, ten
15 minutes to an hour depending on how many images are
16 on each sheet of microfiche -- or how many sheets of
17 microfiche are related to that unit number.
18 In this particular case, it looks like it
19 was a fairly small amount because I see the Bates
20 numbers go to about 25. So I could have gone through
21 that in, you know, probably 10 or 15 minutes to see
22 what was inside it. What was inside the records I
23 should say.
24 Q So I want to go back and clarify one thing. You said
25 if you have the unit numbers, it's relatively quickly

1 to find, correct?
2 A Correct.
3 Q The unit number is contained on the index cards; is
4 that correct?
5 A Yes.
6 Q So if you find an index card, you're going to have
7 the unit number, it would be rather quick to at least
8 locate the commercial records?
9 A Normally, yes. I was just saying if the unit number
10 is there, because occasionally people say to me can
11 you go find the records for this boiler and it's a
12 different name than what we may have in our index
13 cards for one reason or another and I don't have a
14 way to search the commercial records by job name or
15 location or anything like that. They are just kept
16 by number.
17 Q Okay. The manufacturing document, how do you locate
18 those?
19 A Depends a good bit on the year and sometimes the
20 product, but normally there are references within the
21 commercial records, and those references may be
22 something as vague, I'll call it, as just the model
23 number. But in other cases there are references to
24 some higher level drawings within those commercial
25 records that get me to what I'll call the initial or

1 A I don't believe so, no. Certainly -- again,
2 certainly not before or during the time periods that
3 are called out at issue here.
4 BY MS. STONE:
5 Q When you say "I don't believe so," it's that you
6 didn't find any records but you just don't remember
7 the search? I'm just trying to see why you say "I
8 don't believe so."
9 MS. SPARDONE: Object to form.
10 DEFENSE COUNSEL: Object to form.
11 A I'm only saying "believe so" because I don't have a
12 perfect recollection of what I found when I searched.
13 However, I know for certain we did not find anything
14 before or during the time periods we're talking about
15 here because if we had, we would have produced that
16 information, as we did for Bowater.
17 BY MS. STONE:
18 Q And the last one is Bowater, and that's where we
19 found some records; correct?
20 A Yes. That 1957 boiler we were talking about earlier.
21 Q So Cleaver-Brooks' records verifies that there is a
22 Cleaver-Brooks boiler at Bowater?
23 MS. SPARDONE: Object to form.
24 A I guess I'd say our records verify that we shipped a
25 boiler there and it was started up. It certainly

1 doesn't verify how long it was there, although I
2 think there's some records that show some interaction
3 in the '60s. But beyond that, I couldn't say when it
4 was there or when it wasn't there.
5 BY MS. STONE:
6 Q And you can confirm that asbestos was used on this
7 specific boiler that was shipped to Bowater?
8 MS. SPARDONE: Object to form. Did you
9 say on? Was that the question?
10 MS. STONE: Yes.
11 MS. SPARDONE: Object to form.
12 A Certainly there were components inside the boiler;
13 but as we talked about earlier, when we're talking
14 about on the outside of the boiler, I would have to
15 say no.
16 BY MS. STONE:
17 Q So you can confirm for me that asbestos-containing
18 products were used on the inside of this boiler?
19 A When it was shipped, I believe some of the components
20 had asbestos as part of the makeup of the component,
21 yes.
22 Q Do the documents that have been produced in this case
23 that we have marked as -- for the record, I'll go
24 through it more slowly -- Exhibit 4 will be BPM000001
25 through BPM000025.

1 MS. SPARDONE: Okay. Why don't you just
2 hang on so the court reporter can stop typing and we
3 can mark these. Okay?
4 MS. STONE: Yeah, no, that's fine.
5 (Exhibit No. 4 was marked.)
6 MS. STONE: Exhibit 5 will be BPM26
7 through 44.
8 (Exhibit No. 5 was marked.)
9 MS. STONE: Exhibit 6 will be BPM45 to 61.
10 (Exhibit No. 6 was marked.)
11 MS. SPARDONE: Do you want to mark the
12 manual now too?
13 MS. STONE: Yes. I was waiting 'til you
14 all were ready. Exhibit 7 will be CB_MAN_HOWE 1
15 through 50.
16 (Exhibit No. 7 was marked.)
17 BY MS. STONE:
18 Q Other than those documents that we've just marked as
19 Exhibits 4 through 7, are there any other documents
20 in Cleaver-Brooks' possession related specifically to
21 the boiler at Bowater?
22 MS. SPARDONE: Object to form. He did
23 testify about the index card. I don't know if you
24 want to call that as related. But there is that
25 particular document that isn't included.

1 A These are the --
2 MS. STONE: The index card itself is not
3 included?
4 MS. SPARDONE: Correct.
5 A So other than that, yes -- or no, there are not any
6 more documents related to the Progress model whatever
7 unit number we're dealing with, unit number 0-18343
8 that we show shipping to Bowater's Carolina
9 corporation, Catawba, South Carolina.
10 BY MS. STONE:
11 Q Did you know that other documents were produced
12 yesterday in response to plaintiffs' discovery
13 requests?
14 A I knew they were produced yesterday. I wasn't sure
15 what they were produced in response to. But
16 certainly I knew they were produced, some documents,
17 yesterday.
18 Q Did you know that there was a hearing where
19 Cleaver-Brooks' attorneys represented to the court
20 that we would be getting all records responsive to
21 our discovery requests on January 24th?
22 MS. SPARDONE: Object to form.
23 DEFENSE COUNSEL: Object to the form.
24 A No. I normally don't get involved in hearings and
25 things of that sort, so I don't believe I knew that

1 there was any such hearing.
2 BY MS. STONE:
3 Q And the judge also ordered other defendants to
4 provide the documents by Monday, January 29th. Did
5 you know that?
6 MS. SPARDONE: Object to the form.
7 DEFENSE COUNSEL: Object to form.
8 A No.
9 BY MS. STONE:
10 Q But January 31st is after both January 24th and 29th,
11 correct?
12 MS. SPARDONE: Object to form,
13 argumentative.
14 A Certainly if we're talking about the same year, yes.
15 Sorry.
16 MS. SPARDONE: That didn't even occur to
17 me.
18 MS. STONE: Just for the record, it's
19 plaintiffs' position that that is a violation of the
20 court's order and we'll likely be seeking sanctions
21 for failure to produce those records prior to the
22 deadlines provided by the court.
23 MR. THOENSEN: And let me just put
24 something on the record. This is Joe Thoensen on
25 behalf of Cleaver-Brooks. And we respectfully

1 disagree with plaintiffs' characterization of what
2 was represented or what was not represented. And we
3 will deal with that at a later time. This is not
4 the forum to debate that.
5 MS. STONE: Thanks, Joe.
6 MS. SPARDONE: We've been going --
7 Sabrina, we've been going for just about an hour. I
8 don't know if you -- we typically like to break
9 after about an hour. But if you're not at a good
10 stopping point, we can go a few more minutes.
11 MS. STONE: No, no. That's fine. I was
12 about to get into the document, so this is the
13 perfect time.
14 MS. SPARDONE: All right. Should we just
15 take ten?
16 MS. STONE: Yeah, that's fine.
17 (Recess taken from 11:06 to 11:17 a.m.)
18 BY MS. STONE:
19 Q All right, John. We just took a quick break. And I
20 would like for you to pull up Exhibit 4, which is
21 BPM000001 to BPM000025.
22 A Okay. I have that in front of me.
23 Q And what would these documents fall under under the
24 categories we were just talking about earlier?
25 A This would be what I would refer to as the commercial

1 records which are the ones that were on the
2 microfiche jackets, the multiple images in one jacket
3 type microfiche.
4 Q And this is really just specifically related to the
5 sale and the start of the boiler; is that fair?
6 A For the most part, yeah. I think there's a couple of
7 things, looks like a part or two was shipped to them
8 at some time in the '60s. But this is the -- would
9 have been that second level of documents we were
10 talking about.
11 Q And these records, once the index card is located, is
12 pretty quick to find; is that correct?
13 A Yes. I would have gone to the microfiche drawers
14 that are the fire-tube records and gone to unit
15 number 0-18343.
16 Q But there's nothing about the components in the
17 boiler, the type of insulation used, correct?
18 MS. SPARDONE: Object to form.
19 A In this particular one, not much in detail.
20 Sometimes, depending on our records, there can be.
21 But it does give some detail on some of the
22 components, some of the electrical components, things
23 of that sort. But from a potential
24 asbestos-containing component, no. It does call out
25 that it was to be insulated and lagged, sheet metal

1 lagged, on the purchase order.
2 MS. SPARDONE: What number is that?
3 A I'm sorry, I was looking at BPM19. So there is a
4 little bit of information on that which this looks
5 like the purchase order from the actual purchaser of
6 the boiler to Cleaver-Brooks.
7 BY MS. STONE:
8 Q Okay. I want you to start with the very first page,
9 BPM000001.
10 A Okay.
11 Q And it indicates Bowater's Carolina corporation; is
12 that correct?
13 A Yes.
14 Q And right beside it it says 15 pounds. What does
15 that 15 pounds mean?
16 A That's the abbreviation that's normally used to show
17 the maximum working pressure of the boiler is 15
18 pounds per square inch. So it would be a 15 psi
19 boiler.
20 Q Okay. The next line is Catawba, South Carolina; is
21 that correct?
22 A Correct.
23 Q And then it has P723-30S. Is that the model number?
24 A Yes.
25 Q And what other information is contained on page 1?

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1 A The next line on that label you've been reading off
2 of is I believe what was the sales order number,
3 which is the SO-P-1170. And then on that same line
4 on the right-hand side is the O-18343 which is the
5 unit number we talked about before. And then I
6 believe the next line is the -- looks like CO or
7 OO-2023-220, that looks to be the purchase order
8 number. If you look back at BPM19, the 2023-220 is
9 the same number as the purchase order number on the
10 Crane Co. document for purchasing the boiler.
11 Q Do you know why a copy of the index card wasn't
12 produced in this case?
13 A Quite frankly, it's something we normally don't
14 produce in any of the cases. It's just something I
15 looked at to see whether or not there were records or
16 not and got me to these records. And it has all the
17 same information on it that is within these
18 commercial records. So it doesn't add anything to
19 the information I guess is the reason I would assume
20 we don't.
21 Q And then the first line on the folder, I can't really
22 make out what it's saying, but it has a date of 1964.
23 Do you see that?
24 A Yes.
25 Q What is that 1964 referring to if it was shipped in

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1 1957?
2 A Well, the -- what we're actually looking at here in
3 this image is a picture of the -- what was at one
4 time I'll call it the manila file folder. So that's
5 what you're seeing in this image. And written on the
6 front manila file folder, it appears to me it says
7 file cleared; and then there's a line to fill in and
8 it gives a date in 1964. And then the second line
9 says file cleared as well and gives some initials and
10 a date looks like in 1975.
11 And I believe what that was, from my
12 looking at these records over quite a long period of
13 time now, occasionally someone would go through
14 the -- what that time was the hard copy job file and
15 they would make sure that there weren't duplicates.
16 So let's say if there's a letter in it that someone
17 wrote and it copied someone else at Cleaver-Brooks,
18 both people, because the job files where everything
19 for a particular boiler ended up, both people might
20 have put the same copy of the letter in the file. So
21 someone would occasionally go through that and make
22 sure there weren't duplicates of things in there
23 because, quite frankly, they were looking at space
24 when it was on paper.
25 I think the 1975 one was related to the

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1 time period where they started to microfilm the
2 actual hard copies of the files; so they would have
3 gone through the hard copy and made sure there wasn't
4 duplicate information before they actually went
5 through the filming process.
6 Q So the only thing removed from the folders would have
7 been duplicates; is that correct?
8 A Correct.
9 Q So if you can turn with me to BPM000002.
10 A Okay.
11 Q What is this document?
12 A It looks to be a handwritten note by somebody
13 referencing a Danny Syfrett, I believe, talking about
14 this boiler. And it appeared to me, just based on
15 what I see written there, it was somebody quoting or
16 giving this gentleman in looks like '73 some
17 information on converting the boiler's burner to burn
18 number 2 oil and natural gas. When the boiler was
19 shipped, it was there to burn just natural gas.
20 Q So in '73 they were converting it. Do you know why
21 they would do that?
22 A No. I can kind of speculate a little bit, I guess.
23 And I don't know that it shows that they did convert
24 it. I guess this is just somebody getting a number,
25 as in a price, for doing it. I didn't see any actual

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1 parts order of any type that said they did it, at
2 least from Cleaver-Brooks. But normally when
3 somebody is adding a different fuel or an additional
4 fuel to what it was originally designed for, they're
5 doing it because they now have access to the second
6 fuel and they want to be able to burn either/or.
7 Q But there is nothing on this page that tells you
8 where the boiler was located at Bowater; is that
9 fair?
10 A Correct. I did not see anything, actually, in any of
11 the records that gave me a good indication of where
12 physically it was located at Bowater.
13 Q And then the next page, which is BPM3, that's the
14 same type of document, correct?
15 A Yes. It looks like a different price for a different
16 option related to that conversion to a combination
17 number 2 oil and gas.
18 Q And it's still the same model number and it's the
19 same boiler?
20 A Yes.
21 Q Will you turn with me to BPM5.
22 A Okay.
23 Q And this is a remittance request?
24 A Correct.
25 Q In 1958?

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1 A Yes. It looks like when you look at the signature
2 above the field representative signature, there's a
3 by, and it looks like the last name could be Jones.
4 Q And the next page is included with this field report,
5 correct, BPM9?
6 A Yes.
7 Q Has Cleaver-Brooks tried to find out from Daniel
8 where the boiler was located?
9 MS. SPARDONE: Object to form.
10 A I -- not that I'm aware of. Nothing I've done, no.
11 BY MS. STONE:
12 Q Does Cleaver-Brooks still have any sort of business
13 relationship with Daniel or for Daniel?
14 MS. SPARDONE: Object to form, overbroad.
15 DEFENSE COUNSEL: Object to form.
16 A I'm not sure I could say for certain. Fluor Daniel
17 is a large company. It would not surprise me that we
18 sell them equipment occasionally. But I don't know
19 that for certain.
20 BY MS. STONE:
21 Q Do you know why you haven't asked Daniel to determine
22 where the location of this boiler was?
23 MS. SPARDONE: Object to form, assumes
24 facts.
25 A I suppose it's because my focus is on what's in our

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1 records. I leave other people's records to others to
2 find and look and ask about.
3 BY MS. STONE:
4 Q But if Cleaver-Brooks say that it doubts that the
5 boiler was in the powerhouse, wouldn't it be
6 reasonable to try to find evidence of where it was
7 actually located?
8 MS. SPARDONE: Object to form,
9 argumentative, beyond the scope, assumes facts.
10 A Again, that's not normally something I get involved
11 in. Whether others have or not I couldn't tell you.
12 BY MS. STONE:
13 Q Okay. And so these notes that we're looking at at
14 BPM9, they are likely written by Mr. Tiner, correct?
15 A It looks that way, and that was -- in my experience
16 in looking at these, those are -- that's a sheet
17 that's usually used for any type of narrative report
18 somebody decides they want to document on a site.
19 Q And if this boiler is supposed to be a small boiler,
20 why does it take two or three weeks to be properly
21 fired?
22 MS. SPARDONE: Object to form, assumes
23 facts, argumentative.
24 A I'm not sure what you're talking about the two or
25 three weeks to be properly fired.

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1 BY MS. STONE:
2 Q I'm sorry, I should have directed you to that. The
3 last two lines on these handwritten notes.
4 A Oh, where it says this unit will be properly fired on
5 natural gas 10,000 Btu in about two or three weeks.
6 Is that what you're talking about?
7 Q Yes, sir.
8 DEFENSE COUNSEL: Form.
9 BY MS. STONE:
10 Q Yes, sir.
11 MS. SPARDONE: Also calls for speculation.
12 A In reading the whole context of this, it appears as
13 though -- it actually doesn't appear, he says it up
14 there -- that the boiler is actually running
15 currently when he was writing this or just as he --
16 prior to him starting this up or with him starting
17 this up, on what they -- he wrote here as LP gas
18 which is propane gas. So it was actually running on
19 bottles of gas, which certainly can tell you the size
20 of the boiler. And what I believe he's saying there
21 is they won't have the actual gas lines, natural gas
22 lines to the facility for two to three weeks. And
23 once that is, they will switch it over to natural
24 gas. That's the way I read that.
25 BY MS. STONE:

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1 Q All right. And if you could turn with me to BPM15.
2 A Okay.
3 Q Is this an invoice?
4 A Yes. Or a copy of an invoice, yes.
5 Q So Cleaver-Brooks is selling to Applied Engineering,
6 correct?
7 A Correct.
8 Q But shipping it to Daniel Construction, correct?
9 A That's what it shows there, yes, at the Bowater
10 plant.
11 Q And it's for the steam boiler, correct?
12 A Yes.
13 Q And are -- is this an invoice for a control or for a
14 pump?
15 A For a control that controls the pump and is the low
16 water cutoff. It's an electrical switch.
17 Q Did Cleaver-Brooks sell pumps for its boilers as
18 well?
19 MS. SPARDONE: Object to form.
20 A In this particular case, I didn't see any indication
21 of us supplying a pump. And the type of pump we're
22 talking about in relation to this control that
23 controls it is a feed water pump. Occasionally
24 someone would purchase a feed water system from us
25 that could have included a pump.

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1 A Okay.
2 Q This -- on paragraph G, I guess, it talks about
3 removing the firebrick and the refractory. Is that
4 correct?
5 MS. SPARDONE: Object to form.
6 A Well, it's talking about refractory maintenance.
7 BY MS. STONE:
8 Q Which requires -- hold on. I just switched pages on
9 us. It says, "To renew the fire-tube lining
10 consisting of five pieces of super duty firebrick and
11 insulating refractory, first open front and enter
12 door and remove old refractory. Then replace new as
13 follows."
14 A Yep, that's what it says. Those are the materials we
15 were talking about earlier on the drawings.
16 Q And that includes the Vee Block mix asbestos, they
17 would have to remove that?
18 A No. This is specifically talking about the -- what
19 they call the fire-tube lining which is the picture
20 down below on Howe 31 which is talking about that
21 insulating refractory material we talked about that I
22 didn't know what it was, what it consisted of, as
23 well as the refractory tile which was the
24 ceramic-like material. It's not really -- that
25 particular part is not talking about the Vee Block.

1 Q If you could look at figure 4.3, the plate head front
2 refractory.
3 A Yes. On the next page, on Howe 32?
4 Q Yes. And it identifies a Vee Block mix?
5 A Correct.
6 Q Would that be removed?
7 MS. SPARDONE: Object to form.
8 A If it was damaged in any way, this is what we were
9 talking about a little earlier where the -- it would
10 depend a great deal on how the boiler was operated,
11 what it was used for, how often it was used. Whether
12 or not that would have ever needed replacing or not I
13 don't know.
14 Q Okay. And Cleaver-Brooks doesn't have any other
15 records related to this specific boiler that it has
16 not produced, correct?
17 MS. SPARDONE: Object to form, asked and
18 answered.
19 A Correct. In the commercial records we produced of
20 all that. I guess I would be a little careful in
21 that we certainly did not produce drawings for every
22 nut and bolt and piece of steel on the boiler. So
23 there would be more drawings, but nothing related to
24 an asbestos-containing component, potential
25 asbestos-containing component.

1 BY MS. STONE:
2 Q And you said you read Mr. Grant's testimony, right?
3 A Yes. I can't say I committed it to memory, but I
4 read it.
5 Q But he worked with Mr. Sizemore, correct? I'm sorry,
6 Mr. Howe.
7 A They're easy to mix up, aren't they?
8 Q Yes, sir.
9 A I -- yes, Mr. Grant was the Wayne Grant, correct? Is
10 that the one I was thinking of earlier?
11 Q Yes. Yes, it is.
12 A Yes, I believe he said he worked with Mr. Howe.
13 Q And he identified a Cleaver-Brooks boiler at Celanese
14 as well, correct?
15 DEFENSE COUNSEL: Object to the form.
16 MS. SPARDONE: Object to form as well.
17 A Again, I don't know that I could say I recall that
18 specifically. I didn't remember a lot of reference
19 to Cleaver-Brooks in most of it. I would have to
20 look at the testimony again.
21 BY MS. STONE:
22 Q Let me pull it up. Well, before we get into his
23 testimony, it's your testimony earlier that you
24 didn't find any boilers at Celanese, correct?
25 MS. SPARDONE: Object to form.

1 DEFENSE COUNSEL: Object to form.
2 MS. SPARDONE: Which location are you
3 asking about? The location that's in the notice?
4 Either -- there are lots of Celanese locations, you
5 know, in these three cases, so I just want to make
6 sure we're clear.
7 MS. STONE: Yes. Give me a second. Just
8 a second. I'm trying to find it in the depo so I
9 can point it to him.
10 A And did you want me to answer your last question
11 while you're doing that?
12 Q Yes.
13 A The answer is no, I did not find a boiler at those.
14 And I think before when we were talking, I'm still
15 not certain that there was possibly something after
16 the time frame because I didn't commit this to
17 memory, but I don't believe there was.
18 Q Sorry. I'm trying to locate the specific passage. I
19 can tell you on page -- and this is the Wayne Grant
20 testimony -- 89.
21 MS. STONE: Wayne Grant?
22 MS. SPARDONE: Yes.
23 DEFENSE COUNSEL: Which volume are you
24 referring to?
25 MS. STONE: I didn't think there was more

1 than one volume of Wayne Grant. It was conducted
2 Tuesday, November 22nd, 2016.
3 A I thought I remembered a couple volumes of
4 Mr. Grant's testimony or -- again, it tends to blend
5 together.
6 Q No, that's fine. For the two Celanese locations in
7 the notice related to Howe, you didn't locate any
8 boilers at those two locations?
9 DEFENSE COUNSEL: Object to form, asked
10 and answered.
11 MS. SPARDONE: Object to form.
12 A Correct. I think we looked under the --
13 MR. THOENSEN: Sabrina, I'm --
14 MS. STONE: I'm sorry?
15 MR THOENSEN: Sabrina, I'm sorry to
16 interrupt. This is Joe Thoensen. There are two
17 volumes of Wayne Grant's testimony.
18 MS. STONE: Oh, I apologize.
19 MR. THOENSEN: No, it's okay. I just
20 wanted to make sure everyone's clear. The second
21 volume was taken on December the 1st.
22 MS. STONE: So we're talking volume one.
23 MR. THOENSEN: I think you're talking
24 about volume one.
25 MS. STONE: Yes.

1 A And to answer the question, no, I did not find any
2 shipments under Celanese in I think it's Rock Hill,
3 South Carolina, or Narrows, Virginia.
4 BY MS. STONE:
5 Q Okay. Related to the Howe case, do you have any
6 issue other than what we've talked about previously
7 with the testimony related to Cleaver-Brooks in this
8 case?
9 MS. SPARDONE: Object to form, overbroad,
10 vague.
11 A Well, I guess, if I remember correctly, there wasn't
12 any testimony by Mr. Howe about Cleaver-Brooks. But
13 if -- and he talked it seemed like a good bit and
14 others talked a good bit about the powerhouse
15 boilers, the multi-story powerhouse boilers that have
16 precipitators and things of that sort. If it's
17 believed that those were Cleaver-Brooks boilers I
18 would have an issue with it. But other than that, I
19 can't think of any other than what you may be talking
20 about with Mr. Grant, but I don't think that's -- I
21 think you're talking about a different site.
22 Q But we don't have any documentation to show where the
23 Cleaver-Brooks boiler was at Bowater?
24 MS. SPARDONE: Asked and answered.
25 A I think what I said was the general testimony about

1 boilers at the Bowater site by I think all the people
2 who were deposed or testimony was related to the
3 large powerhouse boilers. And, quite frankly, our
4 boiler being in a powerhouse -- this particular
5 boiler, a 15-pound steam 30 horsepower boiler of that
6 size being in a powerhouse for any other reason would
7 be highly, highly unusual because there's steam
8 there. Typically a boiler of that type in a location
9 like that is going to be used somewhere in a remote
10 building that they couldn't get steam from the
11 powerhouse to in an efficient way, so they put this
12 tiny little boiler in.
13 BY MS. STONE:
14 Q Do you have an opinion as to where it was located in
15 the plant?
16 A I think that's what I just gave you. I -- my opinion
17 would be it being in the powerhouse would be highly,
18 highly unlikely. I guess we could ask the Bowater
19 people if they have any testimony about that.
20 Q Have you ever been to Bowater?
21 A I don't believe so. I don't recall ever being in
22 Bowater in my career with Cleaver-Brooks.
23 Q There was some discussion earlier about -- I called
24 them boiler registries, but they're site inspections.
25 Did you have a chance to look at those?

1 A I don't believe so, no.
2 Q Okay.
3 A It wasn't anything that was in our records, I don't
4 believe.
5 MS. SPARDONE: Yeah, Sabrina, this is
6 Stephanie. We have a set of what Joe produced to
7 you. He, as he said, has not looked at them. I
8 don't know if you feel the need to ask him any
9 questions; but if you do, then he's going to have to
10 take some time to look at these to answer.
11 MS. STONE: No, that's fine. I just --
12 that's fine.
13 MS. SPARDONE: Did you still want to
14 attach them as an exhibit or are we not doing that?
15 MS. STONE: No, I still want to attach
16 them as an exhibit and, just be clear, what we're
17 attaching as Exhibit 8 is documents that were
18 provided to plaintiffs by representatives of
19 Cleaver-Brooks and the witness has not reviewed
20 these documents.
21 (Exhibit No. 8 was marked.)
22 Q Do you know anything about Bowater's knowledge of the
23 hazards of asbestos?
24 A I don't believe so. I don't recall, there may have
25 been some discussion in the testimony I read about --

Exhibit 9 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

John Tornetta Deposition (Mar. 6, 2018)

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK FOR THE SIXTEENTH JUDICIAL
2 CIRCUIT
TIMOTHY W. HOWE, as Personal
3 Representative of the Estate
of WAYNE E. HOWE, deceased,
4 and JEANETTE HOWE, surviving
spouse,
5 Plaintiffs,
vs. C/A No. 2015-CP-46-03456
6
AIR & LIQUID SYSTEMS CORPORATION,
7 et al.,
Defendants
8
---
9 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK FOR THE SEVENTH JUDICIAL CIRCUIT
10
ROXANNE FALLS, Individually and
11 as Personal Representative of the
Estate of CHARLOTTE GAYE SMITH,
12 Deceased,
Plaintiff,
13
vs. C/A No. 2015-CP-46-02155
14
CBS CORPORATION, et al.,
15
Defendants.
16
---
17 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON FOR THE SEVENTH JUDICIAL CIRCUIT
18
JAMES CALVIN SIZEMORE,
19
Plaintiff,
20 vs. C/A No. 2016-CO-25-0440
21 BOWATER PAPER MILL, et al.,
22 Defendants.
23

30(b)(6) DEPOSITION OF CLEAVER-BROOKS March 6, 2018
24 THROUGH THE TESTIMONY OF JOHN TORNETTA 9:51 a.m.
VOLUME 2 Job No. 2835056
25

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1 PROCEEDINGS
2 THE VIDEOGRAPHER: We're on the record.
3 Today's date is March 6, 2018. The time is 9:51.
4 JOHN TORNETTA,
5 having been first duly sworn, testified as follows:
6 EXAMINATION
7 BY MR. BRALY:
8 Q. Good morning.
9 A. Good morning.
10 Q. My name is Ben Braly. You are
11 Mr. Tornetta, correct?
12 A. I am, yes.
13 Q. Are you still speaking as Cleaver-Brooks'
14 corporate representative --
15 A. Yes.
16 Q. -- for the lawsuits entitled Howe,
17 Sizemore, and Smith?
18 A. Yes.
19 Q. Or Falls, depending on how you look at the
20 caption on that.
21 You are rejoining us from a deposition
22 that was taken on February 2nd of this year,
23 correct?
24 A. I think it was actually February 1st, but
25 I know there's been some confusion with that, but --

1 I'm pretty sure it was the 1st, but --
2 Q. Okay.
3 A. 1st or 2nd. I was just saying.
4 Q. 1st or 2nd. That's --
5 MS. SPARDONE: I think the rough
6 transcript had the wrong date on it, so --
7 MR. BRALY: Okay. I --
8 MS. SPARDONE: -- if you were looking at
9 that --
10 MR. BRALY: I'm looking at something that
11 says February 2nd. I don't care if it was the 1st
12 or 2nd.
13 MS. SPARDONE: He's here again.
14 BY MR. BRALY:
15 Q. Early February.
16 A. Correct.
17 (Exhibits 12, 13, 14 and 15 marked)
18 Q. I have marked as exhibits the notices of
19 deposition. Number 12 will be the Howe transcript
20 or the deposition notice which is the plaintiff's
21 fourth amended. Exhibit 13 will be the Sizemore
22 second amended notice of Cleaver-Brooks. And 14
23 will be the Falls or Smith case third amended notice
24 of deposition of Cleaver-Brooks.
25 Did you happen to see these?

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1 MS. SPARDONE: Just before he answers,
2 just so the record's clear, these were served on
3 March the 5th, I believe, or the 4th, and
4 Cleaver-Brooks is reincorporating and reasserting
5 all the objections that it had previously lodged to
6 the previous notices. And I think you'll note that
7 there are some discrepancies in the current notices
8 versus the last notices, the last set of notices, so
9 just alerting you to that fact. But we're just for
10 the record making sure that our objections are
11 reasserted, reincorporated.
12 BY MR. BRALY:
13 Q. Have you seen these?
14 A. I think I've seen them. I didn't spend a
15 lot of time looking through those because I presumed
16 they were basically the same as the notices I had
17 seen prior to either the 1st or the 2nd of February.
18 Q. Okay.
19 A. With a different date, I should say.
20 Q. I show that before the February of this
21 year deposition that Cleaver-Brooks had produced
22 some 60 pages or so of records related to the
23 Bowater paper mill. Do you understand that to be
24 the case?
25 A. Not sure sitting here without them in

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1 front of me I could verify the number, but certainly
2 we had produced our commercial records and some
3 drawings and parts descriptions related to the
4 Bowater facility, yes.
5 MS. SPARDONE: And, Counsel, just to
6 interject, Cleaver-Brooks had also produced some
7 other corporate knowledge corporate documents --
8 MR. BRALY: I'm getting to that.
9 MS. SPARDONE: -- prior to -- oh, I'm
10 sorry. I thought -- I didn't want it to --
11 MR. BRALY: I'm getting there.
12 MS. SPARDONE: -- be construed that those
13 were the only documents.
14 BY MR. BRALY:
15 Q. Prior to the first time you gave a
16 deposition in this case, it is correct that there
17 were documents produced, about 61 in total number,
18 related to the Bowater paper facility, correct?
19 A. That sounds like it could be the number.
20 I certainly don't remember the number of documents,
21 but that would make sense for the commercial records
22 we produced and the drawings we produced related to
23 that boiler.
24 Q. Okay. In addition, on January 31st there
25 was a production of what I'm just going to refer to

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1 as corporate documents, documents related to safety
2 policies, Cleaver-Brooks' -- how would you classify
3 this -- like material safety data sheets, things of
4 that nature, things that are somewhat more general
5 in nature about Cleaver-Brooks' overall role in
6 utilizing asbestos in boilers.
7 MS. SPARDONE: Object to form.
8 A. Yes, I know there were a series of
9 documents produced prior, just prior to the
10 deposition related to general knowledge of the use
11 of asbestos.
12 BY MR. BRALY:
13 Q. Okay. Included in that production were a
14 set of documents that were produced with the Bates
15 label HOWE_SMITH_SIZEMORE_CB(WAU) 130 through 135,
16 six documents. And I could show these to you if you
17 would like.
18 A. Okay.
19 Q. These are six documents that I believe are
20 presumably being used I think --
21 THE WITNESS: Might have them if it's
22 easier.
23 MS. SPARDONE: 130 to 135?
24 MR. BRALY: Right.
25 MS. SPARDONE: I have a extra for you.

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1 MR. BRALY: I've got them right here so
2 I'll just --
3 MS. SPARDONE: Okay.
4 BY MR. BRALY:
5 Q. Take your time.
6 A. These certainly ring a bell. I've looked
7 at a lot of documents, but --
8 Q. Sure.
9 A. -- certainly these ring a bell for ones
10 that I've looked at in the past.
11 Q. Okay. Now, these documents, the earliest
12 date on any of these documents appears to be
13 March 30th or March 23 of 1984. I'm sorry,
14 March 14th of 1984. Take your time.
15 A. I don't see a March date. I do see --
16 Q. I'm sorry.
17 A. -- some in '84.
18 Q. What am I saying?
19 A. Looks like September.
20 Q. I don't know why -- I'm saying March
21 because we're in March right now.
22 A. Okay.
23 Q. August 14th of 1984. I think you'll find
24 that on 131.
25 A. Thank you. Oh, yeah, the purchase order

1 date. I was --
2 Q. Right.
3 A. -- looking at the invoice date, but the
4 purchase order date was August of '84, yes.
5 Q. These documents do not specifically relate
6 to any of these three cases insofar as these are
7 documents that were not pulled specifically for this
8 case, but rather these are documents that are part
9 of a Cleaver-Brooks production that happens commonly
10 in asbestos-related cases. Is that fair?
11 MS. SPARDONE: Object to form.
12 A. Yeah, these are documents related more in
13 general specifically, I think, to the request about
14 any warnings that we provided with a product or with
15 documents with a product. And these are actually
16 related to -- or not related to boilers. They're
17 related to some of the water technologies equipment
18 that was another division of the company.
19 BY MR. BRALY:
20 Q. Okay. In these invoices there is a
21 statement related to asbestos gaskets that are being
22 supplied that states -- well, one of them
23 specifically says asbestos gaskets must be
24 individually packaged in permanently sealed plastic
25 containers and tagged "Caution: Contains asbestos

1 fibers. Avoid breathing dust. Breathing asbestos
2 dust may cause serious bodily harm." True?
3 A. Yes, that's what it says.
4 Q. Is the earliest example of a caution or
5 warning attached to an invoice that you can find
6 this document dated August 14th of 1984?
7 A. Yes. As far as I know, this is the first
8 one we found. And I would just correct slightly. I
9 know it's only a month, but the actual document date
10 is technically September of '84 because that's the
11 invoice date. The purchase order date for that
12 product that was being shipped was August.
13 Q. Okay. So to the best of Cleaver-Brooks'
14 knowledge, the first example of a warning or caution
15 related to asbestos-containing gasket material that
16 was ever provided by any division of Cleaver-Brooks
17 is from September of 1984?
18 MS. SPARDONE: Object to form.
19 A. That's what we found, yes.
20 BY MR. BRALY:
21 Q. And as of September of 1984 going into
22 1985, Cleaver-Brooks is still supplying
23 asbestos-containing gasket material to customers?
24 MS. SPARDONE: Object to form.
25 A. It appears in this particular case, yes.

1 MR. BRALY: And let's go ahead since
2 you -- since you do have that there, let's go ahead
3 and mark that as 16 just so we have a record of it.
4 (Exhibit 16 marked)
5 BY MR. BRALY:
6 Q. So the document I was just showing you is
7 marked as Exhibit 16. Exhibit 15, I'm going to show
8 this to you, are Cleaver-Brooks' answers and
9 objections to plaintiff's standard interrogatories
10 and request for production of documents. And this
11 was produced to us --
12 MS. SPARDONE: Which case?
13 BY MR. BRALY:
14 Q. This is marked as Sizemore. This is dated
15 March 2nd of this year. Ask if you've seen that.
16 A. Pretty sure I have, yes.
17 Q. Okay. I'll be asking you some questions
18 about that later, but for now I can take that back.
19 Thanks.
20 Talk to me a little bit about how
21 documents are kept for Cleaver-Brooks.
22 MS. SPARDONE: Overbroad.
23 A. It depends a little bit on what documents
24 we're talking about. For the most part I'll talk
25 about the boiler-specific documents you may have

1 read in previous testimony. We start out with a
2 series of index cards, I'll call them, that indicate
3 job sites where boilers would be. I don't know how
4 much detail you want me to get into in each
5 category. Along with those index cards are also
6 some printouts from the late Eighties through late
7 Ninety-ish time frame that would give similar
8 information. That would be documents related to
9 what I would call the job sites.
10 Beyond that we would have what we would
11 refer to as the commercial records for the
12 individual boilers. Those pretty much are on
13 microfilm, microfiche going through at least the
14 mid-Ninety-ish time frame in most cases.
15 Beyond those documents there are what we
16 would call the drawings or engineering drawings some
17 will refer to them as. Those are kept on aperture
18 cards of microfilm. And then beyond that there are
19 microfilm reels of part descriptions as well as a
20 scanned version of those part descriptions from a
21 certain period of time that we generally would
22 produce related to a specific boiler.
23 Those are the documents that we have
24 talked about in the past putting together in
25 relation to a specific boiler. There's certainly

1 subsets within those categories, and the drawing
2 structure may have changed that not everything's on
3 the drawing, it could be on a bill of material,
4 things of that sort. So those would be the
5 documents more related to the specific boilers and
6 the boiler job sites.
7 Q. Okay. Is it the position of
8 Cleaver-Brooks that every boiler that they've sold
9 will have an index card?
10 MS. SPARDONE: Object to form.
11 A. Certainly using the term "every" makes me
12 hesitate because I never really know. I guess I
13 believe the records are pretty good. But could I
14 say absolutely? No, I think I'd be foolish to say
15 absolutely there couldn't have been a card that was
16 missing.
17 But my experience has been the records
18 give us a very good indication of where they are.
19 In fact, some cases show them moving from place to
20 place and having multiple index cards for the same
21 boiler.
22 BY MR. BRALY:
23 Q. Are the index cards -- I guess you had
24 mentioned several levels of documents, engineer
25 drawings, correspondence related to boilers, some

1 bills of material, things of that nature.
2 Are the index cards, for lack of a better
3 term, kind of the gatekeeper for the remainder of
4 the documents basically, get the index card and it
5 gives you the roadmap to find you where all the rest
6 of the documents are located?
7 A. Certainly not the only thing. If I had a
8 serial number for a boiler, it would get me directly
9 to that specific boiler. Short of a serial number
10 with just a job name, city, and state, the index
11 cards would be the gate into that. That's the only
12 way I could find it other than a serial number or
13 unit number for the boiler.
14 Q. Where are the index cards kept?
15 A. In Milwaukee in my office.
16 Q. How much space do they take up?
17 A. It's two relatively large cabinets with
18 roughly -- trying to count them in my head --
19 Q. Uh-huh.
20 A. -- 15 drawers each. I don't think the
21 second cabinet goes all the way to the bottom, so
22 it's a bit of a guess, but educated, 20-ish
23 drawers --
24 Q. Okay.
25 A. -- of cards. There's -- I think we've

1 determined there's roughly 80,000 plus of them.
2 Q. All right. And, you know, in your
3 responses to interrogatories, the preliminary
4 statement on Exhibit 15 says, "Since the 1930s
5 Cleaver-Brooks has designed, manufactured, and sold
6 over 120,000 boilers and ancillary equipment."
7 Just based on this representation and your
8 estimate of 80,000 cards, I mean, is it fair to say
9 that the records would not necessarily be complete?
10 A. Oh, no. The -- the index card, there are
11 certainly many index cards that cover more than one
12 piece of equipment.
13 Q. Okay.
14 A. There could be three boilers, four
15 boilers, ten boilers on the same job.
16 Q. That makes sense. I'm sorry. That was
17 kind of a dumb question.
18 A. That's all right.
19 Q. The index cards, are they organized by
20 year of manufacture or like if you went to the first
21 card, why would it be the first card, I guess is
22 what I'm getting at.
23 A. It would depend on where you start what
24 you'd call the first card. There -- probably best
25 to just say -- not answer your question but say how

1 they're organized.
2 Q. Okay.
3 A. They are first organized by very broad
4 category of product. So firetube type boilers are
5 in a set of drawers. Industrial water tube is in
6 another set of drawers. Commercial water tube is in
7 a couple other various ones. Within those
8 categories they are kept alphabetically by the job
9 site name. So if it's ABC Company, it's under A.
10 If it's, you know, XYZ Company, it's under X, that
11 type of thing.
12 And then within that, let's say you're
13 searching for -- I always use the example St. Mary's
14 Hospital since there's one everywhere. Within that
15 there would be a series of St. Mary's Hospital
16 cards. One would be Milwaukee, Wisconsin, one would
17 be Des Moines, Iowa, that type of thing.
18 Q. If you wanted to find a Cleaver-Brooks --
19 if Cleaver-Brooks supplied a boiler to this
20 building, this building in which Hawkins Parnell
21 Thackston & Young's office sits here in Dallas,
22 Texas --
23 A. Uh-huh.
24 Q. -- how would you do that?
25 A. If there's a name for the building, I

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1 would search under whatever that name is. If the
2 name of the building is the address, I'd search
3 under the address and it would be -- I'd actually
4 search in the beginning of each thing under actual
5 numbers that occasionally there are some there, and
6 then I would spell out the number and look for it
7 alphabetically under the spelled-out number.
8 Q. Do you have to do this -- excuse me.
9 Do you have to do this manually, or is there like a
10 electronic index that you could just do a find
11 function?
12 A. It's manual.
13 Q. Okay. Why? It just seems like it would
14 be something that you'd think about digitizing at
15 some point in the world. Is it something you've
16 ever considered or no?
17 A. I haven't.
18 MS. SPARDONE: Object to form.
19 A. I'm not quite sure I would see the
20 business reason for Cleaver-Brooks to do it.
21 BY MR. BRALY:
22 Q. Okay. How long does it take you to do a
23 search for a job site using this card system?
24 A. It depends on how complicated the name is.
25 If it's a straightforward one-word name that is

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1 under, you know, M, it's probably in the 20-minute
2 range to go through each of them as well as I would
3 go through, which again is another reason there's
4 not 120,000 cards. Once we stopped using the card
5 system in the late Eighties, we have that computer
6 printout, so I would go through that as well. And
7 then I also search our more current information for
8 current boilers shipped in the 2000s just to be
9 complete.
10 Roughly 15 minutes, 30 minutes, sometimes
11 45 minutes depending on how complicated the site
12 name is.
13 Q. Okay. Are these like old library card
14 size cards or are these like actual sheets of paper?
15 A. They're 4 by 6 index cards very much like
16 recipe cards.
17 MR. BRALY: I'm getting to a --
18 MS. SPARDONE: Do you think the jury's
19 going to know what a card catalog is?
20 MR. BRALY: It's exactly the point I was
21 about to make. I'm getting to an age now where I
22 feel like I just lost half my audience.
23 THE WITNESS: It's our version of the
24 Dewey decimal system.
25 MS. SPARDONE: Yeah.

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1 THE WITNESS: That'll really confuse
2 people.
3 MS. SPARDONE: I think that's funny.
4 BY MR. BRALY:
5 Q. Since your deposition on February 1st or
6 2nd of this year, we've received looks like five,
7 four additional productions of documents from
8 Cleaver-Brooks including the answers to
9 interrogatories that have been marked as Exhibit 15
10 that we got about four days ago.
11 Did you -- were you the person who
12 searched for additional documents to produce?
13 A. Yes.
14 Q. Why didn't you do that before your
15 deposition on February 1st or 2nd?
16 MS. SPARDONE: Object to form.
17 A. As I understood it before my deposition
18 February 1st or 2nd, the job site at issue, as I
19 understood it, was the Bowater facility. Quite
20 frankly, I didn't even think we were going to talk
21 about the Sizemore case other than the Bowater part
22 of it.
23 MR. BRALY: You don't happen to have the
24 exhibits from the first deposition, do you?
25 MS. SPARDONE: I do.

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1 MR. BRALY: I'm sorry. And I'll tell you
2 which one I'm --
3 MS. SPARDONE: Just make sure there's
4 nothing --
5 MR. BRALY: Yeah, sure.
6 MS. SPARDONE: -- misfiled in here. Turn
7 over the keys to the kingdom.
8 MR. BRALY: I am looking for Exhibit 3.
9 MS. SPARDONE: Yes. Okay. There you go.
10 BY MR. BRALY:
11 Q. Okay. So I'm going to show you -- I was
12 going to use the current deposition notice, but as I
13 pointed out, that went out recently so that wouldn't
14 really do anything for me.
15 But Exhibit 3 is a copy of the deposition
16 notice for Mr. Sizemore for your deposition that
17 occurred on the 1st of February. It lists out
18 several different job sites on which we wished to
19 examine Cleaver-Brooks. Is it fair to say that
20 prior to that deposition that none of those job
21 sites, other than Bowater, had been searched for?
22 A. No, I don't think I could say that.
23 Q. Okay.
24 A. I certainly did a search for some before
25 my deposition. I'm not sure I could sit here and

1 say which ones of these, but I know I was asked to
2 do some searches at some point prior to that
3 deposition on the 1st.
4 So I don't think I could say that I didn't
5 search for any of these. Absolutely I did. I --
6 during that deposition I hadn't actually spent any
7 more time on the Sizemore case other than related to
8 Bowater, so I don't believe in that deposition I was
9 able to say that I did or didn't. I thought I did.
10 Q. If you had, then why weren't any documents
11 produced from those other job sites?
12 MS. SPARDONE: Objection. At this point
13 I'd just like to also point out that Exhibit 3 does
14 not have a document request attached to it and
15 Cleaver-Brooks had not been served or didn't have to
16 answer discovery until March the 2nd of 2018. And I
17 know that you know about the correspondence that's
18 gone back and forth.
19 MR. BRALY: Uh-huh.
20 MS. SPARDONE: And I can attach that as an
21 exhibit at some point.
22 Go ahead and answer if you can.
23 A. I don't know. I don't get involved in
24 when things are produced or why they're produced.
25 What I do is I -- if I'm asked to search something,

1 I search. If I'm asked to produce some drawings, I
2 produce those drawings to our attorneys.
3 BY MR. BRALY:
4 Q. Okay. On February 7th, less than seven
5 days after the conclusion of this first round of
6 deposition for you, we received documents from a
7 Domino Sugar facility in Arabi, and I believe
8 that's -- Arabi, forget what state that is. Is that
9 North Carolina?
10 MS. SPARDONE: It's New Orleans,
11 Louisiana.
12 MR. BRALY: Oh, Louisiana, that's right,
13 Arabi, Louisiana.
14 A. Yes.
15 BY MR. BRALY:
16 Q. A-R-A-B-I. We received documents from
17 Avondale shipyard for Cleaver-Brooks equipment that
18 was shipped to Avondale in New Orleans. We received
19 documents from a Cargill corn milling operation in
20 Memphis, Tennessee. We received documents that were
21 sent -- that Cleaver-Brooks equipment that was sent
22 to Daniel Construction in Greenville,
23 South Carolina.
24 And we received documents of
25 Cleaver-Brooks boilers being sent to SCE&G or

1 South Carolina Electric & Gas to an A.M. Williams
2 steam plant in Charleston, South Carolina. And we
3 received documents related to a facility called
4 Viking Distillers.
5 You're familiar with the location or the
6 finding of those Cleaver-Brooks equipment to those
7 job sites, correct?
8 A. Yes. I've seen those commercial records
9 that I think you're talking about.
10 Q. All right. Cleaver-Brooks boilers were
11 present at all of those job sites, correct?
12 A. Yes. I'd be a little careful with in
13 particular one that strikes me is the South Carolina
14 Electric & Gas one where I think it's asked for the
15 steam plant, whatever it was. Sorry. I --
16 Q. A.M. Williams.
17 A. A.M. Williams. I'm not sure our records
18 said that it was South Carolina Electric & Gas in
19 Charleston. I personally don't know whether it's
20 that location or not, whether there's more than one
21 in Charleston.
22 Q. Okay.
23 A. But other than that, yes.
24 Q. Assuming the A.M. Williams steam plant was
25 the only SCE&G steam plant in Charleston,

1 South Carolina, and we're talking about the same
2 thing, then it would be correct to say that
3 Cleaver-Brooks supplied boilers to all of those
4 locations?
5 A. Short of any other odd things with names,
6 yes.
7 Q. Yeah. Okay. And, you know, on page 9 of
8 Exhibit 15, which is Cleaver-Brooks' answers to
9 interrogatories, it states essentially that same
10 thing.
11 MS. SPARDONE: Object to form.
12 A. Just make sure.
13 BY MR. BRALY:
14 Q. Yeah.
15 A. Yes, I believe so.
16 Q. Okay. Now, I understand that we're
17 talking about two different things with respect to
18 what did you look for and what was produced. Okay?
19 What I'm telling you about this February 7th date is
20 this is when these documents were produced to us.
21 Okay?
22 A. Okay.
23 Q. Had you, prior to your deposition on
24 February 1st or 2nd, searched for the records
25 pertaining to all of these job sites before that

1 deposition?
2 MS. SPARDONE: Object to form. Overbroad.
3 A. Again, I'm not certain exactly when it
4 was. I believe so in relation to those job sites.
5 I believe a search was done for those prior, at
6 least some of them. I -- I, quite frankly, can't
7 say for certain to all of them, but I believe at
8 some point before my last deposition, the "whether
9 or not we had a boiler there" type record.
10 BY MR. BRALY:
11 Q. I guess what I'm asking is, can you say
12 that prior to February 1st or 2nd that
13 Cleaver-Brooks had searched all of the records
14 pertaining to all of the requested job sites or no?
15 MS. SPARDONE: Object to form.
16 A. Certainly not all of the records, no.
17 BY MR. BRALY:
18 Q. Okay. Cleaver-Brooks, or at least you as
19 the person who searches documents and speaks for
20 Cleaver-Brooks, were aware prior to February 1st or
21 2nd, prior to your first deposition, that out of all
22 of the job sites listed in the deposition notice
23 that's marked as Exhibit 3, that Cleaver-Brooks
24 boilers were present at more than just the Bowater
25 paper mill facility. You knew that prior to your

1 first deposition, right?
2 MS. SPARDONE: Object to form.
3 A. Well, I think that gets back to what we
4 were talking about. I certainly knew there was a --
5 during that deposition I knew there was a search
6 that was done. I couldn't sit there and enumerate
7 each of them and, quite frankly, didn't prepare for
8 that for that deposition.
9 BY MR. BRALY:
10 Q. But you did the search though, correct?
11 A. Yeah.
12 Q. Okay.
13 A. I search a lot of things, so it --
14 recalling each one of them for several different
15 cases is real easy to mix things up.
16 Q. I'm not asking you about the specific
17 details of what you recall from the beginning of
18 February. What I am asking you is, you knew at the
19 time of your first deposition that there was more
20 job sites that implicated Cleaver-Brooks in the
21 Sizemore case than just the Bowater paper mill job
22 site. True?
23 MS. SPARDONE: Object to form. Asked and
24 answered.
25 A. No, I believe I was under the impression

1 that the Bowater was the site we were talking about
2 at that deposition. As far as what we had searched
3 prior to that deposition, yes, we did search at
4 least some of those prior to that. I didn't have
5 all the details of that at the last deposition in my
6 head.
7 BY MR. BRALY:
8 Q. Sure. And I'm not asking for all the
9 details. If you had searched some of these one,
10 two, three, four, five, six, seven additional
11 locations that are found on Exhibit 15, if you had
12 searched those prior to your first deposition, you
13 would know that Cleaver-Brooks equipment went to
14 those job sites, would you not?
15 MS. SPARDONE: Object to form. Asked and
16 answered.
17 A. I guess there's a difference between I
18 would know and when I did that search and I would
19 recall that during the deposition. I certainly
20 presumed that there was another search or a further
21 search done than Bowater when we had that last
22 deposition. What all the details of that were, I
23 didn't recall. So I guess I'm not sure how I can
24 answer that --
25 BY MR. BRALY:

1 Q. What did --
2 A. -- any clearer than that.
3 Q. What did you do between the end of the
4 first deposition and February 7th with related --
5 with relationship to any searches that were done?
6 MS. SPARDONE: Object to form.
7 A. Actually I think in that period of time I
8 was pulling out drawings related to Arabi Packing.
9 BY MR. BRALY:
10 Q. That's the Domino Sugar facility?
11 A. Apparently, yes.
12 Q. Yeah. Okay. What about the other
13 locations, Avondale, Cargill, Daniel Construction,
14 SCE&G, and Viking Distillers? Did you pull out any
15 documents between the end of your first deposition
16 and February 7th?
17 A. I'm not sure I can say for certain. I
18 believe most of my time then was dealing with the
19 Arabi one.
20 Q. All right. As far as you can tell, were
21 those documents already retrieved by you prior to
22 your first deposition?
23 MS. SPARDONE: Object to form. Vague.
24 A. I don't believe any of the drawings were
25 retrieved by me prior to my first deposition, no.

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1 BY MR. BRALY:
2 Q. Okay. When did you retrieve documents
3 pertaining to the Avondale shipyard in Avondale,
4 Louisiana?
5 A. I don't believe I pulled any drawings
6 related to that.
7 Q. Who did?
8 A. I don't think we produced drawings related
9 to Avondale shipyard. I think the records we're
10 talking about there are the commercial records. I
11 don't think there --
12 Q. We have a production Bates labeled AVS 1
13 through 82 for Avondale.
14 A. I believe so, yes. And that's -- that is
15 the commercial records we talked about before. I
16 generally don't pull those out.
17 Q. All right. Who does?
18 A. Our attorneys.
19 Q. Where are those kept?
20 A. I'm not sure exactly where our attorneys
21 keep them. I have a -- the microfiche sheets, I'll
22 call them, are in Milwaukee that I have access to.
23 Q. Similarly, the documents that were
24 produced to us on February 7th for the Cargill
25 location in Memphis, Tennessee, I take it that you

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1 did not produce or you did not search for any of
2 these documents?
3 A. I --
4 MS. SPARDONE: Object to form. Overbroad.
5 A. -- believe that's correct. Those were,
6 again, the commercial records which are basically
7 copying of a microfiche that was done at one time.
8 BY MR. BRALY:
9 Q. Forgive my ignorance here, but if there
10 are commercial records of boiler sales to a facility
11 like Cargill or Avondale, wouldn't there be
12 corresponding engineering drawings or corresponding
13 documents similar to what we found for Arabi or for
14 Bowater? Wouldn't those exist?
15 A. Yes. I'd have to put those together.
16 Q. But you haven't done that?
17 A. No. I haven't been asked to.
18 Q. So as I understand it, there are
19 additional documents that exist for Avondale and for
20 Cargill that would consist of essentially
21 engineering drawings?
22 A. There would be, yes.
23 Q. Moving on, we also received a production
24 from Daniel -- or generally speaking to Daniel
25 Construction, and it appears to be to their

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1 headquarters in Greenville, South Carolina, but I
2 can't necessarily confirm that.
3 Did you review the documents that
4 pertained to Daniel Construction?
5 A. I didn't spend a great deal of time
6 looking at those. I -- I don't think I was able to
7 determine one way or the other the -- where it
8 actually was.
9 Q. Can you tell me what it was? What did
10 Cleaver-Brooks supply to Daniel Construction and
11 when?
12 A. If I can look at the records, I could.
13 MR. BRALY: All right. Let's do that.
14 MS. SPARDONE: One second. Do you want to
15 see this?
16 MR. BRALY: I have them here.
17 MS. SPARDONE: Oh, okay.
18 MR. BRALY: Yeah.
19 THE WITNESS: I have here DAN 1 through
20 DAN 34, DAN 35 through DAN 71, and DAN 72 through
21 DAN 111. Is that what you're looking at too?
22 BY MR. BRALY:
23 Q. Yes, sir.
24 A. Okay. I just want to make sure we're
25 looking at the same things.

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1 Q. We are.
2 A. All right. So in the first group -- give
3 me a moment to find the right place -- we shipped a
4 Model PSM50 trailer-mounted portable steamer on
5 March 2nd, 1965. And that was unit number 6056-65.
6 In the second group we shipped another
7 Model PSM50 portable steamer on 6/21/60, and that
8 was unit number 5490-60.
9 And in the third group of documents we
10 shipped another PSM50 portable steam boiler
11 December 6, 1960, and that was unit number 5544-60.
12 MS. SPARDONE: What shipment date? I'm
13 sorry. I missed it.
14 THE WITNESS: December 6, 1960.
15 BY MR. BRALY:
16 Q. When you say unit number, for example, the
17 last one you gave was 5544-60, is that the serial
18 number?
19 A. Yes.
20 Q. Okay.
21 A. Yeah, people tend to use that
22 interchangeably.
23 Q. All right. I mean, presumably for all
24 three of those with the serial number information,
25 there is another subset of documents that exists in

1 Milwaukee pertaining to the engineering, bill of
2 materials, specific things like what we talked about
3 with Arabi Packing and with Bowater. That would
4 exist for those three units, would it not?
5 A. There are more documents related to the
6 engineering drawings but not as you kind of put
7 there related to the unit number. Those are the
8 ones that I have to assemble based on the references
9 in these records to a high-level drawing which
10 therefore references another drawing.
11 So it's not a go to this file or this
12 piece of microfiche and find them all. It's a, for
13 lack of a better term, a matrix of documents of part
14 numbers and drawing numbers that relate to it. So
15 it's not a -- like these are on one sheet of or
16 several sheets of microfiche. The drawings would
17 not be like that.
18 Q. You did not participate in the production
19 or the search for the documents associated with that
20 location, the Daniel Construction location in
21 Greenville, South Carolina. True?
22 MS. SPARDONE: Object to form.
23 A. Other than searching to see for the
24 records, for essentially the unit numbers and the
25 ship dates, no. I didn't actually put together

1 these documents.
2 BY MR. BRALY:
3 Q. Right.
4 A. They were copied by others.
5 Q. Yeah, and that's what I was asking. You
6 talked about cards located in your office in
7 Milwaukee, all this other stuff which you personally
8 could look through and search for job sites,
9 boilers, things of that nature. True?
10 A. The index cards, yes.
11 Q. Right. These documents -- and we'll go
12 ahead and mark these as the next exhibit in the
13 series, which I think would be -- I want to say 17.
14 That's 15. We had a 16.
15 A. 16 is in front of me, yes.
16 Q. Okay. So that'll be 17.
17 A. All three groups, the --
18 Q. Yes.
19 A. The whole group?
20 Q. Yeah, the group, so that'll be -- I'll
21 wait for her.
22 THE WITNESS: Go ahead.
23 (Exhibit 17 marked)
24 BY MR. BRALY:
25 Q. So Exhibit 17 will be DAN 1 through DAN

1 111.
2 A. Yes.
3 Q. All right. You looked through these
4 documents, but you did not retrieve these documents,
5 correct?
6 A. Correct. And my look through these in
7 relation to the search for a boiler at a specific
8 facility is for the most part limited to looking for
9 that invoice, verify the ship date or verify
10 actually the ship to or where it's going, and then
11 look for the model number and the unit number,
12 verify those things, and the ship date.
13 Q. Okay. The information that you would need
14 to conduct your higher-level search for additional
15 documents is all present within those 111 pages.
16 True?
17 A. Given the age of these, it's possible. It
18 takes a little more hunt and peck than just finding
19 a drawing number in these records due to the
20 differences in drawing structures over the years.
21 I would have to go to a couple different types of
22 sheets that call out these engineering
23 specifications which may or may not show a drawing
24 number. And sometimes I have to search through a
25 series of drawing numbers and find the one that

1 relates to a PSM50 in 1960, whatever it is.
2 Q. Okay. You haven't done that search,
3 correct?
4 A. Not for these, no.
5 Q. And you haven't been asked to do that
6 search.
7 A. Correct.
8 Q. Okay. How long would a search like what
9 we're talking about take?
10 A. To pull the drawings for a specific
11 boiler?
12 Q. Yes.
13 A. It's roughly a 40-ish-hour task. That's
14 probably an average. Some will take more, some will
15 take less. Given the age of these, probably on the
16 higher side of it. Per boiler, I should say.
17 Q. Okay. Is that just you that does that
18 search, or are there other people who assist you?
19 Do you -- do you have clerks or employees or, you
20 know, anybody that helps you?
21 A. I do the search. Occasionally I'll have a
22 secretary copy things for me once I pull out the
23 microfiche cards. I would ask her to actually print
24 them for me. But in finding the correct one, I
25 would be pulling those and finding it.

1 Q. Based on your experience with
2 Cleaver-Brooks and the recordkeeping system, is it
3 likely that there are additional documents related
4 to these three portable steam boilers that just
5 haven't been searched for?
6 A. Yeah, I would expect to find the drawings
7 related to these boilers.
8 Q. The documents we received for Arabi
9 Packing and for Bowater, and we could look through
10 these in more detail later and we probably will,
11 they include callouts for, generally speaking, some
12 asbestos parts. Fair?
13 MS. SPARDONE: Object to form.
14 A. Some components, yes.
15 BY MR. BRALY:
16 Q. Yeah.
17 A. At least references to that -- I don't
18 know if you and I have talked about this before you
19 saw it. It would depend on what a supplier was
20 supplying to us whether or not it was actually an
21 asbestos component, but I believe some of these go
22 back to a time where it was probably the original
23 drawings, so --
24 Q. Well, some of them actually use the phrase
25 asbestos, like for gasket rope seal material it'll

1 say asbestos gasket rope seal material. You've seen
2 references like that in the kinds of engineering
3 drawings that were produced for Arabi Packing and
4 for Bowater. True?
5 A. Yes, I have.
6 Q. And, for example, with Bowater there's
7 callouts for Vee Mix, V-E-E Mix. I mean, you're
8 familiar with what Vee Mix is?
9 A. I think it's Vee Block Mix.
10 Q. Thank you.
11 A. And some people say V-E-E, some just say
12 V, the letter, and Block. But yes, I've seen that
13 before.
14 Q. And you know that was an
15 asbestos-containing product?
16 A. At one time, yes.
17 Q. And there's references to tadpole gaskets
18 and things like this which you understood or know to
19 be asbestos-containing products at certain points in
20 time?
21 A. At one time, yes.
22 Q. Yes. The detail in which you would find
23 that information, the -- this is just for example,
24 but like the Vee Block Mix, the tadpole gaskets,
25 asbestos gaskets, any kind of asbestos refractory,

1 any kind of asbestos-containing insulation or
2 fiberglass-containing insulation would be found in
3 these upper-level engineering drawings like what was
4 produced for Arabi Packing and for Bowater.
5 MS. SPARDONE: Object to form.
6 A. Yes. And I think we produced them for a
7 couple other jobs too, but yes.
8 BY MR. BRALY:
9 Q. Okay. Do you know why they were not
10 produced for the Avondale production?
11 A. No. I don't get involved in when we
12 produce or why we produce. I produce what I'm asked
13 to.
14 Q. Okay. So you wouldn't know why they were
15 not produced for the Cargill production?
16 A. No.
17 Q. And you wouldn't know why they were not
18 produced for the Danville production? I'm sorry,
19 Daniel production.
20 A. Correct, I would not.
21 Q. We did receive a production of what I'm
22 just referring to as quote-unquote upper-level
23 engineering drawings, and that may not be the right
24 phrase to use, for Viking Distillers on
25 February 23rd of this year. Did you have any role

1 in producing or finding those documents?
2 A. Yes.
3 Q. Tell me what you did.
4 A. I would have gone through the process
5 we've somewhat talked about where we -- I go through
6 the commercial records to find the references that
7 get me to the drawings, again, depending on the time
8 frame, and I think Viking Distillers were certainly
9 later in time than some of these. I think it was
10 mid-Seventies, if I remember correctly. So there's
11 a little more reference to actual drawing numbers in
12 those commercial records.
13 So I pull out essentially the -- which is
14 where you probably got the term the higher-level
15 drawing, which would be I guess the overall drawing
16 of the boiler or a boiler of that model and size in
17 that time period. I find the drawing that applies
18 based on the ship date of the boilers or boiler.
19 Then I look through the bills of materials
20 for the -- that drawing to find the subassemblies
21 and therefore those subassemblies and the
22 subassemblies of that. It's sort of a growing tree
23 of drawings. And on those drawings I try to find
24 anything that would be potentially an
25 asbestos-containing component or, quite frankly, one

1 that might be questioned as an asbestos-containing
2 component and I produce either that drawing or at
3 the end of it, if there's no drawing for it, the
4 part number which relates to the part description.
5 Q. Okay. How long did it take you to do all
6 that as it related to the Viking Distillers
7 location?
8 A. I don't know that I -- I know I didn't
9 keep track of each one and how long it took me. I
10 would go back to what we talked about earlier, which
11 a rough estimate would be 30 to 40 hours. That
12 being a newer boiler, probably on the lower end of
13 that. But in general, a week's worth of work.
14 Q. Okay. So I want to kind of break down
15 something that has come to light here that I guess I
16 didn't appreciate too much before we got started.
17 MR. BRALY: I'm sorry. Do you have the
18 Viking documents with you?
19 MS. SPARDONE: I could penalize you.
20 MR. BRALY: I could -- well, I know. I
21 could go by reference here, but since you --
22 MS. SPARDONE: No, we have them here.
23 MR. BRALY: -- have them here.
24 MS. SPARDONE: Do you want all of them?
25 MR. BRALY: Yeah.

1 MS. SPARDONE: Okay. Just let me check
2 them real quick. So I will just identify these for
3 the record as VIK000001 through VIK00147.
4 MR. BRALY: I don't know that we need --
5 since some of those are oversize pages, I don't know
6 that we need to mark these as exhibits since we all
7 have them and I can just reference them by
8 identification.
9 I'm going to represent to you that we
10 received production of the series labeled 1 through
11 74 on February 7th and production of VIK 75 through
12 VIK 147 on February 23rd.
13 THE WITNESS: Okay.
14 MR. BRALY: That's not a question. That
15 is simply a representation.
16 BY MR. BRALY:
17 Q. Let's start with 1 through 74. 1 through
18 74, are these the documents that the attorneys find,
19 basically?
20 A. The ones that they copy, yes.
21 Q. All right.
22 A. I -- ultimately I find them based on
23 searching the index cards and finding that unit
24 number that's at the top of the very first page.
25 And then this is then the set of commercial records

1 that we have basically on microfiche sheets, and
2 then they're copied by our attorneys to produce and
3 Bates stamped, I should say.
4 Q. Hold on a second. Tell me about what
5 these documents tell you about what Cleaver-Brooks
6 supplied to the Viking Distillery.
7 MS. SPARDONE: Object to form.
8 A. Can't say I've committed these to memory,
9 but normally there is an invoice within these
10 documents that would tell me who the purchaser was,
11 specifically what the model of the boiler or boilers
12 were, and the ship date. So that would normally be
13 one of the first things I would look at.
14 And this is an invoice, but it gives me
15 the same information. I'm looking at VIK 33, so it
16 tells me we shipped one CB200-400 steam boiler,
17 150-pound design pressure, to the Viking Distillery,
18 Inc., in Albany, Georgia, on October 18th, 1974.
19 And the unit number or serial number of that was
20 L59290.
21 So other than that, there's, yeah, series
22 of correspondence in here. If we were involved in
23 any sales of components after that boiler was
24 shipped, they would be located in here. There is
25 what's called a start-up report in many cases in the

1 commercial records which is the documentation of the
2 initial commissioning of the boiler. And then near
3 the back of the records are some of the documents
4 that get me to the drawings, engineering drawings we
5 were discussing earlier.
6 BY MR. BRALY:
7 Q. Okay. I mean, this particular boiler, if
8 you look at VIK 53 --
9 A. Yes.
10 Q. -- you see this boiler is 10 feet 8 inches
11 tall?
12 A. Yes. Well, overall height, yes.
13 Q. And if you go to the next page, VIK 54,
14 see this boiler is 16 feet 10 and a half inches
15 long?
16 A. Correct.
17 Q. If we -- I almost said scroll down, but I
18 realize you're not scrolling. If we go down to
19 VIK 62 --
20 A. Yes.
21 Q. -- we start -- what is this? What am I
22 looking at?
23 A. It's what we refer to as our -- in this
24 particular time period our process sheets, which is
25 the document that was used at the manufacturing

1 facility to basically say these are the drawings to
2 use to construct this boiler. There's some --
3 there's a higher-level drawing which is called there
4 the high-level code. It's about the second rib or
5 second bar down on that drawing or on that page, 62.
6 And then there are various subassemblies
7 that are called out, most of which will be called
8 out on that higher-level drawing. And if there's
9 anything changed on those drawings, this process
10 sheet would indicate, you see to the far right, an
11 add or a delete to a particular drawing or a
12 subassembly.
13 Q. Okay. The first entry there is for the
14 insulation and lagging for Cleaver-Brooks 400,
15 power, 96 inches. I guess that's diameter B, but
16 I'm guessing.
17 A. Yeah, it's probably diameter boiler, but
18 in the computer world back in those days the fields
19 were probably limited.
20 Q. Okay. This is indicating at least that
21 Cleaver-Brooks is supplying the insulation and
22 lagging for this boiler, correct?
23 A. Correct. That's one of the drawings we
24 produced, and I would just make sure you understand
25 that when we use the term lagging, it may not be the

1 term you're used to hearing with lagging. It's
2 sheet metal lagging over the insulation.
3 Q. Sure. And I under -- I appreciate the
4 clarification, but I also understood that to be the
5 case, so --
6 A. Okay.
7 Q. Now, the insulation would include
8 basically insulation like you might think about it,
9 but would it also include refractory? Would that be
10 part of that classification?
11 MS. SPARDONE: Object to form.
12 A. Not on that drawing.
13 BY MR. BRALY:
14 Q. Okay.
15 A. That drawing itself is the external
16 insulation and sheet metal lagging of the shell of
17 this firetube boiler.
18 Q. All right. The lagging -- I'm sorry.
19 Say that again? Where would the refractory be
20 found?
21 A. You'll find it -- there's a little bit of
22 it called out on -- I'll use the page lines on the
23 far left-hand side, line 209. It says furnace
24 liner, bricking, oil, gas or combination power.
25 So there's some refractory on that

1 drawing. There may be some others. I know there's
2 some others within some of these, but it doesn't
3 call out there, which is why I go through the
4 process of pulling the drawings. You'll see it in
5 the drawings a little more clearly.
6 Q. All right.
7 A. This is more of a high-level snapshot of
8 the main assembly drawing, which is the 607-564, as
9 well as some of the higher-level subassemblies.
10 Q. Okay. And if we go down to VIK 67, for
11 example.
12 A. Yes.
13 Q. I mean, we see callout for several
14 different styles of gaskets, correct? There's a
15 gasket for handhold. It looks like there's a
16 quantity of six of those.
17 A. Correct.
18 Q. There's a manhole gasket with a quantity
19 of one listed.
20 A. Correct.
21 Q. A manhole cover gasket which is a quantity
22 of one listed. Do you see that?
23 A. I -- are you talking about where it says
24 cover manhole or --
25 Q. Yes.

1 A. That's the cover itself, the steel cover.
2 The gasket is up above it where it says gasket
3 manhole.
4 Q. You're right. I'm sorry. I did misread
5 that. So you have those gaskets called out.
6 We would also have some kind of rope
7 gasket assembly to seal the doors on this thing,
8 would we not?
9 A. On this size boiler? We'd have to look
10 specifically at the drawings, but I believe there's
11 some rope going across the baffle on the rear door.
12 It'll be called out in the next batch.
13 Q. So I was just asking basically about what
14 we get in this set of documents that are produced by
15 the attorneys. And this is basically it. We get a
16 list of what other drawings might exist, but as far
17 as any kind of really specific detail about the
18 composition of that material or the manufacturers of
19 that material, that's something we have to look at
20 this second series of drawings to ascertain. Fair?
21 MS. SPARDONE: Object to form.
22 A. Correct. And I would just clarify that
23 the -- the list as you see it in this particular set
24 of records is from a fairly late time frame in our
25 existence where that was the way it was done at that

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1 time. It's not always that clear, and certainly
2 this is not a comprehensive list of all the drawings
3 that could potentially relate to an asbestos
4 component, which is why I pulled together those
5 drawings.
6 BY MR. BRALY:
7 Q. Then we get into VIK 70 through VIK 74.
8 When you get to them, you'll understand. These are
9 redacted pages.
10 A. That's what it looks like, yes.
11 Q. And they're marked as irrelevant,
12 post-exposure. Do you see that?
13 A. Yes.
14 Q. Okay. I don't know if you're aware of the
15 contents of these pages or not, and frankly at this
16 point I don't know that I'm prepared to ask you
17 about that, although it is probably something we're
18 going to have to take up.
19 What I am curious about is, would it be --
20 would this be the place where subsequent follow-up
21 about a boiler might be located in these types of
22 documents?
23 MS. SPARDONE: Object to form.
24 Speculation.
25 A. I guess I'll have to understand what you

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1 mean by subsequent follow-up.
2 BY MR. BRALY:
3 Q. Well, they're marked as post-exposure,
4 which just kind of indicates to me that these are
5 documents that may be dated after the original
6 installation documents from 1974 because otherwise
7 they wouldn't be post-exposure, right?
8 MS. SPARDONE: Object to form.
9 A. I would assume it means post-exposure of
10 the plaintiff at the job site, but I'm not -- I'm
11 not the one that redacted it, but that's the way I
12 would interpret that.
13 But certainly within these records would
14 be anything related to communication that we would
15 have related to this boiler, whether it's prior to
16 the sale, so purchase orders, things like that, or
17 after the sale, issues with the boiler or sale of
18 subsequent parts.
19 BY MR. BRALY:
20 Q. Was there anything about this production
21 for Viking Distillers that could not have been
22 accomplished prior to your first deposition in
23 February?
24 MS. SPARDONE: Object to form.
25 A. Short of the time to do it when I was

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1 asked to, I guess not. There's a period of time it
2 takes to do it, so that would be the limiting factor
3 for me.
4 BY MR. BRALY:
5 Q. All right. Had you searched for documents
6 related to Viking Distillers prior to your
7 February 1st or 2nd deposition?
8 A. You're asking me had I?
9 Q. Yes.
10 A. Again, I believe I had searched for
11 whether or not we shipped a boiler. I did not
12 search for the drawings and things subsequently
13 produced.
14 Q. Okay. Had -- if you had searched for
15 whether or not Cleaver-Brooks had shipped a boiler
16 to Viking Distillers, you would have found that,
17 yes, you did, correct?
18 MS. SPARDONE: Object to form.
19 A. Yes, the Viking Distillers in Albany,
20 Georgia, yes.
21 BY MR. BRALY:
22 Q. And that's information that you would have
23 had prior to the February 1st or 2nd deposition.
24 A. Again, I believe I did do that search at
25 some time prior to that.

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1 Q. If the statement was made the only
2 Cleaver-Brooks boiler that Calvin Sizemore ever
3 worked around was at Bowater Paper and that
4 statement was made prior to your deposition on
5 February 1st or 2nd of this year, that statement
6 would not be accurate. True?
7 MS. SPARDONE: Object to form.
8 A. No, I'm not sure I could testify to what
9 Mr. Sizemore actually worked around.
10 BY MR. BRALY:
11 Q. Okay. Fair enough. If the statement was
12 made the only job site that contained a
13 Cleaver-Brooks boiler that Calvin Sizemore worked at
14 was at Bowater Paper, that statement, to your
15 knowledge right now, is not factually correct,
16 right?
17 MS. SPARDONE: Object to form.
18 A. You said worked at, job site worked at,
19 not boiler worked on?
20 BY MR. BRALY:
21 Q. Right.
22 A. Yeah, as I know it now, it would be.
23 Q. And had -- given that you did do a search
24 for Viking Distillers prior to your February 1st or
25 2nd deposition, it would also be -- it would also be

1 true that at that time, on February 1st or 2nd, that
2 the statement Calvin Sizemore's only job site that
3 corresponds to a Cleaver-Brooks boiler was Bowater,
4 that would be incorrect to the knowledge of
5 Cleaver-Brooks at the time of your first deposition
6 as well, correct?
7 MS. SPARDONE: Object to form. Asked and
8 answered.
9 A. In relation to what I knew, I'd have to
10 say no, that's not correct. My understanding was
11 the job site at issue during that deposition or
12 prior to that deposition was Bowater.
13 BY MR. BRALY:
14 Q. Okay. But you just --
15 A. I didn't spend any time other than a
16 cursory look at his testimony, had no time at all to
17 look at that actual testimony. Quite frankly, as I
18 said before, I wasn't even aware that Sizemore was
19 going to be discussed other than Bowater at that
20 deposition.
21 Q. Okay. Factually you knew that
22 Cleaver-Brooks supplied a boiler to Viking
23 Distillers. And I'm using them as an example
24 because it's one we just talked about. You knew
25 that when you did your first deposition, correct?

1 MS. SPARDONE: Object to form. Asked and
2 answered.
3 A. Again, I get a little tied up with that.
4 Whether I knew it because I had searched it, yes.
5 Whether I recalled it sitting at that deposition, I
6 think the answers I gave were that I think I did
7 some search but I didn't know the details.
8 BY MR. BRALY:
9 Q. The search that you would have conducted
10 would have been at the request of attorneys for
11 Cleaver-Brooks. True?
12 MS. SPARDONE: Object to form.
13 A. Correct.
14 BY MR. BRALY:
15 Q. That investigation, basically the "Here
16 are some job sites, you need to look for these,"
17 that investigation had proceeded to that point,
18 true, before your first deposition?
19 MS. SPARDONE: Object to form. Compound.
20 Calls for speculation. Overbroad. Asked and
21 answered.
22 A. Again, I can't say the exact date, but I'm
23 pretty sure I had looked at at least some of the
24 sites we discussed prior to that deposition or
25 searched them prior to that.

1 MR. BRALY: Okay.
2 MS. SPARDONE: Are you at a good stopping
3 point just for a rest room break?
4 MR. BRALY: A couple minutes.
5 MS. SPARDONE: Okay.
6 BY MR. BRALY:
7 Q. The process by which you determined
8 Cleaver-Brooks yes or Cleaver-Brooks no, we did or
9 did not supply boilers to a job site, is this part
10 of the search that you talked about at the very
11 beginning of this deposition, the search process
12 that takes 20 minutes to an hour to search just to
13 determine did Cleaver-Brooks sell a boiler to this
14 location?
15 A. Yes.
16 Q. Okay.
17 A. Yeah, that's the index card search that we
18 talked about first.
19 Q. Right. And that's something that you had
20 done prior to your February 1st or 2nd deposition.
21 MS. SPARDONE: Objection. Overbroad.
22 Asked and answered. Compound.
23 A. At least for some of the sites, yes.
24 Again, I -- I can't recall exactly what sites were
25 searched prior to that, but I am pretty sure there

1 were sites searched --
2 BY MR. BRALY:
3 Q. Okay.
4 A. -- other than Bowater.
5 Q. And assuming that that list of job sites
6 that's contained within Exhibit 3, which was the
7 deposition notice of Calvin Sizemore's deposition,
8 assuming that that list of job sites are job sites
9 at which Calvin Sizemore worked, it is true that
10 Cleaver-Brooks supplied boilers to more job sites on
11 that list than just Bowater. True?
12 MS. SPARDONE: Objection. Compound.
13 Assumes facts.
14 A. Yes, those are the documents we produced.
15 MR. BRALY: Okay. We can take a bathroom
16 break now.
17 THE VIDEOGRAPHER: We're going off the
18 record at 11:00. We're off the record.
19 (Recess from 11:00 to 11:13)
20 THE VIDEOGRAPHER: This is disk number 2
21 of the deposition. We're back on the record at
22 11:13.
23 BY MR. BRALY:
24 Q. Mr. Tornetta, just a couple of kind of, I
25 guess, questions I should have asked you before

1 about this topic that I didn't and I just want to
2 cover them before we move on.
3 When were you first told about the
4 Sizemore case?
5 A. I'm not sure I -- I guess theoretically
6 when we were sued, which I don't know that I can say
7 when that is.
8 Q. Let me ask you a better question then.
9 When were you asked to conduct a preliminary search
10 for boiler information as it related to Sizemore
11 based job sites?
12 MS. SPARDONE: Object to form.
13 A. That's where I can't really pin down a
14 date. I do believe there was some searching done
15 prior to my last deposition and then there was some
16 searching done after that deposition.
17 BY MR. BRALY:
18 Q. Well, talk to me --
19 A. But I can't say for certain when was the
20 first time I searched. I think there was actually a
21 case in Louisiana that there may have been some
22 searching done way back then, so I can't say for
23 certain.
24 Q. Okay. As it relates to this action in
25 South Carolina, when did you conduct your search for

1 documents related to the Sizemore case? And I'm not
2 asking you for a date, but are we talking about
3 January 2018, are we talking about December 2017?
4 What are we talking about here?
5 MS. SPARDONE: Overbroad. Compound.
6 A. I believe there was at least search for
7 some sites in January of 2018.
8 BY MR. BRALY:
9 Q. Okay. First part of January, second part
10 of January? Do you know?
11 A. Off the top of my head I don't know. I'm
12 not sure I could even figure that out. Quite
13 frankly, the last two months have blended together a
14 lot with these cases.
15 Q. Okay. Did you conduct a search for every
16 job site that's contained within Exhibit A on
17 Exhibit 3 which was the Sizemore deposition notice
18 that pertained to --
19 A. So the 50, actually 60 sites.
20 Q. Are there 60 listed there?
21 A. Yeah, number 56, but 56 includes an A, B,
22 C and D, so -- and I think there are some
23 duplicates, same names and same sites, so 50 plus
24 sites.
25 Q. Okay.

1 A. I have.
2 MS. SPARDONE: Let me just take one --
3 THE WITNESS: I'm sorry.
4 MS. SPARDONE: I'm sorry.
5 MR. BRALY: Sure.
6 MS. SPARDONE: I just object that the
7 question's overbroad, compound. Go ahead.
8 A. I have at this point, yes.
9 BY MR. BRALY:
10 Q. Okay. There is a site listed on there
11 that's referred to as Hoechst Celanese in Greer,
12 South Carolina. Hoechst is H-O-E-S-H-S-T, which
13 doesn't make any sense.
14 MS. SPARDONE: Yeah, we were trying to
15 figure that out yesterday. Hoechst. Okay.
16 MR. BRALY: "Hurts," like --
17 MS. SPARDONE: Oh, "hurts"?
18 MR. BRALY: -- "Ow, that hurts."
19 MS. SPARDONE: Like the cow --
20 MR. BRALY: Yes.
21 MS. SPARDONE: -- the car company? Okay.
22 MR. BRALY: Yeah.
23 MS. SPARDONE: Who knew?
24 MR. BRALY: I did not. I had to ask
25 someone.

1 MS. SPARDONE: Looks like "Hesh" or
2 "Hashe" or --
3 MR. BRALY: Yeah.
4 BY MR. BRALY:
5 Q. Regardless, there is a job site listed in
6 there as Hoechst Celanese in Greer, South Carolina.
7 A. Yes.
8 Q. Did you search for the presence of
9 Cleaver-Brooks boilers at that location?
10 A. Yes.
11 Q. Did you find anything?
12 A. I don't believe I did.
13 Q. Okay. How would it happen that a boiler
14 would be present at a job site for which
15 Cleaver-Brooks would not know?
16 MS. SPARDONE: Calls for speculation.
17 Form.
18 A. If it actually is there.
19 BY MR. BRALY:
20 Q. All right.
21 A. I've certainly come across records or
22 testimony that was inaccurate that placed a boiler
23 where it wasn't necessarily at. But it's possible a
24 boiler can move.
25 Q. Okay.

1 A. Or the name of the company could have been
2 something else when we initially sold it.
3 Q. Like what?
4 MS. SPARDONE: Same objections.
5 A. Like what? I'm not sure.
6 BY MR. BRALY:
7 Q. You said the name of the company might
8 have been something different when you sold it. Are
9 you saying it was another company's boiler, or are
10 you saying that Cleaver-Brooks used a different
11 name?
12 A. Well --
13 MS. SPARDONE: Object to form.
14 A. -- I think an example could be the Arabi
15 site where we sold it to an Arabi Packing which I
16 believe eventually became the Domino Sugar plant.
17 BY MR. BRALY:
18 Q. Okay.
19 A. It's the way I understood it. I don't
20 think there was reference in our commercial records
21 to it being a Domino plant.
22 Q. Okay. So the name of the company to whom
23 you sold the boiler might have changed?
24 A. Correct. And I would say -- I'd just
25 clarify a little, name of the company to which the

1 boiler was located. Sometimes we sell to somebody
2 different than the end user.
3 Q. Is there a secondary market for boilers
4 like Cleaver-Brooks style boilers?
5 MS. SPARDONE: Overbroad.
6 A. I've certainly seen boilers sold used. I
7 wouldn't consider it a huge. These are large pieces
8 of equipment, but they certainly can be shipped
9 because that's the way we sell them, as ones that
10 can be shipped and moved to another place as opposed
11 to field-erected boilers that are built in place
12 that we didn't do.
13 BY MR. BRALY:
14 Q. Based on the review that you conducted,
15 you did not find any indication that Cleaver-Brooks
16 had supplied a boiler directly to the Hoechst
17 Celanese location in Greer, South Carolina, correct?
18 MS. SPARDONE: Object to form.
19 A. Correct, under that or those names
20 actually I would have searched. I did search under
21 Hoechst and Celanese, and I think there was another
22 name associated with another case as well.
23 BY MR. BRALY:
24 Q. But to the extent that a boiler had been
25 acquired through another entity other than

1 Cleaver-Brooks, even a Cleaver-Brooks boiler that
2 had been acquired by Hoechst Celanese or by anybody
3 through a separate sale, that's something that
4 Cleaver-Brooks would not have a record of. Fair?
5 MS. SPARDONE: Object to form.
6 A. I wouldn't say we wouldn't have a record
7 of that. I've found many, many examples over the
8 years of us having record of that. Could I testify
9 that we have been told of every one of those?
10 Absolutely not.
11 MR. BRALY: So Exhibit 14 is the
12 deposition notice that pertains to the Charlotte
13 Gaye Smith case. There is a corresponding notice
14 from the first deposition that would be Exhibit 2
15 which unfortunately I don't have with me. I'm so
16 sorry.
17 MS. SPARDONE: Did you want to mark it?
18 Oh, no, it's already marked.
19 MR. BRALY: It's already marked.
20 MS. SPARDONE: Let me just --
21 A. Yes, I recall this.
22 BY MR. BRALY:
23 Q. Okay. Great. Is it correct that you've
24 also done a job-based search for locations that
25 pertain to Cleaver-Brooks for the other cases that

1 are also under notice here, not just Sizemore but
2 the Smith case and the Howe case?
3 A. Yes.
4 Q. All right. There is a -- there are two,
5 actually, power plants that are listed in this
6 deposition notice. There's the Duke Power -- hold
7 on. I'm saying that wrong. Yeah, the Duke Power
8 Cliffside steam station in Cliffside,
9 North Carolina, and the Duke Power McGuire nuclear
10 station in Huntersville, North Carolina. Do you see
11 both of those?
12 A. Yes.
13 Q. And I take it that Cleaver-Brooks
14 conducted a search for those locations?
15 A. Yes.
16 Q. Are you aware that publicly-available
17 documents show the presence of Cleaver-Brooks
18 boilers at both of those locations?
19 MS. SPARDONE: Object to form.
20 A. Yeah, I was shown some -- I guess I never
21 thought of about being publicly available or not.
22 They look to be some state records of some type that
23 indicated there were some firetube boilers that they
24 had the name Cleaver-Brooks on the records at both
25 of those locations, I believe.

1 BY MR. BRALY:
2 Q. For the Cliffside location, I show a
3 firetube boiler bearing the name Cleaver-Brooks
4 manu -- built in 1995, a Cleaver-Brooks pressure
5 vessel being used as a deaerating tank,
6 D-E-A-E-R-A-T-I-N-G, tank built in 2010, and a
7 Cleaver-Brooks firetube boiler built in 1969. Oh,
8 I'm sorry. And one other one, a Cleaver-Brooks
9 firetube boiler built in 2009.
10 I'd be happy to show you these records if
11 you want to take a look through them, but I think
12 you've seen the same thing that I'm talking about
13 here.
14 A. I have seen them in the past, yes.
15 Q. When were you shown the state record
16 information?
17 MS. SPARDONE: Object to form.
18 A. It's been within the last couple of weeks.
19 BY MR. BRALY:
20 Q. Since you were shown the state record
21 information, did you make any secondary search or go
22 back and search again to find the presence of
23 Cleaver-Brooks boilers, these three boilers and
24 deaerating tank supplied to this power plant, at
25 least according to the state record information?

1 MS. SPARDONE: Object to form.
2 A. Actually, and I hope I'm not confusing
3 this, but I think the latter boilers we had located
4 in the past. The '69, if I remember right, I have
5 not been able to locate.
6 And yes, the answer to your question was
7 or is, yes, I made a second search of Duke Power
8 Maguire, Cliffside in our index card indexes, I'll
9 call them, for those names and did not find those
10 earlier boilers.
11 BY MR. BRALY:
12 Q. So you did find the more recent boilers.
13 Am I understanding that right?
14 MS. SPARDONE: Object to form.
15 A. I believe so. Again, that's -- a lot of
16 this is blending together, but I believe the more
17 recent ones may have been. Without it at my
18 fingertips, I can't say for certain. I would
19 presume they weren't at issue in this case, but I
20 could be wrong.
21 BY MR. BRALY:
22 Q. As it relates to the McGuire station, what
23 I show is a Cleaver-Brooks firetube boiler that was
24 built in 1975 that was supplied to the McGuire
25 nuclear facility.

1 Did you find any documents related to that
2 boiler?
3 A. No.
4 Q. Do you have any information that would
5 basically contradict the state record information
6 that says that from 1975 to 2003 there was an active
7 Cleaver-Brooks location at that job site?
8 MS. SPARDONE: Object to form.
9 A. I don't have any -- there weren't any
10 numbers on the documents I looked at that got me to
11 a specific Cleaver-Brooks boiler. I actually don't
12 remember those records saying anything about a span
13 of time that it was there, but maybe I missed it.
14 BY MR. BRALY:
15 Q. Well, let me -- let me just show this to
16 you. Let me go up to the page I want to start with
17 here. Okay. I'm going to move on actually from the
18 McGuire station. We'll come back to that later.
19 Or actually I'm going to go to it now.
20 Okay. Got to take this guy with me because it's got
21 all my stuff on it. I'm sorry. This gets a little
22 bit complicated, but you understand kind of the
23 nature of how some public records that you'll
24 receive on the -- what you reviewed or what you saw,
25 looked at, did it -- I mean, did it look roughly

1 like a printout that looks like this?
2 A. Yes.
3 Q. Okay. If we look down at the bottom of
4 this first page here, it says Duke Energy McGuire
5 Nuclear Station?
6 A. Yes.
7 Q. You see that? And then it continues down
8 for several pages listing various things.
9 A. Correct.
10 Q. None of which say Cleaver-Brooks. And
11 then we get down -- got to go a little bit -- right
12 here there's a firetube process boiler manufactured
13 by Cleaver-Brooks with 1975 listed as year built.
14 A. Correct.
15 Q. And then I guess this is an
16 out-of-commission date or some such, July 31st of
17 2003. Do you see this?
18 A. Yes.
19 Q. Okay. In what Cleaver-Brooks located in
20 your search -- I guess starting out the question is,
21 Cleaver-Brooks did not find a boiler for that
22 location or you did and -- or what?
23 A. Did -- I'm sorry. Go ahead.
24 MS. SPARDONE: I'm sorry. Which location?
25 MR. BRALY: McGuire. I'm sorry.

1 MS. SPARDONE: Okay.
2 MR. BRALY: McGuire.
3 MS. SPARDONE: And I think he testified
4 that there was none.
5 A. Did not.
6 BY MR. BRALY:
7 Q. Did not. Okay. In 1975 are we talking
8 about basically some kind of an old school
9 electronic format that you would find boilers of
10 that era in or no?
11 MS. SPARDONE: Object to form.
12 A. As far as our indexing of it, it would be
13 the index cards we talked about earlier if it was --
14 if that boiler was built in 1975, it would be in the
15 same -- document wise in the same range as I think
16 the Viking Distilling ones were, which were
17 roughly '75.
18 BY MR. BRALY:
19 Q. Okay. How would you account for this, the
20 presence of a state document listing a
21 Cleaver-Brooks boiler being present in 1975 and
22 Cleaver-Brooks' failure to find contemporaneous
23 records that reflect the same thing?
24 MS. SPARDONE: Object to form. Assumes
25 facts.

1 A. I'd have to --
2 MS. SPARDONE: Calls for speculation.
3 A. -- speculate a great deal, but it could be
4 the boiler was moved there, could be the boiler was
5 used there temporarily. I wouldn't necessarily go
6 by the built date and whatever that date was that
7 said 2003 as a range that that boiler was, quote,
8 there, or it could be that an error or errors in the
9 records. I would have no idea. It would all be
10 speculation.
11 BY MR. BRALY:
12 Q. It could be an error on McGuire's end, it
13 could be an error on Cleaver-Brooks' end.
14 MS. SPARDONE: Object to form.
15 A. Could be an error on anybody's end, yes.
16 Could be the state boiler inspector made an error.
17 I have no idea.
18 BY MR. BRALY:
19 Q. Okay. State boiler inspections are
20 conducted as a -- basically as a safety measure,
21 right, by the state, state governments, to ensure
22 that pressure vessels are known about and maintained
23 and safe?
24 A. Typically, yes. I'm not sure what the
25 requirements are in North Carolina, but overall,

1 yes. I know there can be differences from state to
2 state, so --
3 Q. Sure. And, I mean, especially in the
4 context of a nuclear power station, you'd want
5 information to be pretty accurate. Fair?
6 MS. SPARDONE: Object to form.
7 A. I wouldn't have any idea what they would
8 require in relation to -- if it could have been a
9 temporary boiler, not a temporary boiler. I have no
10 idea.
11 BY MR. BRALY:
12 Q. The records indicate it was there for 23
13 or 28 years.
14 MS. SPARDONE: Object to form. Assumes
15 facts. No foundation.
16 A. Again, I don't think I would interpret
17 those that way, certainly not in a definitive way.
18 The boiler was built in '75. Doesn't mean it was
19 installed there in 1975. It could have been
20 installed there in 2003, used for two months for
21 some temporary measure, and not used again and when
22 the boiler inspector came there, that boiler was
23 there. I have no idea. All speculation on my part.
24 BY MR. BRALY:
25 Q. Backing up to the Cliffside location, if I

1 understood you correctly, you said that you did find
2 some of the later installed boilers or records of
3 later installed boilers but not any records of the
4 boiler that was reflected as being 1969. Is that
5 right?
6 MS. SPARDONE: Object to form.
7 A. Correct. And I think I said I may be
8 confusing the later boilers, finding those with some
9 others, so I wasn't certain of that, but I
10 certainly -- I specifically know I did not find the
11 1969 boiler.
12 BY MR. BRALY:
13 Q. Do you know why any documents related to
14 that job site, Cliffside, Duke Power Cliffside, were
15 not produced to us?
16 MS. SPARDONE: Object to form.
17 A. No. Again, I don't get involved in what's
18 produced and what isn't.
19 BY MR. BRALY:
20 Q. Do you want to talk about Bowater for a
21 little bit?
22 A. You're asking me?
23 Q. Yeah.
24 A. I'll talk about whatever you'd like to
25 talk about, I suppose.

1 Q. All right. The Cleaver-Brooks boiler that
2 was supplied to the Bowater paper mill, do you know
3 where at the Bowater facility that boiler was
4 installed?
5 MS. SPARDONE: Cumulative. Asked and
6 answered.
7 A. I would have to look, but if I recall, my
8 last deposition, I don't think there was a way we
9 could tell from our records where it was. It was
10 a -- but I can't even off the top of my head. I
11 didn't look at it very much before this, but I think
12 it was a relatively small firetube boiler.
13 BY MR. BRALY:
14 Q. All right. You don't know anything about
15 the Bowater physical plant layout as far as where
16 buildings were located at any various points in the
17 time or anything like that?
18 A. Other than what I read in testimony --
19 Q. Right.
20 A. -- no. There was a lot of talk about
21 bark-fired boilers and liquor boilers and a power
22 house and things like that. I think in my last
23 deposition we talked this out. I think I had said
24 that it would surprise me that a boiler of the one
25 we did was in the power house. It was probably some

1 remote location that needed steam that they didn't
2 want to pipe steam to. But that again was probably
3 speculation.
4 Q. Okay. As far as the physical location of
5 any administration building or any other type of
6 building as it relates to the power house at
7 Bowater, is that information that you have at all?
8 A. Certainly not in our records. Again,
9 there may be some discussion of that in the various
10 depositions that talk about Bowater from different
11 plaintiffs, but I don't recall off the top of my
12 head.
13 Q. Short story shorter, you don't know where
14 at Bowater the Cleaver-Brooks boiler was installed.
15 True?
16 MS. SPARDONE: Asked and answered.
17 A. I don't have any definitive way to
18 determine that in our records, no.
19 MR. BRALY: Okay. So what I'd like to do
20 is get into some of these engineering drawings that
21 relate to Bowater quickly because I know you did
22 discuss some of this already, but the set that runs
23 from BPM 26 to 44, if you want to take a look at
24 those.
25 MS. SPARDONE: Are you done with Viking?

1 I just want to --
2 MR. BRALY: I might go back to it.
3 MS. SPARDONE: Okay.
4 MR. BRALY: In fact, I know I'm going to
5 go back to it.
6 MS. SPARDONE: Okay. Let's try to get
7 these in some order.
8 THE WITNESS: That's all Viking.
9 MS. SPARDONE: Okay. Thank you. What did
10 you say, 26 to what?
11 MR. BRALY: 44.
12 MS. SPARDONE: I'm just going to put them
13 all in front of him in case he needs to toggle back
14 and forth.
15 BY MR. BRALY:
16 Q. For someone who may not ever have
17 experienced drawings like this, can you -- how would
18 you describe these, just engineering drawings or
19 what?
20 A. And I assume you're starting with BPM
21 26 --
22 Q. Sure.
23 A. -- asking about that. Yeah, a description
24 of it could be an engineering drawing. Typically
25 the way I pull them out and they're usually here is

1 with the higher-level drawing first and subsequent
2 subassemblies behind it, so just gives you kind of a
3 map as I went through it. But I guess, yeah, I
4 would call them engineering drawings. They're
5 actually what was used to manufacture the boiler.
6 Q. Okay. And from this you can get ideas
7 about the height, the width, the length of a boiler.
8 Fair?
9 A. On some of them, yes. It's not always the
10 case on that very first drawing. It depends, again,
11 a little bit on time frame and what our drawing
12 structure, but in this particular one I think it
13 does give some overall dimensions of that boiler.
14 Or I should say the boiler at Bowater.
15 Q. I mean, for example, it shows that it's 53
16 and a half inches high.
17 A. Correct.
18 Q. Correct? And on the second page it shows
19 that it's 80 and 5/8 inches long.
20 A. That would be just the pressure vessel
21 part of the boiler because that's what that drawing
22 depicts. The overall length including the front and
23 rear doors on the first page, BPM 26, which is
24 Dimension D -- then you have to look at it in
25 relation to the model boiler which is a

1 30-horsepower progress. So Dimension D is --
2 MS. SPARDONE: I don't have my magnifying
3 glass. Do you need one?
4 A. -- 105 inches long, which would be the
5 total extents of the components attached to the
6 boiler that make up the whole boiler. So, 8-ish, 8
7 and a half feet.
8 BY MR. BRALY:
9 Q. Okay. This boiler utilized asbestos rope
10 5/8-inch diameter.
11 A. I believe I remember finding that before,
12 yes.
13 Q. And it was 35 inches of 5/8-inch diameter
14 asbestos rope, correct?
15 A. Correct. You're looking at item 17 on
16 BPM 26, I assume?
17 Q. Yes, sir.
18 A. Yes.
19 Q. And that's just shy of 3 feet.
20 A. Correct.
21 Q. This boiler used 5 pounds of
22 asbestos-containing cement. True?
23 A. That's what calls out there, yes.
24 Q. And it says JM450, right?
25 A. Correct.

1 Q. Do you know what JM450 was, how it came
2 packaged, anything like that?
3 A. I'm not certain of the packaging we
4 received it in, but I believe it to be a material
5 that was mixed to make cement.
6 Q. It was a powder.
7 A. It was dry form. I'm not sure I would
8 call it powder, but it was a dry form.
9 Q. At the top, item number 2 is insulation
10 and lagging. It says "See table," and I'm trying to
11 figure out what table it's talking about. Can you
12 locate the table it is referencing?
13 A. Yes. It's the one that is just below that
14 set of bill of material that has an asterisk and
15 table and gives the boiler sizes. If you go across
16 from the boiler size on the left-hand side, you'll
17 see the insulation and lagging drawing called out
18 based on the size of the boiler.
19 Q. Okay. So what size is this boiler?
20 A. 30-horsepower, so it's a P30.
21 Q. All right. In this drawing, 465-169, is
22 that one of the drawings that we have here?
23 A. I believe -- let me double-check this
24 because this has been awhile since I pulled this one
25 out.

1 That drawing was actually different.
2 You'll see a little mark next to that 465-17 -- 169.
3 There's a little triangle with a "7," which if we
4 look down at the -- not very easily on this, there
5 are revisions at the bottom of that which indicate
6 revisions that were done over time to that drawing.
7 And I believe the -- what I have access to
8 are many revisions in microfilm format but not every
9 one of them. So occasionally I have to pull out a
10 drawing that is a later revision than the boiler
11 shipped and then literally back out the revisions
12 called out there.
13 So I believe, and it's hard for me to do
14 it after the fact now, but I believe one of those
15 revisions changed that drawing for the time period
16 we're talking about this boiler shipping to 465-105,
17 which is on BPM 29.
18 Q. Okay. So let's look at that.
19 MS. SPARDONE: 29?
20 A. 29?
21 BY MR. BRALY:
22 Q. Yes.
23 A. Yes.
24 Q. BP -- it's drawing number 465-105.
25 A. Correct.

1 Q. And this is BPM 29 is the Bates number.
2 You list lagging top, lagging right side, lagging
3 left side, lagging vent.
4 A. Correct.
5 Q. As I understand it, lagging is a sheet
6 metal cover.
7 A. Correct.
8 Q. All right. Then we have 10 and a half
9 square feet of something called a Microlite
10 insulation blanket --
11 A. Correct.
12 Q. -- that is 2 inches thick and 36 inches
13 wide.
14 A. Correct.
15 Q. All right. Do you know if Microlite
16 blankets during the time period that this drawing
17 was done, which is dated April 12th of 1956, would
18 be asbestos containing or not?
19 MS. SPARDONE: Asked and answered.
20 A. I don't believe so.
21 BY MR. BRALY:
22 Q. Okay. Based on what?
23 A. I have never seen anything related to that
24 material saying it was asbestos containing. And
25 quite frankly, I've talked about that for 15 or so

1 years, and I'm assuming someone would have corrected
2 me if I was wrong.
3 Q. Okay. Going to the next page, which is
4 BPM 30.
5 A. Yes.
6 Q. This is entitled -- the drawing title is
7 "Head Rear Insulated."
8 A. Correct.
9 Q. What are we talking about?
10 A. This is the rear head or rear door of the
11 boiler that if you go back to BPM 26, it's item 6.
12 And you'll see it pointed out in the center drawing
13 shown on the back of the boiler, the right-hand side
14 of that drawing. It's what directs the flue gases
15 from one set of tubes to the other and creates a
16 division between the upper and lower half set of
17 tubes.
18 Q. If one of these boilers resembles a Coke
19 can on its side and this is one end of it, would the
20 opposing end or the corresponding door on the other
21 side be -- match it, basically be insulated in the
22 same way, or is this unique to one side of the
23 boiler?
24 MS. SPARDONE: Object to form.
25 A. It's unique to one side of the boiler.

1 This is the rear door. The front door looks
2 different.
3 BY MR. BRALY:
4 Q. Okay. The rear door utilized asbestos
5 board, one of which was 4 inches by 34 inches?
6 A. Correct. Quarter-inch JM106.
7 Q. And then the second board was 2 inches by
8 33 inches, also a quarter-inch thick, correct?
9 A. Correct.
10 Q. The rear door also uses 60 pounds of that
11 Vee Block Mix which is specified as asbestos?
12 A. Correct.
13 Q. It also uses 150 pounds of refractory
14 castable called Bafflecrete MEX-R-CO. I don't know
15 what that means. Do you know if this refractory
16 material in nineteen fifty -- 1956 would have been
17 asbestos containing or not?
18 A. I don't believe so.
19 Q. All right. Who manufactured this product?
20 A. I think that MEX-R-CO was at one point a
21 manufacturer. I think the part descriptions may
22 shed a little more light on that. I'm not certain.
23 Made 7296. That says basically the same thing,
24 refractory -- I'm looking at BPM 56, refractory
25 furnace crete course grade MEX-R-CO hundred-pound

1 bags.
2 But my understanding is those materials
3 did not contain asbestos. They are in an area
4 that's exposed to temperatures close to or exceeding
5 1,800 degrees, so I wouldn't expect it to.
6 Q. Explain that to me just from an
7 engineering point of view.
8 A. As I understand it, and this is actually
9 something I've -- I guess I've learned through this
10 litigation, that asbestos wouldn't survive
11 temperatures of that nature.
12 Q. That's something that you've heard from
13 your involvement in litigation as opposed to
14 something you just understood from your employment
15 at Cleaver-Brooks?
16 A. Correct.
17 Q. All right.
18 A. My -- my understanding of the temperature
19 range is based on my employment at Cleaver-Brooks.
20 My understanding of asbestos's ability to withstand
21 that is based on my involvement in the litigation.
22 Q. Thanks for clarification. That's exactly
23 what I meant, but I understand why you would want to
24 make that clarification.
25 This rear door also used almost 9 feet of

1 asbestos rope, correct?
2 A. Correct.
3 Q. It also used a pound of asbestos furnace
4 cement?
5 A. Correct.
6 Q. And that would be in addition to the
7 JM405 that we looked at previously, correct?
8 MS. SPARDONE: 450.
9 BY MR. BRALY:
10 Q. I'm sorry, 450.
11 A. Yes, 450, yes.
12 Q. It also used 2 pounds of this cement
13 refractory, Firefrax number 1. Do you know who the
14 manufacturer was of Firefrax number 1?
15 A. Not off the top of my head. And again,
16 I'm not sure if the part descriptions shed any more
17 light on that. Possibly do. No, the part number,
18 I'm looking at BPM 53, calls out Firefrax number 1
19 which may well be -- I don't know if that's a
20 manufacturer or trade name, to be honest with you.
21 Q. Okay.
22 A. But lists, I think, alternate Kaiser H169.
23 I'm not sure if that could apply to that time frame
24 or not, to be quite frank.
25 Q. And is Firefrax an asbestos-containing

1 product, or do you know?
2 A. I don't believe it is. I certainly would
3 have to defer to others that are more familiar with
4 it. But again, it's in an area -- it's used in
5 areas where refractory tile are used and exposed to
6 higher temperatures, so I don't believe it is, but I
7 couldn't be certain.
8 Q. Let's go down to BPM 33 real quick.
9 A. Okay.
10 Q. This is a drawing for an observation
11 window assembly?
12 A. Correct.
13 Q. I take it this is just something so people
14 can look inside the boiler, make sure nothing's
15 burning incorrectly or something?
16 A. Correct. It gives you a view of the flame
17 down the furnace from the rear door.
18 Q. It lists in its bill of materials two
19 asbestos sheet packing gaskets manufactured by Johns
20 Manville, or JM, listed as JM number 60, as having
21 an inside diameter, meaning the size of the hole
22 that the gasket is surrounding, of 1 and 7/16-inch
23 by 1/16-inch thick. Do you see that?
24 A. Correct.
25 Q. Okay. And the description of it itself

1 describes it as an asbestos-containing gasket,
2 correct?
3 A. That's what it calls out, and I believe at
4 that time it was.
5 Q. All right. Go to the next page. And I
6 think this is the front door now?
7 A. It's what we would call the inner door in
8 the front. It is in the front of the boiler, but
9 there's a front door and an inner door. And
10 actually this is more an inner plate because in this
11 particular size boiler, given its small size, it's
12 actually not hinged.
13 Q. Okay. So there's a cap that goes on the
14 outside, right, or a door?
15 A. Correct. Yeah, if you looked at that very
16 first drawing, BPM 26, what you would call the cap I
17 would call the front door which is item 5, kind of
18 pointing to the left-hand side of the center
19 drawing. That's what you would see externally.
20 It's a steel door with a motor hanging off the front
21 of it and various burner linkages.
22 Q. Okay.
23 A. This particular BPM 34 is actually
24 sandwiched between that outer front door and the
25 pressure vessel itself.

1 Q. I'm going to show you a picture. And I'll
2 have to send this to the court reporter to have it
3 marked, but if we're talking about a boiler end that
4 looks kind of like that --
5 MS. SPARDONE: Object to all the questions
6 about this document.
7 MR. BRALY: Sure.
8 MS. SPARDONE: I have no idea what it is
9 or --
10 A. Kind of, but not -- I can tell by the
11 configuration this is a much larger boiler. And the
12 way the gull-wing baffle is in the front and we do
13 have a hinged inner door in this particular case. I
14 can see it off to the right. But when you open up
15 the front door and take off the inner plate of the
16 boiler we shipped to Bowater, you would see
17 something similar to that. You'd see the end of all
18 the tubes and some burner opening. I believe the
19 burner would have been attached to the tube sheet
20 the way this is in this style boiler.
21 BY MR. BRALY:
22 Q. Okay. So this is not in any way identical
23 to what's described in the drawing BPM 34. Fair?
24 A. Correct.
25 Q. Okay.

1 A. It's not identical at all.
2 Q. But as far as a similarity between this
3 inner plate and kind of the rough look of what inner
4 plates look like or what they are, is this some kind
5 of fair example of what that would look like?
6 MS. SPARDONE: Object to form.
7 A. The inner plate you're talking about?
8 BY MR. BRALY:
9 Q. Right.
10 A. No. The inner plate's actually, on this
11 particular picture, is off the picture but cut off a
12 little bit on the right-hand side. What we're
13 looking at here in this picture is the front side of
14 the pressure vessel.
15 Q. Okay.
16 A. So where the tubes are.
17 Q. Is that similar to what we're looking at
18 in the drawing for BPM 34?
19 MS. SPARDONE: Object to form.
20 A. No.
21 BY MR. BRALY:
22 Q. No. Okay. Why not?
23 A. Because that's the pressure vessel. This
24 is the inner plate, the door, per se. And you're
25 not looking at the door there. What you're actually

1 looking at there would be more of the BPM 27, sort
2 of the left-hand view or the view on the left-hand
3 side of that drawing.
4 Q. Okay.
5 A. BPM 27 is the pressure vessel itself.
6 Q. Oh.
7 A. And what you're looking at is a head-on
8 view to the front of the pressure vessel after that
9 outer door and, in that case of the picture you had,
10 the inner door were swung open.
11 MR. BRALY: Got it. Okay. So let me take
12 care of some housekeeping here real quick. This
13 would be exhibit number -- what's the next exhibit
14 number?
15 THE REPORTER: 18.
16 (Exhibit 18 marked)
17 MR. BRALY: 18. And do you mind if I get
18 your e-mail address real quick?
19 MS. SPARDONE: Will you just copy me on
20 it, please?
21 MR. BRALY: Sure. Can I get your e-mail
22 address?
23 MS. SPARDONE: Sspardone --
24 S-S-P-A-R-D-O-N-E -- @hptylaw.com.
25 Are you representing that that is a photo

1 of a Cleaver-Brooks boiler?
2 MR. BRALY: I'm representing that it is a
3 demonstrative that I use to -- no.
4 MS. SPARDONE: Okay. It's just a boiler.
5 MR. BRALY: I'm not making that
6 representation.
7 MS. SPARDONE: I just wasn't clear.
8 BY MR. BRALY:
9 Q. Mr. Tornetta -- and you can take a look at
10 it again if you would like -- can you tell from the
11 photograph that I just showed you if that's a
12 Cleaver-Brooks boiler or not?
13 A. I don't think I could definitively because
14 there's no nameplate on it. Certainly it looks like
15 a four-pass boiler. We aren't the only ones that
16 made four-pass boilers, but it looks similar. But
17 definitively I couldn't say.
18 Q. Okay. So it looks similar to a
19 Cleaver-Brooks boiler, but without seeing a
20 nameplate or more information, you can't say for
21 sure?
22 A. Correct.
23 Q. All right. Okay. So going back to I
24 guess BPM 34, the front insulated plate head, we
25 have specified here half a cubic foot of that Vee

1 Block Mix, again calling out for it to be asbestos,
2 and then a two gasket labeled as head gaskets. Can
3 you tell from that description if those gaskets
4 would be asbestos?
5 A. Not from that description, but the drawing
6 should follow, and it does, in BPM 35.
7 Q. Uh-huh.
8 A. And I guess I can't say for certain that
9 drawing specifically says that they were asbestos
10 containing, but certainly I -- I believe at one time
11 the materials called out on BPM 35 I believe to have
12 been asbestos at one time.
13 Q. JM tadpole style. And then it gets a
14 little bit blurry on me here, but looks like 123?
15 A. Correct.
16 Q. All right. BPM 38 we have gaskets that
17 are just specified dry oven gaskets. Also listed is
18 the JM tadpole style 123?
19 A. Correct.
20 Q. How many of these style gaskets would be
21 used in a boiler like what we're talking about?
22 A. Of this drawing, 32443, I think is just
23 one.
24 Q. Okay.
25 A. It's called out on another drawing at

1 least one place. Of course, it would be too easy if
2 I could find that easily. It's actually called out
3 on BPM 26 as item 38. Pretty sure that's the one.
4 Q. Okay. Basically these gasket drawings
5 that follow are details for the gaskets that are
6 referenced earlier in the drawings?
7 A. Correct.
8 Q. All right. So you --
9 A. As I said, it's kind of that growing tree
10 and --
11 Q. Right.
12 A. Where I get to this, that's kind of the
13 end of that line short of that part number there,
14 which is also in the part descriptions.
15 Q. All right. There really is no dispute
16 that the Cleaver-Brooks boiler at Bowater contained
17 asbestos-containing cement, asbestos-containing
18 gasket material, and asbestos-containing rope.
19 Correct?
20 MS. SPARDONE: Object to form.
21 A. Correct. I believe it's called out, all
22 three of those items.
23 BY MR. BRALY:
24 Q. Talk to me about the second set of Bowater
25 documents that you have there, the second series

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1 which I think is BPM 45 through 61. This looks like
2 a random collection of specifications. I --
3 MS. SPARDONE: Object to form.
4 MR. BRALY: Sure.
5 MS. SPARDONE: We take great umbrage at
6 the word "random."
7 A. Those are the part descriptions that are
8 called out within the drawings where, as I said, the
9 end of the line could be a drawing or it could be a
10 part number or it could be a drawing with a part
11 number. These are those part numbers that are
12 called out for any, as I said before, potential
13 asbestos-containing components or those that might
14 be questioned as that.
15 BY MR. BRALY:
16 Q. So talk to me about BPM 50. And there's
17 going to be a couple like this.
18 A. Yeah.
19 Q. But I can just use this as an example.
20 You see very clearly that the font and the clarity
21 of the text changes when you get to Garlock
22 Thermosil or SEPCO fiberglass, and then it's dated
23 October 22nd of 1980. Do you see that?
24 A. Yes.
25 Q. What's happening here?

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1 A. I don't have a good way to, I'll say, date
2 the part descriptions. I have a fixed set in time,
3 and there are ones that certainly will contradict
4 some of the references on the drawings themselves.
5 They weren't kept necessarily in relation to date.
6 I've never really been able to figure out --
7 occasionally you'll see a date underneath some of
8 the descriptions you see there. You don't always
9 see it. I've never been able to figure out what
10 that date actually means, whether it's the first
11 time it was used, the first time it was updated,
12 whatever it is.
13 So this is what we have. There are cases
14 where in this particular case I would have to say
15 it's likely incorrect where it's calling out the --
16 I'm looking at 49 at the moment, 853-348 rope, it's
17 calling out fiberglass rope when on the drawing it
18 was clearly called out as asbestos rope.
19 Q. Right.
20 A. So it's just what we have. I don't have a
21 part description that necessarily or part
22 descriptions that necessarily are dated these are
23 the part descriptions from this time period and this
24 time period and this period. I have a snapshot.
25 Q. Based on the change in both the font -- I

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1 mean, the font preceding is a serif font and this is
2 not a serif font.
3 MS. SPARDONE: Object to form.
4 BY MR. BRALY:
5 Q. Right?
6 A. I'll -- I'll say the font is different,
7 yes.
8 Q. Okay.
9 A. I can't say I testify to different types
10 of fonts and what they are.
11 Q. Do you know what a serif font is?
12 A. I know there are different fonts. I
13 couldn't tell you what's serif and what's not --
14 Q. Okay.
15 A. -- I guess is the way I'd put it.
16 Q. But the clarity of it, I mean, it's
17 diff -- they're different.
18 A. Oh, absolutely.
19 Q. The writing's different. Do you believe
20 based on the differences in the writing and then the
21 use of the numbers in what appears to be normal date
22 format of October 22nd of 1980 or 10/22/80 would
23 indicate a change in whatever specification is being
24 referenced here?
25 MS. SPARDONE: Object to form.

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1 A. There was, I assume, a change in the part
2 description at some time. Whether that '80 date
3 gives me any indication of that being the time, I
4 just don't know.
5 BY MR. BRALY:
6 Q. Okay.
7 A. I don't have a way to nail that down.
8 Certainly there was a change in the font, as you
9 said. My guess is, you know, these were all on a
10 page where there were 30 of these and they were
11 kept, I presume, in some type of binder because
12 there's three-hole punches on the side. And when
13 there was a change back in those days, somebody used
14 white-out or white-out tape, took the page out of
15 the binder, typed in the new stuff, and put it back
16 in.
17 Q. Okay.
18 MS. SPARDONE: Now you for sure lost the
19 jury. Typewriters.
20 THE WITNESS: And white-out.
21 MR. BRALY: White-out.
22 MS. SPARDONE: Exactly.
23 THE WITNESS: I won't say carbon copy.
24 MS. SPARDONE: Oh, God. Mimeograph.
25 Really old.

1 BY MR. BRALY:
2 Q. Rely on the documents basically, look to
3 the engineering drawings to determine what was
4 supplied with that boiler?
5 A. To a point.
6 Q. Yeah.
7 A. And certainly in this case I think we can.
8 But I think, as I described a little bit before,
9 once we get to certain times, I have come across
10 certainly where the Vee Block Mix has been
11 referenced in our drawing and on our part
12 descriptions as asbestos containing when, in my
13 understanding, is that material from Kaiser was no
14 longer asbestos containing.
15 So I don't know that I could say, yeah,
16 absolutely rely on the drawings. The drawings say
17 what they say. I can't definitively say absolutely
18 it was this or that. Certainly I can make some
19 presumptions that the boiler made in 1956 and one of
20 those original ones, it probably was.
21 MR. BRALY: Okay. I tell you what. Let
22 me give you some signposts here about what we're
23 doing here for the rest of this deposition.
24 MS. SPARDONE: Do you want to go off the
25 record?

1 MR. BRALY: No, this is -- we'll leave
2 this on the record.
3 I'm going to ask you questions about the
4 Arabi Packing engineering drawings and the Viking
5 Distilling engineering drawings. I may ask you just
6 some surface-level questions about the other stuff,
7 what did Cleaver-Brooks supply and when. But I
8 probably have an hour and a half, two hours left of
9 questions to go. Do you want to probably get lunch
10 or something, because it's -- I just noticed it's
11 12:05, so --
12 THE WITNESS: I -- I usually defer to the
13 court reporter because she's the one sitting there
14 exercising her fingers.
15 MS. SPARDONE: I mean, I think let's
16 take --
17 MR. BRALY: Let's go off the record.
18 THE WITNESS: I certainly want to break
19 now.
20 MR. BRALY: Yeah.
21 THE VIDEOGRAPHER: We're going off the
22 record at 12:08.
23 (Recess from 12:08 to 1:04)
24 THE VIDEOGRAPHER: We're back on the
25 record at 1:04.

1 BY MR. BRALY:
2 Q. Good afternoon.
3 A. Good afternoon.
4 Q. So just a couple more questions about
5 Bowater, then we'll move on to the Arabi Packing,
6 their Domino Sugar location. Okay?
7 Do you know what the boiler Cleaver-Brooks
8 supplied to Bowater was used for?
9 A. I don't think I found anything in the
10 records that gave me a direct indication of that I
11 think I looked at during the last deposition. It is
12 a -- one of the smallest boilers we make.
13 Q. Okay.
14 A. It's certainly in the firetube range.
15 It's only 30 horsepower. But I don't believe there
16 was any real good indication of what it was actually
17 used for.
18 Q. A boiler that size, what would you even
19 use that for, I mean just generally speaking?
20 A. I think what I said in the last deposition
21 I had was given the testimony about large
22 field-erected high-pressure steam boilers, it
23 wouldn't be unusual for steam from those from a
24 central place to be piped to different buildings if
25 that's what they had. And in some cases a small

1 steam boiler like that is used in a remote location
2 where it was cheaper to buy a, I don't know, it was
3 a few-thousand-dollar boiler to put there than it
4 was to run pipe or to maintain that pipe.
5 Q. Could it be used for like providing heat
6 for an enclosure or for a space?
7 A. You know, it's a low-pressure steam
8 boiler, so it was probably what we would refer to as
9 a heating boiler, not necessarily just for heating
10 space but could have been for making hot water for a
11 kitchen or a locker room, whatever it might be.
12 Q. Right, right. I'm asking because, you
13 know, at least half of the boilers used in the power
14 plant were black liquor like reheat recovery
15 boilers. You read that --
16 A. Yes.
17 Q. -- I take it, yeah. You wouldn't really
18 expect people to pipe steam all over the plant from
19 a reheat boiler that was used for a specific process
20 like that, would you?
21 MS. SPARDONE: Object to form.
22 A. I guess I'm not as familiar in the paper
23 industry as others might be, but I was always under
24 the impression when they burn that black liquor, it
25 is -- it's a waste from their product, but it's also

1 used as an energy source in addition to another
2 energy source. I could be wrong. I don't know.
3 BY MR. BRALY:
4 Q. Okay.
5 A. I think there was some reference to some
6 coal-fired boilers as well, but -- or -- and bark
7 boilers, if I remember correctly, so --
8 Q. Right.
9 A. I didn't think the boiler was there
10 specifically to get rid of that, but that's a
11 secondary purpose of it.
12 Q. Right, right. Okay. So this
13 Cleaver-Brooks boiler that you've characterized as
14 one of the smallest that you make, you could use it
15 for, like, heating or something like that.
16 A. Yeah, it's 15 PSI steam, so it could have
17 been used for heating space. It could have been
18 used for heating water. Typically a 15-pound steam
19 boiler is not used in a process unless the process
20 only requires 10 pounds of steam.
21 Q. You know what a start-up boiler is?
22 A. I've heard the term used. It depends on
23 the context, I guess, what I would understand it to
24 be.
25 Q. What do you understand it to be?

1 A. I'm a little more familiar with it in a
2 location where larger steam boilers are used,
3 field-erected type boilers, where those boilers are
4 being fed by pieces of equipment that require steam
5 before they get started such as a steam-driven pump.
6 So in order to get pump water into the
7 larger field-erected boiler, you first need steam to
8 do it, so obviously the one you're pumping water
9 into can't. So it's used to supply those devices
10 until the larger boiler is online, then it's shut
11 off.
12 Q. Kind of provide almost like a priming
13 source?
14 A. Yeah, for lack of a better term, yes.
15 Q. Okay. I don't have a better term, so yes.
16 A. Neither do I.
17 Q. Would a boiler like what we're talking
18 about be something sized appropriately to be a
19 start-up boiler, or would you need more information?
20 MS. SPARDONE: Object to form.
21 A. To be more definitive, I'd need more
22 information, but a 15-pound steam boiler in that
23 application would surprise me. And just to clarify,
24 when I say 15-pound, I mean pound per square inch.
25 BY MR. BRALY:

1 Q. Thank you. I understood what you meant,
2 but I understand why you would want to make that
3 clarification too, so thank you.
4 Being surprising to you and being
5 impossible to be used as are two different things.
6 Fair?
7 MS. SPARDONE: Object to form.
8 A. Yes. And again, as a start-up boiler, it
9 would depend on what it's really starting up.
10 BY MR. BRALY:
11 Q. Okay. Fair enough. There's no reason --
12 there's no reason on the face of the documents or in
13 the review of the documents that you've seen where
14 this type of boiler could not be used as a start-up
15 boiler under any circumstance. Fair?
16 MS. SPARDONE: Object to form.
17 A. Yeah, again, I'm assuming an awful lot
18 either way. This is a very small 30-horsepower
19 boiler and low pressure, so it's -- it would
20 surprise me again, but I certainly couldn't say
21 definitively either way.
22 MR. BRALY: Okay. That's -- that's all I
23 was looking for.
24 All right. So what I want to do is ask
25 you about Arabi Packing or Domino Sugar. I'm going

1 to move on to Viking Distillers, but let's get the
2 documents that are labeled APC starting with 54. I
3 don't need the business records. Let's just start
4 with 54. And I just want to check off a couple
5 things here.
6 MS. SPARDONE: Give me a percentage?
7 MR. BRALY: Yes, you got it. I have the
8 authority to do that.
9 MS. SPARDONE: Coffee?
10 MR. BRALY: Right.
11 MS. SPARDONE: Piece of pie?
12 THE WITNESS: Okay.
13 BY MR. BRALY:
14 Q. When did you retrieve these documents?
15 A. I think it was shortly after my last
16 deposition, I think the next week, in that week and
17 possibly into the next week. I don't remember exact
18 timing, but --
19 Q. What did Cleaver-Brooks supply to the
20 Arabi Packing Company?
21 A. Actually need the business documents to
22 see that.
23 Q. Okay.
24 A. It was a Model LF215-5, 125-pound steam
25 boiler, I believe. Let me just double-check. Yes.

1 Q. This would be a larger boiler, I take it,
2 than the one at Bowater?
3 A. Not a large amount, no. Not by a great
4 deal, I should say. It is a 50-horsepower boiler
5 versus the 30-horsepower boiler, so still in that
6 lower end of capacities for our firetube boilers.
7 Q. Okay. Is that the only piece of equipment
8 that you found that was supplied to Arabi Packing --
9 A. Yeah.
10 Q. -- or Domino Sugar?
11 A. Correct.
12 Q. You have reviewed the engineering
13 documents for this boiler, correct?
14 A. Correct.
15 Q. Do you know that this boiler was specified
16 for use with asbestos tape? True?
17 A. I believe I did see that somewhere in the
18 records that I produced.
19 Q. Well, for example --
20 A. Yes, I see it right on 54.
21 Q. Yeah. There's a specification to seal all
22 gasket joints with asbestos furnace cement?
23 A. Correct.
24 Q. You've seen reference, for example, at
25 page 56 to a specification for 30 inches of asbestos

1 rope, three-quarter-inch square?
2 A. Correct.
3 Q. And 30 inches of rope, that's, you know,
4 2 and a half feet. Is this intended to go around
5 like a groove in the door to seal it, or what is --
6 A. It's around -- in a groove in a circular
7 opening that we call the relief door. It's actually
8 depicted on 56.
9 Q. Okay.
10 A. That's actually a cutaway where you see
11 it. But if you look at the top view, it's a circle
12 that that 20 inches is going around that,
13 probably -- can't do the math in my head, but it's
14 probably a 8-inch-diameter opening.
15 Q. Okay. There is a specification on the
16 next page for 50 pounds of a product manufactured by
17 a company called Plibrico, P-L-I-B-R-I-C-O. Do you
18 see that?
19 A. Yes.
20 Q. What can you tell us about that cement?
21 What is that?
22 A. I don't know.
23 MS. SPARDONE: Object to form. Sorry.
24 A. Other than there may be a little more
25 description in the part descriptions. I don't think

1 there was though.
2 BY MR. BRALY:
3 Q. Feel free to look.
4 A. Better get those fixed. Yeah, it still
5 says Plibrico and then talks about alternate being
6 Kaiser IRC, whatever that is. Hard to read if that
7 date -- whatever that might mean.
8 Q. Okay. And can you tell us what page you
9 saw that on? I'm sorry.
10 A. Oh, I'm sorry. I should have --
11 Q. Just so -- we're not marking these as
12 exhibits, so I just want to make sure that we all
13 look at the same Bates page.
14 A. Right. APC 69.
15 Q. Thank you. On the next page we see
16 additional references to the use of Plibrico
17 products. At the bottom it lists a cement Tuff Mix.
18 It says 179 pounds of that. And then again this LWI
19 Plibrico, and it says another 108 pounds of that.
20 A. Correct.
21 Q. And then this Pyro -- I think that's
22 Pyrotex insulating block. It says 4 square feet of
23 that.
24 A. Correct.
25 Q. Do you know if the Pyrotex insulating

1 block is asbestos containing?
2 A. I think at one time I've seen that that
3 was in a different context, but I think that part
4 number I've seen listed.
5 Q. And the Arabi Packing or Domino Sugar
6 documents, from what time period was this boiler
7 installed or manufactured?
8 A. This is back in the Fifties. I don't
9 remember the exact time frame. It was started up in
10 1952. Find the ship date. We shipped it
11 August 17th, 1951, so early 1950s.
12 Q. Okay. On page APC 59 you see a
13 specification for an asbestos gasket that is used in
14 the oven?
15 MS. SPARDONE: Object to form.
16 A. Yes. The entire drawing is for the --
17 what we call the dry oven in that particular
18 instance, but within that is item 7 which is called
19 out as a gasket asbestos paper.
20 BY MR. BRALY:
21 Q. Drawing APC 61 looks like a -- almost an
22 exact duplicate of the same sight hole that was seen
23 in the Bowater documents including the specification
24 for the JM60 asbestos sheet gasket.
25 MS. SPARDONE: Object to form.

A. Correct. Same gasket. In fact, I think the same part number. Slightly different arrangement of the sight port, but same function.
BY MR. BRALY:
Q. The next page calls out more of this Pyrotex -- it says Forty-Eight high temp, and that -- and Forty-Eight is in quotation marks. It's likely a reference to Forty-Eight Insulation is the company. I don't know if you're familiar with them, but --
A. I am. I've seen that reference before. I thought it was too.
Q. Okay. And then it also calls out 12 pounds of long-fiber asbestos cement.
A. Correct.
Q. And 17 feet of an asbestos rope that's 3/8-inch in diameter.
A. Correct.
Q. Okay. Now, 17 feet of asbestos rope, would this be the outside diameter of the rear door or the rear baffle?
A. No. This is a little different arrangement than what you're familiar with with the other ones, a different style boiler. It's an older style where the door is actually a plate or the rear

door is not one solid door. There's a rear plate on the bottom, a couple rear plates on the top.
And I believe that gasket or that rope goes around a portion where that bottom half of the rear door seals against what we call the shell extension in the back of that particular model boiler.
Q. Okay. So the Arabi paper boiler or Domino Sugar, there is no dispute that it was supplied with asbestos gaskets, asbestos rope, asbestos cement, and, depending on this Pyrotex product, maybe asbestos refractory.
A. I wouldn't call the Pyrotex refractory. I think I'd call that insulation.
Q. Okay. I was referencing APC 62. It says refractory, and then it says Pyrotex.
A. Yeah, I don't know -- quite frankly, I'm not sure where that reference comes from, but I'm familiar with that material more, as I referenced earlier, in one of the ones as a block-type insulation.
Q. Let me reask the question then. As it relates to the Arabi Packing or Domino Sugar facility, there is no dispute from Cleaver-Brooks that that boiler would be supplied with asbestos

rope, correct?
A. I believe so, yes.
Q. Asbestos gaskets, correct?
A. I think we saw that called out. I think they're interchanging gasket and tape in some cases, but yes.
Q. And when you say tape, you're not talking about like Scotch tape. You're not -- you're talking about like almost a -- like consistency of tape but not like an adhering material?
A. Correct.
Q. Okay. Asbestos cement. We saw that.
A. Yes.
Q. Okay. Asbestos insulation?
A. In these portions, yes.
Q. Okay. And potentially, based on what we could find out about Forty-Eight Insulation's high temp, maybe asbestos refractory?
MS. SPARDONE: Object to form.
A. Again, I think that part number is really talking about insulation. Even though it says refractory there, I realize it says that, I think it's mistakingly saying that.
BY MR. BRALY:
Q. Okay.

A. Because other parts, that 872-22 on one we just looked at, if I recall it properly, on APC 58, item 6 calls out the 4 square feet of 872-22 block insulation Pyrotex.
Q. Okay.
A. I am more familiar with it, and that application appears to me more as an insulating block versus a refractory. I know the term refractory is used pretty loosely.
Q. Fair enough. All right. Just like with the Bowater documents, we have a third grouping of documents that runs APC 65 through 77 that appears to be specification notations.
MS. SPARDONE: Object to form.
A. They're what we call our parts descriptions.
BY MR. BRALY:
Q. Okay.
A. Or part descriptions.
Q. Again, just like when we looked at the Bowater part descriptions, would it be accurate to say that those are a handy reference but, if you want more accuracy, to look at the engineer drawings?
MS. SPARDONE: Object to form.

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A. I'd be hesitant to say more accuracy. I would use them both and in context, I guess is the way I'd put it. So if I'm looking at a part description that I don't know what it's dated at and it references that fiberglass rope in a boiler I'm looking at in 1952 and on the drawing from '52 it says asbestos rope, I think I'm going to look at it in the context of it being asbestos rope.
BY MR. BRALY:
Q. Okay. And that's what I was going on.
A. Yeah.
MR. BRALY: Thank you. All right. So let's look at the Viking Distilling documents.
THE WITNESS: I have those already there, right?
MS. SPARDONE: Yeah.
THE WITNESS: Okay.
BY MR. BRALY:
Q. First thing as it relates to the Viking Distilling documents I want to ask you is what was supplied and when.
A. We shipped a Model CB200-400 150-pound design pressure boiler on October 18th, 1974, and its unit number was L59290. And it was Viking Distillery in Albany, Georgia.

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Q. Okay. And this was shipped in 1974, you said?
A. Yes.
Q. All right. Let's look at the drawings that you found for this boiler starting with VIK 82. I'm sorry. It starts at VIK 75.
A. Okay.
Q. In 1974 was Cleaver-Brooks still utilizing asbestos-containing insulation materials?
MS. SPARDONE: Object to form.
A. That I don't know that I can be certain of. I think '74, from my experience in this litigation, was a time period when the Vee Block Mix, which I believe is called out on some of these drawings, was no longer asbestos containing, and I would consider the Vee Block Mix an insulating material.
Whether or not the other pieces of insulation inside the rear door were or weren't, I'd really have to depend upon the suppliers of those materials at the time to say whether they were or not.
BY MR. BRALY:
Q. Okay. And we saw earlier in the very beginning of this deposition that Cleaver-Brooks was

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supplying gasket material that contained asbestos as late as the middle Eighties.
A. Oh, in those invoices that we looked at with that warning, yeah, that was again related to some water techno -- or water purification equipment, but yes, there were ones in that time period.
Q. Okay. The boiler shipped in 1974 to Viking Distilling utilized asbestos-containing gasket and rope material. True?
A. I believe at least gasket. I -- the rope would be possible. Again, it's getting to a point where I'm not sure I could say what the suppliers of the rope may have included in that material. I think it did, but I'm not certain.
Q. Okay. Can you turn to page 82, please. There's a table at the top. First of all, this is a drawing for the rear head and davit arm, D-A-V-I-T, for this boiler, correct?
A. Correct. Well, for boilers like this too.
Q. Right. This is -- this is a generalized drawing. It applies to Cleaver-Brooks' standard drawing for boilers who -- of this size that incorporate rear door with a davit arm like it's shown on this drawing, right?

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A. Various boilers of this size. I'd be a little careful of the term "standard," because while we may have actually tabled it out like that, whether we built boilers with that table, I don't know off the top of my head. But absolutely, it's designed to be a drawing for a range of boilers.
Q. And just for someone who might not know, a davit arm is just basically a fancy hinge, right?
A. Yes.
Q. The specifications here from 1973 or '4 call out 20 pounds of asbestos cement, correct?
MS. SPARDONE: Object to form.
A. Yes.
BY MR. BRALY:
Q. It also calls out 54 feet of asbestos wick packing, correct?
A. Let me just make sure. Just check one thing first.
Q. Yeah.
A. Yes.
Q. And 54 feet of anything sounds like a lot, so how do you use 54 feet of packing in that assembly?
MS. SPARDONE: Object to form.
A. It is going around the inside diameter of

1 the -- where the pressure vessel tube sheet goes
2 against the shell of the boiler. Inside the closing
3 of the rear door, it's within that. So it's going
4 around the diameter of a 96-inch-diameter boiler.
5 So 54 feet, if I did 2 pi R, I'd probably come close
6 to that.
7 BY MR. BRALY:
8 Q. All right. Let's skip ahead here to
9 VIK 83.
10 A. Okay.
11 Q. This is a drawing for gasket front and
12 rear?
13 A. Yes.
14 Q. The material that's called out here are
15 Union Asbestos and Rubber, and there's a part number
16 there for an 8153 with alternates for a JM tadpole
17 gasket with a part number or a Garlock XP7604,
18 correct?
19 A. Correct.
20 Q. All right. Do you know these gasket
21 materials to be asbestos containing, or do you just
22 not know?
23 A. I understand at one time they were.
24 Whether they were in '74, I believe they were, but
25 I'm not certain of that.

1 Q. Next page is the installation of rope and
2 cement firebrick to rear tube sheet. Do you see
3 that?
4 A. Yes.
5 Q. And it says "See table."
6 A. Correct.
7 Q. And this is a 96-inch boiler, correct?
8 A. Yes, it is.
9 Q. So according to that table, you would need
10 8 feet of 1-and-a-half-inch-diameter asbestos rope?
11 A. Correct.
12 Q. And it also calls for 12 ounces, which
13 that's three-quarters of a pound, of asbestos cement
14 for this application here, correct?
15 A. Correct. And again, this is an area where
16 whether or not that particular cement was available
17 as asbestos cement at that time, I couldn't say for
18 certain. I think the part number is calling out a
19 JM450.
20 Q. Certainly asbestos rope was available in
21 1973, '4, correct?
22 A. You know, quite frankly, I don't get into
23 what was available and when beyond what our records
24 are, so I couldn't say for certain.
25 Q. Okay. On the next page, which is a

1 specification for the rear head insulated --
2 A. Yeah.
3 Q. -- which I guess is the rear door --
4 A. Yes.
5 Q. -- it calls out asbestos board as item
6 number 5?
7 A. Yes, it does.
8 Q. It calls out 25 pounds of asbestos cement
9 as item number 10?
10 A. Yes. Again, same part number we just
11 discussed.
12 Q. Right. It calls out two different types
13 of insulating block, but because of the time period,
14 I'm going to defer on that. I'm going to just --
15 could be asbestos, might not be.
16 And then there's something else I saw here
17 that I thought I was going to call out for you, but
18 maybe not. Oh, and then item number 22, it calls
19 out Superex insulation. Do you see that?
20 A. Yes.
21 Q. And it calls it out as one-and-a-half inch
22 thick by 12 inches by 23 inches. Do you know what
23 they're talking about here? Is this a block of some
24 kind?
25 A. I think it is a -- well, I guess anything

1 that's inch-and-a-half thick I would call more than
2 an insulating board. I'd call it more of a block.
3 Whether or not it was asbestos or not, I don't know.
4 Q. We'd have to look up what JM was doing
5 with Superex at that time, right?
6 A. If that -- if Superex is JM. I don't know
7 that.
8 Q. It is.
9 A. Okay.
10 Q. It's a JM brand.
11 A. Yeah.
12 Q. Okay. Over on the left side of that page,
13 it says coat, and it gives item number -- or it says
14 coat with asbestos cement. Do you see that?
15 A. Yes.
16 Q. Okay. So at least as far as the
17 specifications for this boiler goes, it's calling
18 for asbestos rope, asbestos gaskets, asbestos
19 cement, and potentially asbestos insulation.
20 MS. SPARDONE: Object to form.
21 A. That's what it's calling for. And again,
22 I would just defer to the suppliers or what we could
23 know from a supplier whether or not they actually
24 were asbestos containing in all those instances, but
25 I believe in at least some of them they were.

1 BY MR. BRALY:
2 Q. Last couple of these. Let's go to VIK 93.
3 A. Okay.
4 Q. And I'm actually just going to group these
5 together, VIK 93 through 96.
6 A. Okay.
7 Q. Okay. These are specifications for
8 various gasket material for use with valves and
9 regulators that are used with the boiler, correct?
10 MS. SPARDONE: Object to form.
11 A. I'll just clarify a little bit. It's for
12 use in what we call our fuel oil controller, which
13 is a device that is a series of valves and one
14 casting and a regulator for controlling the fuel
15 flow into the burner.
16 So it's -- I just would not want people to
17 get the impression that it's a valve here and pipe
18 to a valve there and pipe to a valve there. It's
19 one assembly that has valves and regulators as part
20 of it.
21 BY MR. BRALY:
22 Q. Okay. And those valves and regulators are
23 specified to be used with asbestos gaskets
24 manufactured by Johns Manville and Garlock, correct?
25 MS. SPARDONE: Object to form.

1 A. Yeah, the description here says asbestos
2 neoprene. And again, I -- that's what it says on
3 the drawing. I don't know whether it was --
4 apparently in 1959 when they drew it or actually
5 in '71 when they revised the part number, that's
6 what it was. In '74 if it was or not, we'd have to
7 look at JM or Garlock.
8 BY MR. BRALY:
9 Q. And I'm not going to go through all of
10 these, but the same would be true for all of the
11 specified gasket material that appears in these
12 drawings. For example, at page Viking VIK 102,
13 VIK 103, we see various specifications for gasket
14 material.
15 MS. SPARDONE: Object to form.
16 A. Correct, yeah, in that particular case of
17 102 it's a JM60. So is 103. If JM60 at that time
18 period was, then, yes, it would have been asbestos
19 containing.
20 BY MR. BRALY:
21 Q. Okay. All right. We have a final group
22 of production here for the Viking documents. For
23 identification it's VIK 117 through 147.
24 A. Okay.
25 Q. And again, these are the descriptive --

1 tell me what these are again. I forget the phrase
2 that you used.
3 A. These are what we would call our part
4 descriptions. So in the drawings they call out a
5 part number. Where there's no drawing, if there
6 isn't enough information, or even if there is, if
7 there's additional information on the part
8 description, I would produce that.
9 Q. Why does it look like this, by the way?
10 I mean, it's a blank piece of paper with kind of
11 this offset -- they're not in the same place in
12 every document. It looks like a ransom note, like
13 what's going on here?
14 A. The original -- well, the original --
15 original copy of it that we have would be a sheet
16 with 20 part numbers or whatever would fit in two
17 columns here. And when our attorneys produce it,
18 they, I believe, redact all the part numbers that
19 aren't relevant to this particular boiler.
20 As I'm going through the drawings, I pull
21 out -- I identify the part numbers that are at issue
22 with that particular boiler. So like in the case of
23 some of these, you'll see two part numbers on it
24 because there were two part numbers that happened to
25 be on that. They're in numerical order.

1 Q. All right. I thought that was a
2 possibility for why, I just didn't know. Thanks for
3 filling that in.
4 All right. We're moving right along here.
5 I have some questions about the other job sites that
6 we don't have engineering documents for, and so
7 let's just get started with that. It's going to be
8 shorter, though, because we don't have as much to
9 ask about.
10 Before I get to that, though, we've looked
11 at three different job sites so far. We looked at
12 the Bowater, the Arabi Packing, and the Viking
13 Distilling locations. All three of them, regardless
14 if the boiler was made in 1952 or 1973, contained
15 asbestos components, rope, gaskets, that kind of
16 thing. True?
17 A. Yeah, I think each of them identify some
18 asbestos components.
19 Q. The specifications or the drawings, the
20 engineering drawings for these boilers, while they
21 were specific to these purchases, these serial
22 numbers, the drawings we looked at were generalized
23 drawings, meaning they weren't drawn specifically
24 for this boiler, they were drawn for that class of
25 boilers. Right?

1 MS. SPARDONE: Object to form.
2 A. I -- I'd be a little careful in saying
3 that class. In some cases, yes, there's a range.
4 In some cases it's not.
5 Certainly the drawings -- in fact, I think
6 when we look at -- there were two sets and maybe I'm
7 confusing it, that they were close enough in
8 shipment time that they actually shared some
9 drawings between two of them. So, yeah, there --
10 the drawings I produced would have possibly been
11 used on -- in manufacturing other boilers.
12 BY MR. BRALY:
13 Q. Prior to 1975 are there any Cleaver-Brooks
14 boiler designs that would not have contained any
15 asbestos?
16 MS. SPARDONE: Object to form.
17 A. I'm not sure I've ever been able to
18 research it to that point, whether I could say there
19 was a particular one at that time. There's
20 certainly ones I would wonder, but I don't know that
21 I could give you anything definitive in that area.
22 BY MR. BRALY:
23 Q. How long have you been serving as a
24 corporate representative for Cleaver-Brooks in
25 asbestos cases?

1 A. Sixteen or seventeen years now.
2 Q. I know I've seen at least ten transcripts
3 of testimony that you've given in either depositions
4 or in trial. I'm guessing, but I don't know, that
5 you've looked at records for hundreds of boilers,
6 thousands of boilers? What are we --
7 A. Easily hundreds. To say thousands might
8 be accurate too. I -- that indicates more than
9 1,000, so -- I've never kept track. Just wasn't
10 something I did.
11 Q. A lot.
12 A. Yeah.
13 Q. Yeah. Have you ever seen a boiler
14 manufactured before 1975 by Cleaver-Brooks that had
15 no asbestos in it at all?
16 MS. SPARDONE: Object to form.
17 A. Again, I don't know -- it's certainly not
18 something I've kept a note of, mental or otherwise.
19 I couldn't place the time. Certainly I've come
20 across boilers I want to say in the Seventies, I'm
21 not sure when, that I did not find
22 asbestos-containing components. But I certainly
23 wouldn't want to nail it down to a specific year.
24 That's not something I've noted.
25 BY MR. BRALY:

1 Q. Okay. For a boiler manufactured prior to
2 1970 by Cleaver-Brooks, you would expect that that
3 boiler would have some asbestos-containing
4 components, correct?
5 MS. SPARDONE: Object to form.
6 A. You know, I'd always be careful with
7 expecting because usually when I expect something,
8 that's when somebody shows me something different.
9 So I wouldn't want to guess at that.
10 BY MR. BRALY:
11 Q. Sure.
12 A. I certainly haven't looked at every one.
13 Q. In the hundreds or maybe even thousands of
14 boilers that you've researched, that you've gone
15 back and actually looked at, can you recall ever a
16 situation of finding a boiler manufactured prior to
17 1970 that contained no asbestos at all?
18 MS. SPARDONE: Object to form.
19 A. I can't recall it, but again, as you know,
20 I haven't looked at every one. I -- I wouldn't want
21 to definitively say it one way or the other.
22 BY MR. BRALY:
23 Q. What did Cleaver-Brooks supply to the
24 Avondale facility and when?
25 A. I'd have to look at the records because

1 I -- off the top of my head, I'm not sure I could do
2 that.
3 MR. BRALY: That makes sense.
4 MS. SPARDONE: While he's looking, just
5 off the record.
6 (Discussion off record from 1:40 to
7 1:41)
8 BY MR. BRALY:
9 Q. All right.
10 A. The records here are a -- we supplied a
11 CBH100-30 steam boiler 15-pound design, March looks
12 like 16th, 1963. Difficult to read, so I think
13 that's right. And the unit number, serial number is
14 L30021.
15 Q. Based on what you know about that model of
16 boiler and the year of manufacture, would you expect
17 that this boiler would contain asbestos gaskets,
18 asbestos rope, asbestos insulating material?
19 MS. SPARDONE: Object to form.
20 A. It certainly wouldn't surprise me. I --
21 again, I hate to expect things because then I get
22 what I don't expect, but --
23 BY MR. BRALY:
24 Q. Would the clearest way to know for sure to
25 be look -- would that be to look at the engineering

1 drawings?
2 A. Yes, in this particular instance, yes. In
3 some cases, not necessarily. In this one it would
4 possibly also require looking at what a particular
5 supplier had available at a particular time, but in
6 the 1963 time frame I'm not sure that would be
7 necessary.
8 Q. And in 19 -- or, I'm sorry. For this
9 location, Avondale, you have not looked at the
10 engineering drawings for this boiler?
11 A. No, I haven't.
12 Q. Do you expect that those engineering
13 drawings exist?
14 A. I'm always careful expecting, but yes.
15 MR. BRALY: All right. Let's go on to the
16 next one. The next job site would be the Cargill
17 location in Memphis, Tennessee.
18 MS. SPARDONE: Oh, did I not give them to
19 you?
20 THE WITNESS: No, that's Daniel.
21 Want to know what was shipped, I assume.
22 BY MR. BRALY:
23 Q. What was shipped and when?
24 A. Okay. We shipped a CB200-200 150-pound
25 design steam boiler to Cargill Nutrena in Memphis,

1 Tennessee, on March 19th, 1975, and it was unit
2 L59414.
3 Q. Okay. Based on the year of manufacture,
4 would you need to look at the engineering drawings
5 to know what, if any, asbestos-containing components
6 would be used with this boiler?
7 A. Yes, to know for certain what was used,
8 yes.
9 Q. Do you have the information necessary in
10 those documents to find those engineering drawings?
11 A. Yes.
12 Q. Have you looked for those engineering
13 drawings for this boiler?
14 A. No, I haven't yet.
15 Q. When were these documents for Cargill
16 produced to you?
17 A. Produced to me or --
18 Q. When did you see them for the first time?
19 A. Well, I saw them when I did the search
20 where I found this. Certainly didn't do much more
21 than find that invoice.
22 Q. Right.
23 A. And I don't know that I can nail down
24 exactly when that was, but I think it was in January
25 sometime.

1 Q. All right. You can set that aside. It
2 would have been prior to your first deposition?
3 A. I think so. Again, I'm -- there's some
4 fogginess there to me on what sites were searched
5 when, but I'm sure there were sites searched before
6 then.
7 MR. BRALY: Understood. Let's look at the
8 Daniel Greenville location, Daniel Construction.
9 THE WITNESS: I think it's this one.
10 Those are ones we looked at a little bit before,
11 right?
12 MR. BRALY: I believe so.
13 THE WITNESS: Okay.
14 MR. BRALY: Those have a sticker on them.
15 We actually did mark those as an exhibit, so --
16 And by the way, anybody who's reading this
17 transcript and wondering where all of your exhibits
18 are, we've tried to reference the Bates numbers from
19 the document production, so look at the Bates
20 numbers. Please don't e-mail me at midnight asking
21 me where your exhibits are. Look at the Bates
22 numbers. It's all there. I can go off the --
23 MS. SPARDONE: People get that way?
24 MR. BRALY: Sometimes.
25 THE WITNESS: I think we did look at these

1 before, but do you want me to look at them again?
2 BY MR. BRALY:
3 Q. It has a -- go ahead and reference the
4 exhibit sticker on this one.
5 A. Oh, I'm sorry. Exhibit No. 17.
6 Q. Great, great.
7 A. Which -- do you need the Bates numbers
8 just to cover your --
9 Q. The Daniel Greenville production runs from
10 DAN 1 to DAN 111.
11 A. Correct.
12 Q. All right. What was supplied to Daniel
13 Construction and when?
14 MS. SPARDONE: You did go over this
15 earlier.
16 MR. BRALY: Did I?
17 MS. SPARDONE: The portable steamers.
18 MR. BRALY: You've seen how long this
19 takes. I'll just do it again.
20 A. We shipped a -- get the right document --
21 PSM50 150-pound trailer-mounted portable steamer --
22 BY MR. BRALY:
23 Q. Right.
24 A. -- to Daniel Construction, Greenville,
25 South Carolina, 3/2/65.

1 Q. Right. And there were three of them.
2 A. Yes.
3 Q. A third or -- there was more than one.
4 A. Earlier. One was '60 and one was -- two
5 of them were '60 and one was '65, if I remember
6 right.
7 Q. Right. And I remember why I wanted to
8 come back to this. Portable steamer, this sounds
9 like a boiler in a buggy. What is this? What does
10 this -- what does it look like and how does it work?
11 A. Probably a little bit like that. It's --
12 it is a trailer-mounted relatively small boiler,
13 50-horsepower boiler, that could be towed around
14 behind a truck.
15 Q. What would you use it for?
16 A. In some cases for portable -- I shouldn't
17 say portable -- temporary steam where you're
18 disconnecting somebody's boiler to put in a new one
19 and the time that that's disconnected they need a
20 certain amount of steam while it's being installed.
21 That's a common use. In the north they use them
22 for -- road crews use them to steam out frozen
23 culverts.
24 MR. BRALY: Oh, yeah. And this is rank
25 speculation, so I'm going to tell you that before I

1 get started. So if the objection is made, fine.
2 MS. SPARDONE: Conceded.
3 BY MR. BRALY:
4 Q. But like for a construction company like
5 Daniel that's working in steam plants and a boiler
6 like this might -- might be used like in an outage
7 or some other kind of event where they still need to
8 supply emergency, basically backup steam?
9 A. Could be, yeah. That would be the
10 temporary steam situation. Certainly the
11 50-horsepower limits it to a certain amount of
12 steam. That's a relatively small amount of steam --
13 Q. Right.
14 A. -- in an industrial application, but that
15 wouldn't be unusual.
16 Q. Right. It's not going to replace a
17 field-erected boiler, but --
18 A. No.
19 Q. -- maybe some critical path material could
20 stay up.
21 A. Correct. You could supply heat to a small
22 building or hot water to a set of showers or a
23 bathroom.
24 Q. Got it, got it.
25 The presence of asbestos in any of these

1 boilers supplied to Daniel, is that something that
2 we would have to look at the engineering documents
3 to know about?
4 A. Yeah, these are a little different
5 animals, so I wouldn't want to compare them exactly
6 to some of the other ones we've looked at in that
7 time period. So I'd want to look at the drawings to
8 see where we're talking about, and certainly to find
9 a gasket on it that would be asbestos containing
10 wouldn't surprise me.
11 Q. You have the information that you would
12 need to find the engineering drawings for these,
13 correct?
14 A. Eventually, yes. These would be -- given
15 the time period and the type of product, these are a
16 little more hunt and peck, I'll call it, for the
17 drawings where I'd have to possibly search through a
18 series of them looking for the one that applies.
19 But I think I probably could, given some time.
20 Q. You have not hunted yet, correct? You
21 have not begun the search for these engineering
22 drawings, right?
23 A. No, I have not.
24 Q. Would you have first located these
25 documents, first received these documents prior to

1 your February deposition?
2 A. I don't know. I'm not sure when I
3 searched. I know there was a series of job sites I
4 searched for after my deposition. I'm not sure if
5 Daniel Construction was one of them or not.
6 Q. Okay. Boilers like this that go on a
7 trailer, we're talking about like a standard
8 trailer, like a trailer you'd use for like a parade
9 route or something. I mean, like a parade float or
10 something like that. Would it fit on a trailer like
11 that size?
12 MS. SPARDONE: Object to form.
13 A. I'm not sure. This boiler was built into
14 a trailer. It would have been 50 horsepower. It's
15 roughly a 4-foot diameter vessel, and the actual --
16 with these boilers, they had a fuel tank and a gas
17 tank, gasoline tank for supplying it.
18 So I couldn't call it a standard trailer.
19 It was a specifically-built trailer that had those
20 tanks on it and the boiler was between it. But
21 certainly could be pulled by a commercial vehicle,
22 I would call it. I wouldn't pull it with my van.
23 BY MR. BRALY:
24 Q. What about like a pickup truck?
25 A. Possibly.

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1 Q. And when we talk about a commercial
2 vehicle, I just -- lawyers are tricksy people,
3 and --
4 A. I have never noticed.
5 Q. I know. What some people might call a
6 commercial vehicle might not be what I'm thinking in
7 my head right now as a commercial vehicle. What do
8 you think a commercial vehicle is?
9 A. I'm picturing a heavy-duty pickup truck or
10 larger.
11 Q. Okay. Like a three-quarter, one-ton
12 pickup --
13 A. Yes.
14 Q. -- that kind of thing? Okay.
15 A. And they're relatively heavy.
16 Q. Right.
17 A. This is --
18 Q. That was the next thing I was going to
19 ask.
20 A. -- a big hunk of steel.
21 Q. You know, there's a -- there's a -- I
22 think it's GWVR, gross weight vehicle rating or
23 some -- do you have any idea what the trailer
24 capacity or the weight of one of these things would
25 be?

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1 A. I'm looking at the one we shipped in 1965
2 and there's a actual bill of lading and it says
3 total weight, 4,600 pounds, I believe.
4 Q. Okay.
5 A. So --
6 Q. So like a decent-size boat.
7 A. Yeah. That's 2-ton, plus 2 ton.
8 MR. BRALY: All right. I need to look
9 through some documents for South Carolina Gas &
10 Electric. I had previously said that we didn't have
11 engineering drawings for that. I have since been
12 provided engineering drawings for that that may have
13 been produced to my office that I just wasn't aware
14 of. So I need to look at those and then I'm going
15 to have some more questions for you, so let's take
16 10 or 15 minutes. Okay?
17 THE WITNESS: Okay.
18 THE VIDEOGRAPHER: We're going off the
19 record at 1:54. We're off the record.
20 (Recess from 1:54 to 2:10)
21 THE VIDEOGRAPHER: This is disk number 3
22 of the deposition. We're back on the record at
23 2:10.
24 BY MR. BRALY:
25 Q. I want to move on, ask you about this

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1 South Carolina Electric & Gas job site. I want to
2 start by asking you the questions I was asking about
3 the other job sites. What did Cleaver-Brooks supply
4 and when?
5 A. We shipped a CB, Model CB700-700 30 PSI
6 design pressure hot water boiler, two of them, on
7 January 6, 1975, and they were unit numbers L59666
8 and L59667.
9 Q. Okay. You did locate documents for
10 those -- for these two boilers.
11 A. Correct.
12 Q. These documents were located -- when did
13 you locate these documents?
14 A. The commercial records would have been
15 when I searched. And again, I'm not sure if that
16 was part of the search prior to my other deposition
17 or just after it, but the drawings and parts
18 descriptions were -- middle of last week I think I
19 finished gathering those.
20 Q. Okay. We received a transmittal that I've
21 been informed of on February 28th, Wednesday of last
22 week, with the engineering drawings for this. We
23 actually received the business records for this on
24 what looks like --
25 MS. SPARDONE: 7th?

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1 BY MR. BRALY:
2 Q. Yeah, on February 7th, so just five days
3 after your initial deposition.
4 Do you know when you received the business
5 records for the South Carolina Electric & Gas
6 boiler?
7 A. Well, again, I'm not certain if I had
8 looked at them. I would have just reviewed them
9 initially for that invoice and to make sure what the
10 index card said was what the actual commercial
11 records said. I'm not certain if that was prior to
12 my last deposition or just after when I searched for
13 South Carolina Electric & Gas.
14 Q. The step one, the search of the index
15 cards would have happened before your initial
16 deposition to just determine if there was
17 Cleaver-Brooks hits on this location or not. True?
18 A. Again, I'm not certain. I don't believe
19 every one of the 60, 50 plus sites I searched prior
20 to my deposition the last time, the February 1st
21 deposition.
22 Q. Okay.
23 A. And I've -- quite frankly, I'm not certain
24 what category that fits into, whether it was just
25 before or just after.

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1 Q. So tell me that. If you search the index
2 cards for a job site and you report up that, hey,
3 look, we've got some Cleaver-Brooks boilers that are
4 being sold to this location, from that
5 communication, however that happens, how long does
6 it take to receive the business records from the
7 attorneys?
8 MS. SPARDONE: Object to form.
9 A. I actually have the copies of those
10 commercial records, but the attorneys do as well.
11 So for production, they are Bates stamping them and
12 then producing them.
13 BY MR. BRALY:
14 Q. Okay.
15 A. I don't actually make the copies of what's
16 produced, but I have -- original's a bad word. I
17 have the original microfiche, which is a copy
18 obviously.
19 Q. So basically you go to the index cards,
20 you find out, oh, ah-ha, we've got something that
21 was shipped here. You can go and retrieve the
22 business records yourself and the engineering
23 drawings yourself?
24 A. Correct.
25 Q. All right. Were both of these boilers --

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1 I'm sorry. Which CGE -- or I'm sorry,
2 South Carolina Electric & Gas location did these
3 boilers go to?
4 A. It shows Charleston, South Carolina, as
5 the street address, I guess I'll call it, for lack
6 of a better term because there's not a street
7 address. I didn't find anything that identified
8 other than there was some reference to Goose Creek,
9 I have no idea what that means, in a city and state
10 on one of the documents. I didn't see anything, and
11 possibly I missed it, that referred to -- I don't
12 remember the term, the name. Williams or --
13 Q. Yeah, Williams steam plant.
14 A. Yeah. I didn't see that anywhere in our
15 records. We talked a little bit about that
16 before --
17 Q. Yeah.
18 A. -- and that I -- certainly we say in most
19 places here Charleston, South Carolina, but I didn't
20 have anything throwing this into whatever that steam
21 plant was.
22 Q. Okay.
23 A. Or these, I should say.
24 Q. If you'll turn to the engineering
25 drawings.

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1 A. Okay.
2 Q. There are references to some of the same
3 types of products that we've seen before. For
4 example, on I guess what would be SCEG 61, there is
5 a reference to bulk gaskets. Do you see that?
6 A. Yes.
7 Q. And this is a drawing for the baffle
8 assembly, correct?
9 A. Correct.
10 Q. How would we find out if those bulk
11 gaskets or that specification would be asbestos
12 containing or not?
13 A. We would go to the part description for
14 part number 853-394.
15 Q. Can we do that?
16 A. Yes.
17 Q. Okay.
18 A. And it may tell us one way or the other
19 and, quite frankly, may not. That's one of the
20 ones -- if we look at SCEG 89, that's one of the
21 ones similar to what we talked about before where
22 there's a difference in the font in the part
23 description that talks about Garlock Thermosil or
24 SEPCO fiberglass where I believe in 1975 when
25 this -- these boilers were shipped, that probably

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1 was not the case.
2 Q. Okay. So that would be something that was
3 likely whited out and changed to say the two that
4 you mentioned?
5 A. At some point, yes.
6 Q. All right. Is there any reference in the
7 engineering drawings to help determine if those
8 would be asbestos-containing gaskets or not?
9 A. That particular gasket? I don't think so
10 other than that.
11 Q. On page 62 there's a reference to
12 refractory cement and insulated mill board that's
13 used in a drawing here for the furnace liner. Do
14 you see that?
15 A. Yes.
16 Q. Can you tell from those designations
17 whether those would be asbestos containing or not?
18 A. I don't believe the refractory cement was.
19 That's, I think, similar to I think the Firefrax we
20 talked before about.
21 Q. Is there a number you can cross-reference
22 to that sheet and determine?
23 A. Yes. 872-390 is the part number called
24 out for that. And if we look at 872-390 -- unless
25 it's out of order, I don't see. Oh, they're out of

1 order. I didn't see it in my first pass. Let's try
2 number two.
3 MS. SPARDONE: What's the part number?
4 A. I'm looking at -- oh, the Bates number is
5 mostly blacked out -- SCEG 90. And it actually
6 calls out a Trowleze material. Again, not being
7 able to date that very well, I don't know if that
8 was the actual material used in 1974.
9 I would say that that material and in that
10 application is similar to the cement we talked about
11 before. In fact, I think it was the same part
12 number, where it's in an application that's -- here
13 we're talking about temperatures in excess of
14 2,000 degrees, so it would surprise me if it did.
15 BY MR. BRALY:
16 Q. What about the insulated mill board?
17 A. I think that's called out as the JM106
18 when you look at the part description. It's
19 actually behind the refractory, so I think at one
20 time that was asbestos containing. I don't know if
21 JM106 was in 1975.
22 Q. All right. On page 66 we have again this
23 davit arm rear head assembly.
24 A. This is the one I was talking about
25 earlier that shared some drawings with the boiler

1 from --
2 MS. SPARDONE: Viking.
3 A. Viking. Thank you. Viking Distilling.
4 BY MR. BRALY:
5 Q. Okay. And just like sharing with -- it
6 has the same callout as Viking, the 20 pounds of
7 asbestos cement and the 54 feet of asbestos wick?
8 A. Except this one would be different in that
9 here we're dealing with a boiler that is a 30-pound
10 hot water boiler. So when we go to this table, we
11 have to look at the size of the boiler and the LP
12 designation instead of power.
13 And the item 5 and item 10 are not used,
14 which is the cement asbestos bulk furnace and the
15 packing asbestos wick bulb -- bulk quarter inch by
16 54 feet. So in this particular boiler those two
17 components aren't used because it's a different
18 model pressure vessel.
19 BY MR. BRALY:
20 Q. Okay. So in that drawing are there any
21 gasket materials or insulating materials that would
22 be asbestos containing?
23 A. It refers to the front head gasket, item
24 2, which is the next one. So I believe at that time
25 that was, yes.

1 Q. Okay. And that's the one found on page 67
2 which is the specification for gaskets front and
3 rear?
4 A. Correct.
5 MS. SPARDONE: Object to form.
6 BY MR. BRALY:
7 Q. Okay. And I believe that was called out
8 for as the Union Asbestos & Rubber gasket or JM
9 equivalent. Is that right?
10 A. Or a Garlock equivalent as well.
11 Q. Or a Garlock equivalent. Okay. All
12 right. For the remainder of the engineering
13 drawings in that set, we can essentially follow
14 through with it the same way that we have with the
15 other ones. You'd cross-reference parts, to the
16 extent that we can't tell from the face of the
17 engineering drawings whether they're asbestos or
18 not, with either the manufacturer's specifications
19 or with the item description, which is that third
20 set of produced documents for that site.
21 A. Correct.
22 Q. Okay. You can set that aside.
23 So -- give me a second.
24 Did you review any other job sites
25 pertaining to either the Howe case, the Smith case,

1 or the Sizemore case other than what we looked at?
2 MS. SPARDONE: Object to form. Any other
3 work sites?
4 MR. BRALY: Yes. Job sites.
5 MS. SPARDONE: Object to form.
6 A. I don't think so, other than what was
7 listed in the deposition notices.
8 BY MR. BRALY:
9 Q. Right. And you conducted a search for all
10 of those job sites?
11 A. Yes.
12 Q. Okay.
13 A. Pretty certain. Anything that was a job
14 site or I had the ability to search. There were a
15 couple that were not -- I think in the Sizemore one
16 didn't have any city or state, so I -- I'm a little
17 bit limited in what I can search and what -- what
18 would be considered a proper search with something
19 like that.
20 Q. If you saw a list of the job sites, would
21 you be able to identify the locations for which you
22 were unable to search?
23 A. I don't know. I'd have to look at it.
24 Q. Well, let's do it then. Let's look at
25 Exhibit 3, which is --

1 MS. SPARDONE: I was going to do this, so
2 had it ready.
3 A. Saucer Marine Services isn't listed in any
4 location, so I didn't search that one. The Exxon
5 facilities are all near something or in a -- as
6 broad as being in an entire state, so searching
7 something that's near might be a little difficult
8 for me to -- everybody's "near" might be different.
9 BY MR. BRALY:
10 Q. Did you make an attempt to search for any
11 of the Exxon facilities, or was it just something
12 that you set aside based on the description?
13 A. I would have set it aside based on the
14 description because near could be in the next state
15 for all I know.
16 Q. Well, then it wouldn't be near.
17 MS. SPARDONE: It's relative.
18 A. Chicago's near Milwaukee.
19 BY MR. BRALY:
20 Q. Right.
21 A. Depending on your perspective. That's why
22 getting into that is --
23 Q. Okay.
24 A. -- pretty big rabbit hole to me.
25 Palm Beach Recovery Resource Corp. didn't

1 list a state or a city. And I think that's it
2 unless I missed one. So, yes, I can do that by
3 looking at a list.
4 Q. Okay. Other than those job sites that
5 you've just kind of talked about here, the other job
6 sites are job sites you would have done a index card
7 search for prior to your deposition?
8 MS. SPARDONE: Object to form.
9 A. Certainly prior to this one. I can't
10 say -- I believe there was a couple phases of what I
11 searched for in totality --
12 BY MR. BRALY:
13 Q. Okay.
14 A. -- with the Sizemore case.
15 Q. All right. So then it's kind of, I
16 guess -- and I'm sorry for redoing some of this. I
17 just want to make sure that I've got this kind of
18 under control.
19 Prior to your first deposition, it would
20 be correct that you had not searched all of the
21 records pertaining to all of the job sites?
22 A. Correct.
23 MR. BRALY: Okay. Okay. I'm going to
24 pass the witness. I think I've -- I'll let you ask
25 your questions here.

1 MS. SPARDONE: Okay.
2 EXAMINATION
3 BY MS. SPARDONE:
4 Q. John, taking you back to the testimony you
5 gave earlier about the Cliffside boilers, just to
6 refresh you, you said that you could have been
7 confused with some other Duke facilities but you
8 thought that there were some boilers shipped to
9 Cliffside in '95, 2009, and a deaerator in 2010.
10 Remember that?
11 A. Yes, I do remember that.
12 Q. Okay. Setting aside -- well, first of
13 all, do you understand that Duke Power has a number
14 of facilities in North Carolina and South Carolina?
15 A. Yes.
16 Q. And you also said during that exchange
17 that something to the effect that you didn't think
18 that those would have been an issue. Remember that?
19 A. Yes.
20 Q. Okay. So why is it that you said that as
21 it relates to the boilers allegedly at Cliffside
22 in '95, 2009, and then the deaerator in 2010?
23 A. I think we're dealing with dates well
24 beyond where we're certain we didn't include any
25 potential asbestos-containing components with the

1 boilers, so in the Nineties and 2000s.
2 Q. Okay. So if I hear you correctly then, if
3 in fact there were boilers manufactured in '95 and
4 2009 at Cliffside, those boilers wouldn't have
5 contained any asbestos, correct?
6 A. Certainly not that we put in.
7 Q. Okay. And there's also -- there was also
8 an exchange during that line of questioning about
9 quote-unquote state records, and Mr. Braly showed
10 you some of those records on his computer. Remember
11 that?
12 A. Yes.
13 Q. Were those records that you understood to
14 be from the state boiler registry?
15 A. I'm not sure what they were. I looked at
16 them prior to. I think there's something on the
17 bottom that says something about jurisdiction online
18 and some date I don't recall. I don't know that
19 that's a state registry or some other registry that
20 people have access to. I -- it's not something I
21 get into. I search our records.
22 Q. All right. There were a lot of questions
23 about what you did and didn't do before the last
24 deposition in these cases and what you did after
25 that deposition.

1 After the first installment of the
2 deposition, how many different work sites did you
3 assemble engineering drawings and part descriptions
4 for?
5 A. For this case, three.
6 Q. And in total how many hours of work was
7 that, roughly speaking?
8 A. I would say roughly three weeks.
9 Q. Okay. Going back to the Viking units, the
10 Cargill units, and the South Carolina Electric & Gas
11 units, with regard to those work sites do you have
12 any recollection of what Mr. Sizemore testified
13 about in terms of his work, if any, on any boiler at
14 those sites?
15 A. I don't recall any. I'm pretty sure I
16 don't -- didn't see any of it. I, again, didn't
17 commit 1,600 pages or so to memory, but I don't
18 recall any.
19 Q. And in the Smith case, did you review the
20 testimony of Mr. Lewis Childers?
21 A. Portions of it.
22 Q. Okay. And did you also review portions of
23 testimony given by Mr. -- I think it is Grant, the
24 other coworker?
25 A. I think I did actually prior to the last

1 deposition, so that's certainly a little further
2 from the front of my mind.
3 Q. Okay. And during your review of those
4 transcripts, did you note any testimony that
5 Mr. Childers worked on boilers at Cliffside or at
6 McGuire?
7 A. I certainly don't remember anything that
8 might have been possibly a Cleaver-Brooks boiler if
9 he --
10 Q. Why do you say that?
11 A. I'm certainly confusing -- I could be
12 confusing it, but I think most of what he talked
13 about were larger utility type boilers,
14 field-erected type boilers.
15 Q. Okay. And with regard to Exhibit 3, do
16 you still have that in front of you?
17 A. Yes.
18 Q. Okay. So Mr. Braly just asked you some
19 questions about sites that you did not search, and
20 you listed out, for example, some -- can I see that,
21 please?
22 A. Sure.
23 Q. -- some Exxon facilities that are listed
24 as being near Flomaton, Alabama. Explain again why
25 it is that you couldn't conduct a search for any

1 boilers, given that description.
2 A. Well, certainly with a name like Exxon
3 that could potentially have facilities in multiple,
4 multiple locations, I -- I'd be very hesitant to do
5 anything that is so subjective as what somebody
6 considers near. You know, if we're talking about a
7 specific city, I can look at that, but once we start
8 getting into things that could be hundreds of miles
9 away, I certainly don't have a list of every city
10 around somewhere. I wouldn't know where to draw the
11 line, I guess is the answer to that.
12 MS. SPARDONE: Okay. That's all I have.
13 FURTHER EXAMINATION
14 BY MR. BRALY:
15 Q. So I just looked up Flomaton, Alabama, on
16 Google Maps, and it doesn't appear to be in a place
17 in the world that's near anything. I just -- did
18 you make any effort to determine what Exxon
19 facilities would be anywhere close to an area called
20 Flomaton, Alabama?
21 A. No. I -- I deal with what our records
22 say. And quite frankly, to go to that extent
23 anytime someone would say near I think would be a
24 little beyond what I could reasonably do.
25 Q. Right. For example, Flomaton is probably

1 a couple hours' drive from Pensacola, Florida, or
2 Mobile, Alabama, which are major cities. Fair?
3 A. I would say so, yeah.
4 Q. And Mobile is actually near Pensacola if
5 you want to draw it out like that.
6 A. And that's my point. Where would I draw
7 that line? If I found something in Pensacola, is
8 that near Flomaton?
9 Q. When you call it Flomaton, why would
10 you -- why would we ask you to look for an Exxon
11 facility near a place like Flomaton if it would --
12 if the idea would be, you know, near is a -- is a
13 dart board game that you can play with larger cities
14 like Pensacola or Mobile?
15 MS. SPARDONE: Object to form. Calls for
16 speculation.
17 A. That's exactly the game I wouldn't want to
18 get into is that dart board game.
19 If someone had said in Flomaton, I would
20 have certainly searched that. But when the actual
21 request is related to something near, I -- I don't
22 think I'd want to get into the what's near and what
23 isn't. And we can sit here and debate that all you
24 want, but --
25 BY MR. BRALY:

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1 Q. Have you ever been to -- I mean, have you
2 ever been to rural Alabama?
3 A. Don't know.
4 MS. SPARDONE: Object to form.
5 BY MR. BRALY:
6 Q. Okay. Are you familiar with the presence
7 of things like refineries or major industrial
8 facilities being in unincorporated areas of town?
9 MS. SPARDONE: Object to form.
10 A. I can't say I am specifically, no.
11 BY MR. BRALY:
12 Q. Okay. So because of the description being
13 quote-unquote near this tiny town with a -- I don't
14 know, we could probably even figure this out. Give
15 me a second. Flomaton, Alabama. Did you ever even
16 try that, just what I just did, type in Flomaton on
17 your computer?
18 MS. SPARDONE: Counsel, it's not his job
19 to do the investigating for the plaintiffs.
20 MR. BRALY: Kind of is.
21 A. Quite frankly, I was focused on getting
22 you the information that was being requested which
23 was specifics on the boilers we had found.
24 BY MR. BRALY:
25 Q. Right. So Flomaton is a town of 1,440

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1 people. Okay?
2 A. Okay.
3 Q. So because the description of the refinery
4 was just adjudicated by you to be too
5 unintelligible, you didn't even try. Is that right?
6 MS. SPARDONE: Object to form.
7 Argumentative.
8 A. I don't think I would say I didn't even
9 try. I searched well over 60 sites, and they're
10 also known as names. So I think describing it as me
11 not even trying is a little disingenuous.
12 I spent a great deal of time on this to,
13 quite frankly, start talking about this. When your
14 particular information said something so vague, I
15 think is disingenuous as well.
16 BY MR. BRALY:
17 Q. Then fine. How did you try to find
18 information about the Exxon facility --
19 A. I didn't find --
20 Q. -- near Flomaton, Alabama?
21 A. I didn't go to any of them in Exxon
22 because of the vagueness of the descriptions.
23 Q. So you didn't try.
24 MS. SPARDONE: Object to form.
25 Argumentative.

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1 A. I was -- I did not do anything related to
2 those sites because of the vagueness of the
3 descriptions.
4 BY MR. BRALY:
5 Q. Which means you did not try. Correct?
6 MS. SPARDONE: You're being argumentative.
7 He's answered your question.
8 A. If that's what you want to call it, that's
9 what it is.
10 BY MR. BRALY:
11 Q. Okay. The Cliffside boilers that we
12 referenced, the North Carolina state boiler registry
13 also lists a boiler shipped to the Cliffside
14 location in 1969.
15 MS. SPARDONE: Object to form.
16 BY MR. BRALY:
17 Q. You're aware of that, right?
18 A. Yeah, I think we discussed that earlier,
19 didn't we, the Cliffside one in '69?
20 Q. Yeah.
21 A. Yeah.
22 Q. And you didn't find any records of the
23 Cliffside boiler from 1969, correct?
24 A. Correct. That's what we discussed
25 earlier.

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1 Q. Okay. I just wanted to make sure that
2 there was no representation being made that the only
3 boilers Cleaver-Brooks could have shipped to
4 Cliffside were the ones from 1995, 2009, or 2010.
5 MS. SPARDONE: Object to form. Assumes
6 facts.
7 A. No, I was saying that I didn't find the
8 record of a 1969 boiler there or possibly the later
9 ones because I wasn't sure what we found. But the
10 records that were produced to me in relation to
11 whether they're state records or some other records,
12 I'm not sure, didn't give me anything I could locate
13 a specific Cleaver-Brooks boiler.
14 BY MR. BRALY:
15 Q. Okay. You said something. You said that
16 those boilers would not have contained asbestos from
17 Cleaver-Brooks.
18 A. Correct.
19 Q. Correct.
20 A. The '95 and --
21 Q. Yeah.
22 A. -- whatever those were.
23 Q. Right. What was the last year that
24 Cleaver-Brooks boilers would have contained
25 asbestos?

1 A. I don't know that specifically. However,
2 I think you've probably seen in our discovery
3 responses that in 1989 a check was made of the
4 suppliers to see if any of the suppliers of those
5 potential components were supplying anything with
6 asbestos, and they were not.
7 So I would say at least after 1989, after
8 they were not. But whether that was '88 that they
9 changed it or '87, I really have no way to tell.
10 Q. It took you three weeks to collect the
11 engineering drawings that we were talking about?
12 A. Roughly. I was certainly doing other
13 things like searching for all the rest of the sites
14 as well.
15 Q. Right. And I imagine you have other cases
16 to look at as well.
17 A. I have a few others, plus I was looking at
18 testimony as well.
19 Q. Are you aware that the Sizemore lawsuit
20 was filed on December 8th of 2016?
21 A. I probably was when we first got it.
22 Whether that's anywhere near the front of my mind,
23 no.
24 Q. All right. You were able to find the
25 engineering drawings for three of these locations

1 within the last three weeks. True?
2 A. Roughly, yes.
3 Q. Why didn't the internal examination,
4 internal search for documents with Cleaver-Brooks
5 happen before the beginning of February?
6 MS. SPARDONE: Object to form. Asked and
7 answered.
8 A. I wasn't asked to take on that task.
9 BY MR. BRALY:
10 Q. Do you have any idea why not?
11 A. No.
12 MS. SPARDONE: Same objections.
13 A. I don't get involved in that type of
14 decision-making.
15 BY MR. BRALY:
16 Q. If you had more time, it's likely you
17 could have found all of the engineering drawings,
18 even the ones that we don't have yet. True?
19 MS. SPARDONE: Object to form.
20 BY MR. BRALY:
21 Q. Time's the limiting factor here, right?
22 A. And ability to find them, yes. It takes
23 time to find them, but it takes knowledge to find
24 them too.
25 Q. There's something that I did not ask you.

1 I probably should have. I know what you told
2 Ms. Stone about what you had reviewed prior to that
3 deposition. Between the February deposition and us
4 sitting here now, what other fact witness testimony
5 have you reviewed?
6 A. I think it's limited to Mr. Sizemore's
7 testimony, some pieces of Mr. Childers' testimony.
8 I think the Grant testimony I may have actually
9 scanned prior to the last deposition, but I think
10 that's it. I can't think of any others that I would
11 have.
12 Q. When you say pieces of Mr. Childers'
13 testimony, can -- I mean, is this -- is this
14 information basically cutouts or snippets, sections
15 that were given to you by attorneys for
16 Cleaver-Brooks, or did you have the whole thing and
17 you just reviewed parts of it?
18 A. I want to be a little careful because it
19 might get into communication with our attorneys.
20 Q. I know. You know -- you know how to parse
21 that.
22 A. I was giving -- given excerpts of it.
23 Q. Okay. Is the same true for the Sizemore?
24 Were you given the whole thing, or were you given
25 excerpts of that?

1 A. That I had the whole thing. I didn't read
2 word for word the whole thing. I used the word
3 index in some places and read large portions of
4 others.
5 Q. Okay. Have you reviewed anybody else's
6 coworker testimony, anything like that in this case
7 that you know of?
8 MS. SPARDONE: In addition to what he
9 talked about --
10 MR. BRALY: Right.
11 MS. SPARDONE: -- during the first one?
12 BY MR. BRALY:
13 Q. Right, in addition to what you talked
14 about with Ms. Stone.
15 A. Not that I can think of.
16 Q. All right.
17 A. I think most of my time in the last few
18 weeks has been pulling the drawings and reviewing
19 Mr. Sizemore's testimony.
20 Q. Okay.
21 A. And discovery responses, I think.
22 Q. Right.
23 That's not what I was looking for.
24 So I just want to be clear about this.
25 When we were talking about the Exxon facilities that

1 you did not look for, we have an Exxon facility near
2 Pennington, Alabama, an Exxon facility near
3 Flomaton, Alabama, an Exxon facility near Ardmore,
4 Alabama, an Exxon facility near Big Escambia Creek,
5 which I believe is in Florida, but I'd have to look
6 that up. Do you know where Big Escambia Creek is?
7 A. No, I don't.
8 Q. Did you make an attempt to find out?
9 A. No.
10 Q. Okay. And then Exxon facility at
11 Louisiana, which designates an entire state, which
12 probably have a stronger argument on that one.
13 But for the other ones, the Pennington,
14 Alabama, Flomaton, Alabama, Ardmore, Alabama, and
15 Big Escambia Creek, it's correct to say that you did
16 not make an effort to drill down on what those
17 locations -- what Cleaver-Brooks may have supplied
18 to any of those locations. True?
19 MS. SPARDONE: Object to form.
20 A. Correct. Once I saw how vague the
21 description was, I did not.
22 BY MR. BRALY:
23 Q. All right. What about the Florida Power &
24 Light plants, the ones that's listed at
25 Fort Lauderdale, Titusville, Cocoa Beach, and

1 Sanford? Did you make any attempt to discover if
2 Cleaver-Brooks had supplied any boilers to those
3 locations?
4 A. Yes.
5 Q. Okay. Those weren't too vague.
6 A. No, they give cities and states there.
7 Q. Okay.
8 A. I assume they -- well, not necessarily
9 always be in Florida, but -- and they say that,
10 so --
11 Q. So it's just basically the use of the word
12 "near" that threw you off?
13 MS. SPARDONE: Object to form.
14 A. Near was an issue as well as the one
15 without a state and then the one that was an entire
16 state I think as a whole makes the Exxon ones a
17 little --
18 BY MR. BRALY:
19 Q. Okay. And that's because you don't know
20 what the word near means?
21 MS. SPARDONE: Object to form.
22 Argumentative.
23 A. I know what the word near means. I don't
24 know what your definition of near is or
25 Ms. Spardone's definition of near, and I wouldn't

1 know where to draw the line.
2 BY MR. BRALY:
3 Q. And you didn't bother to ask anyone.
4 MS. SPARDONE: Object to form.
5 Argumentative.
6 A. I searched what I was asked to search.
7 BY MR. BRALY:
8 Q. No, you didn't. You didn't. You didn't
9 ask your attorneys to reach out to us at any point
10 in time to say, hey, you know, let's find out about
11 this.
12 MS. SPARDONE: Object to form. Also calls
13 for privileged communications.
14 A. I don't think I could travel down the path
15 of what I communicated with our attorneys without
16 breaching that.
17 MR. BRALY: Okay. All right. I'll pass
18 the witness.
19 MS. SPARDONE: Okay. Does anybody have
20 questions on the phone? All right. Fun is over.
21 THE VIDEOGRAPHER: Going off the record at
22 2:45. We're off the record.
23
24 (Deposition concluded at 2:45 p.m.)
25 -oOo-

1 I, JOHN TORNETTA, have read the foregoing
2 deposition and hereby affix by signature that same is
3 true and correct, except as noted above.
4
5 _____
JOHN TORNETTA
6
7 STATE OF _____)
8 COUNTY OF _____)
9 Before me, _____, on this day
10 personally appeared JOHN TORNETTA, known to me (or
11 proved to me under oath or through _____)
12 (description of identity card or other document) to be
13 the person whose name is subscribed to the foregoing
14 instrument and acknowledged to me that they executed
15 the same for the purposes and consideration therein
16 expressed.
17 Given under my hand and seal of office this
18 _____ day of _____, 2018.
19
20 _____
21 NOTARY PUBLIC IN AND FOR
22 THE STATE OF _____
23
24 My Commission Expires: _____
25

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK FOR THE SIXTEENTH JUDICIAL
2 CIRCUIT
TIMOTHY W. HOWE, as Personal
3 Representative of the Estate
of WAYNE E. HOWE, deceased,
4 and JEANETTE HOWE, surviving
spouse,
5 Plaintiffs,
vs. C/A No. 2015-CP-46-03456
6
AIR & LIQUID SYSTEMS CORPORATION,
7 et al.,
Defendants
8
9 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK FOR THE SEVENTH JUDICIAL CIRCUIT
10
ROXANNE FALLS, individually and
11 as Personal Representative of the
Estate of CHARLOTTE GAYE SMITH,
12 Deceased,
Plaintiff,
13
vs. C/A No. 2015-CP-46-02155
14
CBS CORPORATION, et al.,
15
Defendants.
16
17 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON FOR THE SEVENTH JUDICIAL CIRCUIT
18
JAMES CALVIN SIZEMORE,
19
Plaintiff,
20 vs. C/A No. 2016-CO-25-0440
21 BOWATER PAPER MILL, et al.,
22 Defendants.
23
24
25

1 REPORTER'S CERTIFICATE
VIDEOTAPED ORAL 30(b)(6) DEPOSITION OF CLEAVER-BROOKS
2 by and through JOHN TORNETTA
March 6, 2018
3
4 I, KAREN L. SHELTON, a Certified Shorthand
5 Reporter in and for the State of Texas, hereby certify
6 to the following:
7 That the witness, JOHN TORNETTA, was duly
8 sworn by the officer and that the transcript of the oral
9 deposition is a true record of the testimony given by
10 the witness;
11 I further certify that that the signature by
12 the deponent:
13 _X_ was requested by the deponent or a party
14 before the completion of the deposition and is to be
15 returned within 30 days from date of receipt of the
16 transcript. If returned, the attached Errata contains
17 any changes and the reasons therefor;
18 ___ was not requested by the deponent or a
19 party before the completion of the deposition.
20 I further certify that I am neither counsel
21 for, related to, nor employed by any of the parties in
22 or counsel to this action, nor am I financially or
23 otherwise interested in the outcome of this action.
24
25

1 Certified to by me this 6th day of March, 2018.
2
3
4
Karen L. Shelton, CSR, RDR, CRR
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Exhibit 11 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Transcript of March 9, 2018 Hearing

(See Record Page 627)

Exhibit 16 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Copy of *Ethox Chemical, LLC v. The Coca-Cola Co.*, 2014 WL 2719214 (D.S.C. 2014)

2014 WL 2719214
Only the Westlaw citation is currently available.
United States District Court, D. South Carolina,
Greenville Division.

ETHOX CHEMICAL, LLC; James Tanner,
Plaintiffs,
v.
The COCA–COLA COMPANY, Defendant.

No. 6:12–CV–01682–TMC.
|
Signed June 16, 2014.

Attorneys and Law Firms

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OPINION & ORDER

TIMOTHY M. CAIN, District Judge.

I. BACKGROUND

***1** Before the events giving rise to the current suit, The Coca–Cola Company ("Coca–Cola") developed a genus of molecules it calls Formula II, which it hoped would lead to the development of a molecule that would provide greater barrier resistance for plastic bottles, thereby increasing the shelf life of bottled products. In February 2009, Coca–Cola approached Ethox Chemical, LLC ("Ethox"), to assist with the development and assessment of these molecules. Ethox agreed to assist and James Tanner ("Tanner")[1], an Ethox chemist, offered PEM. Coca–Cola later filed two utility patent applications, which included PEM, without informing Ethox or listing Tanner as a co-inventor.[2] As a result, Ethox and Tanner filed this action, seeking to have Tanner named as a co-inventor on the patent and to hold Coca–Cola responsible for misappropriating PEM.

In January 2013, the court dismissed Ethox's South Carolina Unfair Trade Practices Act and misappropriation claims with prejudice, dismissed its fraud, negligent representation, and misappropriation of trade secret claims without prejudice, and granted Ethox leave to file a motion to amend the complaint. (ECF No. 43.) Ethox expressly chose not to amend at that time. (ECF No. 45 .) Thus, the only remaining claims are for (1) correction of ownership of patent pursuant to 35 U.S.C. § 256; (2) unjust enrichment; and (3) imposition of constructive trust.

In June 2013, the court heard extensive argument on the parties' motions for protective orders. The court adopted the proposed confidentiality order, including an agreed upon prosecution bar. Since our last hearing, it appears that the parties have been actively engaging in discovery.

On May 28, 2014, counsel gathered and the court heard oral argument on Ethox's motion to compel (ECF No. 93). Also pending before the court at that time were (1) Coca–Cola's motion for summary judgment (ECF No. 97); (2) Coca–Cola's motion to strike jury trial demand (ECF No. 98); and (3) Ethox's motion to amend the complaint (ECF No. 99). However, because the court determined after oral argument on the motion to compel that Ethox is entitled to additional discovery, it found the other three motions premature and denied them without prejudice and with leave to re-file when the parties complete discovery. (*See* ECF No. 155.) Accordingly, this order only addresses the motion to compel.

II. LEGAL STANDARD

The court reviews procedural matters not unique to patent law, such as a motion to compel, under the law of the regional circuit. *See Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 977 (Fed.Cir.1993). In the Fourth Circuit, the trial court has broad discretion to grant or deny a motion to compel discovery. *See Lone Star Steakhouse & Saloon, Inc. v. Alpha of Va., Inc.*, 43 F.3d 922, 929 (4th Cir.1995).

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III. DISCUSSION

1. Depositions

Ethox has conducted three Rule 30(b)(6) depositions, but asserts that none of the designated witnesses were prepared to provide the requested information on certain topics. Specifically, Ethox challenges the witnesses' testimony on Topics 10–15, regarding the contribution of each of the named inventors to the '265 patent and related patent applications, and Topics 5, 8, and 20, regarding Coca–Cola's work on compounds falling within Formula II, including its business dealings with third parties. Accordingly, Ethox has moved the court to order Coca–Cola to produce witnesses adequately prepared to testify as to the 30(b)(6) topics. In addition, Ethox requests that the court order Coca–Cola to pay costs and fees associated with having to re-conduct the depositions. In response, Coca–Cola argues that, in lieu of specifically preparing witnesses to testify on the 30(b)(6) topics, it produced the three people with the most personal knowledge of the events at the heart of this lawsuit—the other named inventors on the '265 patent.[3]

***2** Federal Rule of Civil Procedure 30(b)(6) requires a corporation to respond to a deposition notice by designating and producing someone familiar with the topics listed in the notice. Fed.R.Civ.P. 30(b)(6); *see Reilly v. Natwest Markets Group Inc.,* 181 F.3d 253, 268 (2d Cir.1999). The designated witness testifies on the corporation's behalf and, thus, testifies not only on his personal knowledge of a subject, but on corporate knowledge. *See Brazos River Authority v. GE Ionics, Inc.,* 469 F.3d 416 (5th Cir.2006). It follows that, in order to comply with the rule, the corporation has an affirmative duty to ensure that its designee has knowledge of all information on the noticed topics reasonably available to the corporation and is prepared to provide complete, binding answers on that information. *See Bd. of Trustees of Leland Stanford Jr. University v. Tyco Intern. Ltd.,* 253 F.R.D. 524 (C.D.Cal.2008) (Rule 30(b)(6) implicitly requires a corporate designee to review all matters known or reasonably available to the corporation in preparation for the deposition, even if the documents are voluminous and reviewing them would be burdensome); *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.,* 250 F.R.D. 203 (E.D.Pa.2008) (As a corollary to the corporation's duty to designate a deposition witness, it must prepare its designee to be able to give binding answers on its behalf, and perform a reasonable inquiry for information that is noticed and reasonably available to it); *Wilson v. Lakner,* 228 F.R.D. 524 (D.Md.2005) (Corporation's designated deponent is required to make good faith effort to find out relevant facts).

After a full review of the deposition transcripts, it is clear to the court that Coca–Cola did not adequately prepare its 30(b)(6) designees. The designated co-inventors did not consult with each other or other Coca–Cola employees or representatives regarding the deposition topics or review any associated notes or written materials. In several instances, the designees were not able to testify as to their own personal involvement, let alone institutional knowledge of a topic, due to lack of preparation. Accordingly, Ethox's motion is GRANTED as to its request for additional 30(b)(6) depositions and Coca–Cola is ordered to produce witnesses sufficiently prepared to answer questions related to Topics 5, 8, 10–15, and 20.[4]

2. Documents

Ethox also moves the court to order Coca–Cola to produce several documents that CocaCola has withheld as privileged. Specifically, Ethox requests:

(1) Four draft patent applications, identified as:

a. CCCO—ETHOX—00007139,

b. CCCO—ETHOX—00007204,

c. CCCO—ETHOX—00006579, and

d. CCCO—ETHOX—00006650;

(2) Unredacted versions of two copies of a monthly project update:

a. CCCO—ETHOX—00001607 and

b. CCCO—ETHOX—00001609; and

(3) An unredacted version of a draft memorandum by Robert Kriegel:

a. CCCO—ETHOX—00001806.

At the hearing, the parties represented to the court that they could reach an agreement regarding the production of these documents. On June 10, 2014, the court received a joint proposal from the parties, which the court filed as an order on June 12, 2014. (ECF No. 157.) Pursuant to that order and by consent of the parties,

> ***3** (1) Coca–Cola agrees to make unredacted copies of the documents available for review and use by Ethox, including at deposition, in papers filed with the Court, in expert reports, and as part of Ethox's affirmative and defensive presentations at trial; and

(2) Ethox agrees that the production of such documents and the elicitation of testimony concerning such documents, as well as the subsequent use of such documents by Ethox shall not be deemed a waiver of any attorney-client, work product, or any other applicable privilege that Coca–Cola has in the documents or the subject matter of the documents.

IV. CONCLUSION

For the reasons stated above, Ethox's motion to compel (ECF No. 93) in granted in part. Discovery shall proceed as outlined in this order.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.3d, 2014 WL 2719214

Footnotes

1 Because Tanner has assigned all of his rights to Ethox, the court refers to Tanner and Ethox, collectively, as "Ethox" in parts of this order.

2 Central to this dispute is U.S. Patent No. 8,110,265 ("the ' 265 patent").

3 Coca–Cola also argues that the court should dismiss Ethox's motion to compel as untimely under Local Civil Rule 37.01, DSC. Rule 37.01 requires a party to file a motion to compel "within twenty-one (21) days after the receipt of the discovery response to which the motion to compel is directed." The district court has discretion to consider an untimely motion to compel if the movant "offer[s] an acceptable explanation for [the motion's] tardiness." *Spencer Med. Assoc. v. Comm'r,* 155 F.3d 268, 273 (4th Cir.1998). Here, there is some debate regarding when the relevant discovery substantially concluded. In the interest of deciding this case on the full merits, the court declines to dismiss this motion on a possible procedural error.

4 Ethox has also requested reimbursement from Coca–Cola of any costs and fees associated with re-conducting the depositions. In order to grant this request, the court would first have to make a finding that an award of fees and costs is appropriate, then determine if the requested amount is reasonable through the application of factors adopted in *Barber v. Kimbrell's, Inc.,* 577 F.2d 216 (4th Cir.1978) and analysis of the lodestar formula. In this instance, discovery has not been completed, so the court is unable to conduct this analysis on the record before it. Accordingly, Ethox's request for fees and costs is denied without prejudice.

End of Document

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Exhibit 17 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Affidavit of Jessica Dean in Support of Fees

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of **WAYNE ERVIN HOWE**, deceased, and **JEANETTE HOWE,**	)	**C/A NO. 15-CP-46-03456**
Plaintiffs,	)	**AFFIDAVIT OF JESSICA DEAN IN SUPPORT OF PLAINTIFFS' MOTION FOR SANCTIONS WITH STATEMENTS OF FEES AND COSTS AGAINST CLEAVER BROOKS, INC.**
v.	)	
AIR & LIQUID SYSTEMS CORPORATION, et al.,	)	
Defendants.	)	

STATE OF TEXAS

COUNTY OF DALLAS

1. I am an attorney and a member in good standing of the bar of the State of Texas and licensed to practice in this case in South Carolina pro hac vice.

2. I am an attorney with Dean Omar Branham, LLP, attorneys of record for the Plaintiffs herein. The matters stated in this affidavit are true to my own personal knowledge, and if called to testify I could and would set forth the below facts.

3. I submit this declaration in support of Plaintiffs' Motion for Sanctions with Statements of Fees and Costs Against Cleaver Brooks, Inc.

BACKGROUND

4. In 1999 received a bachelor's degree in economics and a bachelor's degree in political science from Boston University, magna cum laude. I attended the University of Texas School of Law, where I graduated in 2003 with my juris doctorate, cum laude.

5. I am a name partner at Dean Omar Branham. I have been practicing law since 2003 and have won numerous multi-million dollar verdicts in asbestos litigation similar to the lawsuit at issue here. I have been selected as a Rising Star attorney by Texas Super Lawyers every year from 2009 to 2017. I have been honored to receive the awards of the Top Young Lawyers in Texas as well as the Top 40 Under 40 Lawyers in Dallas. I am a member of the American Board of Trial Advocates and the International Academy of Dispute Resolution.

COSTS

6. The costs of Plaintiffs' lawyers in this case, in an exhibit submitted herewith, stem directly from having to take this case to trial.

7. These costs are correct and were necessarily incurred in the action as a result of Cleaver Brooks' belated disclosure of documents in the middle of trial.

ATTORNEYS' FEES

8. Dean, Omar & Branham, LLP, and Kassel McVey represent the Plaintiffs in this case styled *Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe, v. Air & Liquid Systems Corporation, et al.*, C/A NO. 15-CP-46-03456.

9. Cleaver Brooks failed to produce all of the requested documents as it had represented to this Court that it would do at the January 24, 2018 hearing. Defendant produced records confirming that two boilers were sold to Bowater – Unit No. 0-18343 and Unit No. 0-18344. The index cards for those units were requested and not produced.

10. Plaintiffs deposed John Tornetta, the company's corporate representative, on January 29, 2018. He had to be redeposed because Cleaver Brook failed to produce all requested documents. He was deposed again the week before trial. At no point in time during his depositions did he disclose that the second boiler referenced in Cleaver Brooks records to Bowater was a repeated mistake/typo. This opinion was first given on the stand in trial.

11. On January 11, 2018, Cleaver Brooks for the first time admitted it sold boilers to Bowater. Cleaver Brooks initially contended that its boiler was in the powerhouse, but sought to limit its production to exclude documents relating to the internal components of the boiler claiming Mr. Howe never worked inside of the boiler. When Plaintiffs provided evidence that Howe had worked on the inside of boilers, Cleaver Brooks changed its story and claimed that its boiler had never been in the powerhouse and was likely in the administration building. This information was first made known to Plaintiffs the week of January 24, 2018.

12. By the time of the March 9, 2018 hearing on Plaintiffs' motion for sanctions, it was clear to the parties and the Court that the trial hinged on Plaintiffs' ability to prove that there was a Cleaver Brooks boiler in the powerhouse where Mr. Howe worked "on every boiler." This was clear by Plaintiffs' request for a presumption that a Cleaver Brooks boiler was in the powerhouse, by argument of Plaintiffs and Cleaver Brooks, by discussion had off the record by all counsel, and is clear by the remaining facts of the case – specifically, Cleaver Brooks' admission of sales of asbestos and release of asbestos, as well as Cleaver Brooks' decision not to call a single expert but focus entirely on product identification.

13. Plaintiffs settled with all defendants except Cleaver Brooks by March 11, 2018, the Sunday morning before trial. In an effort to work with Defendant's expert, Dr. Oury, who claimed unavailability throughout trial, Plaintiff deposed that expert on March 11, 2018. Cleaver Brooks was the only defendant left in the case by that time.

14. Plaintiffs decided to proceed to trial against Cleaver Brooks because the 25 pages of commercial records produced by Cleaver Brooks stated that there were two boilers at Bowater. Defendant had claimed that their boiler was more suited for the administration building. Plaintiffs knew that Bowater's

position was that all boilers were either in the administration room or boiler house so Plaintiffs believed we had a powerful argument that at least one, if not two, Cleaver Brooks boilers were in the powerhouse.

15. Indeed, Cleaver Brooks appeared to recognize the fact that there was clearly a fact issue regarding the location of the boiler and withdrew its motion for summary judgment.

16. At 11:35 on the night before Cleaver Brooks' corporate representative was scheduled to testify, Cleaver Brooks ambushed Plaintiffs with the production of numerous never-before-produced documents ("the midnight documents").

17. It was not until March 15, 2018, when Cleaver Brooks produced the "midnight documents" in the middle of trial, that Plaintiffs first learned that of the two boilers referenced in the 25 pages of commercial documents, only one had gone to Bowater, and the other had gone to Illinois. Moreover, the late-produced evidence indicated that the boiler at Bowater was at the administration building, not the powerhouse.

18. It was not until March 16, 2018 that I became aware that Cleaver Brooks believed the second unit reported in its commercial documents were mistakes repeated throughout the documents. This was first learned while the witness, Cleaver Brooks' corporate representative, was on the stand despite deposing him earlier the same month.

19. If Plaintiffs had been in possession of the midnight documents before trial started, Plaintiffs would not have proceeded to trial against Cleaver Brooks.

20. The specific work performed by me in prosecuting this action at trial is detailed as follows.

21. Fees for Jessica Dean, at $550 per hour = $85,800.

Date	Description of Work	Number of Hours	Total
Sunday 3/11/18	Trial prep	12	$6600
Monday 3/12/18	Trial	17	$9350
Tuesday 3/13/18	Trial	17	$9350
Wednesday 3/14/18	Trial	17	$9350

Thursday 3/15/18	Trial	21	$11,550
Friday 3/16/18	Trial	10	$5500
Saturday 3/17/18	Trial prep	8	$4400
Sunday 3/18/18	Trial prep	14	$7700
Monday 3/19/18	Trial	14	$7700
Tuesday 3/20/18	Trial	20	$11,000
Wednesday 3/21/18	Trial	6	$3300

22. I have personal knowledge of the hourly rates charged by other attorneys with comparable experience to mine. Based on that information, I believe that my rates are at or near the market rate for attorneys with comparable expertise, experience, and qualifications and are reasonable and appropriate in this case.

23. The law firms took this case on a contingency basis, without any assurance that we would be paid any fees or reimbursed any costs for our efforts or expenditures. At no time did we have any assurance that we would ultimately prevail in this matter or that a mutually agreeable settlement could be reached.

24. The firms accepted the case because of the important principle of vindicating Plaintiffs' rights. While the amount in controversy may be small relative to other actions before the Court, the importance of the case to the Plaintiffs cannot be overstated. The amounts recovered will help Plaintiffs in their living situations.

25. By accepting Plaintiffs' case, our firms were precluded from accepting other employment. If these firm and the associated counsel had not expended our time and resources on this case, we would have devoted our time and resources to other cases and compensable work. As a result of this case, we have forgone the opportunity to perform other work that may have paid far more

quickly and profitably.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

FURTHER YOUR AFFIANT SAYETH NOT.

Executed on this 30th day of April, 2018, at Dallas Texas.

Signature of Affiant

SWORN to and subscribed before me, this the 30 day of April, 2018.

TERESA GILLILAND
Notary Public, State of Texas
My Commission Expires
March 13, 2019

NOTARY PUBLIC

Exhibit 18 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

No Exhibit—Designated as "Will Supplement" in Original

Exhibit 19 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Affidavit of Jonathan Holder

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of **WAYNE ERVIN HOWE**, deceased, and **JEANETTE HOWE**,	)	**C/A NO. 15-CP-46-03456**
Plaintiffs,	)	**AFFIDAVIT OF JONATHAN IN SUPPORT OF PLAINTIFFS' MOTION FOR SANCTIONS WITH STATEMENTS OF FEES AND COSTS AGAINST CLEAVER BROOKS, INC.**
v.	)	
AIR & LIQUID SYSTEMS CORPORATION, et al.,	)	
Defendants.	)	

STATE OF TEXAS

COUNTY OF DALLAS

1. I am an attorney and a member in good standing of the bar of the State of South Carolina.

2. I am an attorney with Dean, Omar & Branham, attorneys of record for the Plaintiffs herein. The matters stated in this affidavit are true to my own personal knowledge, and if called to testify I could and would set forth the below facts.

3. I submit this declaration in support of Plaintiffs' Motion for Sanctions with Statements of Fees and Costs Against Cleaver Brooks, Inc.

BACKGROUND

4. I obtained my J.D. from the Charleston School of Law, where I was an editor on the maritime journal, a teaching fellow in legal writing and research as well as a member of the Dean's List. As an undergraduate, I graduated with honors with a degree in government from Wofford College, where I was a member of the Honor Council.

5. I have for five years represented individuals harmed by occupational exposure to asbestos, trying cases to verdict in South Carolina, Missouri, Louisiana, and California. Prior to working for victims of asbestos exposure, I represented injured individuals as part of general plaintiffs' practice, amassing a win-loss verdict record of 8-0 as a first-chair trial lawyer. I also built a reputation for my early skill in appellate law, having successfully argued before the Supreme Court of South Carolina in my second year in practice. (SC Appellate Case # 2011-196006; Memorandum Opinion 2012-MO-046).

COSTS

6. Attached hereto as Exhibit "A" is a true and correct copy of the costs of Plaintiffs' lawyers in this case stemming directly from having to take this case to trial.

7. These costs are correct and were necessarily incurred in the action as a result of Cleaver Brooks' belated disclosure of documents in the middle of trial.

ATTORNEYS' FEES

8. Dean, Omar & Branham, LLP, and Kassel McVey represent the Plaintiffs in this case styled *Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe, v. Air & Liquid Systems Corporation, et al.*, C/A NO. 15-CP-46-03456.

9. Defendant Cleaver Brooks, Inc. failed to produce the documents as it had represented to this Court that it would do at the January 24, 2018 hearing.

10. On January 11, 2018, Cleaver Brooks for the first time admitted that one of its boilers was sent to Bowater. Cleaver Brooks initially contended that its boiler was in the powerhouse, but further claimed that Howe had never been in the powerhouse. When Plaintiffs provided evidence that Howe had worked in the powerhouse, Cleaver Brooks changed its story and claimed that its boiler had never been in the powerhouse.

11. Up until that time, during two years of litigation, every deponent had testified that every boiler was in the powerhouse.

12. By the time of the March 9, 2018 hearing on Plaintiffs' motion for sanctions, it was clear to the parties and the Court that the trial hinged on Plaintiffs' ability to prove that there was a Cleaver Brooks boiler in the powerhouse where Mr. Howe worked "on every boiler." This was clear by Plaintiffs' request for a presumption that a Cleaver Brooks boiler was in the powerhouse, by argument of Plaintiffs and Cleaver Brooks, by discussion had off the record by all counsel, and is clear by the remaining facts of the case – specifically, Cleaver Brooks' admission of sales of asbestos and release of asbestos, as well as Cleaver Brooks' decision not to call a single expert but focus entirely on product identification.

13. Plaintiffs settled with all defendants except Cleaver Brooks by March 11, 2018, the weekend before trial.

14. Plaintiffs decided to proceed to trial against Cleaver Brooks because the 25 pages of commercial records produced by Cleaver Brooks suggested that there were two boilers at Bowater, with one boiler in the powerhouse, where Howe worked.

15. Indeed, Cleaver Brooks appeared to recognize this overwhelming evidence in favor of Plaintiffs as it withdrew its motion for summary judgment.

16. At 11:35pm on the night before Cleaver Brooks' corporate representative was scheduled to testify, Cleaver Brooks ambushed Plaintiffs with the production of numerous never-before-produced documents ("the midnight documents").

17. It was not until March 15, 2018, when Cleaver Brooks produced the "midnight documents" in the middle of trial, that Plaintiffs first learned that of the two boilers referenced in the 25 pages of commercial documents, only one had gone to Bowater, and the other had gone to Illinois. Moreover, the

late-produced evidence indicated that the boiler at Bowater was at the administration building, not the powerhouse.

18. If Plaintiffs had been in possession of the midnight documents before trial started, Plaintiffs would not have proceeded to trial against Cleaver Brooks.

19. The specific work performed by the firms in prosecuting this action at trial is detailed as follows.

20. Fees for me, at $400 per hour = $62,400.

Date	Description of Work	Number of Hours	Total
Sunday 3/11/18	Trial prep	12	$4800
Monday 3/12/18	Trial	17	$6800
Tuesday 3/13/18	Trial	17	$6800
Wednesday 3/14/18	Trial	17	$6800
Thursday 3/15/18	Trial	21	$8400
Friday 3/16/18	Trial	10	$4000
Saturday 3/17/18	Trial prep	8	$3200
Sunday 3/18/18	Trial prep	14	$5600
Monday 3/19/18	Trial	14	$5600
Tuesday 3/20/18	Trial	20	$8000
Wednesday 3/21/18	Trial	6	$2400

21. I have personal knowledge of the hourly rates charged by other attorneys with comparable experience to mine. Based on that information, I believe that my rates are at or near the market rate for attorneys with comparable expertise, experience, and qualifications and are reasonable and appropriate in this case.

22. The law firms took this case on a contingency basis, without any assurance that we would be paid any fees or reimbursed any costs for our efforts or expenditures. At no time did we have

any assurance that we would ultimately prevail in this matter or that a mutually agreeable settlement could be reached.

23. The firms accepted the case because of the important principle of vindicating Plaintiffs' rights. While the amount in controversy may be small relative to other actions before the Court, the importance of the case to the Plaintiffs cannot be overstated. The amounts recovered will help Plaintiffs in their living situations.

24. By accepting Plaintiffs' case, our firms were precluded from accepting other employment. If these firms and the associated counsel had not expended our time and resources on this case, we would have devoted our time and resources to other cases and compensable work. As a result of this case, we have forgone the opportunity to perform other work that may have paid far more quickly and profitably.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

FURTHER YOUR AFFIANT SAYETH NOT.

Jonathan M. Holder, Affiant

Executed on this 30th day of April, 2018, at Dallas, Texas.

Notary Public for the state of Texas

SCOTT PEPIN
Notary Public, State of Texas
Comm. Expires 05-20-2021
Notary ID 12275922

Exhibit 20 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Order in *Parker v. ABC Debt Relief, Ltd.* (N.D. Tex. 2014)

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR - 9 2014
CLERK, U.S. DISTRICT COURT
By _____
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRIAN PARKER, MICHAEL FRANK, and JEREMY COZART, on behalf of themselves and other similarly situated,	§	
Plaintiffs,	§	**CIVIL ACTION NO. 3:10-cv-1332-P**
v.	§	
ABC DEBT RELIEF, LTD. CO., THE DEBT ANSWER, LLC, LLOYD WARD, P.C. D/B/A LLOYD WARD & ASSOCIATES, LLOYD REGNER, and LLOYD WARD,	§	
Defendants.	§	

ORDER

Plaintiffs filed their Motion for Attorneys' Fees and Costs on September 19, 2013. Doc. 224. Defendants Lloyd Ward, P.C. and Lloyd Ward ("Defendants") filed a Response October 28, 2013. Doc. 233. Plaintiffs then filed their Reply on October 28, 2013. Doc. 234. After reviewing the parties' briefing, the evidence, and the applicable law, the Court GRANTS Plaintiffs' Motion for Attorneys' Fees and Costs.

I. Background

On July 8, 2010, and as later joined, Plaintiffs sued Defendants under the Fair Labor Standards Act ("FLSA") for unpaid overtime compensation. On January 28, 2013, the Court granted Summary Judgment in favor of Plaintiffs as to liability on their claims against Defendants. Doc. 174. The Court found that fact issues remained on the issues of damages and willfulness under the FLSA. Doc. 174 at 29. On September 9, 2013, this case was tried before a

jury. On September 11, 2013, the jury returned a verdict in favor of Plaintiffs. Doc. 215 at 13-15. Plaintiffs now move for attorneys' fees and costs. Doc. 224.

II. Legal Standard

Under the FLSA, prevailing plaintiffs are entitled to reasonable expenses and attorneys' fees. *See* 29 U.S.C. § 216(b); *Black v. SettlePou, P.C.*, 732 F.3d 492, 502 (5th Cir. 2013). A plaintiff is "prevailing" if the party "succeeded on any significant claims affording it some of the relief sought." *Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791 (1989). The lodestar method is used to calculate the appropriate attorneys' fee award. *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795, 799 (5th Cir. 2006). "The lodestar is calculated by multiplying the number of hours an attorney reasonably spent on the case by an appropriate hourly rate, which is the market rate in the community for [the] work. There is a strong presumption of the reasonableness of the lodestar amount." *Black*, 732 F.3d at 502 (citations omitted). "After calculating the lodestar, the court may decrease or enhance the amount based on the relative weights of the twelve factors set forth in [*Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)]." *Saizan*, 448 F.3d at 800. However, "[t]he lodestar may not be adjusted due to a *Johnson* factor that was already taken into account during the initial calculation of the lodestar." *Black*, 732 F.3d at 502 (citing *Saizan*, 448 F.3d at 800).

III. Attorneys' Fees

Plaintiffs' counsel spent a total of 1346.79 hours prosecuting their case. Doc. 224-1 at 4; Doc. 224-2. Plaintiffs' lead counsel Charles Branham ("Branham") submitted an affidavit explaining that his firm exercised billing judgment prior to recording time to eliminate time for duplicative tasks or to reduce time for inefficient work. Doc. 221-1 at 4. Additionally, Braham noted that he reduced the amount of total fees requested to take into account time spent

prosecuting a claim on behalf of a plaintiff who subsequently retained separate counsel. Doc. 244-1 at 5. However, Defendants argue that the number of hours worked by Plaintiffs' counsel is unreasonable. Doc. 233 at 3-4. They specifically point to a two-month period during which Plaintiffs' counsel worked over five hundred hours. Doc. 233 at 4. Defendants also maintain that hours entered by Charles Branham and Todd Goldberg "seem to duplicate one another quite frequently when preparing for Plaintiffs' Motion for Summary Judgment."[1] Doc. 233 at 4.

After reviewing their billing records, the Court finds that the number of hours worked by Plaintiffs' counsel is not reasonable and necessary. The Court finds that the number of hours submitted is excessive in this case. While the case involved a number of plaintiffs, which would require additional work to gather the pertinent information, all Plaintiffs were in one of three categories of employees. The legal issues involved were the same for each category regardless of the number of plaintiffs in the category. Additionally, Plaintiffs' lead counsel states that approximately 50% of his time is spent on FLSA overtimes cases. Doc. 224-1 at 3. The 1346.79 hours claimed by Plaintiffs equals almost eight months of 40 hours per week dedicated to this case. The Court finds this is not reasonable or necessary. Plaintiffs' case was also complicated by the structure of the defendant companies and the relationship among the various Defendants and was also made more difficult by the obstructionist tactics of Defendants. However, none of this justified the 1346.79 hours of work on this case. Additionally, Plaintiffs' timesheets show billings for work on claims for which Plaintiffs did not prevail, such as an ADEA claim, a sexual harassment claim, and a motion for a temporary restraining order and temporary injunction. *See*

[1] Defendants also request that the Court disallow fees and costs for November 2, 2011 through January 5, 2012 because Plaintiffs failed to supplement a prior disclosure of attorneys' fees. Doc. 233 at 2. However, even assuming, *arguendo*, that Federal Rule of Civil Procedure 26 applied to the documentation of attorneys' fees, Defendants have failed to show that the billing statement submitted to Defendants on November 2, 2011 was a disclosure Rule 26(e) would require Plaintiffs to supplement. *See* Fed R. Civ. P. 26; Doc. 233 at 1-2. Thus, the Court will not disallow fees and costs for November 2, 2011 through January 5, 2012.

Doc. 224-2 at 2. As Plaintiffs did not prevail on these issues, they are not entitled to recover for work on these claims. Lastly, it appears there is some duplication of effort among the attorneys. *See generally* Doc. 224-2. For these reasons, the Court finds that, still taking into account the difficulties of this case, reducing the hours by 10% is fair and proper.

Plaintiffs also request that attorneys Branham and Jeffery Goldfarb be compensated at an hourly rate of $475, that attorneys Todd Goldberg and Corinna Chandler be compensated at an hourly rate of $350, and that paralegals Barb Nicholas, Nancy Galloway, and Danielle Littleton be compensated at an hourly rate of $100. Doc. 224-1 at 4. Defendants have not objected to Plaintiffs' requested hourly rate. *See* Doc. 233. The Court finds that the hourly rates requested by Plaintiffs are reasonable for this locality. *See, e.g.*, *Primrose Operating Co. v. Nat'l Am. Ins. Co.*, 382 F.3d 546, 562 (5th Cir. 2004) ("[T]rial courts are considered experts as to the reasonableness of attorney's fees.").

Thus, the lodestar should be altered to reflect the reduction in hours. However, the Court does not find it necessary to otherwise adjust attorneys' fees based on the *Johnson* factors. Therefore, Plaintiffs are entitled to an attorneys' fee award of $433,874.24.

IV. Costs

Plaintiffs seek an award of $20,794.97 for costs associated with the prosecution of the case. Doc. 224 at 9. "The 'Supreme Court has indicated that federal courts may only award those costs articulated in [29 U.S.C. §] 1920 absent explicit statutory or contractual authorization to the contrary.'" *Gagnon v. United Technisource, Inc.*, 607 F.3d 1036, 1045 (5th Cir. 2010) (quoting *Cook Children's Med. Ctr. v. New England PPO Plan of Gen. Consolidation Mgmt. Inc.*, 491 F.3d 266, 274 (5th Cir. 2007)). A number of the costs Plaintiffs seek recovery for are

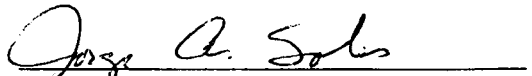
not articulated in § 1920.[2] Specifically, postage, retainers, lunches, and mediation fees are not articulated in § 1920. *See* 29 U.S.C. § 1920. Because Plaintiffs have not shown how the costs they seek that are not articulated in § 1920 fall within the costs-award provision of the FLSA, the Court will not award such costs. *See Gagnon*, 607 F.3d at 1045 (finding that a trial court abused its discretion by awarding FLSA costs not contemplated in § 1920 and failing to provide any other statutory or contractual authorization for the costs). Therefore, the Court finds that Plaintiffs can recover for transcript and copy fees, which the Court finds were necessarily obtained for use in the case. Thus, the Court finds that Plaintiffs are entitled to an award of costs in the amount of $12,471.01.

V. Conclusion

For the foregoing reasons, the Court GRANTS Plaintiffs' Motion. Specifically, the Court awards Plaintiffs $12,471.01 in costs and awards Plaintiffs $433,874.24 in attorneys' fees.

IT IS SO ORDERED.

Signed this 9th day of April, 2014.



JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

[2] Under § 1920, a plaintiff may recover for (1) fees of the clerk and marshal; (2) fees for printed or electronically recorded transcripts necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; (5) docket fees under 29 U.S.C. 1923; and (6) compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under 29 U.S.C. § 1828. 29 U.S.C. § 1920.

Exhibit 21 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Affidavit of Jessica Dean in Support of Costs and Attachments

STATE OF SOUTH CAROLINA COUNTY OF YORK **TIMOTHY W. HOWE**, Individually and as Personal Representative of the Estate of **WAYNE ERVIN HOWE**, Deceased, and **JEANETTE HOWE**, Plaintiffs, v. **AIR & LIQUID SYSTEMS CORPORATION**, et al. Defendants.	))))))))))))))))	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT **C/A NO. 15-CP-46-03456**

AFFIDAVIT OF JESSICA M. DEAN

STATE OF TEXAS

COUNTY OF DALLAS

1. I am a partner in the firm of Dean Omar Branham and one of the attorneys representing Plaintiffs Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, Deceased, and Jeanette Howe, in the above-entitled matter. I submit this affidavit in support of Plaintiffs' Motion for Sanctions with Statements of Fees Against Cleaver-Brooks, Inc.

2. This Affidavit details the expenses incurred by Plaintiffs in trying this case against Cleaver-Brooks once Cleaver-Brooks became the only defendant left in the case on March 11, 2018 (plus the cost of the second deposition of Cleaver-Brooks's corporate representative, John Tornetta, necessitated by their discovery misconduct). Plaintiff is asking for her trial expenses incurred from March 11, 2018, through March 21, 2018.

3. The total expenses requested are $95,435.16.

4. Plaintiffs had three attorneys trying the case, two of whom, myself and Johnathan

Holder, are from out of state and incurred hotel costs during the trial. Plaintiff also had hotel costs for her trial support team, as well as a "war room" utilized throughout the trial. The total hotel costs for the dates referenced above are $10,180.40. Attached as Exhibit 1 is a true and correct copy of those bills.

5. Plaintiffs' attorneys incurred travel costs for getting around Rock Hill and York, South Carolina during trial, including car services, a rental car, and gasoline. Those costs totaled $1,749.75. Attached as Exhibit 2 is a true and correct copy of those bills.

6. Plaintiffs' attorneys meal costs during trial were in the amount of $506.14. Attached as Exhibit 3 is a true and correct copy of those bills.[1]

7. During trial, Plaintiffs relied on a trial support team consisting of two paralegals working 80+ hours/week. They billed Plaintiffs a total of $38,787.30, which included $28,280.00 for the cost for their services and $10,507.30 for their expenses. Attached as Exhibit 4 are true and correct copies of those invoices.

8. Plaintiffs incurred a total cost of $2,272.77 for the following depositions taken during the trial of this case:

Dr. Timothy Oury Deposed 3/11/18	$1,437.65
John Tornetta Deposed 3/6/18 for second time Transcript - $444.70 (1/3 cost) Video - $390.42 (1/3 cost)	$835.12

Attached as Exhibit 5 are true and correct copies of the invoices for these deposition costs.

9. Plaintiffs paid a total of $3,050.95 for the trial transcripts and related costs, as follows:

[1] Some meals were charged to counsel's personal credit card and that bill is not yet available. Those meal charges totaled $284.71.

Pre-trial Hearing Transcript (1/3 cost) 3/9/18	$82.67
Trial Transcripts (Rough)	$2,668.28
Court Reporter Cancellation Fee First day of trial, 3/12/18 Cleaver-Brooks refused to work with these court reporters	$300.00

Attached as Exhibit 6 are true and correct copies of these invoices.

10. Plaintiffs called the following expert witnesses for live testimony, who billed Plaintiffs a total of $37,782.22, as follows:

Dr. Arnold Brody Testified on March 13, 2018 Two days of travel and trial testimony -$9,200 Travel expenses -$97.00 Cancellation fee for March 19 - $4,600[2]	$13,897.00
Dr. Edwin Holstein Testified on March 14, 2018 Preparation for trial testimony - $2,380 Trial testimony - $12,000 Travel expenses - $1,663.15	$16,043.15
Oliver G. Wood Testified on March 15, 2018 Report/Evaluation - $1,325 Professional Services - $6,113.50 Expenses - $403.57	$7,842.07

Attached as Exhibit 7 are true and correct copies of the experts' bills.

11. Plaintiffs incurred FedEx costs of $1,105.63 during trial for sending trial materials back and forth from Dallas, Texas, to South Carolina. Attached as Exhibit 8 are true and correct copies of those invoices.

12. All of the above expenses have been paid by Dean Omar Branham, LLP or,

[2] Dr. Brody kept this date open in the event the Howe case resolved and the Charlotte Smith case went to trial.

alternatively, by co-counsel Kassel McVey.

FURTHER YOUR AFFIANT SAYETH NOT.

Executed this 30 day of April, 2018.

Signature of Affiant

SWORN to and subscribed before me, this the 30th day of April, 2018.

Teresa Gilliland

NOTARY PUBLIC

TERESA GILLILAND
Notary Public, State of Texas
My Commission Expires
March 13, 2019

EXHIBIT 1

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 11 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$132.09

Doing Business As:FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 13 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$148.09

Doing Business As: FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 16 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$132.09

Doing Business As: FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 18 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$1,056.72

Doing Business As: FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 18 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$1,056.72

Doing Business As:FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 18 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$1,056.72

Doing Business As:FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 19 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$1,056.72

Doing Business As:FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 19 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$1,056.72

Doing Business As:FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 22 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$480.25

Doing Business As: FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 22 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$538.36

Doing Business As:FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 23 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$544.21

Doing Business As: FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 23 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$803.06

Doing Business As: FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 26 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$724.50

Doing Business As:FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 26 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$1,056.72

Doing Business As:FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

Transaction Details Prepared for
RYAN TRAVIS
Account Number
XXXX-XXXXXX-31049

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 26 2018	FAIRFIELD INN 5M3 Rock Hill SC	RYAN TRAVIS	$337.43

Doing Business As:FFI&S ROCK HILL
578 GALLERIA BLVD - ROCK HILL SC
29730
UNITED STATES
Category: Travel-Lodging

EXHIBIT 2

Transaction Details Prepared for
JESSICA DEAN
Account Number
XXXX-XXXXXX-35032

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 13 2018	BLACKLANE *5148777BERLIN BE	JESSICA DEAN	$101.98

Doing Business As:BLACKLANE GMBH
FEURIGSTR. 59 BERLIN
10827
GERMANY
Category: Business Services-Other Services

Transaction Details Prepared for
JESSICA DEAN
Account Number
XXXX-XXXXXX-35032

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 15 2018	UBER *TRIP BIIX2 HELP.UBER.COM CA	JESSICA DEAN	$27.17

Doing Business As: UBER
1455 MARKET ST 4TH FLOOR SAN FRANCISCO CA
94103
UNITED STATES
Category: Transportation-Taxis & Coach

Transaction Details Prepared for
JESSICA DEAN
Account Number
XXXX-XXXXXX-35032

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 16 2018	UBER *TRIP SX2ZG HELP.UBER.COM CA	JESSICA DEAN	$30.08

Doing Business As:UBER
1455 MARKET ST 4TH FLOOR SAN FRANCISCO CA
94103
UNITED STATES
Category: Transportation-Taxis & Coach

Transaction Details Prepared for
JONATHAN M HOLDER
Account Number
XXXX-XXXXXX-33094

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 17 2018	PILOT_04578 04578 WINNSBORO SC	JONATHAN M HOLDER	$36.56

Doing Business As:PILOT
10959 STATE HIGHWAY 200 WINNSBORO SC
29180
UNITED STATES
Category: Transportation-Fuel

Transaction Details Prepared for
JESSICA DEAN
Account Number
XXXX-XXXXXX-35032

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 18 2018	UBER TRIP U6EBS HELP.UBER.COM CA	JESSICA DEAN	$62.36

Doing Business As: UBER
1455 MARKET ST 4TH FLOOR SAN FRANCISCO CA
94103
UNITED STATES
Category: Transportation-Taxis & Coach

Transaction Details Prepared for
JESSICA DEAN
Account Number
XXXX-XXXXXX-35032

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 18 2018	UBER *TRIP 2HFZ3 HELP.UBER.COM CA	JESSICA DEAN	$31.01

Doing Business As:UBER
1455 MARKET ST 4TH FLOOR SAN FRANCISCO CA
94103
UNITED STATES
Category: Transportation-Taxis & Coach

Transaction Details Prepared for
JESSICA DEAN
Account Number
XXXX-XXXXXX-35032

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 21 2018	UBER *TRIP LMCA4 HELP.UBER.COM CA	JESSICA DEAN	$9.14

Doing Business As: UBER
1455 MARKET ST 4TH FLOOR SAN FRANCISCO CA
94103
UNITED STATES
Category: Transportation-Taxis & Coach

Transaction Details Prepared for
JESSICA DEAN
Account Number
XXXX-XXXXXX-35032

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 21 2018	UBER TRIP BB5K5 HELP.UBER.COM CA	JESSICA DEAN	$5.94

Doing Business As: UBER
1455 MARKET ST 4TH FLOOR SAN FRANCISCO CA
94103
UNITED STATES
Category: Transportation-Taxis & Coach

Transaction Details Prepared for
JESSICA DEAN
Account Number
XXXX-XXXXXX-35032

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar.22 2018	UBER *TRIP VI3BN HELP.UBER.COM CA	JESSICA DEAN	$10.04

Doing Business As:UBER
1455 MARKET ST 4TH FLOOR SAN FRANCISCO CA
94103
UNITED STATES
Category: Transportation-Taxis & Coach

Transaction Details Prepared for
JONATHAN M HOLDER
Account Number
XXXX-XXXXXX-33094

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 22 2018	SHELL OIL 9100248616ORANGEBURG	JONATHAN M HOLDER	$36.00

Doing Business As:SHELL
12700 NORTHBOROUGH ATTN: TEXACO CHARGEBACKS HOUSTON TX
77067
UNITED STATES
Category: Transportation-Fuel

Transaction Details Prepared for
JESSICA DEAN
Account Number
XXXX-XXXXXX-35032

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 23 2018	HERTZ CAR RENTAL 800-654-4173 NC	JESSICA DEAN	$1,361.16

Doing Business As: HERTZ RAC
14501 HERTZ QUAIL SPRINGS - OKLAHOMA CITY OK
73134-2606
UNITED STATES
Category: Travel-Vehicle Rental

Transaction Details Prepared for
JONATHAN M HOLDER
Account Number
XXXX-XXXXXX-33094

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 25 2018	ApIPay LYFT *RIDE SAN FRANCISCO CA	JONATHAN M HOLDER	$22.27

Doing Business As:LYFT.COM
548 MARKET ST SAN FRANCISCO CA
94104
UNITED STATES
Category: Transportation-Taxis & Coach

Transaction Details Prepared for
JONATHAN M HOLDER
Account Number
XXXX-XXXXXX-33094

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 26 2018	ApIPay LYFT *RIDE SAN FRANCISCO CA	JONATHAN M HOLDER	$16.04

Doing Business As:LYFT.COM
548 MARKET ST SAN FRANCISCO CA
94104
UNITED STATES
Category: Transportation-Taxis & Coach

EXHIBIT 3

Transaction Details Prepared for
JONATHAN M HOLDER
Account Number
XXXX-XXXXXX-33094

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 11 2018	TARGET ROCK HILL SC	JONATHAN M HOLDER	$9.71

Doing Business As: TARGET
1900 SPRINGSTEEN RD ROCK HILL SC
29730-6990
UNITED STATES
Category: Merchandise & Supplies-Wholesale Stores

Transaction Details Prepared for
JONATHAN M HOLDER
Account Number
XXXX-XXXXXX-33094

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 12 2018	CHICK-FIL-A ROCK HILL SC	JONATHAN M HOLDER	$26.02

Doing Business As: Chick-fil-A
2245 DAVE LYLE BOULEVARD ROCK HILL SC
29730
UNITED STATES
Category: Restaurant-Bar & Café

Transaction Details Prepared for
JONATHAN M HOLDER
Account Number
XXXX-XXXXXX-33094

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 13 2018	ApIPay CHICK-FIL-A ROCK HILL SC	JONATHAN M HOLDER	$22.69

Doing Business As: Chick-fil-A
2245 DAVE LYLE BOULEVARD ROCK HILL SC
29730
UNITED STATES
Category: Restaurant-Bar & Café

Transaction Details Prepared for
JONATHAN M HOLDER
Account Number
XXXX-XXXXXX-33094

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 16 2018	THE PUMP HOUSE RESTAROCK HILL SC	JONATHAN M HOLDER	$116.66

Doing Business As: THE PUMP HOUSE
575 HERRONS FERRY RD ROCK HILL SC
29730-0040
UNITED STATES
Category: Restaurant-Restaurant

Transaction Details Prepared for
JONATHAN M HOLDER
Account Number
XXXX-XXXXXX-33094

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 17 2018	CHICK-FIL-A ROCK HILL SC	JONATHAN M HOLDER	$9.53

Doing Business As: Chick-fil-A
2245 DAVE LYLE BOULEVARD ROCK HILL SC
29730
UNITED STATES
Category: Restaurant-Bar & Café

Transaction Details Prepared for
JONATHAN M HOLDER
Account Number
XXXX-XXXXXX-33094

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 18 2018	LOVES COUNTRY STORE ORANGEBURG SC	JONATHAN M HOLDER	$22.01

Doing Business As:LOVE'S
3205 FIVE CHOP RD US301/FICE CHOP RD & 1-26 ORANGEBURG SC
29115
UNITED STATES
Category: Transportation-Fuel

Transaction Details Prepared for
JONATHAN M HOLDER
Account Number
XXXX-XXXXXX-33094

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 20 2018	TEXAS ROADHOUSE ROCK HILL SC	JONATHAN M HOLDER	$37.50

Doing Business As: Texas Roadhouse
2367 DAVE LYLE BLVD, LOCATED NEXT TO THE ROCK HILL SC
29730-7939
UNITED STATES
Category: Restaurant-Restaurant

EXHIBIT 4

The Trial Group LLC
6901 Golf Green Drive
Arlington, TX 76001 US
(682) 433-4768
rtravis@thetrialgroup.com

TTG
The Trial Group

BILL TO
Dean Omar Branham
302 N. Market Street
Suite 300
Dallas, TX 75202

POSTED 03/30/18

INVOICE # 358
DATE 03/16/2018
DUE DATE 03/31/2018
TERMS Net 15

CASE
Howe

Hourly - $120 Howe, Smith, Sizemore Exhibit list numbering, downloading, renaming, organizing, uploading	45	120.00	5,400.00	Howe - 1/3 $1,800
Hourly - $120 Shipping out equipment	1.50	120.00	180.00	
2 Man Trial Support Day Ryan, Alex 3-11 - 3-16	6	2,100.00	12,600.00	

BALANCE DUE **$18,180.00**

$14,580 - Howe
tg

The Trial Group LLC
6901 Golf Green Drive
Arlington, TX 76001 US
(682) 433-4768
rtravis@thetrialgroup.com

TTG
The Trial Group

BILL TO
Dean Omar Branham
302 N. Market Street
Suite 300
Dallas, TX 75202

INVOICE # 357
DATE 03/16/2018
DUE DATE 03/31/2018
TERMS Net 15

CASE
Smith, Sizemore, Howe

POSTED 03/20/18

1 Man Trial Support Day Ryan 3-8 to 3-10	3	1,600.00	4,800.00

BALANCE DUE **$4,800.00**

Hemp
1/3 = 1600.00

The Trial Group LLC
6901 Golf Green Drive
Arlington, TX 76001 US
(682) 433-4768
rtravis@thetrialgroup.com

TTG
The Trial Group

INVOICE

BILL TO
Dean Omar Branham
302 N. Market Street
Suite 300
Dallas, TX 75202

POSTED
03/27/18

INVOICE # 360
DATE 03/23/2018
DUE DATE 04/07/2018
TERMS Net 15

CASE
Howe

2 Man Trial Support Day 3/18 - 3/22 Ruan, Alex	5	2,100.00	10,500.00
1 Man Trial Support Day 3/23 - Ryan	1	1,600.00	1,600.00

BALANCE DUE **$12,100.00**

tg

The Trial Group LLC
6901 Golf Green Drive
Arlington, TX 76001-US
(682) 433-4768
rtravis@thetrialgroup.com

The Trial Group

INVOICE

BILL TO
Dean Omar Branham
302 N. Market Street
Suite 300
Dallas, TX 75202

INVOICE # 363
DATE 04/30/2018
DUE DATE 05/15/2018
TERMS Net 15

CASE
Howe

ACTIVITY	QTY	RATE	AMOUNT
Expense Reimbursement See Attached Expense Breakdown	1	10,507.30	10,507.30

BALANCE DUE **$10,507.30**

EXHIBIT 5

INVOICE

CompuScripts, Inc.
Court Reporters

REVISED
10:35 am, Mar 19, 2018

PO Box 7172 • Columbia, SC 29202-7172
888.988.0086 toll free
803.988.0086 • 803.988.0094 fax
www.compuscripts.com

Federal ID 58-2476952

Bill To:

Dean Omar Branham, LLP
302 N Market St
Ste 300
Dallas, TX 75202
USA

POSTED 03/20/18

Ordering Attorney:

Jessica Dean, Esq
302 N Market St
Ste 300
Dallas, TX 75202
USA

Invoice Number	Invoice Date	Reporter	Payment Terms	Due Date
1041118	3/19/18	Deborah L. Dusseljee	Net 10 Days	3/29/18

Item Description	UOM	Qty	Amount
Case Number: 2015-CP-46-03456	-		
Case Caption: Timothy W. Howe, et al. v Air & Liquid Systems, et al.	-		
Job Date: 3/11/2018	-		
	-		
Witness: Dr. Timothy Oury	-		
1 Certified Transcript Less Than 1-Business Day Turnaround	PAGE	155.00	891.25
Digital Exhibits	SIDE	142.00	71.00
Video Digitization for Sync - MPEG-1, MPEG-2, MPEG-4, DVD-Video - One Hour Minimum Charge - Billed by Tenth Hour	HOUR	2.80	168.00
Video Synchronization - Sync digitized video with ASCII transcript - One Hour Minimum Charge - Billed by Tenth Hour	HOUR	2.80	168.00
Video - All Formats - Expedite Service - Billed by Video Minute	MINUTE	164.00	139.40

Subtotal	$	1,437.65
Total Invoice Amount	$	1,437.65
Check/Credit Memo No: Payment/Credit Applied		
TOTAL	$	1,437.65

Overdue invoices are subject to late charges and attorney fees.

-- Please include your invoice number on all payments to ensure proper credit --

Thank you for your business!

Priority One Division
Veritext Corp

290 West Mt. Pleasant Ave, Suite 2260
Livingston NJ 07039
Tel. 718-983-1234 Fax. 973-660-1021
Fed. Tax ID: 20-3132569

VERITEXT
LEGAL SOLUTIONS

Bill To: Benjamin D. Braly Esq
Dean Omar Branham
302 N Market St
Ste 300
Dallas, TX, 75202

Invoice #: NJ3270775
Invoice Date: 3/22/2018
Balance Due: $1,334.10

Case:	Howe, Timothy/Smith, Charlotte/Sizemore, James v. Asbestos/Cleaver-Brooks
Job #:	2835056 I Job Date: 3/6/2018 I Delivery: Expedited
Billing Atty:	Benjamin D. Braly Esq
Location:	Hawkins Parnell Thackston & Young LLP 4514 Cole Avenue I Suite 500 I Dallas, TX 75205
Sched Atty:	Jonathan Holder I Dean Omar Branham

Witness	Description	Units	Quantity	Amount
John Tornetta Vol 2 - Cleaver Brooks	Original Transcript	Page	212.00	$1,166.00
	Exhibits - Color	Per Page	119.00	$119.00
	Exhibits	Per Page	55.00	$19.25
	Physical Media (CD/DVD/Flash)	Per disk	1.00	$10.00
	Shipping & Handling	Package	1.00	$19.85

Notes:

Invoice Total:	$1,334.10
Payment:	$0.00
Credit:	$0.00
Interest:	$0.00
Balance Due:	$1,334.10

TERMS: Payable upon receipt. Accounts 30 days past due will bear a finance charge of 1.5% per month. Accounts unpaid after 90 days agree to pay all collection costs, including reasonable attorney's fees. Contact us to correct payment errors. No adjustments will be made after 90 days. For more information on charges related to our services please consult http://www.veritext.com/services/all-services/services-information

1/3

44420

POSTED 03/27/18

tg

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(American Express, Mastercard, Visa, Discover)

132882

Please remit payment to:
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P.O. Box 71303
Chicago IL 60694-1303

Invoice #: NJ3270775
Job #: 2835056
Invoice Date: 3/22/2018
Balance: $1,334.10

Priority One Division
Veritext Corp

290 West Mt. Pleasant Ave, Suite 2260
Livingston NJ 07039
Tel. 718-983-1234 Fax. 973-660-1021
Fed. Tax ID: 20-3132569

VERITEXT
LEGAL SOLUTIONS

Bill To: Jonathan Holder
Dean Omar Branham
302 N Market St
Ste 300
Dallas, TX, 75202

Invoice #:	NJ3271473
Invoice Date:	4/9/2018
Balance Due:	$1,171.25

Case: Howe, Timothy/Smith, Charlotte/Sizemore, James v. Asbestos/Cleaver-Brooks
Job #: 2835056 | Job Date: 3/6/2018 | Delivery: Normal
Billing Atty: Jonathan Holder
Location: Hawkins Parnell Thackston & Young LLP
4514 Cole Avenue | Suite 500 | Dallas, TX 75205
Sched Atty: Jonathan Holder | Dean Omar Branham

POSTED
04/10/18

Witness	Description	Units	Quantity	Amount
John Tornetta Vol 2 - Cleaver Brooks	Video - Initial Fee	1	1.00	$350.00
	Video - Additional Hours	Hour	4.25	$467.50
	Video – MPEG/Digitizing	Hour	3.05	$198.25
	Video - Media and Cloud Services	Per disk	3.00	$126.00
	Shipping & Handling - Video Media	Package	1.00	$29.50

Notes:

Invoice Total:	$1,171.25
Payment:	$0.00
Credit:	$0.00
Interest:	$0.00
Balance Due:	$1,171.25

TERMS: Payable upon receipt. Accounts 30 days past due will bear a finance charge of 1.5% per month. Accounts unpaid after 90 days agree to pay all collection costs, including reasonable attorney's fees. Contact us to correct payment errors. No adjustments will be made after 90 days. For more information on charges related to our services please consult http://www.veritext.com/services/all-services/services-information

390 ½ each

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(American Express, Mastercard, Visa, Discover)

132882

Please remit payment to:
Veritext
P.O. Box 71303
Chicago IL 60694-1303

Invoice #:	NJ3271473
Job #:	2835056
Invoice Date:	4/9/2018
Balance:	$1,171.25

EXHIBIT 6

SERVICE INVOICE

ELIZABETH B. HARRIS, CVR-M-CM
Official Court Reporter
414 Autumn Circle
Columbia, SC 29206

email: EHarris@sccourts.org
Phone: (803) 422-5236

SERVICE FOR:
Theile B. McVey, Esquire
Kassel McVey
PO Box 1476
Columbia, SC 29202

INVOICE NUMBER 18318.2
ORDER NUMBER 201.2
TAX NUMBER 9092
JOB DESCRIPTION Transcript
DATE March 18 , 2018

INVOICE FOR:
Theile B. McVey, Esquire
Kassel McVey
PO Box 1476
Columbia, SC 29202

POSTED
03/20/18

SERVICE DESCRIPTION	PAGES	EXPEDITED RATE	AMOUNT
TRANSCRIPT OF HEARING: *SC ASBESTOS CASES: HOWE, SMITH, SIZEMORE*			
COPY	248	1.00	248.00
DATE TAKEN: 3-09-18 CASE NUMBER: 2017-GS-40-05234 BEFORE: THE HON. J. TOAL DELIVERED: 3-17-18			

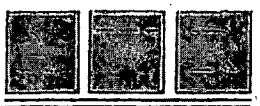
$248.00
AMOUNT OWED

MAKE CHECKS PAYABLE TO:
ELIZABETH B. HARRIS

PAYMENT DUE UPON RECEIPT OF TRANSCRIPT.

1/3 Howe
8267

A. William Roberts, Jr., & Associates
234 Seven Farms Drive 6B&T Building, Suite 210
Charleston, SC 29492
Phone: 843-722-8414
Fax: 866-390-3376



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Court Reporting & Litigation Solutions
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Jessica M Dean
DEAN, OMAR & BRANHAM, LLP
302 N. Market Street
Suite 300
Dallas, TX 75202

POSTED 03/22/18

Invoice #8757

Date	Terms
03/19/2018	Net 30 days - finance @ 1.5 %

Job #16793 on 03/13/2018

Action: Timothy Howe, et al vs. Asbestos/Bowater Paper Mill

Shipped On: 03/14/2018
Shipped Via: Electronic Shipment

Description			Amount
Trial			
Rough Draft			$ 431.20
			$ 431.20

Amount Due: $ 431.20
Paid: $ 0.00

Balance Due:	**$ 431.20**
Payment Due:	**04/18/2018**

Interest at 1.50% after 04/18/2018: **$ 437.67**

Tax. I.D. 57-0762990

PAYMENT WITH CREDIT CARD: (Amex, Visa, MasterCard)
Cardholder's Name: _____
Card Number: _____
Expiration Date: _____ **Phone #:** _____
Billing Address: _____
Zip: _____ **Card Security Code:** _____
Amount to Charge: _____
Signature: _____

REMIT TO: billing@scheduledepo.com

A. William Roberts, Jr., & Associates
234 Seven Farms Drive BB&T Building, Suite 210
Charleston, SC 29492
Phone: 843-722-8414
Fax: 866-390-3376

A. William Roberts, Jr. & Associates
Court Reporting & Litigation Solutions
www.scheduledepo.com | 800-743-DEPO

Jessica M Dean
DEAN, OMAR & BRANHAM, LLP
302 N. Market Street
Suite 300
Dallas, TX 75202

Invoice #8760

Date	Terms
03/19/2018	Net 30 days - finance @ 1.5 %

Job #16794 on 03/14/2018

Action: Timothy Howe, et al vs. Asbestos/Bowater Paper Mill

Shipped On: 03/15/2018
Shipped Via: Electronic Shipment

Description			Amount
Trial Vol: Day 3			
Rough Draft			$ 497.35
			$ 497.35

Amount Due: $ 497.35
Paid: $ 0.00

Balance Due:	**$ 497.35**
Payment Due:	**04/18/2018**

Interest at 1.50% after 04/18/2018: **$ 504.81**

Tax. I.D. 57-0762990

PAYMENT WITH CREDIT CARD: (Amex, Visa, MasterCard)
Cardholder's Name: _____
Card Number: _____
Expiration Date: _____ **Phone #:** _____
Billing Address: _____
Zip: _____ **Card Security Code:** _____
Amount to Charge: _____
Signature: _____

POSTED
08/22/18

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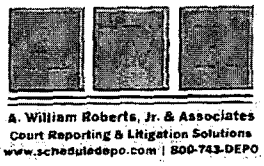
A. William Roberts, Jr., & Associates
234 Seven Farms Drive BB&T Building, Suite 210
Charleston, SC 29492
Phone: 843-722-8414
Fax: 866-390-3376



Jessica M Dean
DEAN, OMAR & BRANHAM, LLP
302 N. Market Street
Suite 300
Dallas, TX 75202

POSTED
03/22/18

Invoice #8763

Date	Terms
03/19/2018	Net 30 days - finance @ 1.5%

Job #16795 on 03/15/2018

Action: Timothy Howe, et al vs. Asbestos/Bowater Paper Mill

Shipped On: 03/16/2018
Shipped Via: Electronic Shipment

Description			Amount
Trial Vol. 4			
Rough Draft			$ 360.15
			$ 360.15

Amount Due: $ 360.15
Paid: $ 0.00

Balance Due:	**$ 360.15**
Payment Due:	**04/18/2018**

Interest at 1.50% after 04/18/2018: **$ 365.55**

Tax. I.D. 57-0762990

PAYMENT WITH CREDIT CARD: (Amex, Visa, MasterCard)
Cardholder's Name: _____
Card Number: _____
Expiration Date: _____ **Phone #:** _____
Billing Address: _____
Zip: _____ **Card Security Code:** _____
Amount to Charge: _____
Signature: _____

REMIT TO: billing@scheduledepo.com

A. William Roberts, Jr., & Associates
234 Seven Farms Drive BB&T Building, Suite 210
Charleston, SC 29492
Phone: 843-722-8414
Fax: 866-390-3376

A. William Roberts, Jr. & Associates
Court Reporting & Litigation Solutions
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Jessica M Dean
DEAN, OMAR & BRANHAM, LLP
302 N. Market Street
Suite 300
Dallas, TX 75202

Invoice #8766

Date	Terms
03/19/2018	Net 30 days - finance @ 1.5 %

Job #16796 on 03/16/2018

Action: Timothy Howe, et al vs. Asbestos/Bowater Paper Mill

Shipped On: 03/19/2018
Shipped Via: Electronic Shipment

Description	Amount
Trial Vol: 5	
Rough Draft	$ 519.40
	$ 519.40

Amount Due: $ 519.40
Paid: $ 0.00

Balance Due:	**$ 519.40**
Payment Due:	**04/18/2018**

Interest at 1.50% after 04/18/2018: **$ 527.19**

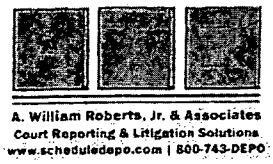
Tax. I.D. 57-0762990

PAYMENT WITH CREDIT CARD: (Amex, Visa, MasterCard)
Cardholder's Name: _____
Card Number: _____
Expiration Date: _____ **Phone #:** _____
Billing Address: _____
Zip: _____ **Card Security Code:** _____
Amount to Charge: _____
Signature: _____

POSTED
03/22/18

REMIT TO: billing@scheduledepo.com

A. William Roberts, Jr., & Associates
234 Seven Farms Drive BB&T Building, Suite 210
Charleston, SC 29492
Phone: 843-722-8414
Fax: 866-390-3376



Jonathan Holder
Dean, Omar & Branham, LLP
302 N. Market Street
Suite 300
Dallas, TX 75202

POSTED 03/22/18

Invoice #8875

Date	Terms
03/23/2018	Net 30 days - finance @ 1.5 %

Job #16792 on 03/12/2018

Action: Timothy Howe, et al vs. Asbestos/Bowater Paper Mill

Shipped On: 03/20/2018
Shipped Via: Electronic Shipment

Description			Amount
Trial			
Rough Draft			$ 53.90
			$ 53.90

Amount Due:	$ 53.90
Paid:	$ 0.00

Balance Due:	**$ 53.90**
Payment Due:	**04/22/2018**

Interest at 1.50% after 04/22/2018: $ 54.71

Tax. I.D. 57-0762990

PAYMENT WITH CREDIT CARD: (Amex, Visa, MasterCard)
Cardholder's Name: _____
Card Number: _____
Expiration Date: _____ **Phone #:** _____
Billing Address: _____
Zip: _____ **Card Security Code:** _____
Amount to Charge: _____
Signature: _____

REMIT TO: billing@scheduledepo.com

A. William Roberts, Jr., & Associates
234 Seven Farms Drive BB&T Building, Suite 210
Charleston, SC 29492
Phone: 843-722-8414
Fax: 856-390-3376

A. William Roberts, Jr. & Associates
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Jessica M Dean
Dean, Omar & Branham, LLP
302 N. Market Street
Suite 300
Dallas, TX 75202

POSTED 03/27/18

Invoice #9055

Date	Terms
03/26/2018	Net 30 days - finance @ 1.5 %

Job #16798 on 03/20/2018

Action: Timothy Howe, et al vs. Asbestos/Bowater Paper Mill

Shipped On: 03/21/2018
Shipped Via: Electronic Shipment

Description	Amount
Trial Vol: 7	
Rough Draft	$ 369.95
	$ 369.95

Amount Due:	$ 369.95
Paid:	$ 0.00

Balance Due:	**$ 369.95**
Payment Due:	**04/25/2018**

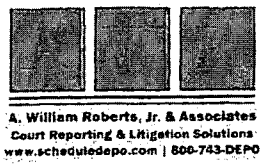
Interest at 1.50% after 04/25/2018: **$ 375.50**

Tax. I.D. 57-0762990

PAYMENT WITH CREDIT CARD: (Amex, Visa, MasterCard)
Cardholder's Name: _____
Card Number: _____
Expiration Date: _____ **Phone #:** _____
Billing Address: _____
Zip: _____ **Card Security Code:** _____
Amount to Charge: _____
Signature: _____

REMIT TO: billing@scheduledepo.com

A. William Roberts, Jr., & Associates
234 Seven Farms Drive BB&T Building, Suite 210
Charleston, SC 29492
Phone: 843-722-8414
Fax: 866-390-3376



Jessica M Dean
Dean, Omar & Branham, LLP
302 N. Market Street
Suite 300
Dallas, TX 75202

Invoice #9034

Date	Terms
03/26/2018	Net 30 days - finance @ 1.5%

Job #16799 on 03/21/2018

Action: Timothy Howe, et al vs: Asbestos/Bowater Paper Mill

Shipped On: 03/22/2018
Shipped Via: Electronic Shipment

Description			Amount
Trial Vol: 8			
Rough Draft			$ 396.90
			$ 396.90

POSTED 03/27/18

Amount Due:	$ 396.90
Paid:	$ 0.00
Balance Due:	**$ 396.90**
Payment Due:	**04/25/2018**

Interest at 1.50% after 04/25/2018: **$ 402.85**

Tax. I.D. 57-0762990

PAYMENT WITH CREDIT CARD: (Amex, Visa, MasterCard)
Cardholder's Name: _____
Card Number: _____
Expiration Date: _____ **Phone #:** _____
Billing Address: _____
Zip: _____ **Card Security Code:** _____
Amount to Charge: _____
Signature: _____

REMIT TO: billing@scheduledepo.com

Priority One Division
Veritext Corp

290 West Mt. Pleasant Ave, Suite 2260
Livingston NJ 07039
Tel. 718-983-1234 Fax. 973-660-1021
Fed. Tax ID: 20-3132569

VERITEXT
LEGAL SOLUTIONS

Bill To: Jonathan Holder
Dean Omar Branham
302 N Market St
Ste 300
Dallas, TX, 75202

Invoice #:	NJ3285734
Invoice Date:	3/23/2018
Balance Due:	$300.00

Case: Howe, Timothy v. Asbestos
Job #: 2843412 I Job Date: 3/12/2018 I Delivery: Normal
Billing Atty: Jonathan Holder
Location: York County Courthouse
1 South Congress St I Judge is Chief Justice Jean Toal I York, SC 29745
Sched Atty: Jonathan Holder I Dean Omar Branham

POSTED 03/27/18

Witness	Description	Units	Quantity	Amount
BUST/appearance only	Attendance Fee	1	1.00	$300.00

Notes:

Invoice Total:	$300.00
Payment:	$0.00
Credit:	$0.00
Interest:	$0.00
Balance Due:	$300.00

TERMS: Payable upon receipt. Accounts 30 days past due will bear a finance charge of 1.5% per month. Accounts unpaid after 90 days agree to pay all collection costs, including reasonable attorney's fees. Contact us to correct payment errors. No adjustments will be made after 90 days. For more information on charges related to our services please consult http://www.veritext.com/services/all-services/services-information

tg

To pay online, go to
www.veritext.com

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Please remit payment to:
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P.O. Box 71303
Chicago IL 60694-1303

Invoice #:	**NJ3285734**
Job #:	**2843412**
Invoice Date:	**3/23/2018**
Balance:	**$300.00**

EXHIBIT 7

March 14, 2018

POSTED 03/15/18

Ms. Belinda Jolivet
DOB Law
3900 Elm Street
Dallas, Texas 75226

Howe

Dear Ms. Jolivet:

It was a pleasure working with Ms. Dean and your team in York, SC, on March 12 and 13. The expenses and fees for this follow: Round trip Uber (home to RDU)-$45;
dinner at CLT-$42; gratuity-$10; two days of travel and testimony-$9,200.
This totals **$9,297.**

I appreciate your taking care of this matter and look forward to working with you again. Please have a check sent to my home office at-
1910 GLENMARTIN DR., RALEIGH, NC 27615.

Sincerely,

Arnold R. Brody,
Ph.D.
Professor Emeritus

March 15, 2018

POSTED 03/15/18

Ms. Belinda Jolivet
DOB Law
3900 Elm Street
Dallas, Texas 75226

Hove

Dear Ms. Jolivet:

I am sorry that the schedule we had set up for my testimony on March 19 did not work out as planned. I altered my calendar so I could testify on 3/19 and continued to arrange my schedule accordingly. Thus, I am charging a one-day cancellation fee of **$4,600.**

I appreciate your taking care of this matter and look forward to working with you again. Please have a check sent to my home office at-
1910 GLENMARTIN DR., RALEIGH, NC 27615.

Sincerely,

Arnold R. Brody,

Ph.D.

Professor Emeritus

Environmental Health Associates, P.A.

Edwin C. Holstein, M.D.
President

10 Langley Road, Suite 305
Newton Centre, MA 02459
tel: 617.795.2238

March 31, 2018
Invoice No. 8954

Belinda Jolivet
Dean, Omar & Branham, LLP
302 N Market Street, Suite 300
Dallas, TX 75202

RE: Wayne Howe litigation

I. Professional services rendered by Edwin C. Holstein, M.D.:

POSTED
04/10/18

Review of Holstein deposition Review of Howe medical records Attorney conferences by telephone Preparation for testimony at trial	
3.4 hours @ $700.00	$2,380.00
Testimony at trial Rock Hill, SC March 13-14, 2018	
1.5 days @ $8,000.00	$12,000.00

II. Travel expenses
Sarasota, FL to/from Rock Hill, SC
March 13-14, 2018

See attached itemization	$1,663.15
Total	**$16,043.15**

Environmental Health Associates, P.A. Tax ID: 22-2537435
Please make checks payable to Environmental Health Associates, P.A. Remit to above address.

tg

Rec. 1375

March 14, 2018

POSTED 03/15/18

Ms. Belinda Jolivet
DOB Law
3900 Elm Street
Dallas, Texas 75226

Howe

Dear Ms. Jolivet:

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Sincerely,

Arnold R. Brody,

Ph.D.

Professor Emeritus

March 15, 2018

POSTED 03/15/18

Ms. Belinda Jolivet
DOB Law
3900 Elm Street
Dallas, Texas 75226

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1910 GLENMARTIN DR., RALEIGH, NC 27615.

Sincerely,

Arnold R. Brody,

Ph.D.

Professor Emeritus

March 14, 2018

POSTED 03/15/18

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DOB Law
3900 Elm Street
Dallas, Texas 75226

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Sincerely,

Arnold R. Brody,

Ph.D.

Professor Emeritus

March 15, 2018

POSTED 03/15/18

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DOB Law
3900 Elm Street
Dallas, Texas 75226

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Sincerely,

Arnold R. Brody,

Ph.D.

Professor Emeritus

Environmental Health Associates, P.A.

Edwin C. Holstein, M.D.
President

10 Langley Road, Suite 305
Newton Centre, MA 02459
tel: 617.795.2238

March 31, 2018
Invoice No. 8954

Belinda Jolivet
Dean, Omar & Branham, LLP
302 N Market Street, Suite 300
Dallas, TX 75202

RE: Wayne Howe litigation

I. Professional services rendered by Edwin C. Holstein, M.D.:

POSTED
04/10/18

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March 13-14, 2018

See attached itemization	$1,663.15
Total	**$16,043.15**

Environmental Health Associates, P.A. Tax ID: 22-2537435
Please make checks payable to Environmental Health Associates, P.A. Remit to above address.

Rec. 1380

Travel Expenses
Edwin C. Holstein, MD, MS
Sarasota, FL to/from Rock Hill, SC
March 13-14, 2018
Re: Wayne Howe litigation

Date	Item	Comment	Amount
3.9.18	Outbound airfare	Amex	$1,444.30
3.13.18	Uber	Amex	$12.37
3.13.18	Lunch	Amex	$4.48
3.13.18	Lunch	Amex	$5.34
3.13.18	Miscellaneous	Cash	$6.00
3.13.18	Gratuities	Cash	$6.00
3.14.18	Hotel	Amex	$132.09
3.14.18	Dinner	Amex	$28.00
3.14.18	Miscellaneous	Cash	$6.00
3.14.18	Gratuities	Cash	$6.00
3.14.18	Return airfare	Paid by client	$0.00
3.14.18	Uber	Amex	$12.57
			$1,663.15

OLIVER G. WOOD, JR. Ph.D.
Consulting Economist

P.O. Box 24677
Columbia, SC 29224

Ph. (803) 736-1300
Fax (803) 736-1301
ogwecon@aol.com

March 26, 2018

TO: Mr. Jonathan Holder, Attorney at Law
Ms. Thiele McVey, Attorney at Law

POSTED 03/26/18

FROM: Dr. Oliver G. Wood, Jr.

Re: Ms. Jeanette Howe

FOR PROFESSIONAL SERVICES RENDERED:
(Since statement dated 2/16/18)

March 8, 2018
Review of file, prepared "Facts for Consideration" and "Trial Questions" for Dr. Wood. (1 hr.)

March 12, 2018
Read and respond to email from Mr. Holder. (O. A. .2 hrs.)

March 13, 2018
3 Telephone conferences with Ms. McVey. (.6 hrs.)

March 14, 2018
Telephone conference with Ms. McVey. (.3 hrs.)
Read and respond to email from Elizabeth. (O. A. .2 hrs.)

Review of file, evaluation of life care plan, by year, up to 10.94 years, (Mr. Howe's life expectancy per SC 19-1-150); formulate theory of how to present the present value of future medical care costs for Ms. Howe. $375.00
Prepare trial charts. (R. A. 1.5 hrs.)

Review of file, review of Dr. Wood's deposition (39 pps), prepared trial notes, prepared for trial. (2.0 hrs.)

March 15, 2018
Enlarge and mount trial charts. (R. A. 1.5 hrs.)

Appearance as Economic Expert in Court of Common Pleas, York, County, SC. (10 hrs.)
(E.A. 10 hrs.)

March 21, 2018

Read and respond to email from Ms. McVey.	(O. A. .2 hrs.)
Review of Cleaver-Brooks financial documents. Prepared trial Charts exhibits regarding Cleaver-Brooks Inc. financial data.	$950.00

* * * * *

Summary	
Amount for revised report	$375.00
Amount for Cleaver-Brooks Evaluation	950.00
Other Professional Services	
Wood (13.9 hours @ $375)	5,212.50
Research Ass't (3 hours@ $200)	600.00
Office Ass't (.6 hours @ $85)	51.00
Economic Ass't (10 hours @ $25)	250.00
Expenses	
Trial Charts (10 @ $25)	250.00
Copies (165 @ .25)	41.25
Mileage	112.32
Total amount due	$7,842.07

Thank you,

Oliver G. Wood, Jr.

Oliver G. Wood, Jr.
FIN: 20-0011267

EXHIBIT 8

FedEx

FedEx Billing Online

Invoice Detail View

Back

Invoice Summary

Help Hide

Billing Information		Charge Summary	View Details
Invoice no.	3-753-30558		
Account no.	3177-8293-4	Total express charges	1105.63
Store ID no.		Total ground charges	0.00
FedEx Tax ID No.	71-0427007	Total other charges	0.00
Invoice date	03/13/2018	Total invoice amount	1,105.63
Invoice status	Closed	Total payments and credits	1,105.63
Balance due	$0.00	**Total balance due**	**$0.00**
View Invoice History			

Shipments included in this invoice received an earned discount. If you would like to know how it was calculated, please go to the following URL: https://www.fed Read More.
Other discounts may apply.

FedEx Invoice Details

Help

Filter by None selected

Results per page 10

1 2

Select all	Tracking ID	Date	Type	Product group	Reference	Payor	Status	Meter	Total Billed	Balance due
	771751569568	03/08/2018	Express	MWT	SC Trial Boxes	Shipper	Closed	103610714	90.42	0.00
	771751642873	03/08/2018	Express	MWT	SC Trial Boxes	Shipper	Closed	103610714	78.42	0.00
	771751662371	03/08/2018	Express	MWT	SC Trial Boxes	Shipper	Closed	103610714	78.42	0.00
	771751709811	03/08/2018	Express	MWT	SC Trial Boxes	Shipper	Closed	103610714	90.42	0.00
	771751732327	03/08/2018	Express	MWT	SC Trial Boxes	Shipper	Closed	103610714	90.42	0.00
	771751749940	03/08/2018	Express	MWT	SC Trial Boxes	Shipper	Closed	103610714	90.42	0.00
	771756761196	03/08/2018	Express	MWT	SC Trial Boxes	Shipper	Closed	103610714	90.42	0.00
	771756799616	03/08/2018	Express	MWT	SC Trial Boxes	Shipper	Closed	103610714	78.42	0.00
	771756818074	03/08/2018	Express	MWT	SC Trial Boxes	Shipper	Closed	103610714	90.42	0.00
	771756836338	03/08/2018	Express		SC Trial Boxes	Shipper	Closed	103610714	123.59	0.00

Back

Transaction Details Prepared for
CHARLES W BRANHAM
Account Number
XXXX-XXXXXX-36006

Business Platinum Card®

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
Mar 12 2018	FEDEX INV 375330558; MEMPHIS TN	CHARLES W BRANHAM	$1,105.63

Doing Business As: FEDEX EXPRESS
3875 AIRWAYS BLVD - MEMPHIS TN
38116-5070
UNITED STATES
Category: Business Services-Mailing & Shipping

Exhibit 22 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

No Exhibit—Designated as "Will Supplement" in Original

Exhibit 23 to Plaintiffs' Motion for Sanctions with Statement of Fees and Costs

Affidavit of Wende Myers

STATE OF SOUTH CAROLINA **COUNTY OF YORK**	)))	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of WAYNE ERVIN HOWE, deceased, and JEANETTE HOWE, Plaintiffs, **v.** **AIR & LIQUID SYSTEMS CORPORTATION,** *et al.* Defendants.	)))))))))))))	**C/A No.: 15-CP-46-03456**

AFFIDAVIT OF WENDE MYERS

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

Affiant, being first duly sown upon oath, states the following:

1. My name is Wende Myers I am over the age of 18 years old and I am currently residing at 1799 Lake Shore Road, Camden, SC 29020.

2. Wayne Ervin Howe is my father.

3. Trial commenced on March 12, 2018 in the above-captioned case.

4. I work at Kershaw County School. I had to take off two days of work and arrange child care for my twin daughters. I lost $571.84 in my pay check as a result. My husband recently passed away, so I am a single parent. Each time I came to court required extensive effort and a drive of 77 miles one way.

5. We knew from the start of the trial that the location of the Cleaver Brooks boilers was the central dispute. The evidence we learned about on Friday, March 16, 2018 was upsetting. I do not understand how a family can be surprised with this type of information in the middle of the case.

6. Further, Affiant sayeth naught.

Executed this 30 day of April, 2018.

Wende H. Myers
Signature of Affiant

SWORN to and subscribed before me, this the 30 day of April, 2018.

Stephanie A. Cockrell
NOTARY PUBLIC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe,	)	Civil Action No. 2015-CP-46-03456
Plaintiffs,	)	In Re: Asbestos Personal Injury Litigation Coordinated Docket
v.	)	
Air & Liquid Systems Corp., et al.,	)	
Defendants.	)	

DEFENDANT CLEAVER-BROOKS, INC.'S OPPOSITON TO PLAINTIFFS' MOTION FOR SANCTIONS

NOW COMES Defendant Cleaver-Brooks, Inc. ("Cleaver-Brooks"), by and through its undersigned counsel, and respectfully submits this brief in opposition to Plaintiffs' Motion for Sanctions, showing the Court as follows:

STATEMENT OF THE FACTS

This case stems from asbestos related illness suffered by Wayne Ervin Howe ("Plaintiff"). Mr. Howe claimed exposure to asbestos at a number of different work sites, including the Bowater Paper Mill in Catawba, South Carolina ("Bowater"). Specifically, he claimed exposure to asbestos contained within boilers located in the powerhouse. Testimony offered in depositions and trial was that he went "inside" those boilers to do repairs. Neither Mr. Howe nor any of his co-workers identified Cleaver-Brooks as the manufacturer of a boiler that he worked with or around. Rather, the only testimony admitted at trial regarding Cleaver-Brooks boilers at Bowater

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was the deposition testimony of Johnny Bogan, who was offering testimony in a different case, about the work of a different person. In that case, Bogan testified that there was a Cleaver Brooks boiler "up there" which Plaintiffs argued meant "in the power house at Bowater."

Discovery in this case is governed by Asbestos Trial Docket Amended General Scheduling Order. (Tr. Ex. 19) That Order includes a Master Discovery/Scheduling Order which provides for four sets of Standard Interrogatories and Requests for Production to be deemed served in all asbestos litigation. (*Id.* at pp. 3-4) Plaintiffs' Standard Interrogatories and Request for Production of Documents seek information and documents regarding "the employers and jobsites of plaintiff" as listed in Plaintiffs' own discovery responses. (*Id.* at p. 46)

Each Cleaver-Brooks boiler has a unique identification number called a unit number. All documents that Cleaver-Brooks has about a particular unit are to be maintained in the commercial records for that unit. The commercial records include all documents related to the original purchase order and shipping information, communications with the customer, start-up of the boiler, any subsequent work on the boiler by Cleaver-Brooks, and any replacement parts provided by Cleaver-Brooks to the boiler owner. Commercial records are organized by unit number. In order to identify the unit number for a boiler at a particular site, Cleaver-Brooks maintains a set of index cards organized by site name showing the unit number for each boiler shipped to that particular location. Using the list of employers and jobsites provided by Plaintiffs under the Master Discovery/Scheduling Order for asbestos cases in South Carolina, Cleaver-Brooks checked these index cards and located only one employer or jobsite listed by Mr. Howe: Bowater

The index card identified only one Cleaver-Brooks Boiler shipped to Bowater, which was

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identified as unit number O-18343. Using this number, Cleaver-Brooks located the commercial records for that particular unit number and produced them to Plaintiffs in discovery. This production occurred on January 11, 2018. (Ex. A) Plaintiffs' counsel deposed Cleaver-Brooks' corporate representative, John Tornetta ("Mr. Tornetta"), on February 2, 2018. (Tr. Ex. 31)

The commercial records for Bowater were marked as Exhibit 4 to that deposition. *Id.* None of Plaintiffs' trial counsel attended this deposition. Rather, it was covered by Ms. Sabrina Stone from the law firm of Dean Omar & Branham, LLP – lead trial counsel for the Plaintiffs. Ms. Stone examined Mr. Tornetta about the method used to locate documents produced in discovery, including specific questions about the index cards. (*Id.* at 25 – 36, 39, 41, 144-145) The fact that the index cards were not included in the document production was also specifically discussed. (*Id.* at 44 -45, 50) This deposition was specifically left open to permit further examination.

A second deposition of the Cleaver-Brooks corporate representative was held on March 6, 2018. (Tr. Ex. 33) Plaintiffs' counsel for this deposition was again from their lead trial firm Dean Omar & Branham, this time through attorney Benjamin Braly. Again the index cards were the subject of examination. (*Id.* at 165 – 173) This interrogation specifically included the fact that an index card could have more than one unit listed on it and the fact that the index card for Bowater (which simply identified the unit number of the single unit shipped to Bowater) was not part of the document production in this case. (*Id.* at 169, 188).

The unit number assigned to the boiler ordered by and shipped to Bowater in 1957 was O-18343. The commercial records, however, contain three related documents that show a different unit number: O-18344. The first of these documents is the start-up report where the

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unit number was handwritten on to the form. The start-up report was then used to prepare an invoice to Cleaver-Brooks, on which O-18344 was also written. This invoice was used to prepare a remittance request, which again shows O-18344. Every other reference to the unit number for this particular boiler is O-18343, and the commercial records included no purchase order for unit O-18344.

Plaintiffs' counsel acknowledges that they had noticed this discrepancy in the unit number references prior to trial and built their trial theory around it. (Ex. B[1] at 98/19 – 99/2; Pl. Br. at XX) Cleaver-Brooks did not notice this discrepancy. (Ex. B at 75/4-9) And despite the fact that the Cleaver-Brooks corporate representative was deposed two separate times before trial, Plaintiffs' counsel never asked any questions about the discrepancy nor made any effort to confirm if in fact the reference to O-18344 indicated shipment of a second boiler. No request for production for any index cards was made – not for O-18343 or for O-18344 -- despite the extensive questioning about index cards at the deposition of Cleaver-Brooks' corporate representative. Finally, although they clearly knew about the index card and had specifically examined Mr. Tornetta about the fact it was not produced, the failure to produce the index card was not raised in Plaintiffs' March 8, 2018 Motion for Discovery Sanctions against Cleaver-Brooks. (Ex. C)

During opening, Plaintiff stated that "at first we were told by Bowater they didn't have the actual boiler in the power house, so we started asking, we found a co-worker who also passed away, we have his testimony, that boiler was a Cleaver-Brooks boiler." (Ex. D[2], Tr. Trans at 26)

1 Ex. B is a portion of the official transcript for the trial in this matter, obtained for purposes of submitting with this motion.

2 Ex. D is the rough copy of the daily transcripts provided during trial because the official copy is not yet available.

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Plaintiff also told the jury that boilers were "dual process", specifically describing the Cleaver-Brooks boilers and "how they were used for heating in a paper mill or in a big power plant." Plaintiff described the purpose of the package boiler as "the starter boiler" for the field erected boilers in the power house, or for the purpose of reducing sulfur content from TMS gases. (*Id.* at 13-15) At no point during their opening did Plaintiffs reference the core part of their theory of the case: the two unit numbers listed in the commercial records for Bowater.

Plaintiffs had deposed the Bowater corporate representative, Art Welker ("Mr. Welker"), on February 20, 2018. (Tr. Ex. 33) Following that deposition, Plaintiffs' counsel requested that Bowater continue to look for documents related to the Cleaver-Brooks boiler. Additional documents were produced by Bowater during the trial. These include documents specifically showing that the package boiler in the power house was manufactured by Combustion Engineering and that the Cleaver-Brooks' boiler was in what was known as the old administration building – a building where Mr. Howe never worked. (Tr. Exs. 6-10)

Plaintiffs called Mr. Welker to testify in their case-in-chief. Their examination of Mr. Welker on March 14, 2018 is the first time that Plaintiffs revealed their theory about the two unit numbers contained in the commercial records representing two different Cleaver-Brooks boilers at Bowater – the one Bowater documents show was in the old administration building and then another boiler at some undetermined location. Mr. Welker also testified that the purposes for packaged boilers at Bowater given by Plaintiffs in opening – as "starter boilers" or to reduce emissions – was simply wrong. (Ex. E, Tr. Trans. at 63-64[3])

Plaintiffs' next witness was to be John Tornetta, the Cleaver-Brooks corporate

3 Ex. E is also the unofficial transcript.

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representative. Having learned of the two-boiler theory, Cleaver-Brooks checked the commercial records for O-18344 (the unit referenced first on the handwritten start up report in the Bowater commercial records) and learned that it was a boiler shipped to National Protein in Illinois. The relevant index card and commercial records were emailed to defense counsel that same day.

At 9:43 p.m. on March 15, 2018 – the night before Cleaver-Brooks' corporate representative was to be called adversely to testify in Plaintiffs' case-in-chief, Plaintiffs' counsel sent an email stating: "If you have any documents that show what was or was not at the Bowater location, please confirm that we already have them and that they have been bates numbered." (Tr. Ex. 25) Although the index card and commercial records for unit O-18344 were not responsive to any discovery requests previously made in the *Howe* case, the documents now at issue were produced two hours and five minutes later, and accessed by Plaintiffs' counsel at 12:06 a.m. (Tr. Exs. 26, 27, & 29)

With the knowledge of what was in these documents, Plaintiffs nonetheless asked John Tornetta the following question on the witness stand and in front of the jury:

> Q. Have you gone back since you've acknowledged that you maybe missed the different unit numbers to look and see what the other indicators there were about those boilers to make clear that we're talking about more than one boiler here?

To which Mr. Tornetta responded:

> A. I supposed if pulling out the records for 18344 and seeing where it was indicated otherwise, that that boiler 18344 was not at Bowater, so in a way, yes, I did do that to see if there was a second boiler there and it a 18344. 18344 was in Illinois.

(Ex. B Tr. Trans. at 80/22 – 81/5)

Because Plaintiffs had elicited testimony about the location of unit 18344, Cleaver-Brooks sought to use the commercial records for unit O-18344 in its own examination of Mr. Tornetta.

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The Court refused to allow this, ruling that it was being excluded "and the basis for it is violation of the South Carolina rules of production." (*Id.*, at 104/24 – 105/4)

ARGUMENT AND CITATION TO AUTHORITY

I. This Court Lacks Jurisdiction To Provide The Requested Relief

The South Carolina Rules of Civil Procedure provide three ways a party may seek relief from the Court following a trial: Rule 54 which provides that "costs shall be allowed as a matter of course to the prevailing party unless the court otherwise directs"; Rule 59 which permits a new trial but only if such motion is made not later than 10 days after the jury is discharged; and Rule 60 which permits relief from judgment under certain circumstances. Plaintiffs have not sought relief pursuant to any of these rules, but instead cite SCRCP 37(b) as the basis for their request. Nor can Plaintiffs salvage their request at this point because the time for seeking relief under one of the post-judgment rules has already passed and none of them permit the losing party to make an application for fees.

Further, because this case was tried to verdict, this Court now lacks jurisdiction to grant relief under SCRCP 37(b). Indeed, under SCRCP 58, judgment in Cleaver-Brooks favor should already have been entered by the clerk as a matter of course. While the failure of the clerk to enter judgment following the jury's return of their verdict on March 21, 2018 is likely merely a clerical oversight, it is important to the question of what authority is still vested with the trial court. Had judgment been entered in accordance with the statute, there could be no question as to the limited procedures which could be invoked by Plaintiffs for seeking post-trial relief. The fact that judgment was for some reason not yet entered does not operate to extend or

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change the jurisdictional limitations imposed upon the trial court once a jury verdict has been rendered.

II. Documents Regarding Unit 18344 Were Not Responsive to the Discovery Requests Served on Cleaver-Brooks

Plaintiffs served no case-specific discovery on Cleaver-Brooks. Rather, they relied upon the Standard Interrogatories and Requests for Production of Documents included in the Master Discovery and Scheduling Order for asbestos cases in South Carolina. Those discovery requests are:

> **No. 1:** Did you sell and/or distribute products containing asbestos to the employers and jobsites plaintiff listed in Answer to Defendant Interrogatory No. 4 attached during the time listed or one year prior thereto?" Please note that this Interrogatory includes thermal insulation asbestos products or cloth or spray containing asbestos.
>
> **No. 2:** Did you sell and/or distribute products containing asbestos to job sites at which plaintiff was employed as described in Exhibit A for the time periods that plaintiff was at each job site?
>
> **No. 3:** If the answer to Interrogatory #1 or #2 is affirmative please state:
>
> a. The names of the products sold;
>
> b. To whom the product was sold and shipped;
>
> c. As to each of the above-mentioned products, please include the quantities of each shipped to each company during the applicable time period; the site to which each product was shipped and the date of shipment;
>
> d. As to each of the products mentioned above, will you provide without a Motion to Produce copies of:
>
> (1) Any pertinent trademark, copy of such trademark, and the trademark registration number;
>
> (2) The label, or copy of the label, used in the packaging of the particular product;

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(3) A photograph of the product itself;

(4) Sales brochures, specification sheets, performance data, or other promotional material as well as any and all installation materials, date or brochures which would have accompanied or been distributed in connection with the installation, application or use of each of the above-mentioned products;

(5) Copies of any invoices, sales, receipts, or other document which show sales referred to in Interrogatories #1 and #2 above.

e. If you cannot provide all of the above documents, please indicate the name or names of the individuals having custody of said documents or copies thereof.

(Tr. Ex. 19 at 46)

In this case, Plaintiffs responded to Defendants' Interrogatory No. 4 by listing his worksites, which included Bowater. (Ex. F) National Protein in Illinois was not identified by the Plaintiffs. Cleaver-Brooks therefore properly confined its discovery responses to the "employers and jobsites" Plaintiff had identified. This is all that is required of a Defendant under the applicable Asbestos Trial Docket Amended General Scheduling Order. The failure to produce documents about unit 18344 without any inquiry about that unit from Plaintiffs' counsel is not a failure to respond to discovery served in this case.

III. Cleaver-Brooks Should Not Be Sanctioned for the Consequences of Plaintiffs' Own Strategic Decisions

A. Plaintiffs Intentionally Elected Not to Take Discovery On Their Theory Regarding Unit Numbers

"The gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party. The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial." *CEL Products, LLC v. Rozelle,* 357 S.C. 125, 132, 591 S.E.2d 643, 646 (Ct. App. 2004) (Citations omitted). Here,

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Cleaver-Brooks had no inkling that Plaintiffs were building their case on the theory that the two different unit numbers in the commercial records for the boiler at Bowater Paper Mill meant there were two different boilers at that site. Plaintiffs' counsel apparently conceived this theory weeks before trial, but never took any discovery on this theory. It was not raised one time during the more than nine hours of deposition of Cleaver-Brooks' corporate representative. The commercial records were marked as a deposition exhibit and questions asked about them at *both* of Mr. Tornetta's depositions, yet no questions were asked about Plaintiffs' core theory predicated upon the two different unit numbers. Questions were even asked about the way Cleaver-Brooks located commercial records and how the unit numbers fit into that investigation, but still no questions were asked about Plaintiffs' core theory predicated upon the two different unit numbers.

Plaintiffs had every opportunity to take discovery to resolve any ambiguities regarding the unit numbers in the commercial records, but did not do so. It appears that Plaintiffs declined to conduct discovery on this issue, anticipating a "Matlock" moment where they revealed their two-boiler theory at trial as a way to counter Cleaver-Brooks arguments about its boiler not being used in the powerhouse. Plaintiffs' theory collapsed because it was factually unfounded, a fact they did not know because they declined to investigate the theory prior to trial. They admit themselves that they had no proof of their claims against Cleaver-Brooks other than their uninvestigated theory about unit 18344, contending that their in-trial discovery of the real facts "deprived Plaintiffs of the choice whether to proceed to trial in the first place." (Pl. Br. at 14)

Plaintiffs apparently made the tactical decision not to inquire about unit number 18344 during discovery. Like all decisions, some pay off and others do not. Plaintiffs' decision to not ask

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about the second unit number during discovery did not pay off. The failure of their strategy is not an appropriate basis for shifting fees to the party who prevailed at trial. Cleaver-Brooks cannot guess how opposing counsel will interpret – or in this case misinterpret -- Cleaver-Brooks documents. This is why discovery exists. Whether the failure to seize that opportunity was inadvertent or a deliberate strategy to reveal the theory only at the trial, the inescapable fact is that the Plaintiffs had the chance to test their theory through discovery and they declined to do so. Cleaver-Brooks is not responsible for the consequence of that decision.

B. Plaintiffs' Waived Their Right To Sanctions Related To The At-Issue Documents

Also important is the fact that Plaintiffs raised their objections about the at-issue documents only after they had completed their adverse examination of Mr. Tornetta.

When the issue was raised, the Court noted that the timing was troubling: "I am a little troubled about one thing right off the bat about these two. Why didn't you all tell me about this before [Ms. Dean] asked questions of Tornetta about this? . . . Just telling you that if there's an objection from you, then I'm going to be turning to waiver . . . ." (Ex. B at 96/25 – 97/2) The Court was right to be concerned about waiver because it directly impacts the question of whether sanctions are appropriate.

The inescapable fact is that although Plaintiffs had the at-issue documents and had looked at them before their examination of Mr. Tornetta, *Plaintiffs themselves* nonetheless elicited the testimony from Mr. Tornetta regarding the present location of unit 18344. (Ex. B at 80/22 – 81/5) Plaintiffs also asked Mr. Tornetta, for the first time at trial (and therefore without knowing his response), why the commercial records included reference to Unit O-18344. Mr. Tornetta explained that it appeared the individual preparing the handwritten startup report

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simply wrote down the wrong unit number – 18344 instead of 18343. That carried over to the invoice and the remittance request, which are prepared from the information on the startup report. Mr. Tornetta knew the reference was mistaken, because there otherwise would have been a startup report, invoice, and remittance form for the correct unit number, O-18343, in the commercial records, and those documents were lacking. (Ex. B at 73/12 – 75/9) Plaintiffs' counsel could have just asked Mr. Tornetta to confirm the commercial records referenced a second unit number and then argued to the jury the second boiler might have been in the powerhouse. Counsel instead went further and established both *why* the records referenced a second unit number and *where* that second unit was located – somewhere other than Bowater.It was not until after Plaintiffs had opened the door through their own questioning that Cleaver-Brooks sought to introduce documents regarding unit 18344 and to ask Mr. Tornetta questions about them. Cleaver-Brooks specifically advised counsel of this intent prior to its own examination of Mr. Tornetta and the issue was addressed outside the presence of the jury prior to that examination. Having been sanctioned by way of exclusion of that evidence, Cleaver-Brooks made no references at all to the excluded documents, nor asked Mr. Tornetta any questions about the location of unit 18344. The only evidence in the record regarding that point was elicited by Plaintiffs' counsel. As the party who elicited the testimony, Plaintiffs cannot legitimately complain about its inclusion in the record.

Plaintiffs could certainly have raised the issue of the "midnight documents" before their examination of Mr. Tornetta, seeking a ruling at that time about whether or not the documents or their content could be used at trial. They elected not to do this, but then asked Mr. Tornetta questions that elicited reference to them. Having elicited this testimony, Plaintiffs still did

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nothing: they did not move to strike the testimony, they did not seek a mistrial. Having foregone the opportunity to have the issue determined in advance of the testimony and then having elicited the "damaging" testimony themselves without objection, Plaintiffs have waived their right to seek redress based upon it.

Further, as noted above, even if Cleaver-Brooks had noticed the discrepancy in the unit numbers contained in the Bowater commercial records, nothing about the plain language of the discovery served on Cleaver-Brooks implicates any obligation on it to produce information about unit 18344. That discovery request is very specifically limited to products shipped or sold to Plaintiffs "employers" and "jobsites." Unit 18344 was not shipped to either. The only one of the "midnight" documents which even arguably fell under the discovery requests is the index card for Bowater, Trial Exhibit 11. Plaintiffs knew at least as early as February 2, 2018 that this had not been produced because it was the subject of examination at the deposition of John Tornetta on that day. (Tr. Ex. 31) Yet Plaintiffs never made any request – not on the record at the deposition, not by email or letter to counsel following the deposition – for that index card. Instead, when Plaintiffs re-deposed Tornetta on March 6, 2018, they again asked questions about the index card (Tr. Ex. 32), but still did nothing to follow up to seek production.

On March 8, 2018, Plaintiffs filed an Opposition to Cleaver-Brooks Motion for Summary Judgment and Motion for Sanctions. (Ex. C) Plaintiffs argued that they were entitled to sanctions because Cleaver-Brooks had produced documents in discovery late or not produced them at all. (*Id.* at 5-9) Significantly and contrary to the statements of Plaintiffs' counsel during the trial, although Plaintiffs do complain about Cleaver-Brooks discovery responses regarding the Bowater site, the motion makes no reference to the failure to produce the index card for that – or any –

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site. Plaintiffs were specifically aware of the fact that the Bowater index card had not been produced, had the opportunity to seek pre-trial relief either to obtain production or to sanction Cleaver-Brooks for the failure to produce it, but they declined to do so even though they were raising allegations of non-compliance with discovery obligations. Having been in front of the Court on discovery issues but having failed to seek relief before trial, Plaintiffs have waived their right to seek sanctions now based upon the failure to produce the Bowater index card.[4]

C. Plaintiffs Cannot Demonstrate The Jury Verdict Was Based On The Testimony About Unit 18344 Being In Illinois

Although not explicitly stated in their brief, Plaintiffs motion for fees is predicated upon the assumption that the defense verdict is solely attributable to the question of whether there were one or two Cleaver-Brooks boilers at the Bowater Paper Mill. The motion must be based on this assumption because if the jury reached its verdict on an entirely different point, then there would be no connection between the failure to produce documents and the cost of the trial. Arguments about whether the jury felt there was one or two Cleaver-Brooks boilers at Bowater are at best speculation since the Plaintiffs did not request and the jury was not given an interrogatory to answer about the number of Cleaver-Brooks boilers they found to be at Bowater.

The speculative nature of the assumption about the basis for the jury verdict is particularly acute in this case. Cleaver-Brooks did not argue in closing that there was one boiler. Instead, Cleaver-Brooks specifically left that decision to the jury, telling the jurors that it was up to them to decide that point. While the jurors were given some points to consider in making that

[4]The index card states only the site name (Bowater) and the unit number, which unit number is then used to lead to the commercial records for the unit. In other words, the index card includes no information that is not also in the commercial records. (Tr. Ex. 11)

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decision, it was by no means the focus of Cleaver-Brooks' closing arguments. The closing argument focused on the Plaintiffs' overall failure to meet the burden of proof regarding exposure to asbestos from a Cleaver-Brooks product – evidentiary failures which transcended the question of how many Cleaver-Brooks boilers were at Bowater.

Sanctions must fit the nature of harm sought to be remedied. A sanction should be a rifle shot, not a shotgun blast. *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (1990). Sanctions must be aimed at the specific conduct of the party sanctioned and not go beyond what is necessary under the circumstances. *Id.* Plaintiffs filed their motion seeking sanctions against Cleaver-Brooks requesting costs because their theory failed at trial. Having taken the risk to pursue trial and to present their case in a certain way, Plaintiffs cannot shift the consequence of that decision to the prevailing party.

IV. Cleaver-Brooks Has Already Been Sanctioned

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). While discovery motions may not become moot when a case is terminated, the law does not recognize multiple sanctions for alleged discovery abuse. Here, Cleaver-Brooks was sanctioned during the trial by the exclusion of the evidence which was not produced. Plaintiffs requested this exclusion as a sanction for the "non-production" and the Court granted the requested relief. For the same reasons it is unconstitutional to punish someone twice for the same crime, it is inequitable to punish Cleaver-Brooks twice for the

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conduct. Having chosen the sanction, it would violate due process to punish Cleaver-Brooks a second time by granting the Plaintiffs' trial costs and expenses.

Plaintiffs argue that because the Court cannot award sanctions such as striking pleadings or entering default judgment, the "most appropriate sanction in this case is an award of costs, expenses, and attorneys' fees," but fail to cite a single case authorizing it under the circumstances of this case. Indeed, Plaintiffs have failed to identify a single case empowering the Court to punish a party twice for the same perceived violation. The reason for the omission is clear: there is no case law authorizing the extraordinary relief Plaintiffs are requesting. Not even the most generous reading of any South Carolina or federal fee-shifting statute supports imposition of an award of trial fees and expenses to Plaintiffs under the circumstances of this case.

V. Plaintiffs' Fees Are Not Reasonable

Generally, attorneys' fees and costs are not recoverable unless authorized by contract or statute. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). Here, Plaintiffs seek to change the "American Rule" that each party bears responsibility for its own fees and costs by presenting their fee-shifting claim as a post-trial request for discovery sanction. This is clearly not contemplated by either the rule or the spirit of the law in South Carolina. But pretermitting the propriety of such an award, the Plaintiffs' submission for their request for several hundred thousand dollars in fees and expenses is lacking in the evidentiary support required to support any fee-shifting award. *See generally, Hensley v. Eckerhart*, 461 U.S. 424 (1983). The burden of demonstrating the reasonableness of any award falls squarely on the party seeking it. *Plyler v. Evatt*, 902 F.2d 273, 277 (4th Cir. 1990).

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Here, Plaintiffs seek fees of $550 per hour for Jessica Dean and $400 per hour for Mr. Holder, supported only by the bare statement that each has "personal knowledge of rates charged by other attorneys with comparable experience to mine." These attorneys have not been identified, nor is there anything in the record to show where these un-named attorneys practice law or whether these un-named attorneys have actually been paid that rate, either by clients paying per hour or awarded in fees from a court. Both Cleaver-Brooks and the Court are therefore deprived of the information required to evaluate the reasonableness of this claim. This alone is sufficient to deny the request.

From the scant information provided it does seem that the Plaintiffs are seeking to apply rates for attorneys Dean and Holder that lawyers in South Carolina would not normally receive. The idea that an out-of-state lawyer may collect fees in South Carolina based upon prevailing rates from some other jurisdiction has been roundly rejected in South Carolina. *See, Nutramax Laboratories, Inc. v. Manna Pro Products, LLC*, 2017 WL3473990 (Slip. Op. 8/14/2017). No affidavit has been provided for Ms. McVey – that exhibit remains "to be supplemented" and thus Cleaver-Brooks has no opportunity to address its potential content.[5]

Interestingly, Plaintiffs also claim 456 hours of trial preparation for both Mr. Holder and Ms. Dean – claiming that each worked exactly the same number of hours in trial preparation on exactly the same days. This in and of itself is somewhat extraordinary, but independent of that the bare totals are not sufficient to support an award of fees. Even presuming fees could be appropriately awarded, which they cannot, it would only be for that work reasonably done.

5 SCRCP 6(d) requires that affidavits be submitted with the motion. Plaintiffs have failed to comply with this requirement with respect to Ms. McVey, thus the Court cannot consider any fees requested for her.

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Without an itemization of what work was done, reasonableness of claimed fees cannot be assessed.

Plaintiffs claim expenses of $95,435.16, covering a myriad of costs Plaintiffs claim are attendant to the trial. These include fees for the travel of Plaintiffs' trial counsel and entourage to South Carolina along with lodging expenses for several support staff. Plaintiffs have offered no explanation for why so many people were necessary for the trial of this case.

Similarly, they seek costs for their expert witnesses, including cancellation fees which were apparently charged when Plaintiffs changed the date for certain witnesses to testify. (Ex. 21 at 65) Plaintiffs have provided no explanation for why this cancellation fee is attributable to the conduct of Cleaver-Brooks. The fees also include various "miscellaneous" cash payments, none of which have been explained. Nor is it reasonable for Plaintiffs to seek to shift the more than $1,000 in Federal Express charges "for sending trial materials back and forth from Dallas, Texas and South Carolina." Plaintiffs chose their lawyers in Texas, and the costs associated with that – including travel, lodging and shipping – cannot equitably be imposed upon Cleaver-Brooks.

Finally, Plaintiffs seek the wages Timothy Howe and Wende Myers would have earned had they not been in court. Wende Myers submitted an affidavit claiming $571.84 in lost wages, but offered no back-up documentation. Mr. Howe submitted nothing. But even if he had, there is no basis for an award of lost wages to a Plaintiff who elects to take a case to trial rather than to accept the settlement offered to them.[6]

6 Cleaver-Brooks notes for the record that it made confidential settlement offers to Plaintiffs during and after mediation for the settlement of these claims. The amount of the offers can be submitted to the Court under seal.

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Independent of and in addition to the myriad of evidentiary problems related to the Plaintiffs' claim for fees and expenses, the amount of the requested sanction Plaintiffs bears no rational relation to the discovery issue on which their motion is based. If the Court is inclined to consider awarding any amount for attorneys' fees, expenses of litigation and/or lost wages, Cleaver-Brooks must be given a full and complete opportunity to conduct discovery on all facts upon which the requested relief is based, including written discovery and depositions7. Imposing the requested sanction without giving Cleaver-Brooks an opportunity to fully investigate and challenge the alleged foundation for it would violate fundamental notions of due process.

Conclusion

Plaintiffs acknowledge they were aware of the discrepancy in unit numbers contained in the Cleaver-Brooks commercial records for Bowater long before trial, but they elected not to conduct any discovery on the predicate assumption upon which their trial theory was based. Plaintiffs were also aware that an index card existed for Bowater Paper Mill that was not produced in discovery, but again Plaintiffs elected not to pursue production of that document even at the time it filed motions for sanctions against Cleaver-Brooks for failure to produce documents.

Cleaver-Brooks has already been sanctioned for failing to provide documents relating to unit 18344. Because Cleaver-Brooks has already been sanctioned once by this Court, a second sanction under these circumstances is not warranted. For the foregoing reasons, Plaintiffs' Motion for Sanctions against Cleaver-Brooks should be **DENIED**.

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RICHARDSON PLOWDEN & ROBINSON, P.A.

1900 Barnwell Street
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803-771-4400

By: s/ Steven J. Pugh
Steven J. Pugh (SC Bar 14341)

and

M. Elizabeth O'Neill (admitted *pro hac vice)*
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ATTORNEYS FOR DEFENDANT
CLEAVER-BROOKS, INC.

May 30, 2018

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CERTIFICATE OF SERVICE

I, Hope Grate, an employee of Richardson Plowden & Robinson, P.A., do hereby certify that a true and correct copy of **DEFENDANT CLEAVER-BROOKS, INC.'S OPPOSITION TO PLAINTIFFS' MOTION FOR SANCTIONS** was e-filed with the court's e-filing system, and thereby served electronically on all counsel of record, this 30th day of May, 2018.

s/ Hope Grate
Hope Grate

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CB Exs To Opp to Post Trial Sanctions Motion

Ex. A - Copies of CB's 1/4/18 doc prod to PL (including all dox produced)

Ex. B - Official Trial Transcript of days of Tornetta Testimony & Court's Ruling on Disco Issue

Ex. C - PL 3/8/18 Opp to CB MSJ & Motion for Sanctions Against CB

Ex. D - Day 1 rough trial transcript

Ex. E - Day 4 rough trial transcript

Ex. F - Plaintiffs' Responses to Standard Interrogatories – be sure it has the worksite list

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Exhibit A to Cleaver-Brooks's Opposition to Plaintiffs' Motion for Sanctions

Cleaver-Brooks's Document Production

(See Record Page 1198)

Exhibit B to Cleaver-Brooks's Opposition to Plaintiffs' Motion for Sanctions

Portion of Trial Transcript

(See Record Page 265)

Exhibit C to Cleaver-Brooks's Opposition to Plaintiffs' Motion for Sanctions

Plaintiffs' Supplemental Response in Opposition to Cleaver-Brooks's Motion for Summary Judgment

(See Record Page 1132)

Exhibit D to Cleaver-Brooks's Opposition to Plaintiffs' Motion for Sanctions

Portion of Trial Transcript

(See Record Page 131)

Exhibit E to Cleaver-Brooks's Opposition to Plaintiffs' Motion for Sanctions

Portion of Art Welker's Trial Testimony

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1 lines, not for general heating purposes. 10:27:56
2 Q. Because it's too big? 10:27:00
3 A. That is correct. It would be too big 10:27:02
4 for all of the buildings that are on our site. 10:27:05
5 Q. To your knowledge, was the Combustion 10:27:12
6 Engineering packaged boiler that was in the 10:27:18
7 powerhouse ever used to restart a field-erected 10:27:19
8 boiler after it had been closed or turned off for a 10:27:24
9 shutdown? 10:27:28
10 A. I'm not aware it would have been used 10:27:29
11 purpose. 10:27:32
12 Q. With respect to the field erected 10:27:32
13 boilers that are at Bowater are they the kind of 10:27:35
14 field erected boilers where you would need to use 10:27:36
15 something else to get them restarted? 10:27:39
16 A. The only thing that would be needed 10:27:41
17 fuel, in this case, natural gas and electricity in 10:27:45
18 fans. 10:27:50
19 Q. So if you take one of those giant 100 10:27:51
20 feet tall, 20 feet wide -- 25 feet wide, 25 feet 10:27:53
21 deep field-erected boiler is offline, shut it down, 10:27:57
22 do all the work you want it to do, and you want to 10:28:01
23 start it back up, all you need to do is get it fuel 10:28:03
24 and electricity and it'll start back up? 10:28:03
25 A. In extremely simplistic terms, yes. 10:28:08

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1 Q. I am not -- I am not representing that 10:28:12
2 I can give you any detail. That's generally 10:28:15
3 correct in the very basic third grade phonics way? 10:28:19
4 A. With some labor, yes. 10:28:24
5 Q. And to your knowledge was that 10:28:28
6 Combustion Engineering boiler in the powerhouse 10:28:30
7 that Bowater ever use to reduce emissions from the 10:28:32
8 combustion of black liquor used in the paper-making 10:28:38
9 process? 10:28:41
10 A. I'm not aware of anything along those 10:28:42
11 lines, no. 10:28:44
12 Q. Did Bowater have any packaged boiler to 10:28:44
13 your knowledge that was used to reduce the 10:28:46
14 emissions from the combustion of black liquor used 10:28:48
15 in the paper-making process? 10:28:53
16 A. I have not seen any documentation 10:28:53
17 referring to that. 10:28:55
18 Q. So there was a little bit of discussion 10:28:59
19 on direct examination about the building of paper 10:29:01
20 machine 2 and the administration building and the 10:29:09
21 old -- the original administration building is that 10:29:11
22 the correct term? 10:29:15
23 A. I would say the original administration 10:29:16
24 building was the one demolished to make way for the 10:29:20
25 No. 2 paper machine, yes. 10:29:25

Exhibit F to Cleaver-Brooks's Opposition to Plaintiffs' Motion for Sanctions

Plaintiffs' First Amended Answers to Master Interrogatories 2 and 4

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STATE OF SOUTH CAROLINA COUNTY OF YORK **TIMOTHY W. HOWE,** as Personal Representative of the Estate of **WAYNE ERVIN HOWE**, deceased, and **JEANETTE HOWE,** surviving spouse, Plaintiffs, v. **AIR & LIQUID SYSTEMS CORPORATION,** et al., Defendants.	)))))))))))))))))	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT **C/A NO. 15-CP-46-03456**

PLAINTIFFS' FIRST AMENDED ANSWERS TO MASTER INTERROGATORIES NO. 2 AND NO. 4

Plaintiffs, by and through undersigned counsel, respond to the Master Interrogatories and Request for Disclosures as follows.

INTRODUCTORY STATEMENTS

Plaintiffs reserve the right to further amend, revise or otherwise further respond to these interrogatories upon discovery of any items bearing on the answers below, without prejudice to Plaintiffs nor to those responses, exhibits, attachments and objections that hereinafter follow.

FIRST AMENDED ANSWERS TO INTERROGATORIES

2. **FIRST AMENDED ANSWER to NO. 2: 1972 – until death: 920 Allendale Circle, Rock Hill, SC 29732.**

4. **FIRST AMENDED ANSWER to NO. 4: Plaintiffs incorporate the allegations of the Complaint, as well as the depositions of Decedent Wayne Howe, as if the same were fully set forth at length. Additionally, Plaintiffs state as follows**

Dates unknown – Charleston Naval Shipyard, Charleston, SC – shipyard supervisor, steel erection and steel decking for floors for an addition onto an existing building.

1962 - 1965	**Celanese, Rock Hill, SC.; helper;** **[Employer: AME, Inc.]**
1962 - 1965	**American Enka, Enka, NC.; helper;** **[Employer: AME, Inc.]**
1962 - 1965	**Old Mall, Rock Hill, SC.; helper;** **[Employer: AME, Inc.]**
1962 - 1965	**Unknown Building, Chester, SC.; helper;** **[Employer: AME, Inc.]**
1962 – 1965 **(Weekends)**	**Crown Cork & Seal Company, Inc., helper.** **[Employer: Daniel Construction]**
1965 – 1967	**U.S. Army, Fort Bragg, Fayetteville, NC; mechanic**
1967 - 1977	**Celanese, Rock Hill, SC / Celanese Narrows, Va. - built 8 precipitators, did HVAC work, did rigging, did welding, various mechanical work and demolition work.** **[Employer: AME, Inc.]**
1977 – 1978	**Celanese, Rock Hill, SC – moved machinery and did various mechanical work and demolition work.** **[Employer: Ace Mechanical]**
1978 - 1982	**Bowater Paper Mill, Catawba SC; onsite contractor doing work w/ pumps, valves, boilers, paper machines, dryer felts, welding.** **[Employer: Industrial & Textile Piping, Inc.]**
1983- 1986	**Bowater Paper Mill, Catawba SC; onsite contractor doing work w/ pumps, valves, boilers, paper machines, dryer felts, welding.** **[Employer: Beta Construction]**
1986 – 2008	**Bowater Paper Mill, Catawba SC; paper mill employee doing work w/ pumps, valves, boilers, paper machines, dryer felts, welding.** **[Employer: Bowater Paper Mill/Resolute FP US, Inc.]**

Respectfully submitted,

/s/ Jonathan M. Holder

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ATTORNEYS FOR PLAINTIFF

January 12, 2018
Anderson, South Carolina

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ELECTRONICALLY FILED - 2018 Jun 04 9:02 AM - YORK - COMMON PLEAS - CASE#2015CP4603456

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of **WAYNE ERVIN HOWE**, deceased, and **JEANETTE HOWE,**	)	**C/A NO. 15-CP-46-03456**
Plaintiffs,	)	**NOTICE OF FILING AFFIDAVITS IN SUPPORT OF PLAINTIFFS' MOTION FOR SANCTIONS WITH STATEMENTS OF FEES AND COSTS AGAINST CLEAVER BROOKS, INC.**
v.	)	
AIR & LIQUID SYSTEMS CORPORATION, et al.,	)	
Defendants.	)	

COME NOW Plaintiffs, Timothy W. Howe, individually and as personal representative of the estate of Wayne Ervin Howe, deceased, and Jeanette Howe, and file the attached affidavits of attorneys Jessica Dean, Jonathan Holder, and Theile McVey. Exhibits 1-3.

The affidavits of Attorneys Dean and Holder were served upon Defendant Cleaver Brooks and this Court concurrent with Plaintiffs' Motion for Sanctions on April 30, 2018. The affidavit of Attorney McVey was served upon Defendant Cleaver Brooks and this Court the following day, on May 1, 2018.

The service of such affidavits was timely under SRCP 6(d). Nevertheless, Defendant accuses Plaintiffs of not having served the affidavit of Attorney McVey. The attached screenshot of the Dropbox link shows that this accusation is in error. Exhibit 4. In an abundance of caution, Plaintiffs now file all three attorney affidavits with this Court, and serve Defendant again, accordingly.

For the foregoing reasons, Plaintiffs respectfully file the attached attorney affidavits.

Respectfully submitted,

/s/ Jonathan M. Holder

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ATTORNEYS FOR PLAINTIFFS

June 1, 2018

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Exhibit 1 to Plaintiffs' Notice of Filing Affidavits

Affidavit of Jessica Dean in Support of Fees

(See Record Page 1290)

Exhibit 2 to Plaintiffs' Notice of Filing Affidavits

Affidavit of Theile McVey

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of **WAYNE ERVIN HOWE**, deceased, and **JEANETTE HOWE,**	)	**C/A NO. 15-CP-46-03456**
Plaintiffs,	)	**AFFIDAVIT OF THEILE MCVEY IN SUPPORT OF PLAINTIFFS' MOTION FOR SANCTIONS WITH STATEMENTS OF FEES AND COSTS AGAINST CLEAVER BROOKS, INC.**
v.	)	
AIR & LIQUID SYSTEMS CORPORATION, et al.,	)	
Defendants.	)	

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

1. I am an attorney and a member in good standing of the bar of the State of South Carolina and licensed to practice law in South Carolina.

2. I am an attorney with Kassel McVey, attorneys of record for the Plaintiffs herein. The matters stated in this affidavit are true to my own personal knowledge, and if called to testify I could and would set forth the below facts.

3. I submit this declaration in support of Plaintiffs' Motion for Sanctions with Statements of Fees and Costs Against Cleaver Brooks, Inc.

BACKGROUND

4. In 1997, I received a bachelor's degree Public Affairs and a minor in Spanish from Columbia College, cum laude. I attended the University of South Carolina School of Law, where I graduated in 2000 with my juris doctorate.

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5. I am a name partner at Kassel McVey. I have been practicing law in South Carolina since 2000 and have won several multi-million dollar verdicts in asbestos litigation similar to the lawsuit at issue here. I have been selected as a South Carolina Super Lawyer from 2013-2018. In 2017, I received the Gold Compleat Lawyer Award from the USC School of Law (the highest award given to alumnae of the school). I am a member of the prestigious American Board of Trial Advocates Finally, I am currently the President-Elect of the South Carolina Association of Justice.

COSTS

6. Attached hereto as Exhibit "A" is a true and correct copy of the costs of Plaintiffs' lawyers in this case stemming directly from having to take this case to trial.

7. These costs are correct and were necessarily incurred in the action as a result of Cleaver Brooks' belated disclosure of documents in the middle of trial.

ATTORNEYS' FEES

8. Dean, Omar & Branham, LLP, and Kassel McVey represent the Plaintiffs in this case styled *Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe, v. Air & Liquid Systems Corporation, et al.*, C/A NO. 15-CP-46-03456.

9. Cleaver Brooks failed to produce all the documents as it had represented to this Court that it would do at the January 24, 2018 hearing.

10. On January 11, 2018, Cleaver Brooks for the first time admitted that one of its boilers was sent to Bowater. Cleaver Brooks initially contended that its boiler was in the powerhouse, but further claimed that Howe had never been in the powerhouse. When Plaintiffs provided evidence that Howe had worked in the powerhouse, Cleaver Brooks changed its story and claimed that its boiler had never been in the powerhouse.

11. Up until that time, during two years of litigation, every deponent had testified that every boiler was in the powerhouse.

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12. By the time of the March 9, 2018 hearing on Plaintiffs' motion for sanctions, it was clear to the parties and the Court that the trial hinged on Plaintiffs' ability to prove that there was a Cleaver Brooks boiler in the powerhouse where Mr. Howe worked "on every boiler." This was clear by Plaintiffs' request for a presumption that a Cleaver Brooks boiler was in the powerhouse, by argument of Plaintiffs and Cleaver Brooks, by discussion had off the record by all counsel, and is clear by the remaining facts of the case – specifically, Cleaver Brooks' admission of sales of asbestos and release of asbestos, as well as Cleaver Brooks' decision not to call a single expert but focus entirely on product identification.

13. Plaintiffs settled with all defendants except Cleaver Brooks by March 11, 2018, the weekend before trial.

14. Plaintiffs decided to proceed to trial against Cleaver Brooks because the 25 pages of commercial records produced by Cleaver Brooks suggested that there were two boilers at Bowater, with one boiler in the powerhouse, where Howe worked.

15. Indeed, Cleaver Brooks appeared to recognize this overwhelming evidence in favor of Plaintiffs as it withdrew its motion for summary judgment.

16. At 11:35 on the night before Cleaver Brooks' corporate representative was scheduled to testify, Cleaver Brooks ambushed Plaintiffs with the production of numerous never-before-produced documents ("the midnight documents").

17. It was not until March 15, 2018, when Cleaver Brooks produced the "midnight documents" in the middle of trial, that Plaintiffs first learned that of the two boilers referenced in the 25 pages of commercial documents, only one had gone to Bowater, and the other had gone to Illinois. Moreover, the late-produced evidence indicated that the boiler at Bowater was at the administration building, not the powerhouse.

18. If Plaintiffs had been in possession of the midnight documents before trial started, Plaintiffs would not have proceeded to trial against Cleaver Brooks.

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19. The specific work performed by the firms in prosecuting this action at trial is detailed as follows.

20. Fees for Theile McVey, at $550 per hour = $77,550

Date	Description of Work	Number of Hours	Total
Sunday 3/11/18	Trial prep	10	$5500
Monday 3/12/18	Trial	17	$9350
Tuesday 3/13/18	Trial	17	$9350
Wednesday 3/14/18	Trial	17	$9350
Thursday 3/15/18	Trial	20	$11,000
Friday 3/16/18	Trial	10	$5500
Sunday 3/18/18	Trial prep	14	$7700
Monday 3/19/18	Trial	14	$7700
Tuesday 3/20/18	Trial	16	$8800
Wednesday 3/21/18	Trial	6	$3300

21. I have personal knowledge of the hourly rates charged by other attorneys with comparable experience to mine. Based on that information, I believe that our rates are at or near the market rate for attorneys with comparable expertise, experience, and qualifications and are reasonable and appropriate in this case.

22. The law firms took this case on a contingency basis, without any assurance that we would be paid any fees or reimbursed any costs for our efforts or expenditures. At no time did we have any assurance that we would ultimately prevail in this matter or that a mutually agreeable settlement could be reached.

23. The firms accepted the case because of the important principle of vindicating Plaintiffs' rights. While the amount in controversy may be small relative to other actions before the Court,

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the importance of the case to the Plaintiffs cannot be overstated. The amounts recovered will help Plaintiffs in their living situations.

24. By accepting Plaintiffs' case, our firms were precluded from accepting other employment. If these firm and the associated counsel had not expended our time and resources on this case, we would have devoted our time and resources to other cases and compensable work. As a result of this case, we have forgone the opportunity to perform other work that may have paid far more quickly and profitably.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

Theile B. McVey

SWORN TO before before me
this 1st day of May, 2018
(SEAL)
Notary Public for the State of South Carolina
My Commission Expires: 07-20-20

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Exhibit 3 to Plaintiffs' Notice of Filing Affidavits

Affidavit of Jonathan Holder

(See Record Page 1298)

Exhibit 4 to Plaintiffs' Notice of Filing Affidavits

Screenshot of Exhibits

Exhibits - Howe Sanctions CB

Back/Forward | View | Arrange | Action | Share | Edit Tags | Dropbox | Search

Favorites
- iCloud Drive
- Applications
- Desktop
- AirDrop
- Recents
- Downloads
- Documents
- Dropbox (Dean O...
- Creative Cloud Fil...

Devices
- Remote Disc

Tags
- Yellow
- Green
- Purple
- Orange
- Blue

Name	Date Modified	Size	Kind
Ex 1 - Howe Depo V2.pdf	Apr 30, 2018 at 5:36 PM	285 KB	Adobe...cument
Ex 2 - Howe Depo V3.pdf	Apr 30, 2018 at 5:36 PM	366 KB	Adobe...cument
Ex 3 - Gilbert Small Depo.PDF	Apr 30, 2018 at 5:36 PM	3.1 MB	Adobe...cument
Ex 4 - BPM 1-25.pdf	Apr 30, 2018 at 5:37 PM	13.5 MB	Adobe...cument
Ex 5 - MTC 012318 with Exhs.pdf	Apr 30, 2018 at 5:38 PM	3.4 MB	Adobe...cument
Ex 6 - 12418 Hearing.pdf	Apr 30, 2018 at 5:38 PM	371 KB	Adobe...cument
Ex 7 - Order.pdf	Apr 30, 2018 at 5:38 PM	274 KB	Adobe...cument
Ex 8 - Depo of Tornetta 020218.pdf	Apr 30, 2018 at 5:39 PM	224 KB	Adobe...cument
Ex 9 - John Tornetta Vol II.pdf	Apr 30, 2018 at 5:39 PM	340 KB	Adobe...cument
Ex 10 - Supp MSJ Resp with Exhs.pdf	Apr 30, 2018 at 5:39 PM	2.8 MB	Adobe...cument
Ex 11 - 030918 Hearing.pdf	Apr 30, 2018 at 5:39 PM	619 KB	Adobe...cument
Ex 13 - 031518 TT.pdf	Apr 30, 2018 at 5:41 PM	555 KB	Adobe...cument
Ex 14 - 031618 TT.pdf	Apr 30, 2018 at 5:41 PM	816 KB	Adobe...cument
Ex 15 - 032118 TT.pdf	Apr 30, 2018 at 5:41 PM	652 KB	Adobe...cument
Ex 16 - Ethox Chem v Coca Cola.pdf	Apr 30, 2018 at 5:42 PM	203 KB	Adobe...cument
Ex 17 - JD Affidavit.pdf	Apr 30, 2018 at 5:42 PM	1.6 MB	Adobe...cument
Ex 18 - Theile Affidavit.pdf	May 1, 2018 at 9:08 AM	978 KB	Adobe...cument
Ex 19 - JH Affidavit.pdf	Apr 30, 2018 at 5:42 PM	1.3 MB	Adobe...cument
Ex 20 - Order.pdf	Apr 30, 2018 at 5:42 PM	461 KB	Adobe...cument
Ex 21 - JD Costs Aff.pdf	Apr 30, 2018 at 5:43 PM	10 MB	Adobe...cument
Ex 22 - Affidavit of Tim Howe.pdf	May 1, 2018 at 9:08 AM	103 KB	Adobe...cument
Ex 23 - Affidavit of Wende Myers.pdf	Apr 30, 2018 at 5:43 PM	63 KB	Adobe...cument

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of **WAYNE ERVIN HOWE**, deceased, and **JEANETTE HOWE,**	)	**C/A NO. 15-CP-46-03456**
Plaintiffs,	)	**PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR SANCTIONS AGAINST CLEAVER-BROOKS, INC.**
v.	)	
AIR & LIQUID SYSTEMS CORPORATION, et al.,	)	
Defendants.	)	

Plaintiffs Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe ("Plaintiffs") file this reply in support of Plaintiffs' motion for sanctions against Defendant Cleaver-Brooks, Inc. ("Cleaver-Brooks") for its abuse of the discovery and trial processes.

INTRODUCTION

Cleaver-Brooks concedes that the "gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party." Resp. at 9 (citation omitted). Yet, throughout this case, Cleaver-Brooks engaged in a course of withholding crucial documents until the night before its corporate representative was scheduled to testify and then ambushing Plaintiffs with testimony regarding those documents mid-way through trial. This issue of Cleaver-Brooks' failure to produce consequential documents permeated pretrial and trial procedure and was the subject of multiples motions and hearings. Cleaver-Brooks' argument that Plaintiffs have waived this issue (for which Cleaver-Brooks cites no authority) is

baseless. Likewise unfounded is Cleaver-Brooks' contention (also lacking supporting authority) that this Court lacks jurisdiction to sanction Cleaver-Brooks' machinations. This is a simple issue: Cleaver-Brooks violated the discovery rules, at severe cost to Plaintiffs and waste of the resources of this Court and the jurors. Cleaver-Brooks should be made to pay.

STATEMENT OF FACTS

Cleaver-Brooks does not dispute this Court's observation that the "lynchpin" of this case at trial and during discovery was the location and number of Cleaver-Brooks boilers. Ex. A, Trial Trans. at 716:9. Specifically, the issue was the presence of Cleaver-Brooks boilers in the powerhouse at Bowater. Instead of producing all relevant evidence, as Plaintiffs repeatedly requested, Cleaver-Brooks produced misleading "commercial records" (the 25-page Bowater file) which indicated that more than one Cleaver-Brooks boiler was at Bowater. Exhibit 4 to Motion, Bates labels BPM 000001-25.

Cleaver-Brooks attempts to distract from this fundamental fact by asserting that no witness "identified Cleaver-Brooks as the manufacturer of a boiler that he worked with or around." Rep. at 1. Of course, circumstantial evidence is equally persuasive as direct evidence, and here Plaintiffs had (1) Howe's and his co-worker, Gil Small's testimony that Howe had worked on all of the boilers in the powerhouse, (2) Cleaver-Brooks commercial records showing that it had two boilers at Bowater, and (3) testimony of Bowater's corporate representative indicating that logically one of Cleaver-Brooks boilers would have been in the powerhouse. The fact that Cleaver-Brooks' commercial records identified two Cleaver-Brooks boilers at Bowater is evidenced by Cleaver-Brooks' response to this Court as well as repeated assertions by its corporate representative, John Tornetta.

As Cleaver-Brooks now admits, each boiler has a unique identifier called a unit number.

Resp. at 2. Cleaver-Brooks has also repeatedly admitted as much in testimony after testimony, including in this case. *E.g.*, Exhibit 8 to Motion, Dep. of John Tornetta, *Howe v. Air & Liquid Systems Corporation*, C/A No. 2015-CP-46-03456 (York County, S.C. Feb. 2, 2018), at 24:25–31:11 (explaining that he uses a boiler's unit number, which is on the index card, to get their commercial records); Ex. B, Dep. of John Tornetta, *Baccaglini and Zaino v. Cleaver-Brooks, Inc.* (N.Y. Supreme Court April 17, 2003), at 46:10-50:24 (explaining that each individual boiler has its own unit number); Ex. C, Trial Test. of John Tornetta, *Esposito v. A.O. Smith* (June 17, 2016), at 1530:21-26 ("we have index cards that indicate where we – not where we ship the boiler but where the boiler ended up, where we were told where a boiler ended up"); Ex. D, Trial Test. of John Tornetta, *Robaey v. Cleaver-Brooks Company* (N.Y. Supreme Court Dec. 12, 2016) at 1481:07-19; 1524:06-1525:04 (Cleaver-Brooks' index card would show a unit number, or model number, for a particular boiler).

By Cleaver-Brooks' own admission, the commercial file that Cleaver-Brooks produced to Plaintiffs as pertaining specifically to Bowater had two unit numbers—one ending in 43 and one ending in 44. This indicated that two Cleaver-Brooks boilers were at Bowater. Cleaver-Brooks tries to write off the fact that two units were identified in its Bowater commercial file as a "discrepancy." Resp. at 4. On the contrary, the 25 pages which were produced by Cleaver-Brooks as the file for the Bowater site contained documents regarding a unit number 18343 (*e.g.*, Exhibit 4 to Motion at BPM000013, showing "unit number 18343" "ship to Bowaters Carolina Corp, Catanba, South Carolina"), as well as documents regarding a unit number 18344 (*e.g.*, Exhibit 4 to Motion at BPM000016, showing "unit #0-18343" "ship to Bowaters-Carolina Corp."). Plaintiffs had no way to know that Cleaver-Brooks would claim mid-way through trial that the identification of one of the boilers was a typo. As Cleaver-Brooks' own corporate representative admitted, the

numbers 18344 and 18343 "are really different things." Ex. A, Trial Trans. at 692:25-693:2. There was no discrepancy in the commercial records: all of the documents produced by Bowater up until it finally produced the midnight documents indicated unequivocally that there were two Cleaver-Brooks boilers at Bowater.

Based on the Bowater file, as well as the witness testimony, Plaintiffs made the perfectly reasonable decision to proceed to trial. Cleaver-Brooks maintains that it "cannot guess how opposing counsel will interpret—or in this case misinterpret—Cleaver-Brooks documents." Resp. at 11. Actually, Cleaver-Brooks can know how opposing counsel would interpret its documents because it has been telling us all along that unit numbers are discrete, unique identifying numbers for each boiler, like a social security card. *See* Tornetta trial and deposition testimony, *supra*. In Cleaver-Brooks' own words, "[e]ach Cleaver-Brooks boiler has a unique identification number called a unit number." Resp. at 2. Accordingly, Plaintiffs read Cleaver-Brooks' records exactly as they were designed to be read.

Mid-way through trial, Cleaver-Brooks for the first time produced evidence—the "midnight documents"—proving that one boiler that had been identified in the commercial records it had produced responsive to requests regarding Bowater in fact pertained to a boiler that was sent to Illinois, not Bowater. Accordingly, the midnight documents showed that only one Cleaver-Brooks boiler had been at Bowater, and that boiler had been in the administration building, not in the powerhouse. On cross-examination the next day, Cleaver-Brooks' corporate representative admitted that the records that Cleaver-Brooks had previously produced in response to discovery requests regarding Bowater did in fact contain unit numbers for two separate boilers. For the first time at trial, Tornetta dismissed the boiler unit number 018344 as not being at Bowater, and having been listed in the Bowater commercial file due to a typo. Ex. A, Trial Trans. at 686:2-8. Thus came

Plaintiffs' second surprise at trial—despite two depositions, Tornetta for the first time testified at trial about the typo in the Bowater file, which was highly consequential to Plaintiffs' decision to go to trial. Thus, Cleaver-Brooks violated the rules of discovery once when it produced key documents at midnight mid-way through trial, and then again when Cleaver-Brooks offered new testimony that had not been provided in advance of trial despite two depositions of its corporate representative. Cleaver-Brooks hammered home on this testimony on its examination of Tornetta and again in its closing statement. *E.g.*, Trial Trans. at 1055:12-15 ("Mr. Tornetta told you last week and he told you again this week that Cleaver-Brooks never denied shipping ***a*** boiler to Bowater in 1957").

Up until Tornetta's trial testimony, since these two boilers were identified in documents produced in response to requests pertaining to Bowater, it was reasonable for Plaintiffs to understand that two boilers had been at Bowater. The foundation for Cleaver-Brooks' response—that Plaintiffs were unreasonable in this understanding—is not borne out by the facts. Cleaver-Brooks attempts to skirt the issue by claiming that the midnight documents were never the subject of discovery requests in the first place. On the contrary, the index card pertaining to Bowater, which showed the unique identifier for the unit number of the boiler at Bowater, was always responsive to the requests. Were this not the case, Cleaver-Brooks would have had no reason to produce it mid-way through trial. That index card is as follows:

Name BOWATERS-CAROLINA CORPORATION

Street Address

City CATAWABA

State SOUTH CAROLINA

Model Number P-723-308

Unit Number 0-18343

S. O. Number P-1170

Had Cleaver-Brooks pulled the index card in response to the discovery requests timely, it would have discovered that the commercial records it produced to Plaintiffs erroneously identified two boilers at Bowater, and not one. Indeed, this is precisely what Cleaver-Brooks' corporate representative discovered when he finally pulled the index card the night before he was scheduled to testify at trial. Cleaver-Brooks knew that its index cards were always the subject of discovery requests, yet simply failed to conduct its requisite due diligence in searching its files for responsive evidence until its corporate representative was about to testify at trial.

These documents are responsive to Plaintiffs' Standard Interrogatories and Request for Production of Documents, which specifically request "documents which show sales" pertaining to products containing asbestos to job sites at which plaintiff was employed, which included Bowater. Ex. E, Plaintiff's Standard Interrogatories and Request for Production of Documents, *County of Greenville, In re: Asbestos Litigation Coordinated Docket.* Those discovery requests further order that "[t]hese Interrogatories shall be deemed continuing in the sense of Rule 26(e) of the South Carolina Rules of Civil Procedure so as to require supplemental answers a reasonable time prior to trial. . ." The documents are also subject to the document request attached to the Rule 30(b)(6)

notice to take the deposition of Cleaver-Brooks' corporate representative. Ex. F, Tornetta Deposition Notice at ¶ 3 (produce "purchase order records for all asbestos-containing products sold to any Premises at Issue between 1962 and 2008"). The documents were also subject to Plaintiffs' motion to compel, and Plaintiffs had asked for the documents, as this Court recognized at trial: "Oh, no question about that." Ex. A, Trial Trans. at 711:7-16.

Even if Cleaver-Brooks did not know about the index cards at the time of its first production, it admits that its corporate representative was well aware of the index cards, as evidenced by his depositions. Resp. at 4. It then concedes that the index card regarding the Bowater boiler was responsive to discovery requests (and thus should have been produced), arguing only that the index card for the Illinois boiler was not responsive. Resp. at 6. Tornetta admitted at trial that Plaintiffs had explicitly asked for those index cards during his deposition. Exhibit A, Trial Trans., at 121:12-122:11. Moreover, on January 22, 2018, Plaintiffs moved to compel documents that Cleaver-Brooks had not produced. Exhibit 5 to Motion. On March 9, 2018, Plaintiffs filed a motion for sanctions because further production at that late date would cause prejudice. Ex. 11 to Motion, Hearing on Motion for Sanctions Against Cleaver-Brooks. In lieu of yet again requesting the documents, Plaintiffs asked the Court for a presumption that Cleaver-Brooks' boiler had been in the powerhouse, which request this Court took under advisement. *Id.* Cleaver-Brooks knew it had an obligation to produce the index cards in supplementation of its original discovery production. It simply chose not to.

By Cleaver-Brooks' admission, it was again reminded of its obligation to supplement its document production when, following Art Welker's February 20, 2018 deposition, Plaintiffs again asked Cleaver-Brooks to produce responsive documents. Resp. at 5. Cleaver-Brooks again chose not to fulfill its obligation, but instead waited until midnight on March 15, 2018, mid-way through

trial, to even check its records for responsive documents. Trial Trans. 685:12-695:8. Tornetta had claimed that the index cards have "all the same information" on them that is within the commercial records that Cleaver-Brooks had already produced, and he refused to "get involved in" trying to find evidence of where the boiler was actually located. Exhibit 8 to Motion, at 50:16-20; 59:4-11. This was inaccurate information, stated by Cleaver Brook's represenative that was easily corrected if they had reviewed the requested records.

Attempting to detract from the wrong underlying Plaintiffs' motion—Cleaver-Brooks' failure to comply with discovery requests, despite repeated requests and this Court's own admonition to do so—Cleaver-Brooks faults Plaintiffs for handling the midnight documents as they did. Cleaver-Brooks claims that "[a]t no point during their opening did Plaintiffs reference the core part of their theory of the case:" the existence of two Cleaver-Brooks boilers at Bowater. Resp. at 5. On the contrary, Plaintiffs maintained that there were "specific boilers in this case sold by Cleaver-Brooks." Trial Trans. at 50:12. Cleaver-Brooks' counsel made the same claim, referring during opening statements to "Cleaver-Brooks boilers sold to the Bowater Paper Mill. . . ." *Id.* at 81:5.

In addition, Plaintiffs timely called to this Court's attention the egregiously late production of these documents, requested their exclusion, and expressed an intent to seek sanctions. In response to Plaintiffs' motion to exclude the midnight documents, the Court noted that Plaintiffs were under no obligation to reveal their trial strategy regarding the two boilers at Bowater earlier than they had:

> What they say is they noticed that disparity and they are the kind of lawyers that do notice those kinds of things. I don't think they're obligated to tell y'all that. They had one little old something that they were going to hang their hat on to say, "Hey, there were two boilers here," and did a good job of elucidating that theory yesterday, and I think they were entitled to do that without violating the rules of having to disclose their theory, because you all had these records just like they did.

. . .

Trial Trans. at 717:25-718:9.

Cleaver-Brooks cites no legal authority for its claim that Plaintiffs erred in their handling of Cleaver-Brooks' wrongdoing. Moreover, it is Cleaver-Brooks' offense, and not Plaintiffs' response or Plaintiffs' trial strategy, that is the subject of this motion and for which Cleaver-Brooks should be sanctioned.

Cleaver-Brooks' production of erroneous evidence and failure to timely produce other evidence was extremely prejudicial to Plaintiffs' trial strategy and fundamentally changed the analysis of Plaintiffs' case, resulting in tremendous trial expenses and costs, the waste of judicial resources, and the squandering of citizens' time in serving on a jury. Cleaver-Brooks shrugs its shoulders and claims that it simply did not notice that two boilers were listed in the Bowater commercial file until prompted by Plaintiffs to double-check its records mid-way through trial. Resp. at 4. As a matter of policy, a party should not be rewarded for failing to examine its own files that it produces in discovery, making inaccurate claims about limited documents (namely that the index cards were the same as the commercial records) and then profit from that failure by misleading opposing counsel.

Once Cleaver-Brooks finally noticed the error in its file and produced the documents, Tornetta admitted that they had been sitting in his office all along and that Plaintiffs had asked him for them months ago during his depositions. Trial Trans. at 121:12-122:11. Cleaver-Brooks' lackadaisical attitude does not forgive the time and resources wasted at trial as a result of its mishandling of its own documents. This Court rightly found that Cleaver-Brooks' behavior was "sloppy" and noted its corporate representative's "dereliction." Exhibit 14 to Motion, Trial Transcript (Mar. 16, 2018), at 149:12-153:7. While errors happen, it is imperative that an error be

both rectified in the moment and that a consequence deter such errors from happening again in the future. Sanctions are warranted.

ARGUMENT

A. This Court Has Jurisdiction to Sanction Cleaver-Brooks.

Stringing together isolated provisions of the Rules of Civil Procedure, Cleaver-Brooks wrongly claims that this Court lacks jurisdiction to provide the relief that Plaintiffs seek. Not so. This Court, as "the court in which the action is pending may make such orders in regard to the failure [to provide discovery] as are just. . . ." SCRCP 37(b)(2). This action is pending before this Court, which is empowered to sanction Cleaver-Brooks.

The foundation of Cleaver-Brooks' complaint is its suggestion that the judgment has not be entered timely. This is manifestly inaccurate, as shown by the governing rule:

> (a) Entry Upon Verdict or Decision. Subject to the provisions of Rule 54(b):
> (1) upon a general verdict of a jury, **or upon a decision by the court that a party shall recover only a sum certain or costs** or that all relief shall be denied, the clerk, **unless the court otherwise orders**, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court;
> (2) **upon a decision by the court granting other relief**, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly prepare the form of the judgment, or direct counsel to promptly prepare the form of judgment, to which may be attached the decision, order or opinion of the court, and after review and approval by the court, the clerk shall promptly enter it.
> Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record. Entry of the judgment should not be delayed for the taxing of costs.

SCRCP 58. The judgment is not necessarily automatically entered upon rendition of a verdict, but may be rendered upon a decision of the court granting other relief, such as costs, if "the court otherwise orders," or "upon a decision by the court granting other relief." Id. Here, judgment may be rendered upon a decision of this Court granting sanctions against Cleaver-Brooks. Cleaver-Brooks has failed to show any authority to the contrary. This Court is vested with jurisdiction to determine Plaintiffs' request for sanctions in this action currently pending before this Court.

B. Cleaver-Brooks' Argument that Documents Regarding Unit 18344 Were Not Responsive to the Discovery Requests Is Irrelevant.

Cleaver-Brooks argues that it did not have to produce its documents regarding its Illinois boiler because they were not responsive to the discovery requests. Cleaver-Brooks misses the point. Plaintiffs' discovery requests pertained to documents relevant to Howe's worksites. Plaintiffs had no interest in accessing Cleaver-Brooks' files pertaining to irrelevant sites, nor could Plaintiffs have anticipated that Cleaver-Brooks would produce such documents. Cleaver-Brooks, by producing documents apparently relevant to a completely unrelated location, put that location at issue. Worse, Cleaver-Brooks confused the issue by producing those documents as "commercial records" of Bowater, where Howe had worked, and later playing "gotcha" to reveal midway through trial that the documents were unrelated to Bowater but were mere typos. All of this confusion on the part of Cleaver-Brooks was the result of its failure to review a mere 25 pages of its commercial records and its failure to carefully maintain those commercial records in the first place. Cleaver-Brooks' sloppiness does not excuse its failure to comply with the discovery rules.

Cleaver-Brooks admits that it was not until mid-way through trial, and only when triggered by testimony at trial, that its corporate representative finally examined the commercial records (only 25 pages) that Cleaver-Brooks had produced to Plaintiffs two months earlier and for the first time discovered Cleaver-Brooks' error. Under Rules 26 and 34, a party must produce relevant documents, not random documents like a file identifying a boiler irrelevant to the action at hand. This is particularly true where the other party has no way to know that there is any error in the file. Under Rule 30(b)(6), a corporate representative must have knowledge of all information on the noticed topics reasonably available to the corporation. Exhibit 16 to Motion, *Ethox Chem., LLC v. Coca–Cola Co.*, No. 6:12-cv-1682-TMC, 2014 WL 2719214, at *2 (D.S.C. June 16, 2014). This Rule is not met when a corporate representative fails to examine the corporate documents until

mid-way through trial. Cleaver-Brooks' production of documents was misleading, did not comply with the Rules, did not comply with the 30(b)(6) notice, and did not comply with the Asbestos Trial Docket Amended General Scheduling Order. It was not, as Cleaver-Brooks claims, "all that is required of a Defendant." Resp. at 9.

C. Cleaver-Brooks Should Be Sanctioned for Its Abuse of the Discovery and Trial Processes.

1. Cleaver-Brooks cannot escape sanctions by questioning Plaintiffs' trial strategy.

Cleaver-Brooks argues that "Plaintiffs had every opportunity to take discovery to resolve any ambiguities regarding the unit numbers in the commercial records." Resp. at 10. This summarizes the problem: Plaintiffs had no inkling that there was any such ambiguity, particularly since Cleaver-Brooks had produced the Bowaters-specific "commercial records" in response to discovery requests specific to Bowaters. While faulting Plaintiffs for failing to recognize an ambiguity in its own file, Cleaver-Brooks simultaneously admits that it too failed to recognized such ambiguity, and did not do so until trial and then only in response to questioning by Plaintiffs. In fact, during opening statements, Cleaver-Brooks' own counsel referred to multiple "Cleaver-Brooks boilers sold to the Bowater Paper Mill. . . ." Ex. A, Trial Trans., at 81:5.

Cleaver-Brooks accuses Plaintiffs of misinterpreting Cleaver-Brooks' files, but its own representative admitted at trial that its files that it produced to Plaintiffs were erroneous. There was no misinterpretation, just reasonable interpretation of the files as produced.

In any event, Cleaver-Brooks cites no authority for its premise that it can escape sanctions for its failure to abide by the discovery rules because it disagreed with Plaintiffs' trial strategy. Plaintiffs gave Cleaver-Brooks' representative every opportunity to explain its files during both of his depositions. Exhibit 8 to Motion, Dep. of John Tornetta (Feb. 2, 2018), at 9:17-21; 26:8-28:11;

45:2-5, 50:11-20; 53:7-12; 59:4-11; Exhibit 9 to Motion, Dep. of John Tornetta, Vol. II (Mar. 6, 2018), at 228:4-18. Plaintiffs raised their theory that there was more than one boiler at Bowater during opening statements. Trial Trans. at 50:12. Yet Cleaver-Brooks waited days later, until the eve of Tornetta's testimony, to double-check its files. This is conduct eligible for sanctions.

2. Plaintiffs did not waive the right to seek sanctions.

Cleaver-Brooks begins its waiver argument by willfully misinterpreting this Court's comments at trial. When Plaintiffs first apprised this Court of the problem regarding Cleaver-Brooks' belated production of the midnight documents, the Court suggested that Plaintiffs may have waived any objection Plaintiffs may have to Cleaver-Brooks' use of the documents regarding the Cleaver-Brooks boiler in Illinois. Ex. A, Trial Trans. at 710:14-711:16. Plaintiffs' counsel explained that the only document Plaintiffs had used in questioning Cleaver-Brooks' corporate representative was the index card for boiler 43, the boiler that Cleaver-Brooks agrees was at Bowater. *Id.* The Court confirmed that Plaintiffs had not used the index card regarding the Illinois boiler, and stated, "I see. Okay.", apparently no longer concerned about a potential waiver issue. *Id.* It is apparent that the issue regarding waiver pertained to Plaintiffs' ability to challenge Cleaver-Brooks' use of the documents of the Illinois boiler, because the Court later granted Plaintiffs' objection and excluded such documents, thus finding there was no such waiver. Trial Trans. at 715:25-719:3. The Court further clarified that the waiver issue pertained only to the index card regarding the Bowater boiler, which Plaintiffs had put into evidence: "I think the plaintiffs have waived the Bowater card because they displayed it to the jury so I think I'm allowed to put that into evidence and use it." *Id.* at 714:13-15.

This Court then agreed that Plaintiffs had not waived an ability to seek sanctions:

> MS. DEAN: . . . Your Honor, Ms. McVey had made a request on Friday that these actions were somewhat a lynch pin of our case, fundamentally fact of how we

> approached this trial. We want to seek -- I just want to make sure that if we seek sanctions for costs or time after trial we haven't waived anything.
>
> THE COURT: You have already completely talked about how fundamental it was to your case so forth and so on, that is very well protected in the record as I view it.

Ex. A, Trial Trans., at 864:8-16. Accordingly, this Court has already rejected Cleaver-Brooks' argument that Plaintiffs waived a motion for sanctions by questioning its corporate representative about the documents at trial.

This Court should also reject Cleaver-Brooks' argument that Plaintiffs waived a motion for sanctions by not requesting the midnight documents during discovery because the fact is, Plaintiffs requested the documents again and again and again. Cleaver-Brooks complains that "Plaintiffs never made any request – not on the record at the deposition, not by email or letter to counsel following the deposition – for that index card." Resp. at 13. First, Cleaver-Brooks chooses its words carefully, and misleadingly, because its corporate representative admitted that Plaintiffs had requested the index cards at his deposition, Trial Trans. at 121:12-122:11 – whether that request was on the record is of no moment.

Second, Cleaver-Brooks offers no legal authority for its claim that Plaintiffs should have asked for any piece of evidence by name. As set forth above, the documents are responsive to Plaintiffs' master discovery. The documents are responsive to Plaintiffs' motion to compel. The documents were the subject of Plaintiffs' motion for sanction. The documents were discussed during both of Tornetta's depositions, at which, Tornetta admitted, he was asked to produce the index cards. It is difficult to imagine how many other ways or times Plaintiffs could have requested the same evidence. Cleaver-Brooks simply chose not to produce the evidence, regardless of how many times and in how many ways Plaintiffs asked.

Cleaver-Brooks contends that Plaintiffs should have raised the issue of the midnight

documents before the examination of Mr. Tornetta, moved to strike the testimony, or moved for a mistrial. Cleaver-Brooks cites no legal authority for its contention that Plaintiffs' method of handling Cleaver-Brooks' improprieties constituted a waiver; Cleaver-Brooks' position is contrary to this Court's findings. In fact, an objection may be lodged *before* a motion to strike or a motion for mistrial. *See, e.g., State v. Wilson*, 389 S.C. 579, 583, 698 S.E.2d 862, 864 (Ct. App. 2010). Even then, a motion to strike or a motion for mistrial is not required, except if the party whose objection is sustained wishes to preserve the issue for appeal. *Id.*

Even if Cleaver-Brooks had offered any such authority, at the very least Cleaver-Brooks should still be responsible for all fees and costs associated with the trial up to the date when it suggests that Plaintiffs should have moved to strike or sought a mistrial. Indeed, a court may award attorney's fees and costs, including time at trial, against an opponent whose conduct results in mistrial and multiplication of proceedings. *Cf. In re Gould*, 77 F. App'x 155 (4th Cir. 2003); *Abner v. Kansas City S. Ry. Co.*, 541 F.3d 372, 380 (5th Cir. 2008); *Gierlinger v. Gleason*, 160 F.3d 858, 862 (2d. Cir.1998). In South Carolina award of attorneys' fees is treated as an issue in equity. *Kilcawley v. Kilcawley*, 312 S.C. 425, 427, 440 S.E.2d 892, 893 (Ct. App. 1994) (citing *Brown v. State Farm Mut. Ins. Co.*, 275 S.C. 276, 269 S.E.2d 769 (1980)). Here, equitable factors, including the policy concerns of punishment and deterrence, weigh in favor of imposing fees and costs.

Cleaver-Brooks complains that Plaintiffs elicited testimony from Tornetta on the issue of the midnight documents. Plaintiffs were certainly entitled to ask Cleaver-Brooks about the documents it had produced mid-way through trial, and there is no rule that required any sort of motion in advance. That testimony brought additional surprise, including (1) the fact that Tornetta believed the second unit number listed in the commercial files for Bowater was a typo, and (2) the second unit went to another location. Cleaver-Brooks admits that this testimony was not provided

in advance of trial. This was, quite clearly, trial by ambush.

Plaintiffs maintain that the right for sanctions was preserved by Plaintiffs' objection to the documents and request during trial to move for sanctions at a later time. This, joined with the belated timing of the production of the midnight documents, Tornetta's unanticipated testimony, the presence of the jury, and the fault of Cleaver-Brooks, supports Plaintiffs' request for full costs.

3. The jury verdict was based on the evidence that the only boiler at Bowater was in the administration room.

Without question, the jury understood that the key issue in the case was the number and location of boilers at Bowater. Cleaver-Brooks itself commenced its questioning of its corporate representative with questions about the number and location of its boilers:

DIRECT EXAMINATION

BY MS. O'NEIL:
Q So John, you've known me for a long time, I'm going to go right to the questions. **I want to start by asking for the answers to some of the very basic questions that are at issue in this case** and then I am going to go back and talk about the basis for your answers, okay?
A Okay.
Q Did Cleaver-Brooks ship a boiler to the Bowater Paper Mill in Catawba, South Carolina?
A Yes.
Q And when I use the word Bowater in my questions, I mean the Bowater Mill at Catawba.
A Okay.
Q Did that boiler that Cleaver-Brooks shipped to Bowater contain asbestos?
A At the time of manufacturing it, yes.
Q **How many boilers did Cleaver-Brooks ship to Bowater?**
A One.
Q What was the unit number of the boiler that Cleaver-Brooks shipped to Bowater? And you could just get the last two digits.
A I think the whole unit number, if I get it, correctly is 0-18343.
Q **Did Cleaver-Brooks ship a boiler to Bowater with the unit number 0-18344?**

A No.

Trial Trans. at 736:4- 737:5. Although Cleaver-Brooks maintains that it did not ask Tornetta about the location of unit 18344, Resp. at 12, that is misleading, as it made clear to the jury that the location of the unit was *not* Bowater. *See, e.g.*, Trial Trans. at 737:3-5; 743:2-4.

It was evident to everyone at trial, not least the jurors, that the key issue was whether there was a Cleaver-Brooks boiler in the powerhouse. Indeed, Cleaver-Brooks made this the starting point of its closing argument. *See* Trial Trans. at 1054-55. Cleaver-Brooks' counsel reminded the jury that the evidence showed only one boiler at Bowater, pointing out, for example, that "Mr. Tornetta told you last week and he told you again this week that Cleaver-Brooks never denied shipping ***a*** boiler to Bowater in 1957," and "all of the asbestos containing components in the Cleaver-Brooks boiler shipped to Bowater were inside ***that*** boiler. *Id.* at 1055:12-15; 1055:19-21 (emphasis added). Contrary to Cleaver-Brooks' claim that it did not argue in closing that there was only one boiler, Cleaver-Brooks walked the jury through its supporting evidence, admonishing that "Mr. Tornetta said this 18344 boiler was never at Bowater," explaining away the unit number issue as "mistakes happen," and dismissing Plaintiffs' key witness on the exposure issue. Trial Trans. at 1059:5 ("So let's talk about that boiler.")-1061:24.

Finally, candid discussion among counsel and the Court about the effect of the midnight documents on the jury makes Cleaver-Brooks' argument on this issue disingenuous.

4. Exclusion of evidence is not a sanction.

There is no issue of double punishment here. Although this Court excluded from evidence the midnight documents regarding the Illinois boiler, that did not cure Tornetta's surprise testimony regarding the typo in the commercial files. The revelation of the typo—which came belatedly as a result of the last-minute production of the midnight documents—undermined Plaintiffs' claim that there were two Cleaver-Brooks boilers at Bowater. It is for this conduct that

Cleaver-Brooks has not been sanctioned. Cleaver-Brooks points out that "[d]iscovery 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). Here, a discovery sanction is warranted both to penalize Cleaver-Brooks and because Cleaver-Brooks continues to hide such documents in other cases, such that deterrence is required.

Cleaver-Brooks overreaches by trying to equate this case with a Fifth Amendment case. Even if a double-punishment issue were at hand here, the United States Supreme Court has held that "Congress may impose both a criminal and a civil sanction in respect to the same act or omission; for the double jeopardy clause prohibits merely punishing twice, or attempting a second time to punish criminally, for the same offense." *Dep't of Revenue of Montana v. Kurth Ranch*, 511 U.S. 767, 793 (1994) (quoting *Helvering v. Mitchell*, 303 U.S. 391, 399 (1938)). Double jeopardy is not at issue.

5. Plaintiffs' attorneys' fees are reasonable.

A court may award reasonable expenses, including attorneys' fees, for a party's failure to make or cooperate in discovery. *E.g., Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014) (affirming award of attorneys' fees and costs as sanctions for refusal to comply with discovery rulings). The amount of attorneys' fees to be awarded is within the discretion of the trial judge. *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 357, 594 S.E.2d 888, 898 (Ct. App. 2004). The six factors a court considers when determining attorneys' fees are (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Id.*

Cleaver-Brooks does not challenge that the requested attorneys' fees are appropriate based on the nature, extent, and difficulty of the case, and the professional standing of counsel. Instead,

Cleaver-Brooks attempts to poke holes at other factors, though not persuasively.

For example, Cleaver-Brooks claims that Plaintiffs offered "bare assertions" to support the hourly rates for their attorneys' fees. On the contrary, Plaintiffs explained that the prevailing market rate may be established through evidence of fees that counsel with similar qualifications have received in comparable cases. *See Spell v. McDaniel,* 824 F.2d 1380, 1402 (4th Cir. 1987). Plaintiffs then attached an order in another case awarding attorneys' fees that are in line with those requested here. Exhibit 20 to Motion, Order, *Brian Parker, et al. v. ABC Debt Relief, Ltd. Co., et al.*, No. 3:10-cv-1332-P (N.D. Tx. Apr. 9, 2014). This Court has the discretion to ascertain reasonable expenses, including attorneys' fees, and the evidence would fully support this Court's award of the fees requested. *E.g., Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014). Cleaver-Brooks offers no evidence to the contrary.

Cleaver-Brooks accuses Plaintiffs of not providing the affidavit of Ms. McVey or Mr. Howe. On the contrary, these affidavits were provided the day after Plaintiffs' motion was filed. Exhibits 18 & 22 to Motion. Ms. McVey's affidavit shows that Plaintiffs have not requested special rates for out of state counsel – both Ms. McVey and Ms. Dean, senior and seasoned trial lawyers, are requesting $500 hour. Further, although Cleaver-Brooks claims that the rates for Ms. Dean and Mr. Holder are not rates that a South Carolina attorney would typically receive, it provides no evidence of this claim. To the extent that this Court may entertain Cleaver-Brooks' claim that Plaintiffs' proposed hourly rate is not reasonable, Plaintiffs request an opportunity to discover the standard billing rates of Cleaver-Brooks' trial and associate counsel who participated in the trial of this case.

Cleaver-Brooks also complains that Ms. Dean and Mr. Holder worked the same number of hours in the preparation of trial. This is correct, because both attorneys were working together,

nearly around the clock in preparation for trial, as did Ms. McVey. It thus comes as no surprise that their hours would mirror each other. Further, itemization of counsel's time is not necessary, as it was evidenced by the degree of preparation required by a trial of this length and scope as well as by counsel's performance at trial, none of which Cleaver-Brooks questions.

As for Cleaver-Brooks' complaint about the provision of evidence to and lodging of attorneys and support staff in York, all counsel, including Ms. McVey, were forced to lodge in York in light of its location. As for the number of staff required to try this case, even Cleaver-Brooks does not deny that this was a case of sizable scope, complicated legal and scientific issues, and significant economic interests. So, too, Cleaver-Brooks does not deny that its trial support staff and attorney presence was significant. Cleaver-Brooks' complaint is without merit.

Likewise without merit is Cleaver-Brooks' claims that Mr. Howe and Ms. Myers should not receive the few hundred dollars they are requesting for time lost at work to attend a trial that Cleaver-Brooks ambushed. When there has been an abuse of the discovery rules, "the court in which the action is pending may make such orders in regard to the failure as are just." SCRCP 37(b)(2). Lost wages are just and reasonable for Plaintiffs whose trial Defendant made a mockery of.

The costs sought by Plaintiffs are just and supported by the evidence. The attorneys' fees requested in this case are reasonable. All of the *Jackson* factors weigh in favor of Plaintiffs and are supported with substantial record evidence. Should this Court have further questions regarding the requests attorneys' fees or costs, Plaintiffs respectfully request an opportunity to provide such evidence at this Court's convenience.

CONCLUSION

Cleaver-Brooks is a company that did not take seriously South Carolina's rules of

discovery, the orders of this Court, or the obligations of a corporate representative. This resulted in tremendous costs and wasted time to this Court, the jurors, and Plaintiffs. Cleaver-Brooks should be made to pay. Plaintiffs pray that the Court grant sanctions against Cleaver-Brooks in the amount of (1) costs incurred by Timothy Howe and Wende Myers in taking time off from work for trial, (2) costs, expenses, and attorneys' fees incurred in trying this case, as set forth in the exhibits submitted with Plaintiffs' motion, and (3) a denial of Cleaver-Brooks' cost application.

Respectfully submitted,

/s/ Jonathan M. Holder

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ATTORNEYS FOR PLAINTIFFS

June 28, 2018

Dallas, Texas.

Exhibit B to Plaintiffs' Reply in Support of Motion for Sanctions with Statement of Fees and Costs

John Tornetta Deposition from *Baccaglini v. Cleaver-Brooks, Inc.* (N.Y. Sup. Ct. 2003)

TORNETTA / J. KRISTAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN RE NEW YORK CITY ASBESTOS LITIGATION

BACCAGLINI AND ZAINO, NYCAL
Plaintiffs,
-against- INDEX No.:

CLEAVER-BROOKS, INC.,
Defendant.

VIDEOTAPE DEPOSITION OF JOHN F. TORNETTA, taken at the instance of the Plaintiffs, under and pursuant to the applicable provisions of the statutes of the State of New York, and the acts amendatory thereof and supplementary thereto, and pursuant to Notice, before me, PHYLLIS M. KAPARIS, Registered Professional Reporter and Notary Public in and for the State of Wisconsin, at the offices of Whyte, Hirschboeck & Dudek, 111 East Wisconsin Avenue, Milwaukee, Wisconsin, on the 17th day of April, 2003, commencing at 10:11 in the forenoon.
PRIORITY-ONE COURT REPORTING SERVICES, INC.

APPEARANCES

WEITZ & LUXENBERG, 180 Maiden Lane, New York, New York 10038-4925, by MR. JERRY KRISTAL and MR. EVAN JANUSH, appeared (TELEPHONICALLY) on behalf of the Plaintiffs.

MATTSON, MADDEN & LEITH, 33 Bleeker Street, Millburn, New Jersey 0704-1414, by MR. JOHN R. LEITH, appeared on behalf of the Defendant.

INDEX

WITNESS	EXAMINATION	PAGE
JOHN TORNETTA	By Mr. Kristal	3

EXHIBITS

EXHIBIT	DESCRIPTION	ID'D
1	Letter-Notice of Deposition; 4/15/03	59
2A	General Liability Interrogatories	125
2B	Cleaver-Brooks Answers to Interrogatories	123
3	Cleaver-Brooks Operation, Service and Parts Manual	71

(Original transcript sent to Attorney Kristal)
(Original exhibits returned to Attorney Kristal)

PROCEEDINGS

THE VIDEOGRAPHER: We are on the record and at the beginning of tape number 1. Seated before you is John Tornetta who will be testifying in the matter of Baccaglini and Zaino, Plaintiffs, versus Cleaver and Brooks, Defendants – or Cleaver-Brooks, Defendants. This case is to be heard in the Supreme Court, State of New York, County of New York. The index number is 119824/00.

We are at Whyte, Hirschboeck & Dudek at 111 East Wisconsin Avenue in Milwaukee, Wisconsin. Today is April 17, 2003. The time as indicated on the video screen is 10:11 a.m.

This video deposition has been requested by Attorney Jerry Kristal of Weitz & Luxenberg of New York City.

I am Owen May, a video technician appearing on behalf of Ryker & Lyle Legal Video Services located in Pewaukee, Wisconsin.

The attorneys will now please state their names for the record.

MR. KRISTAL: This is Jerry Kristal on behalf of Mr. Baccaglini and Mr. Zaino.

MR. JANUSH: This is Evan Janush

from Weitz & Luxenberg also on behalf of Mr. Baccaglini and Mr. Zaino.

MR. LEITH: John R. Leith from Mattson, Madden & Leith, attorneys for Cleaver-Brooks.

THE VIDEOGRAPHER: Thank you. The court reporter is Phyllis Kaparis of Priority-One Court Reporting in New York.

The reporter will now swear in the witness.

JOHN F. TORNETTA, called as a witness herein by the Plaintiffs, after having been first duly sworn, was examined and testified as follows:

THE VIDEOGRAPHER: Please proceed.

MR. KRISTAL: Thank you. Just as a record keeping matter, the index number that was read at the beginning of the video may not be the accurate index number. And we can get that to Owen at some point in time.

EXAMINATION

BY MR. KRISTAL:

Q Good morning, Mr. Tornetta. As you heard, my name is Jerry Kristal. It's spelled K-R-I-S-T-A-L. And I'm with the law firm of

1 same from the 60's, all of the agreements would
2 be in that file?
3 MR. LEITH: Objection to form.
4 THE WITNESS: I don't know that for
5 sure, no.
6 BY MR. KRISTAL:
7 Q Okay. Have you ever looked?
8 A Again, I haven't had to look through them to
9 that detail, no.
10 Q The actual purchase order then would be between
11 the customer and Cleaver-Brooks directly as far
12 as you know historically?
13 A Historically in most cases, yes.
14 Q And where are those records kept?
15 A In Milwaukee.
16 Q In the sales group?
17 A No.
18 Q Where are they kept?
19 A Within the individual boiler file.
20 Q And how do they get into the individual boiler
21 file historically?
22 A That's what actually starts the individual
23 boiler file, an order.
24 Q So an order comes into Milwaukee, and if it's a
25 new customer, there is some kind of file that's

1 opened up specifically for that customer?
2 MR. LEITH: Objection to form.
3 THE WITNESS: It's actually a file
4 opened up for that boiler. Whether it's a new
5 customer or an old customer, each individual
6 boiler has its file for the most part, unless
7 there are two boilers sold to the same customer
8 at the same time.
9 BY MR. KRISTAL:
10 Q All right. And if, let's say, 20 Cleaver-Brooks
11 boilers historically over different periods of
12 time were sold to the same customer, is there
13 any sort of filing system that would allow you
14 to go directly into that customer's file?
15 MR. LEITH: Objection to form.
16 THE WITNESS: There would be 20 --
17 if the boilers were sold 20 different times,
18 over 20 different periods of time, there would
19 be 20 separate individual boiler files filed by
20 unit number.
21 BY MR. KRISTAL:
22 Q I understand that. And let's take a customer,
23 General Motors. General Motors has been a
24 customer of Cleaver-Brooks boilers, correct?
25 A I have seen them.

1 Q I'm just using this by way of example.
2 A I have seen General Motors as a customer, yes.
3 Q All right. Is there a file -- or are individual
4 boiler files for boilers sold to General Motors
5 organized so that you could go to a General
6 Motors category and find all the boilers sold to
7 that particular entity?
8 MR. LEITH: Objection to form. It's
9 also been asked and answered.
10 THE WITNESS: And the answer is no.
11 The files are filed by unit number.
12 BY MR. KRISTAL:
13 Q Is there any cross reference or index that you
14 could go to something and look up General
15 Motors, and it would say this boiler number,
16 that boiler number, this other boiler number?
17 MR. LEITH: Objection to form. And
18 it's also been asked and answered.
19 You can answer.
20 THE WITNESS: There is a -- I'm
21 sorry. There is an index of customers and
22 locations that get you to unit numbers. There
23 are index cards, individual index cards.
24 BY MR. KRISTAL:
25 Q So there would be a General Motors index card or

1 a set of index cards is that -- using that as an
2 example?
3 MR. LEITH: Objection to form.
4 THE WITNESS: There would be in an
5 alphabetical listing a series if we sold --
6 using your example, 20 boilers over 20 different
7 periods of time -- 20 individual cards showing
8 individual General Motors, let's say, plants and
9 locations. And those could be in different
10 places, too, because the cards are organized by
11 product.
12 BY MR. KRISTAL:
13 Q But if I'm understanding you, you could go to an
14 index and you could look up alphabetically
15 General Motors, and by that index you would get
16 directed to a set of index cards --
17 MR. LEITH: Objection to form.
18 BY MR. KRISTAL:
19 Q -- that would have the individual boiler
20 numbers on them?
21 MR. LEITH: Objection to form. And
22 also been asked and answered.
23 THE WITNESS: The index is the
24 cards. There is no index for the cards.
25 BY MR. KRISTAL:

1 Q Okay. And are these cards maintained
2 alphabetically?
3 A Alphabetically and by product.
4 Q What do you mean and by product?
5 A They're separated based on fire tube and water
6 tube.
7 Q Okay. So and are these in a file cabinet?
8 A They're in many drawers of a cabinet, yes.
9 Q And they're alphabetical by product?
10 A They're alphabetical by customer and location.
11 Obviously location is on it somewhere, physical
12 location, and then further segregated by
13 product.
14 Q Well, if I opened the drawer that had the letter
15 G on the front of it, and I went through the
16 alphabet and came to General Motors, would I see
17 all of the water tube and all of the fire tube
18 boilers that had been sold to General Motors, a
19 listing of that?
20 MR. LEITH: Objection to form.
21 THE WITNESS: No, you would not.
22 BY MR. KRISTAL:
23 Q What would I see?
24 A It depends on which drawer you open, whether it
25 was in the fire tube group or the water tube

1 group.
2 Q Okay. So if I went to a file cabinet that was
3 water tube and I went to the G drawer and I went
4 alphabetically, I would find all the water tube
5 General Motors purchased, Cleaver-Brooks water
6 tube boilers?
7 A For different locations, if there are some in
8 there, yes.
9 Q Okay. And if there were some in the fire tube,
10 it would be the same process?
11 A Yes.
12 Q If the customer was a contractor, would that
13 filing system be listed by the contractor's name
14 or by the ultimate location of the boiler, or
15 both perhaps?
16 A The ultimate location of the boiler is on the
17 index card.
18 Q And how would Cleaver-Brooks know the ultimate
19 location of the boiler?
20 A We're told when the boiler is sold.
21 Q All right. And Cleaver-Brooks would deliver it
22 directly to the contractor or directly to the
23 job site or a little bit of both historically?
24 A It could be either, yes.
25 Q After each Cleaver-Brooks boiler was installed,

1 did a Cleaver-Brooks representative go to the
2 installation site and have some direct interface
3 with the customer?
4 MR. LEITH: Objection to form.
5 BY MR. KRISTAL:
6 Q Historically?
7 A You said after each one was?
8 Q Yes.
9 A No.
10 Q After many or most?
11 MR. LEITH: Objection to form.
12 THE WITNESS: After a portion of
13 them, yes.
14 BY MR. KRISTAL:
15 Q And what portion of them did that occur?
16 A I couldn't guess at the numbers, but it was
17 generally the fire tubes.
18 Q And do you know why generally with the fire tube
19 boilers a Cleaver-Brooks representative would go
20 to the ultimate location where the boiler was
21 installed?
22 A The sale price in many cases included the
23 commissioning of the boiler.
24 Q Which would mean some sort of instructional
25 session on the operation of the boiler by a

1 Cleaver-Brooks employee?
2 MR. LEITH: Objection to form.
3 THE WITNESS: What exactly was done
4 during start-up, I wouldn't know without looking
5 at an individual file to see what it said.
6 BY MR. KRISTAL:
7 Q Okay. And with respect to the water tube
8 boilers, that service could be purchased or not
9 purchased in terms of the Cleaver-Brooks
10 employee going there at the start-up of the
11 boiler?
12 A Yes.
13 Q The technical services department which was part
14 of the sales group, has that always existed
15 historically as far as you can tell?
16 A Which technical services department that's part
17 of the sales group? I'm not certain what you're
18 referring to there.
19 Q Okay. I think earlier on -- or maybe -- strike
20 that. I apologize. I was looking at the parts
21 department. There's a technical services
22 department at Cleaver-Brooks, right?
23 A Currently today, yes.
24 Q Right. And as far as you know there has always
25 been a technical services department or group,

Exhibit C to Plaintiffs' Reply in Support of Motion for Sanctions with Statement of Fees and Costs

John Tornetta Testimony from *Esposito v. A.O. Smith* (N.Y. Sup. Ct. 2016)

In The Matter Of:

ESPOSITO v.

A.O. SMITH

June 17, 2016

Jack L. Morelli

NYS Supreme Court - Civil Term

60 Centre Street, Room 420

New York, New York 10007

(646) 386-3441

Original File T0617ESPOSITO-2.txt

Min-U-Script® with Word Index

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1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK : CIVIL TERM : PART 11
4 ----------x
5 IN RE: NEW YORK CITY ASBESTOS LITIGATION, : Index:
----------x 190349/2013
6 CHERYLL DRAKE, as Personal Representative :
For Estate of JOHN A. BUTURLA, JR. and
7 CHERYLL DRAKE, Individually, :
8 Plaintiff(s). :
9 - against - :
10 A.O. SMITH WATER PRODUCTS CO., et al., : TRIAL
11 Defendant(s). :
----------x
12 LISA WONG, AS ADMINISTRATRIX FOR THE : Index:
ESTATE OF FRANK D. ESPOSITO, and LISA WONG, 190212/2013
13 Individually,
Plaintiff(s). :
14 - against - :
15 A.O. SMITH WATER PRODUCTS CO., et al., : TRIAL
16 Defendant(s). :
----------x
17 60 Centre Street
18 New York, N.Y. 10007
June 17, 2016
19 B E F O R E:
20 HONORABLE JOAN MADDEN,
21 J U S T I C E
A P P E A R A N C E S:
22
23 WEITZ & LUXENBERG P.C.
Attorneys for the Plaintiffs
24 700 Broadway
New York, New York 10003
25 Y: DANNY R. KRAFT, JR., ESQ.,
26 (Appearances cont'd on next page)

Page 1519

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BY: MARK TIVIN, ESQ.
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9
10 JACK L. MORELLI, CSR
11 SHAMEEKA HARRIS, CSR, RMR, CLR
Senior Court Reporters
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1 J. Tornetta - by Plaintiff/Direct
2 THE COURT: Please bring the jurors in.
3 COURT OFFICER: Jury entering. Please rise for the
4 jury.
5 (Whereupon, the sworn jurors enter the courtroom
6 and take their respective seats.)
7 THE COURT: Please be seated. Good morning,
8 jurors. We're ready to go forward. Mr. Kraft.
9 MR. KRAFT: Yes, your Honor. At this time, the
10 plaintiff calls Cleaver-Brooks' corporate representative
11 John Tornetta.
12 J O H N T O R N E T T A, a witness called by and on
13 behalf of the Plaintiff, upon being duly sworn, was examined and
14 testified as follows:
15 THE WITNESS: I do.
16 COURT CLERK: Remain standing. In a loud, clear
17 voice, state your name for the record.
18 THE WITNESS: John Tornetta.
19 COURT CLERK: Can you spell your last name, please.
20 THE WITNESS: T as in Tom, O-R-N-E-T-T-A.
21 COURT CLERK: Your business address?
22 THE WITNESS: 11950 West Lake Park Drive,
23 Milwaukee, Wisconsin 53224.
24 COURT CLERK: The company you work for.
25 THE WITNESS: Cleaver-Brooks Inc.
26 THE COURT: Jurors, before we go forward with the

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1 J. Tornetta - by Plaintiff/Direct
2 questioning of Mr. Tornetta, there are additional questions
3 and answers from the Esposito deposition to be read to you.
4 The plaintiff has completed their reading of the depositions
5 and the defendant, Cleaver-Brooks, has additional readings
6 of the deposition of Mr. Esposito. And we will continue
7 that next week sometime.
8 MR. KRAFT: May I inquire, your Honor.
9 THE COURT: Yes.
10 DIRECT EXAMINATION
11 BY MR. KRAFT:
12 Q. Thank you. Good morning, Mr. Tornetta.
13 A. Good morning.
14 Q. We said hello to each other in the hallway. I want to
15 remind you my name is Dave Kraft. And I represent the Esposito
16 family in this case pending against Cleaver-Brooks; you
17 understand that, right?
18 A. Yes, I do.
19 Q. Sitting somewhere in the courtroom -- she just stepped
20 out.
21 THE COURT: Sorry.
22 MR. KRAFT: Lisa Wong.
23 Q. -- the wife of Mr. Esposito, she'll be here during the
24 course of your testimony. You haven't had a chance to meet her.
25 I'll introduce you at some point today.
26 A. Okay.

Page 1530

1 J. Tornetta - by Plaintiff/Direct
2 Q. Can you tell me the age of that boiler?
3 A. I was there in '82. I believe it was from the 70's,
4 but I -- that's a little off the top of my head. I can't recall
5 exactly when it was.
6 Q. Can you tell me the BTU output of that boiler?
7 A. It was 150 horse power. I'd have to convert that to
8 BTU output in my head, and I am not able to do that right this
9 moment.
10 Q. It is a tough question?
11 A. It's about six million BTU output.
12 Q. Do you know the serial number of that boiler?
13 A. No, I don't.
14 Q. Do you know the maintenance history of that boiler?
15 A. While I was there between '82 and '85, I would say,
16 yes, I do. Prior to that, no.
17 Q. Do you know the model number of that boiler?
18 A. Yes.
19 Q. What model number was it?
20 A. It was a CB200-115, 150-pound.
21 Q. Okay. Now, Cleaver-Brooks maintains index cards that
22 track where its boilers are sold to; is that correct?
23 A. Yes. I'm not sure I would use the word track, but we
24 have index cards that indicate where we -- not where we ship the
25 boiler but where the boiler ended up, where we were told where a
26 boiler ended up.

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1 J. Tornetta - by Plaintiff/Direct
2 Q. If you wanted to, you could have gone to the index
3 card, looked for Williamson Trade School and determined whether
4 that boiler contained asbestos, right.
5 A. Certainly, not from the index card. I could see -- I
6 would find an index card, I think I have, for Williamson Trade
7 School in Media Pennsylvania. It would give me the model number
8 and the serial number of the boiler. It wouldn't say anything
9 about asbestos.
10 Q. You would have to go to commercial files and the
11 drawings and then other documents and then determine whether it
12 contained asbestos, right?
13 A. Correct.
14 Q. Within a month of graduating from that trade school,
15 you started with Cleaver-Brooks in June of 1985; is that right?
16 A. Correct.
17 Q. You were a service technician for Cleaver-Brooks in
18 Milwaukee, Wisconsin from 1985 to 1989?
19 A. Roughly, yes, those dates.
20 Q. As a service technician, you were responsible for
21 troubleshooting, fixing, repairing and generally servicing
22 Cleaver-Brooks boilers; is that right?
23 A. To a point. I guess I would just clarify that it
24 wasn't the day-to-day servicing of boilers. It was more of a, I
25 guess I'll call it, factory representative, warranty type
26 service. I certainly wouldn't have been in there on a

Page 1532

1 J. Tornetta - by Plaintiff/Direct
2 day-to-day basis in that position doing that type of work.
3 Q. You would have gone out to do service work if someone
4 had called Cleaver-Brooks and said, hey, we have a problem with
5 one of Cleaver-Brooks boiler, right?
6 A. If they said, yes, we have that problem and we need
7 somebody from Cleaver-Brooks to determine what's wrong, yes.
8 Q. People responsible from day-to-day, week-to-week,
9 month-to-month and year-to-year, general maintenance, would be
10 the people at the facility actually maintaining, running and
11 operating the boiler, right?
12 A. In some instances. In some instances, it is outside
13 companies that might do work on the boilers, that type of thing.
14 Q. I guess what I am trying to point out Cleaver-Brooks
15 doesn't repair, fix and maintain all of its boilers across the
16 country, right?
17 A. Certainly not, no.
18 Q. You were an assistant service dispatcher from 1989 to
19 approximately 1992, '93; is that correct?
20 A. You call it assistant service manager. I'm not sure I
21 ever referred to it as a dispatcher before, but manager.
22 Q. And you managed service technicians who did the work
23 you just described that you did when you were a service
24 technician, right?
25 A. Yes, as well still doing the work that I was doing
26 previous to that.

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1 J. Tornetta - by Plaintiff/Direct
2 Q. So in addition to managing other service technicians,
3 you also did some field work on Cleaver-Brooks boiler, right?
4 A. Correct.
5 Q. You were a service manager from 1992, '93 to 1995,
6 correct?
7 A. Roughly, yes. It was -- I acted as service manager.
8 I'm not sure officially if I ever said that but the service
9 manager wasn't there and I did.
10 Q. Well, I'll call you service manager. It sounds good to
11 me?
12 A. It is fine with me.
13 Q. You managed other service technicians who were out in
14 the field servicing Cleaver-Brooks boilers and you also did
15 field work as a service technician yourself out on
16 Cleaver-Brooks boilers, right?
17 A. Correct.
18 Q. You became assistant training manager in 1995 and you
19 held that position until the year 2000; is that correct?
20 A. Yes.
21 Q. You were responsible for, technically, training
22 Cleaver-Brooks employees to troubleshoot, repair and service
23 Cleaver-Brooks boilers, correct?
24 A. I was one of the groups of people, yes.
25 Q. You also trained Non-Cleaver-Brooks employees how to
26 operate, service and repair Cleaver-Brooks boilers, right?

Exhibit D to Plaintiffs' Reply in Support of Motion for Sanctions with Statement of Fees and Costs

John Tornetta Testimony from *Robaey v. Cleaver-Brooks Co.* (N.Y. Sup. Ct. 2016)

1 ~
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK : CIVIL DIV. : PART 11
4 MARLENA F. ROBAEY and EDWARD ROBAEY,
5 Plaintiffs,
6 - against - : Index No.
7 CLEAVER BROOKS COMPANY, INC., CRANE CO., DANA COMPANIES, LLC, FEDERAL-MOGUL
8 ASBESTOS PERSONAL INJURY TRUST as a successor to FELT PRODUCTS MFG. CO.,
9 Defendants.
10 TRIAL
11 60 Centre Street
12 New York, New York
December 12, 2016
13 B E F O R E :
14 HON. JOAN A. MADDEN,
Justice, and a Jury
15 A P P E A R A N C E S :
16 WEITZ & LUXENBERG
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18 BY: DANNY R. KRAFT, JR., ESQ.
PETER TAMBINI, ESQ.
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25 ROBERT PORTAS/KATHY Y. JONES
SENIOR COURT REPORTERS
26

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2
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Atlanta, GA 30308
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PETER R. YORK, ESQ.
25 ALEXANDER T. GREEN, ESQ.
- and -
26 ALLEN LOCKERMAN, ESQ. (Via Telephone)

1 Proceedings
2 THE COURT: Counsel.
3 MR. BURNS: I've spoken to Mr. Kraft and this is
4 obviously not the first time he's cross-examined Mr.
5 Tornetta. I've looked at some of the materials that he
6 plans to show. I think we're generally okay with it. I
7 don't want to have to have a lot of objections.
8 The only general area that I think might come up
9 is for this case we actually have the diagrams, the
10 orders, the photographs of the boilers that are at issue.
11 So, that's really what it's going to be about. I
12 understand that they're going to want to show historically
13 we had other types of boilers and these other types of
14 asbestos products were noted in history and I get that.
15 The only time I might is if I think they go too much into
16 the details and show a ton of pictures of boilers that are
17 not like the ones in this case.
18 I don't think it's going to be a problem. I
19 only want to do it now so we can perhaps save some time.
20 THE COURT: I think you need to object at the
21 time the specific photos of the drawings are being shown.
22 All right. Obviously, the context may determine what will
23 be a factor I consider in making any determination. But
24 perhaps an limine instruction is required.
25 MR. BURNS: I'll say relevancy as we discussed
26 if it's an issue and it saves time having us come up back

1 Tornetta - Direct/Kraft
2 and forth every time.
3 (Whereupon, the jury entered the courtroom)
4 THE COURT: Please be seated.
5 Good morning, jurors.
6 Ready to go forward, Mr. Kraft?
7 MR. KRAFT: Yes, your Honor.
8 At this time the plaintiffs call Cleaver Brooks'
9 corporate representative, John Tornetta.
10 J O H N T O R N E T T A called
11 as a witness on behalf of the Plaintiff,
12 having been first duly sworn, was
13 examined and testified as follows:
14 COURT CLERK: Please state your name and address
15 for the record.
16 THE WITNESS: John F. Tornetta. Business
17 address is 11950 West Lake Park Drive, Milwaukee,
18 Wisconsin.
19 MR. KRAFT: May I inquire, your Honor?
20 THE COURT: Yes.
21 MR. KRAFT: Thank you.
22 DIRECT EXAMINATION
23 BY MR. KRAFT:
24 Q Good morning, Mr. Tornetta?
25 A Good morning.
26 Q Could you spell your name one more time so the jurors

Q You have no idea whether the work that you performed or the work that the others performed on that boiler while in trade school caused you to be exposed to asbestos in any way, right?

A No. I guess I don't specifically know that, no.

Q We're going to talk in a little bit about the index card system that Cleaver Brooks has in place and commercial boiler files that are associated with that index card system.

If you wanted to, you could have pulled the index card for the boiler at that trade school and determined whether that boiler had asbestos components, right.

A I could have pulled the index card but the index card would not -- itself would not have indicated whether the boiler had asbestos. It would have given me an indication of a unit number, a model number and there I would have gone from there.

Q The index card would have led you to the commercial files for the boiler at that location, right?

A Correct.

Q And there would have been paperwork and drawings and other materials associated which would have allowed you to assess whether at least from that boiler was shipped to Williamson there were asbestos components in the boiler, correct?

A Just to clarify a second. The commercial records wouldn't have had the drawings within them. They are in

another area I guess I'll call it for lack of a better term and it's possible they would have in one way or another let me know there was an asbestos component in it, yes.

Q The levels are index card leads you to commercial file. Commercial file leads you to drawings, correct?

A Correct.

Q We're going to talk about that in the context of this case a little bit later.

Needless to say, you haven't done that regarding the boiler that you personally worked on, right?

A Correct.

Q Within a month of graduating from the trade school, you started at Cleaver Brooks in June of 1985, correct.

A That's correct, yes.

Q Your first position at Cleaver Brooks was as a service technician from 1985 to 1989; is that right?

A Roughly, '89, yes.

Q As a service technician, can you tell the jury generally what your responsibilities were during that time period?

A I would have serviced, it was somewhat like a customer service position for the boiler manufacturer. I would go out in the field around the country, potentially working on boilers more from what I would call a warranty standpoint. Sometimes, new products, sometimes old products. Some of it would have

been training on new products. That's the general idea of it.

But I would have traveled around the country as well as been a support in the office for the questions over the phone.

Q The warranty work you were doing was something separate and apart from the daily, weekly, monthly and annual service that folks in the actual boiler plants around the country would have been performing, correct?

A Are you talking about specifically like a job site the daily, weekly and monthly?

Q Yes.

A Yes, it would have been different than that.

Q Cleaver Brooks boilers after they were installed required daily, weekly, monthly, semiannual and then annual inspections and maintenance, right?

A There are certain things you would do on a daily basis, a weekly basis and a monthly basis, varying complexity, I guess I'll call. When you get to the daily-type stuff, it's generally looking at it as well as weekly and monthly and then you get into semiannual and annual type things that I guess I would classify more as maintenance versus operation.

(Continued on next page)

Q Okay.

And Cleaver-Brooks had people and were affiliated with companies that would offer maintenance services to Cleaver-Brooks customers around the country; right?

A In some cases, yes.

Q Okay.

And Cleaver-Brooks was aware that in other cases the stationary fireman or boiler mechanics or custodial workers at the location would be the ones responsible for the actual maintenance of Cleaver-Brooks boilers; right?

A Yes. Depends upon a level of knowledge and expertise in a particular location. They may have that, yes.

Q One of the services that Cleaver-Brooks offered when it sold its boilers, Cleaver-Brooks offered to set up the boiler at the location; right?

A Yes. Generally what we would call -- and it wasn't all the products, but many of the products we sold at that time, what we called start-up. So the initial commissioning of the boiler as well as doing some training on the operation of it for whoever was on site to operate the boiler.

Q Right.

And that training on the operation of the boiler also included training on how to operate, service and maintain the boiler on site; correct?

A If that was needed, yes.

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typically go into industrial applications, not all the time but in many cases, and then there's commercial watertubes which are a little smaller, go into more commercial-type locations.

Q You're not putting this in your apartment in New York City; right?

A No.

Q This is in a hospital type setting or in a factory type setting; right?

A Yes. A larger hospital for some of the smaller sizes. You would see fire tube or watertube in many hospitals. Would depend on the preference.

Q But this is the type of boiler that was within Huntington Hospital; right?

A Certainly the type, yes.

Q All right.

And when you say "Certainly the type," there are various models of industrial watertube boilers; right?

A Correct.

Q There are different sizes of industrial watertube boilers?

A Correct.

Q Are you aware of what model boiler was actually within Huntington Hospital?

A The basic model was a D-type watertube, D~34 I think was the size.

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Q Okay.

So a D-type boiler was originated by a company called the Springfield Boiler Company; right?

A One of the companies that came out with D-type boilers.

Q Right.

A Springfield, I think, was the -- would have been one of the first packaged Type D type boilers.

Q Cleaver-Brooks purchased Springfield in the late 1950s; right?

A Yes. And were a part of it -- I'm not sure I could get into the legal way of what happened in the late 1950s, between Springfield and Cleaver-Brooks, but certainly we referred to them as Springfield packaged boilers at one time.

Q After Cleaver-Brooks purchased Springfield they manufactured the Springfield packaged watertube industrial type boiler; right?

A Correct.

Q Now, we also talked about commercial watertube boilers; right?

A Yes.

Q And this would be a fair representation of a commercial watertube boiler (indicating); right?

A One of the types of commercial watertubes, yes.

Q Okay.

This is a Model 3. There was also a Model 4, a

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Model A, a whole other -- a whole slew of models; right?

A I'm not sure I'd classify it as "Slew," but there certainly were more than one.

Q And within each model there's different sizes for the models; right?

A Correct.

Q All right.

And is there any difference in terms of industrial watertube versus commercial watertube in terms of how the boilers function?

A Yeah. That's kind of broad with "Function," but they are very dissimilar in that, particularly the Model 3, there's no -- no area inside the Model 3 that someone can go into.

Q All right.

A So there's -- there's certainly differences in the way they are assembled and arranged. But their function of producing steam or hot water, no, that's generally the same between fire tube, watertube, commercial watertube and industrial watertube.

Q Okay.

And the purpose of these boilers was to heat water to provide either hot water or steam at whatever location it was being installed upon -- in; right?

A Yes. Short of the one we talked about which was heating oil.

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Q Maybe some other day we will talk about that. We're going to focus on really the industrial watertube type boiler today.

A Okay.

Q Now, we had talked a little bit about the index card system that was in place at Cleaver-Brooks; right?

A Yes. Briefly. Earlier you mean?

Q Yes.

A Yes.

Q And we've talked about that in the past when you've testified; right?

A Correct.

Q And, what happens when a plaintiff like the Robaey Family identifies a particular location where they allege exposure to a Cleaver-Brooks boiler, one of the first things that you do as the technical services person is you look to see if your boiler was at that location; right?

A Yes. If I have a job name and location, city and state, I'll search for that.

Q And you actually did that in association with this case; correct?

A Yes, I did.

Q And you were able to identify that Mr. Robaey, in his capacity as an employee of Huntington Hospital, when he identified two boilers within the plant of Huntington Hospital,

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1 J.TORNETTA-DIRECT/Kraft
2 you were able to confirm that he was correct, there were two
3 Cleaver-Brooks boilers located there; right?
4 A Yes. We shipped two in the late 1960s.
5 Q Okay.
6 And you're aware those two boilers that were shipped
7 in the late 1960s are still within Huntington Hospital even as
8 we are talking today; right?
9 A Yes.
10 Q Some 49 years later; is that right?
11 A I'm doing the math in my head. Yes. Or close to it.
12 Q All right.
13 Boilers have life expectances and lifespans, which
14 clearly boilers like the ones in Huntington Hospital were
15 designed to last a whole long time; right?
16 A Yes. I think we've talked in the past about 20
17 being -- 20 years being a kind of an industry standard. But
18 certainly I've seen boilers last more than the 20 years, I've
19 seen them last less than 20 years.
20 Q In this case you've seen it last almost five decades;
21 right?
22 A Correct.
23 Q During the lifespan of a boiler -- and the lifespan of
24 a boiler is from conception when it's made in the plant...
25 Right?
26 A Okay. Yes.

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1 J.TORNETTA-DIRECT/Kraft
2 Q ...until death when it's removed out of a plant; right?
3 A Yes. With the possibility it may have been moved
4 somewhere else, but removed from service completely I guess I'll
5 call it.
6 Q Okay.
7 And during that time period, from when it's installed
8 until it's finally removed for good, those boilers have to be
9 maintained and serviced; right?
10 A In one way or another, yes.
11 Q Service and repair is an important part of allowing a
12 boiler like the ones manufactured by Cleaver-Brooks to last
13 upwards of two, three, four, five decades; right?
14 A Certainly.
15 Q A boiler that's not maintained properly won't function
16 properly; right?
17 A Correct.
18 Q And a boiler that's not maintained properly becomes a
19 hazard to people in the vicinity of that boiler; right?
20 A It can be, depending on the lack of maintenance we
21 might be talking about.
22 Q Okay.
23 I want to talk at this point briefly about the
24 asbestos-containing components that have been included within
25 Cleaver-Brooks boilers historically. Okay?
26 A Okay.

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1 J.TORNETTA-DIRECT/Kraft
2 Q You would agree that Cleaver-Brooks boilers have
3 contained components which contained asbestos going back to the
4 1930s; right?
5 A Yes. In certain boilers.
6 Q And you would agree that the components included
7 asbestos rope; right?
8 A In some boilers, yes.
9 Q Asbestos gaskets; right?
10 A In some boilers, yes.
11 Q And asbestos refractory materials; correct?
12 A The refractory one is always one that we -- I have a
13 bit of a hard time with. Depending on what somebody terms
14 "refractory."
15 Q Okay.
16 A In my understanding of refractory, I haven't seen that
17 in our shaped-type refractory.
18 Q Okay.
19 In 1988 in the State of New York, County of Nassau,
20 Cleaver-Brooks responded to interrogatories. Are you aware of
21 that?
22 A I think you may have shown those to me in the past.
23 Q And in response to those interrogatories you're aware
24 that when they were required to answer what the asbestos
25 component parts of their gas--- of their boilers were,
26 Cleaver-Brooks answered that the asbestos-containing materials

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1 J.TORNETTA-DIRECT/Kraft
2 were gaskets and refractories; right?
3 A I believe that's what it says. I think it was a little
4 loose use of the term "Refractory."
5 Q Well, do you want to take a look, just so we're --
6 MR. KRAFT: May I approach, Your Honor?
7 THE COURT: All right, at this point the officer
8 is coming, but you may do so.
9 (Mr. Kraft handing to the witness.)
10 Q Do you see there where Cleaver-Brooks answers in
11 response to Question 3, that the boilers contained
12 asbestos-containing gaskets and refractories? Right?
13 A Yes.
14 Q And it even indicates that asbestos-containing gaskets
15 and refractories were sold as component parts of the boiler;
16 right?
17 A Correct.
18 Q And you even indicate that you sold them as replacement
19 parts; right?
20 A Yes.
21 Q Okay. I'll take that back.
22 (Witness handing.)
23 Q Asbestos cement historically has been included within
24 Cleaver-Brooks boilers; right?
25 A In certain boilers, yes.
26 Q Asbestos-containing Vee Block [phonetic] mix has been

STATE OF SOUTH CAROLINA COUNTY OF YORK	)))	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe, Plaintiffs, v. Air & Liquid Systems Corp., *et al.*, Defendants.	)	Civil Action No. 2015-CP-46-03456 **NOTICE OF CLEAVER-BROOKS, INC.'S OBJECTIONS TO PROPOSED ORDER**

Please take notice that Cleaver-Brooks, Inc., files the attached objections to the Plaintiffs' Proposed Order Granting Plaintiffs' Motion for Sanctions Against Cleaver-Brooks, Inc.

Respectfully submitted,

s/ Steven J. Pugh
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November 2, 2018

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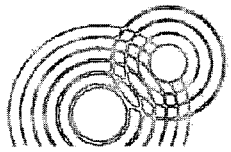

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November 2, 2018

Via Electronic Filing and Email
The Honorable Jean H. Toal
Circuit Court Judge
JToal@sccourts.org

Re: *Howe et al. v. Air & Liquid Systems Corp. et al.*
Case No. 15-CP-46-3456
Objections to Plaintiffs' Proposed Order

Dear Justice Toal:

We write to note our objections to the Plaintiffs' proposed order granting their motion for discovery sanctions against Cleaver-Brooks, Inc. Our client's objections are many, and are presented in the sequence in which the issues appear in the Plaintiffs' proposed order.

Background "Facts" Are False

The "facts" recited in the proposed order read as if they are from a case other than the one at bar. They bear absolutely no relationship to the way this case was actually discovered, prepared, and tried. The suggestion that Cleaver-Brooks "withh[e]ld[] crucial documents" and "ambush[ed]" the Plaintiffs at trial with those documents has no support anywhere in the record. (Proposed Order at 1.) Nor does the statement that Cleaver-Brooks agrees that the "'lynchpin' of this case at trial and during discovery was the location and number of Cleaver-Brooks boilers." (*Id.* at 2.)

Until documents produced at the request of Plaintiffs ***during trial*** by non-party Bowater Paper Mill revealed the Plaintiffs' theory to be incorrect, the case's core factual dispute, as the Plaintiffs had framed it throughout litigation, involved the location of the single Cleaver-Brooks boiler at the Bowater Paper Mill. Plaintiffs argued that the boiler was in the powerhouse; Cleaver Brooks disputed that its boiler would be used in that area of the plant. The "number of Cleaver-Brooks boilers" was ***never*** in dispute until after documents from Bowater Paper Mill produced in trial revealed that the Cleaver-Brooks boiler was in the administration building. It was only after that Plaintiffs—much to the surprise of Cleaver-Brooks—altered their theory midway through trial and began asserting that there was more than one boiler at the plant. The suggestion that Cleaver-Brooks knowingly withheld exculpatory evidence is nonsensical and unsupported by the record in this case.

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Plaintiffs' Discovery Failures Are Improperly Excused

In addition to rewriting the entire history of this case, the Plaintiffs' proposed order also dismisses all of the Plaintiffs' own shortcomings with respect to presentation of their *post hac* "two boilers" theory of the case. Never did they serve an interrogatory, document request, or request for admission that suggested their supposed belief that there were multiple Cleaver-Brooks boilers at Bowater. Never did they ask any witness during the case's many depositions about multiple Cleaver-Brooks boilers at Bowater. Never did they ask for records for the supposed second boiler at Bowater.

In light of the absence of any such discovery questions, there is no way that Cleaver-Brooks could possibly have known that the Plaintiffs would argue that there were two different Cleaver-Brooks boilers at Bowater. To be sure, the first page that Cleaver-Brooks produced to the Plaintiffs—"BPM 00001"—is a photocopy of a file folder containing the commercial records for Unit 0-18343. The remainder of that production—"BPM 00002–25"—are the commercial records associated with that single unit. That has been the consistent testimony from Cleaver-Brooks throughout the case.

The fact that a third-party vendor mis-entered one digit on a field report over sixty years ago cannot undercut the uniform testimony that Cleaver-Brooks rightly gave regarding its commercial records and recordkeeping systems. This is especially so when the Plaintiffs failed to test their incorrect "two boiler" theory in any way during discovery.

The Plaintiffs' discovery failures are not Cleaver-Brooks's fault, but the proposed order lays the responsibility for those failures solely on Cleaver-Brooks. Because Cleaver-Brooks seasonably produced all records regarding the only boiler it ever sent to Bowater, it cannot be sanctioned for not producing records regarding a boiler that was sent somewhere else—particularly when the Plaintiffs never asked for them, nor provided any indication that they interpreted the documents in such a way to suggest a second boiler.

No Jurisdiction to Issue Post-Judgment Sanctions

Cleaver-Brooks has briefed its position that the Court lacks jurisdiction to issue a discovery sanction because judgment was supposed to have already been entered automatically following the jury's verdict in favor of Cleaver-Brooks. Rule 54(a)(1), SCRCP. The only motions available after entry of judgment are listed in Rule 6(b), SCRCP, and the Court lacks jurisdiction to expand the deadlines for filing such motions.

Here, there are no instructions on the record, nor is there any order, directing the York County Clerk of Court not to enter judgment in Cleaver-Brooks's favor. Cleaver-Brooks believes that such an instruction or order would have been improper, as it would have been tantamount to the trial court enlarging its post-judgment jurisdiction. In any event, the judgment should have been entered "forthwith," as required by Rule 54(a)(1), and the passage of time since the verdict should have deprived the Court of jurisdiction to address the Plaintiffs' untimely motion.

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No Basis for Discovery Sanctions

The Plaintiffs moved for sanctions under Rule 37(b), SCRCP. That rule permits a court to issue discovery sanctions when a party "fails to obey an order to provide or permit discovery." There is no such order in this case.

Accordingly, Rule 37(b) does not authorize the Court to sanction Cleaver-Brooks for allegedly improper discovery conduct. Nor has Cleaver-Brooks done anything at all to warrant any kind of discovery sanction, as it timely produced to the Plaintiffs its entire file regarding the single boiler that it shipped to Bowater, which was the only boiler that this case was ever about. As such, any proposed sanction is fundamentally unjust and inequitable.

"Findings of Law" Section B Makes No Sense

Cleaver-Brooks does not understand what point the Plaintiffs are attempting to make in their proposed Section B under the "Findings of Law" heading. As noted above, Cleaver-Brooks produced the entire file regarding its only boiler that was located at Bowater, which was the only location at issue in this case. The fact that two documents within that file contained typographical errors input by a third party over sixty years ago does not somehow "put [another] location at issue," as the Plaintiffs suggest on Page 11 of their proposed order, because those documents were correctly contained in Cleaver-Brooks's file for Unit 0-18343. Nor could such a "finding" be a matter of law—it would at most be a finding of fact, but it cannot be that because there is no evidentiary support for this assertion. Nothing in South Carolina jurisprudence or procedure permits an unsupported hypothesis to be transformed into a "finding of law."

Timing of Production Was Proper

On Pages 12 and 13 of the proposed order, the Plaintiffs argue that Cleaver-Brooks was on notice of the Plaintiffs' "two boiler" theory based on the Plaintiffs' opening statement, "[y]et Cleaver-Brooks waited days later, until the eve of Tornetta's testimony, to double-check its files." This is not true.

There is nothing in the opening statements that approximates a theory of the case that Cleaver-Brooks sent two boilers to Bowater based on the typographical error in the records that had been produced. If there had been, Cleaver-Brooks would have certainly further investigated that point and produced additional materials to clear up any misunderstanding, exactly as it did when it first became aware of the Plaintiffs' misunderstanding.

Plaintiffs Waived Objections

The Plaintiffs waived any objections about Cleaver-Brooks's production of records regarding documents related to Unit 0-18344 or testimony regarding that irrelevant unit because the Plaintiffs thoroughly examined Cleaver-Brooks's witness about those very documents when they called him to testify. (Trial Trans. 685:8–697:19.) The Plaintiffs themselves first elicited the testimony regarding the location of Unit 0-18344. (*Id.* 687:4–19, 692:25–693:12, 694:22–695:5.)

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As Your Honor explained to the Plaintiffs earlier at trial: "You can't object to what your own witness says. You can ask him questions and if he pops out with something you're kind of stuck with it as I view it, that's the normal way." (*Id.* 387:21–24.)

Additionally, Page 14 of the proposed order states that Cleaver-Brooks's "corporate representative admitted that Plaintiffs had requested the index cards at his deposition," and implies that this included the production the index card regarding Unit 0-18344. This is false. There is no such "admission" anywhere in the record. Quite to the contrary, Cleaver-Brooks's representative testified that he had absolutely no idea that the Plaintiffs wanted any information regarding Unit 0-18344 in advance of trial because it was not at issue in the case. (Trial Trans. 689:2–9.) There is no request for the index card during any part of the two full days of deposition endured by Cleaver-Brooks's corporate representative. Plaintiffs' counsel claims that the alleged "admission" was "off the record" at the deposition, but Cleaver-Brooks never agreed that this actually occurred and thus any "finding" that it did is improper.

Basis of Verdict is Speculative

Section C.3 of the proposed order is pure speculation as to what drove the jury's verdict. Because the jury only returned a general verdict in Cleaver-Brooks's favor, it is improper for the Court to speculate as to the basis of that verdict.

Exclusion of Evidence is a Sanction

As noted above, the Court cannot render sanctions under Rule 37(b) for several reasons, including because there is no discovery order that Cleaver-Brooks has allegedly violated, and because Cleaver-Brooks fully met its discovery obligations in this case. Additionally, Rule 37(b)(2)(B) specifically identifies excluding evidence as a sanction for a violation of this rule. Accordingly, the Plaintiffs' statement on Page 16 of the proposed order that "[e]xclusion of evidence is not a sanction" is demonstrably not true.

Moreover, there is a passage on Page 17 of the proposed order that must be stricken. It states that "Cleaver-Brooks continues to hide such documents in other cases." That is completely false, and is clearly an improper attempt by the Plaintiffs to sneak a line by the Court that they can turn to in other cases. The Court should absolutely reject such efforts.

Fees Are Unreasonable

The proposed order contains no itemization of the hours allegedly worked by the Plaintiffs' attorneys for which they wish to be compensated. Moreover, although Cleaver-Brooks does not believe that ***any*** sanction is warranted because it did not do anything wrong, the idea that the Plaintiffs should be awarded all of their attorneys' fees for trial and for deposing a Cleaver-Brooks representative is beyond the pale.

The issue on which the motion for sanctions is based involves whether Cleaver-Brooks should have produced a batch of commercial records for Unit 0-18344 earlier in the case—before

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anyone had even asked for such records or suggested that such records could possibly have any relevance. At trial, the Plaintiffs spent approximately 12 pages of the transcript (685 through 697) questioning Mr. Tornetta about that unit—less than an hour of trial time. Quite clearly, their entire case did not rise or fall based only on whether Cleaver-Brooks shipped two different boilers to Bowater, because the Plaintiffs presented a closing argument that occupies over 36 uninterrupted pages in the trial transcript (1015 through 1051) in which they repeatedly argued—just as they did the entire case—that the core issue was whether a Cleaver-Brooks boiler was located in the power house at Bowater, where Mr. Howe had worked. (*E.g.*, Trial Trans. 1018:14–1019:21; 1025:13–16; 1029:6–7.)

Nor did the Plaintiffs genuinely believe that the so-called "midnight documents" were so conclusive as to have preempted the entire trial, as they now claim. For one, the Plaintiffs pressed on with trial even after receiving documents regarding Unit 0-18344. If the materials really were as dispositive of the whole case as the Plaintiffs now suggest, then they would have had an obligation to cease the case immediately under Rule 11, SCRCP, and Rules 3.1 and 3.3 of the South Carolina Rules of Professional Conduct. Having not done so, Plaintiffs' counsel cannot now assert that the "two boiler" theory was the sole basis for taking the case to trial without it also being a simultaneous admission of violations of Rule 11 and the Rules of Professional Conduct. Because this Court would obviously not *reward* Plaintiffs for such behavior, the inescapable conclusion is, as Cleaver-Brooks has noted, that Plaintiffs' decision to try this case to verdict rests on more than the "two boiler" theory that was proven wrong during the trial.

Likewise, the Plaintiffs argued at length in their closing argument that Mr. Tornetta's testimony about the location of Unit 0-18344 simply should not be believed despite the existence of the "midnight documents." (Trial Trans. 1019:22–1021:18.) In short, the existence of those documents did not preempt the Plaintiffs from making any of the arguments that they apparently intended to make at trial. The jury simply rejected those arguments.

At most, if Cleaver-Brooks's conduct in this case is somehow sanctionable—and it absolutely is not—then the sanction should be limited to fees associated with perhaps a single hour of trial time by the single lawyer who examined Mr. Tornetta about the single issue addressed by the so-called "midnight documents." It is entirely unjust and disproportionate to award all fees to all attorneys for all hours spent for all days of trial when the "two boilers" issue was a minor sliver of one witness's examination at trial, and was never a subject of discovery in advance of trial.

Affidavits Not Timely Served

Rule 6(d), SCRCP, requires that any affidavit that supports a motion must be served with the motion. Here, that did not happen. Accordingly, the Court cannot consider any of the affidavits that the Plaintiffs ultimately filed and, in the absence of proof, it cannot award any fees or costs.

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Expenses are Improper

Finally, the proposed order awards costs to Timothy Howe and Wende Myers for time spent away from work. There is no basis in law for such an award.

Additionally, the proposed order awards "Plaintiffs' trial expenses in the amount of $90,835.16." (Proposed Order at 21.) None of these expenses has anything to do with Cleaver-Brooks's production of documents regarding Unit 0-18344, and they should be excluded from any award. Likewise, the Court should not award any of the Plaintiffs' so-called expenses that have nothing at all to do with the "two boiler" issue, including *inter alia* myriad transportation costs (including Uber, Lyft, rental cards, gasoline, etc.); charges incurred after the trial was over; charges related to Blacklane GmbH; undescribed credit card charges; undescribed Federal Express charges; and charges for preparing trial exhibits. Cleaver-Brooks does not believe it is proper to award the Plaintiffs any expenses, but the above-listed categories certainly have nothing to do with the Plaintiffs' alleged basis for seeking sanctions.

* * * * *

Respectfully, the Court should reject the Plaintiffs' proposed order in its entirety. It is replete with misstatements and mischaracterizations of both the law and the facts. We appreciate the Court's consideration of our objections to the proposed order discussed above.

Very truly yours,

/s/ M. Todd Carroll

cc: Plaintiffs' Counsel

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STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe, Plaintiffs, vs. Air & Liquid Systems Corp., *et al.*, Defendants.	)	Civil Action No. 2015-CP-46-03456 **CLEAVER-BROOKS, INC.'S MOTION TO ALTER OR AMEND ORDER**

Pursuant to Rule 59(e), SCRCP, Cleaver-Brooks, Inc. ("Cleaver-Brooks"), moves the Court to alter or amend its Order Granting Plaintiffs' Motion for Sanctions Against Cleaver-Brooks ("Order"). That Order was entered on December 7, 2018, making this motion timely served. Respectfully, the Order entered appears to have overlooked, misapprehended, or incorrectly analyzed several issues, including:

1. Rule 58(a)(1), SCRCP, requires the Clerk of Court to enter judgment "forthwith" following a general verdict of the jury "unless the court otherwise orders." There is no such written order in the record. Thus, the jury's verdict in favor of Cleaver-Brooks should be effective as of the moment the jury returned it, and the Court has no jurisdiction to consider a motion seeking sanctions for a so-called discovery violation following trial. The Court's Order fails to properly account for this and should be altered or amended accordingly.

2. The Order should be altered or amended, and ultimately vacated, to reflect the actual record of this case. It was not until midway through trial that there was any debate about whether there was only a single Cleaver-Brooks boiler at the Bowater Paper Mill; the only

material factual dispute throughout all of the pretrial litigation between Cleaver-Brooks and the Plaintiffs was the location of that single boiler at the Bowater facility. This is borne out by virtually every one of the Plaintiffs' pretrial representations to the Court regarding Cleaver-Brooks, including Plaintiffs' numerous responses in opposition to Cleaver-Brooks's motion for summary judgment (filed February 21, 2018, and March 8, 2018), and Plaintiffs' statements to the Court during multiple pretrial hearings. The Order should be vacated because it is based on a false premise that the number of Cleaver-Brooks boilers on site at Bowater was ever part of this case before the Plaintiffs changed their litigation strategy mid-trial to assert a never-before-disclosed "two boiler" theory.

3. The Plaintiffs failed to request records regarding Boiler Unit O-18344 at any point. Records regarding Boiler Unit O-18344 are not responsive to anything that the Plaintiffs ever asked of Cleaver-Brooks.[1] Cleaver-Brooks cannot be sanctioned for not producing documents that were never requested, and the Order should be altered or amended accordingly.

4. No motion requiring the production of documents regarding Boiler Unit O-18344 was ever brought, and no order compelling its production was ever entered. Cleaver-Brooks never violated any discovery order from the Court. Therefore, Rule 37(b), SCRCP, has no applicability here, and the Court cannot issue any sanctions against Cleaver-Brooks. The Order should be altered or amended accordingly.

5. The Plaintiffs' waived any objections regarding the timing of the production of records regarding Boiler Unit O-18344 because, first, they never requested those documents through any discovery device; second, the Plaintiffs, not Cleaver-Brooks, raised those issues in

[1] A copy of Cleaver-Brooks's responses to the Plaintiffs' Master Interrogatories and Requests for Production is attached as Exhibit A, and the Plaintiffs' notices of depositions of Cleaver-Brooks's corporate representative are attached as Exhibit B.

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trial; and third, Plaintiffs fully examined Cleaver-Brooks's witness about those documents at trial after production. This waiver should result in their motion being denied, and the Order should be altered or amended accordingly.

6. The Order is based on the assumption that if Cleaver-Brooks had produced records regarding Boiler Unit O-18344 in advance of trial (even though they were never requested), then a trial would have been unnecessary. But if this is true, then the Plaintiffs would have been under a professional obligation pursuant to Rule 11, SCRCP, and Rules 3.1 and 3.3 of the South Carolina Rules of Professional Conduct to immediately cease their case once Cleaver-Brooks did produce those (still never requested) records during trial. However, the Plaintiffs did not dismiss their case, and instead pressed on through a jury verdict. Thus, either the Order is based on an incorrect assumption, or it rewards the Plaintiffs for violating the foundational rules that govern lawyers and litigating legitimate claims. In either event, the Order should be altered, amended, and ultimately vacated.

7. Page 14 of the Order states that Cleaver-Brooks's "corporate representative admitted that Plaintiffs had requested the index cards at his deposition." This is simply not true, and the Order should be altered or amended accordingly.

8. Page 15 of the Order purports to state what "the jury understood the key issue" to be in the case, but the jury was not presented any special interrogatories to answer in the case. Accordingly, this statement in the Order is pure speculation by the Court, and the Order should be altered or amended to remove such improper speculation.

9. Page 16 of the Order states that the evidentiary exclusion of Cleaver-Brooks's records produced during trial to respond to brand new, never-before-disclosed arguments from the Plaintiffs is "not a sanction." This is inconsistent with Rule 37(b)(2)(B), SCRCP, which

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specifically identifies the exclusion of evidence as a discovery sanction. It is improper and a violation of due process to double-punish Cleaver-Brooks—especially when it did not commit any discovery violation in the first place—and the Order should be altered or amended to remove any award of attorneys' fees and costs, as the Court has already sanctioned Cleaver-Brooks by excluding evidence at trial.

10. Page 17 of the Order states that "a discovery sanction is warranted both to penalize Cleaver-Brooks and because Cleaver-Brooks continues to hide such documents in other cases . . . ." There is no basis for this statement in the record, nor is it correct in any event, and the Order should be altered or amended accordingly.

11. Page 19 of the Order acknowledges that the Plaintiffs did not timely serve affidavits in support of their requested attorneys' fees and costs, as required by Rule 6(d), SCRCP. The affidavits should be stricken from the record, and the Order should be vacated due to the lack of an evidentiary basis on which to award fees and costs.

12. There is no legitimate basis that the entirety of Plaintiffs' trial fees and costs can be attributed to Cleaver-Brooks's failure to disclose unrequested documents about an irrelevant boiler unit that was never located at Bowater. An award of ***any*** of Plaintiffs' fees and costs is incorrect as a matter of law, as the "American Rule" requires litigants to bear their own fees and costs absent a contract or statute that provides to the contrary, neither of which is present here. Moreover, an award of ***all*** of Plaintiffs' fees and costs is both incorrect as a matter of law and patently unreasonable, disproportionate, and inequitable compared to the purported basis of the award—less than one hour of trial time spent by Plaintiffs' counsel questioning a Cleaver-Brooks witness about the location of Boiler Unit O-18344, which was the first time that Plaintiffs' counsel asked these questions despite two pretrial depositions of Cleaver-Brooks's

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corporate representative. The Order should be altered or amended to eliminate any award of fees and costs to the Plaintiffs.

13. The Plaintiffs sought $95,435.16 in expenses. However, the Order awards them something other than this amount. Cleaver-Brooks disputed both the request for costs generally, as well specific individual expenses sought. There is no explanation at all in the Order regarding any analysis of the Plaintiffs' requested expenses, including what costs the Court disallowed and the basis for their disallowance, or what costs the Court allowed and the basis for their allowance. The Order should be altered or amended to account for this discrepancy between what costs the Plaintiffs requested and the costs that the Court awarded, and to explain why each cost was permitted, disallowed, or reduced in part. Again, though, an award of any costs is incorrect as a matter of law and is inequitable in all events.

14. Page 21 of the Order purports to award lost wages to Timothy Howe and Wende Myers—who is not even a party—for "taking time off from work for trial." There is no legal basis for such an award, and the Order should be altered or amended accordingly.

15. The Court never provided Cleaver-Brooks with an opportunity to conduct discovery regarding the reasonableness of the Plaintiffs' fees and costs. This is inconsistent with fundamental due process. The Order should be vacated accordingly and Cleaver-Brooks should be provided an opportunity to inquire into the unreasonably high fees and the costs that the Plaintiffs are seeking.

For the reasons explained above, and in Cleaver-Brooks's earlier filings, Cleaver-Brooks respectfully requests that the Court reconsider, alter, amend, and ultimately vacate its Order Granting Plaintiffs' Motion for Sanctions Against Cleaver-Brooks and, instead, award Cleaver-Brooks its costs, as it is entitled to the same as the prevailing party pursuant to Rule 54(e),

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SCRCP. The jury returned its unanimous verdict for Cleaver-Brooks after a full trial on the actual issue in dispute—namely, whether Wayne Ervin Howe had ever worked in the vicinity of the single Cleaver-Brooks boiler at the Bowater Paper Mill—and the judgment in the case should reflect this result alone.

Respectfully submitted,

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ATTORNEYS FOR CLEAVER-BROOKS, INC.

December 17, 2018

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Exhibit A

Cleaver-Brooks's Reponses to Plaintiffs' Master Interrogatories and Requests for Production

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STATE OF SOUTH CAROLINA COUNTY OF YORK	)))	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Wayne Ervin Howe, an individual, and Jeanette Howe, his spouse, Plaintiffs, v. Air & Liquid Systems Corp., et al., Defendants.	)))))))))))	Civil Action No. 2015-CP-46-03456 **RESPONSE OF DEFENDANT CLEAVER-BROOKS, INC. TO PLAINTIFFS' MASTER INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Defendant Cleaver-Brooks, Inc. ("Cleaver-Brooks") responds to Plaintiffs' Master Interrogatories and Requests for Production (collectively, "Requests") as follows:

PRELIMINARY STATEMENT

Since the 1930s, Cleaver-Brooks has designed, manufactured, sold and distributed over 120,000 boilers and ancillary equipment of different styles, types, sizes, horsepower, pressures, fuel types and configurations. At certain times during the 1950s to 2006, Cleaver-Brooks also manufactured water purification and related ancillary equipment. At various times in its history, individual pieces of equipment manufactured and sold by Cleaver-Brooks may have contained one or more parts or components that had some asbestos content. Each and every such asbestos-containing part or component was manufactured by companies other than Cleaver-Brooks and was purchased by Cleaver-Brooks on the open market.

Boiler design was a continuing process at Cleaver-Brooks and the design of various parts, components, subassemblies and other elements of boilers was constantly changing. Many of the parts and components of the boilers were manufactured by others and the identity of those manufacturers frequently changed as did the design and manufacture of those various products. Further, each Cleaver-Brooks boiler is configured to the unique specifications and requirements of each customer. For all of these reasons, each Cleaver-Brooks boiler is unique.

With respect to water purification and related ancillary equipment, that equipment manufactured for use on U.S. Navy ships was manufactured pursuant to strict military specifications. Other equipment was manufactured pursuant to commercial specifications. It is

possible the specifications for various pieces of equipment may have changed from time to time, so that not all such equipment was the same.

It may be possible to determine whether an individual piece of Cleaver-Brooks equipment contained one or more asbestos-containing parts or components but there is only one way for Cleaver-Brooks to do this from the records in its possession, and that process is difficult and typically extremely time-consuming. Not all of the drawings and parts descriptions for an individual piece of equipment are found in one place. In order to locate all of the drawings and parts descriptions used in the manufacture of an individual boiler, once identified from index card or by unit number, the only way is to begin with the commercial records regarding the sale of that particular boiler. Those records will then reference one or more drawings for that particular boiler. From this drawing(s) it is possible to find references to one or more other drawings used in the construction of that boiler. The commercial records, drawings, parts descriptions and other boiler documents comprise a matrix of roughly twelve million documents.

The vast majority of records, drawings, manuals and specifications, if any, for water purification and ancillary equipment are not in the possession of Cleaver-Brooks but are in the possession of third parties. Drawings and parts descriptions for water purification and ancillary equipment in Cleaver-Brooks' possession require sufficient information to identify that individual piece of equipment to be located. It then may be possible to find a high level drawing for a particular piece of equipment from the vast collection of drawings, which are organized by drawing numbers, and other documents.

From high level drawings for boilers, water purification and related ancillary equipment; it is possible to find references to one or more other drawings. It is then necessary to review various iterations of that drawing number in order to determine the specific iteration that was used in the construction of the equipment in question. When that iteration is correctly identified, it will provide reference to one or more further drawing numbers. This process must be repeated over and over again until several hundred drawings and parts descriptions have been correctly identified and located. Moreover, the drawings are stored on microfiche and must be reviewed on a microfiche reader. Thus, while the initial identification of a boiler from index cards or by unit number is not overly burdensome, the process of compiling the drawings and parts

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descriptions actually used in the manufacture of a particular piece of equipment takes a trained and experienced person approximately 35-40 hours to complete. If copies of the drawings or parts descriptions are to be made, the process takes a great deal more time (at least 50 hours total and perhaps twice that long). When those materials have been assembled and reviewed, it may be possible to determine whether that particular piece of equipment had one or more asbestos-containing parts and components when originally constructed.

This search will not, however, determine whether any other piece of Cleaver-Brooks equipment contained any asbestos-containing parts or components. To make that determination, the process must be repeated for each individual piece of equipment at the original or any subsequent job site.

Based upon experience in this type of review, it may well not be possible to determine the manufacturer or manufacturers of the asbestos-containing parts or components, if any, or the seller or sellers of those asbestos-containing parts or components, if any, in any individual piece of equipment. Additionally, the manufacturers of any asbestos-containing parts and components removed asbestos from their products at times and for reasons unknown to Cleaver-Brooks.

These responses were prepared with the assistance of counsel and are based upon information obtained from presently existing records and current and former employees over a long period of time. Some of the matters inquired about occurred many decades ago. Some information or documents may be incomplete or no longer available due to the passage of time. Cleaver-Brooks cannot exclude the possibility that additional information and/or review may reveal that a response is incomplete or inaccurate. Cleaver-Brooks expressly reserves the right to supplement or amend these responses when and if additional relevant information or documentation is discovered.

Cleaver-Brooks does not concede that any documents produced are or will be admissible evidence at a trial of this action, and Cleaver-Brooks does not waive any objection, on any ground, whether or not asserted herein, to the use of any such document at trial.

Any reference to Cleaver-Brooks shall also mean Cleaver Brooks Company from 1931 to 1967, Aqua-Chem, Inc. from 1967 to 2006 and Cleaver-Brooks, Inc. thereafter.

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Any and all information, technical data, drawings or defense services documentation related to articles on the U.S. Munitions List or related to contracts or projects for or with the U.S. Government are confidential and are subject to export control under the International Traffic in Arms Regulation (title 22, code of Federal Regulations, Parts 120-130). As such, any information produced in conjunction with this ligation will not be further disclosed, exported, or transferred in any manner to any foreign national or any foreign country without prior written approval of the Office of Defense Trade Controls, U.S. Department of State and in accordance with U.S. government security (National Industrial Security Program Operating Manual) and customs regulations.

The following General Objections are incorporated into each of the following responses:

GENERAL OBJECTIONS

1. Cleaver-Brooks objects to each Request that relates to periods of time, geographical areas, or activities outside the scope of the allegations of the complaint in any particular action on the grounds that the Request is overly broad, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. It would impose an unnecessary burden on Cleaver-Brooks to search out, review, organize and produce information and documents not related to any issue in a given case. Further, requiring Cleaver-Brooks to produce information without limitation to the particular facts of a case improperly shifts Plaintiffs' burden of proof to Cleaver-Brooks.

2. Cleaver-Brooks objects to each Request to the extent it purports to create and/or impose obligations upon it beyond those contemplated by the South Carolina Rules of Civil Procedure.

3. Cleaver-Brooks objects to each Request requesting information, without the protection of an appropriate protective order, consisting of a trade secret, proprietary information, customer information, confidential financial data or other confidential research, development, or commercial information or personal privacy information of a person not a party to this litigation and for which proper authorizations have not been obtained.

4. Cleaver-Brooks objects to each and every Request to the extent it calls for information that is protected by the attorney-client privilege, work product doctrine, joint defense privilege, common interest doctrine or any other available privileges.

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5. Cleaver-Brooks objects to each Request to the extent it requests information that does not exist or is not currently in the possession and/or control of Cleaver-Brooks.

6. Cleaver-Brooks objects to each Request seeking corporate knowledge because it is impossible for Cleaver-Brooks to set forth a collective knowledge of Cleaver-Brooks employees, past and present. Therefore, the Answers provided are based on the information presently known by Cleaver-Brooks. Cleaver-Brooks' investigation is ongoing and it is possible that information may be discovered that modifies the information set forth herein. Cleaver-Brooks reserves the right to supplement and/or amend any responses herein based upon subsequently discovered information.

7. Cleaver-Brooks objects to any Request that seeks confidential and privileged health information without the proper HIPAA-compliant authorization forms or protection of an appropriate protective order.

8. Cleaver-Brooks objects to each Request to the extent it is so broad, uncertain and unintelligible that Cleaver-Brooks cannot determine the nature of the information sought, and to which Cleaver-Brooks is, therefore, unable to respond.

9. Any Request that is not limited in time and scope to the particular facts of a given case, by definition calls for irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. It also poses an unreasonable burden on Cleaver-Brooks in the expenditure of time and money.

10. Cleaver-Brooks objects to each Request to the extent it seeks information from Cleaver-Brooks about any entity other than Cleaver-Brooks. Cleaver-Brooks objects to Plaintiffs' attempt to enlarge the scope of this litigation beyond this Defendant by requesting information concerning "predecessors," or the like, or by seeking any information from any entity other than this Defendant. Defendant has been named in this litigation in its own capacity, and there have been no allegations concerning any alleged liability for any other entity. Defendant shall respond accordingly solely on its behalf.

11. Cleaver-Brooks objects to any Request to the extent that Plaintiffs have failed to identify a particular Cleaver-Brooks product(s) at issue as irrelevant, unfair and unreasonable and an improper attempt to shift Plaintiffs' burden of proof to Cleaver-Brooks.

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12. Cleaver-Brooks objects to each Request that requests information equally available to Plaintiffs as to Cleaver-Brooks.

13. Cleaver-Brooks objects to each Request to the extent the required good cause or substantial need, as dictated by applicable statutes, court rules and case law, has not been shown for the information requested.

14. Cleaver-Brooks objects to each Request to the extent it seeks "trial preparation" materials as specified in Rule 26 of the South Carolina Rules of Civil Procedure.

Subject to the foregoing Preliminary Statement and General Objections, which are specifically incorporated into each of the following responses, Cleaver-Brooks responds as follows:

RESPONSE TO PLAINTIFFS' MASTER INTERROGATORIES AND REQUESTS FOR PRODUCTION

1. Identify the registered name of the answering Defendant as well as all prior names or predecessor entities by which the Defendant has existed. For each give the current address and the state of incorporation and whether or not it is an active corporation.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver Brooks' direct history started with Cleaver Brooks Company, which was incorporated in 1931. In 1967, Cleaver Brooks Company was merged with and into its then subsidiary, Aqua-Chem, Inc. From 1967 until April 2006, Cleaver-Brooks operated as a division of Aqua-Chem, Inc. As of April 20, 2006, Aqua-Chem, Inc. changed its name to Cleaver-Brooks, Inc. Cleaver-Brooks, Inc. is an active corporation currently organized under the laws

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of the State of Delaware, with its current principal place of business at 221 Law Street, Thomasville, Georgia 31792.

2. Set forth the full and correct name, the principle place of business, and the state and date of incorporation of the answering Defendant.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds that its full legal name is "Cleaver-Brooks, Inc." In further response, please see Response to Interrogatory No. 1.

3. Identify all divisions, subsidiaries or affiliated companies to the answering Defendant.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure and is vague, ambiguous, and overbroad. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

4. For each entity or division listed in response to #3, state whether or not it ever has or presently engages in any phase of mining, manufacturing, sale, supply, distribution, or design of asbestos or asbestos-containing products.

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RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure and is vague, ambiguous, and overbroad. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

5. With respect to each division, subsidiary or company listed in #4, identify the nature and extent of its function during the period of time it was in existence.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects that this Request is vague, ambiguous, and overbroad. Cleaver-Brooks further objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks further objects to the undefined term "nature and extent of its function" as confusing, overly broad, vague, and ambiguous. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

6. Has this answering Defendant been sued under its correct name? If not, please state the correct legal name of the Defendant and provide the information requested in Interrogatory #1 above concerning the Defendant as correctly named.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds that its full legal name is "Cleaver-Brooks, Inc."

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7. Please state whether or not you have ever held a certificate of authority to do business in this state and the addresses for your registered agents for service in that state.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks further objects that Request is vague, ambiguous, and overbroad and calls for a legal conclusion. Subject to the foregoing objections and without waiver, and while additional documents may be discovered which modify this response, Cleaver-Brooks does not believe it has ever held a "certificate of authority" to do business in South Carolina to its understanding of the term. Nor does Cleaver-Brooks believe it maintains an agent for service of process in South Carolina.

8. Have you ever mined asbestos?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is argumentative, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds: No.

9. If the answer to the previous interrogatory is "yes", please state the dates in which you were involved in mining of asbestos, and the location of your mines.

RESPONSE:

Not applicable.

10. Have you ever sold raw asbestos fiber to any of the Co-Defendants? If so, in what years and in what quantities did you make such sales?

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RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague and ambiguous, argumentative, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks has identified no information responsive to this Request. Discovery and investigation are ongoing and Cleaver-Brooks reserves the right to supplement or amend this response.

11. As to any product containing asbestos in any form or quantity, has this Defendant ever:

(a) designed such a product;

(b) manufactured such a product;

(c) processed such a product;

(d) sold such a product;

(e) distributed such a product;

(f) relabeled such a product manufactured or designed by another;

(g) held a patent for such a product.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague and ambiguous,

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compound, argumentative, unduly burdensome, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

Subject to the foregoing objections and without waiver, although Cleaver-Brooks' investigation into these matters is ongoing and information may be identified that modifies the following response, on information and belief, since the 1930s, Cleaver-Brooks has designed, manufactured, sold and distributed over 120,000 boilers and ancillary equipment of different styles, types, sizes, horsepower, pressures, fuel types and configurations. At certain times from approximately the 1950s to 2006, Cleaver-Brooks also manufactured water purification and ancillary equipment. Equipment manufactured and sold by Cleaver-Brooks may have contained one or more parts or components which had some asbestos content at certain times including board, cement, gaskets, rope, packing, or insulating material. Based upon a review of relevant documents, Cleaver-Brooks may have incorporated products manufactured or sold by the following companies in particular boilers: Johns-Manville, Garlock, Thermo-Pac, John-Crane, Flexitallic, Lebanon Gasket & Seal, A.P. Green, Albion Asbestos Packing Ltd., American Asbestos Rubber Co., American Gasket Co., Eagle-Picher, Firebrick Engineering Co., Harbison-Walker, Honeywell, Kaiser, Mex Arco, Union Asbestos & Rubber Co., Durametallic, and possibly others. The vast majority of asbestos-containing parts or components included in a Cleaver-Brooks product would be internal parts or components, all manufactured by companies other than Cleaver-Brooks and purchased by Cleaver-Brooks to fulfill specific requirements of form and function in its own products, not necessarily for chemical composition. Cleaver-Brooks relied upon the

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manufacturers of those parts and components to determine the composition of those parts and components necessary to meet the form and function requirements for incorporation into a Cleaver-Brooks boiler. The manufacturers of those parts and components removed asbestos from their products at various times and for reasons unknown to Cleaver-Brooks, however, in 1989, Cleaver-Brooks confirmed that the manufacturers of those parts and components no longer used asbestos in their products, which is not to suggest that such products necessarily contained asbestos up to 1989. Moreover, because Cleaver-Brooks was not necessarily advised when the manufacturers of parts and components removed asbestos from their products, Cleaver-Brooks parts descriptions, engineering drawings, purchase orders, invoices and other documents may have continued to include references to "asbestos" when the part or component described did not actually contain asbestos. Purchase orders and invoices, for example, were created using Cleaver-Brooks parts descriptions and drawings, which were not necessarily updated contemporaneously when third party manufacturers removed asbestos from their products. Additionally, many parts descriptions and drawings were not used regularly, and may not have been "updated" even after 1989. Water purification equipment manufactured for the Navy was built in accordance with strict military specifications that, in some instances, required the use of asbestos containing components.

Although Cleaver-Brooks did not manufacture or rebrand asbestos-containing parts, Cleaver-Brooks customers could order replacement parts including board, cement, packing, gaskets, rope, and insulating material, which Cleaver-Brooks purchased from third parties and which may have, at some times, contained asbestos. While these products were available from Cleaver-Brooks at certain times, such after-market products could also be purchased direct from suppliers and thus were not always purchased from Cleaver-Brooks.

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Each Cleaver-Brooks boiler is unique and not all water purification or ancillary equipment was the same. There is, therefore, no general list of asbestos-containing parts that would apply to all Cleaver-Brooks products. Further, based upon experience in this type of review, it may well not be possible to determine the manufacturer or manufacturers of the asbestos-containing parts or components, if any, or the seller or sellers of those asbestos-containing parts or components, if any, in any individual product. Nor would Cleaver-Brooks necessarily be privy to the type, amount or weight of asbestos used by the manufacturers of any asbestos-containing parts and components or to the reasons or dates those manufacturers removed asbestos from their products. Discovery and investigation are ongoing and Cleaver-Brooks reserves the right to supplement or amend this response.

12. If the answer to the previous interrogatory or any subpart thereof was in the affirmative, please state the following information about each product:

(a) the manufacturer of the product;

(b) the designer of the product;

(c) the supplier of the raw asbestos fiber used in the product;

(d) the dates or its manufacture or sale by the answering Defendant;

(e) the percentage of asbestos content of the product;

(f) the type of asbestos used in the manufacture of the product.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, compound, argumentative, unduly burdensome, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in

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evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 11.

13. In what year did the answering Defendant first begin selling or distributing asbestos-containing products? Please be specific for each asbestos-containing product manufactured, sold or distributed by you.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, argumentative, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See Cleaver-Brooks' Preliminary Statement and response to Request No. 11.

14. In what year did the answering Defendant last sell, distribute or manufacture an asbestos-containing product? Please be specific for each asbestos-containing product.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil

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Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, argumentative, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 11.

15. For each asbestos-containing product manufactured and/or distributed by you, state:

(a) the brand name of the product and the inclusive years of its manufacture and/or distribution;

(b) the asbestos content by weight of each product for each year;

(c) the type of asbestos fiber used in each product;

(d) the application for which such product was advertised or sold;

(e) the temperature ranges for the products used;

(f) whether the product was a cement, a pipe covering, a cloth or other type of thermal insulation product.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, compound, argumentative, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. As there is no evidence

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that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 11.

16. Describe each product as to its color and physical characteristics and appearances.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. Cleaver-Brooks further objects because it is not clear about which "product(s)" this Request seeks information, making this Request vague and ambiguous. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 11.

17. As to each product, state how such product was packaged or supplied.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is overly broad in time and

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scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. Cleaver-Brooks further objects because it is not clear about which "product(s)" this Request seeks information, making this Request vague and ambiguous.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 11. Responding further, Cleaver-Brooks states that its equipment was typically sold directly to the customer, often pursuant to sales orders solicited by independent sales representatives. Although its products may have been covered for protection during shipping, Cleaver-Brooks does not ship its products with any sort of "package" as it understands the term. Discovery and investigation are ongoing and Cleaver-Brooks reserves the right to modify this response if additional information is identified.

18. Does the answering Defendant claim that any patent would cover any product listed in response to the interrogatories above? If so, give the number of the patent, the date same was issued and the number of each patent application that is pending.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is

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irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

19. For such asbestos-containing product manufactured or designed by you, please state the specific batching requirements for that product.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. Cleaver-Brooks further objects to the undefined term "batching requirements" as vague and ambiguous. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks has at certain times manufactured boilers, water purification, and ancillary equipment, all of which was manufactured in accordance with customer specifications; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Answering further, Cleaver-Brooks is not aware of any batching requirements as it did not utilize any batching method. Discovery and investigation are ongoing and Cleaver-Brooks reserves the right to supplement or amend this Response.

20. State the time period each particular batching requirement was followed and any changes that were made.

RESPONSE:

Not applicable.

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21. For each asbestos-containing product that you manufactured, please set forth the supplier of the raw asbestos fiber used for that product.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects to the undefined term "asbestos-containing products" as overly broad, vague, and ambiguous. Cleaver-Brooks has at certain times manufactured boilers, water purification, and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Cleaver-Brooks further objects that this Request assumes facts not in evidence.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 11.

22. As to each product mentioned above, identify the following:

(a) any pertinent trademark that was applicable to the product during any time of its sale;

(b) the label on the packaging of that particular product for each year of its manufacture;

(c) all sales brochures, specification sheets, performance data or other promotional material, as well as any and all installation materials, data or brochures which would have accompanied or been distributed in

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connection with the installation, application or use of each of the products listed above;

(d) The advertised use of the product (as to this interrogatory, you may provide a copy of the document in lieu of describing the same).

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. Cleaver-Brooks further objects because it is not clear about which "product(s)" this Request seeks information, making this request vague and ambiguous. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 11.

23. For each document listed or described above, please indicate the name or the names of the individuals having custody of said documents or copies thereof, and where they are located.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the

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discovery of admissible evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 11. Responding further, to the extent relevant, non-privileged, and non-confidential information is available for a particular product for which there is evidence that Plaintiff was exposed, if any, most of Cleaver-Brooks' boiler-related documents are maintained in its facilities and most of Cleaver-Brooks' documents related to water purification equipment are in the possession of third parties as more fully set forth in the Preliminary Statement.

24. Please describe in detail the method for disbursement and sale of each asbestos-containing product manufactured, designed or distributed by the answering Defendant.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. Cleaver-Brooks further objects to the undefined term "disbursement" as vague and ambiguous. Cleaver-Brooks further objects to the undefined term "asbestos-containing products" as overly broad, vague, and ambiguous. Cleaver-Brooks has at certain times manufactured boilers, water purification, and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold.

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As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See responses to Request Nos. 11 and 17.

25. Have any of the products listed in the answer to Interrogatories Nos. 12, 13 and 16 above been altered in chemical composition or asbestos type or content since their first being marketed?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 11.

26. If so, please state:

(a) the trade name of each such product;

(b) the date such product was altered;

(c) the nature of that alteration;

(d) the reason for the alteration;

(e) what person has knowledge concerning the alterations.

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RESPONSE:

Not applicable.

27. Identify all sales literature including brochures, advertisements, pamphlets or other material describing each asbestos-containing product manufactured by you beginning in 1925 and coming forward to date.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is argumentative, vague, overly broad and unduly burdensome. Defendant further objects that this Request is vague and argumentative to the extent that it assumes that Cleaver-Brooks manufactured, marketed, and/or sold "asbestos-containing products," which term is undefined. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request mischaracterizes Cleaver-Brooks as a manufacturer of "asbestos-containing products," which is inaccurate, misleading and argumentative.

As set out in the Preliminary Statement, Cleaver-Brooks has sold more than 120,000 boilers over the last eight decades as well as water purification and ancillary equipment. It is impossible for Cleaver-Brooks to provide the information requested for every piece of equipment it has sold without limitation. Further, as there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, although Cleaver-Brooks investigation into these matters is ongoing and information may be identified which modifies this

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response, on information and belief, Cleaver-Brooks did advertise in trade or industry publications from time to time; however, Cleaver-Brooks maintains no archive of historical files with regard to advertising or promotional activities. Discovery and investigation are ongoing and Cleaver-Brooks reserves the right to supplement or amend this Response.

28. Prior to 1960, did you conduct any tests concerning the health consequences of the use of your asbestos-containing product?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, calls for speculation, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects to the undefined terms "asbestos-containing products" and "health consequences" as overly broad, vague, and ambiguous. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request mischaracterizes Cleaver-Brooks as a manufacturer of "asbestos-containing products," which is inaccurate, misleading and argumentative.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. This Request is also vague and overly broad in its use of the term "tests" and argumentative in that it assumes Cleaver-Brooks had a duty to conduct any such tests after the equipment left Cleaver-Brooks' possession and was installed at

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premises owned or operated by third parties over whom Cleaver-Brooks had no control. Subject to the foregoing objections and without waiver, although Cleaver-Brooks' investigation is ongoing and information may be identified that modifies the following response, Cleaver-Brooks has identified no information responsive to this Request.

29. Prior to 1960, did you conduct any tests concerning the health consequences related to the manufacture of your asbestos-containing product?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, calls for speculation, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects to the undefined terms "asbestos-containing products" and "health consequences" as overly broad, vague, and ambiguous. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request mischaracterizes Cleaver-Brooks as a manufacturer of "asbestos-containing products," which is inaccurate, misleading and argumentative.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. This Request is also vague and overly broad in its use of the term "tests" and argumentative in that it assumes Cleaver-Brooks had a duty to conduct any such tests or studies. Subject to the foregoing objections and without waiver, although Cleaver-Brooks' investigation is ongoing and information may be identified that modifies

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the following response, on information and belief, Cleaver-Brooks has identified no information responsive to this Request.

30. Do any written memoranda, specifications, recommendations or other written materials of any kind or character related to the testing of said products exist?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, calls for speculation, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request mischaracterizes Cleaver-Brooks as a manufacturer of "asbestos products," which is inaccurate, misleading and argumentative.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. This Request is also vague and overly broad in its use of the term "testing" and argumentative in that it assumes Cleaver-Brooks had a duty to conduct any such tests or studies. Cleaver-Brooks further objects to the extent this Request seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, and any other applicable privilege or protection. Subject to the foregoing objections and without waiver, although Cleaver-Brooks' investigation is ongoing and information may be identified that modifies the following

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response, on information and belief, Cleaver-Brooks has identified no information responsive to this Request.

31. If so, please state:

(a) identify each such written material or document;

(b) who presently has possession of each such document and where is it located?

RESPONSE:

Not applicable.

32. Have you conducted any tests concerning the health consequences of the use of your product between 1960 and 1975 or the date that the asbestos content was removed from the product, whichever in the later.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, calls for speculation, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request mischaracterizes Cleaver-Brooks as a manufacturer of "asbestos products," which is inaccurate, misleading and argumentative.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, Plaintiffs' Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. This Request is also vague and overly broad in its use of the terms

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"tests" and "health consequences" and argumentative in that it assumes Cleaver-Brooks had a duty to conduct any such tests or studies. Cleaver-Brooks further objects to the extent this Request seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, and any other applicable privilege or protection. Subject to the foregoing objections and without waiver, although Cleaver-Brooks' investigation is ongoing and information may be identified that modifies the following response, on information and belief, Cleaver-Brooks has identified no information responsive to this Request.

33. If so, please state:

(a) what tests were done;

(b) who was responsible for conducting the tests;

(c) what the results of the tests were;

(d) identify any documents concerning the tests.

RESPONSE:

Not applicable.

34. When did the asbestos-containing products manufactured by you first contain any warning or caution concerning the health consequences of the use of the product or the breathing of asbestos dust?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, compound, calls for speculation, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks also objects that the terms "caution" and "health consequences" are vague and ambiguous. Cleaver-Brooks further objects to the

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undefined term "asbestos-containing products" as overly broad, vague, and ambiguous. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request mischaracterizes Cleaver-Brooks as a manufacturer of "asbestos-containing products," which is inaccurate, misleading and argumentative.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, responsive statements about health may have been included in the technical manual that accompanied equipment sold by Cleaver-Brooks, though Cleaver-Brooks is unaware of any related to asbestos. Answering further, although Cleaver-Brooks' investigation is ongoing, Cleaver-Brooks did stamp certain invoices with the following:

ASBESTOS GASKET MUST BE INDIVIDUALLY PACKAGED IN PERMANENTLY SEALED PLASTIC CONTAINERS & TAGGED:

"CAUTION"
CONTAINS ASBESTOS FIBERS
AVOID BREATHING DUST - BREATHING
ASBESTOS DUST MAY CAUSE SERIOUS BODILY HARM

Cleaver-Brooks reserves the right to supplement this response if additional responsive information is identified.

35. For each such product, please state:

(a) the wording of each warning or caution;

(b) the description of each such printed warning or caution;

(c) the method used to distribute the warning to persons who were likely to use the products;

(d) the date each such warning was issued;

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(e) the name, address and job classification of each person who presently has possession of the above-described warning or caution;

(f) identify the warning or caution by date and content;

(g) state whether any industrial psychologist or human factors engineers were consulted prior to utilizing such warnings or cautions;

(h) identify any special instructions provided with each product regarding its use or safety procedures to be employed by persons handling such product.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, compound, calls for speculation, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks also objects that the terms "caution" and "special instructions" are vague and ambiguous. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See Response to request No. 34.

36. For any warning ever provided on an asbestos-containing product manufactured or distributed by you, please state:

(a) when the warning first appeared;

(b) what was the precise wording of the warning when it first appeared;

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(c) was the warning ever altered, amended or changed in any manner and, of so, how and when;

(d) where was the warning located on the product or packaging.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, compound, duplicative of Request No. 34, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects to the undefined term "asbestos-containing products" as overly broad, vague, and ambiguous. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request mischaracterizes Cleaver-Brooks as a manufacturer of "asbestos-containing products," which is inaccurate, misleading and argumentative.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 34.

37. When did you first become aware that warnings were placed on products distributed by other Defendants?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information

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that is not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence and calls for speculation. Cleaver-Brooks also objects to the extent this Request seeks documents protected from disclosure by the attorney-client privilege, the work product doctrine, the common interest doctrine, and the consulting expert privilege. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

38. State the manner in which each of your products was shipped and the type of container it was shipped in to the retailers.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information that is not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence and calls for speculation. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 17.

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39. When, if ever, did you specifically inform the purchaser or user of your products that contained asbestos that the use of that product or exposure to asbestos dust could cause cancer, asbestosis or other serious diseases? Please identify the document containing this information by date and location.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, compound, duplicative, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence and calls for speculation. Cleaver-Brooks also objects that the terms "inform," "cancer," and "other serious diseases" are overbroad, vague, and ambiguous.

Cleaver-Brooks further objects to the undefined term "products that contain asbestos" as overly broad, vague, and ambiguous. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request mischaracterizes Cleaver-Brooks as a manufacturer of "products that contained asbestos," which is inaccurate, misleading and argumentative. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

40. Identify any and all labeling or relabeling agreements in existence since 1925 between you and any other person including Co-Defendants.

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RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks also objects that the terms "labeling" and "relabeling agreements" are vague and ambiguous. Cleaver-Brooks further objects that this Request assumes facts not in evidence and calls for speculation.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds that it is not aware of any "labeling or relabeling agreements." Discovery and investigation are ongoing and Cleaver-Brooks reserves the right to supplement or amend this response.

41. Did you sell any of your products containing asbestos fibers or any raw fiber to any of the companies named as Co-Defendants in this suit?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, compound, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence and calls for speculation. Cleaver-Brooks further objects to the undefined term "products

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containing asbestos" as overly broad, vague, and ambiguous. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request mischaracterizes Cleaver-Brooks as a manufacturer of "products containing asbestos fibers" or seller of "any raw fiber," which is inaccurate, misleading and argumentative.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 11.

42. If so, please state:

(a) the name, address and job classification of each individual who currently has possession of such knowledge, either by documents or records;

(b) please list the names of each Co-Defendant to whom your products have been sold;

(c) please state the dates of each such sale and the amount and kind of materials sold.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, compound, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence and calls for speculation. As there is no evidence that Plaintiff or any identified witness worked with or in the

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vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 11.

43. State whether your company manufactured asbestos-containing insulation products for a Co-Defendant and placed the Co-Defendant's labels, logos, or insignia on said products and list each such Co-Defendant.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request mischaracterizes Cleaver-Brooks as a manufacturer of "asbestos-containing insulation products," which is inaccurate, misleading and argumentative.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks states that it is not aware of any responsive information. Discovery and investigation are ongoing and Cleaver-Brooks reserves the right to supplement or amend this response.

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44. Has this Defendant ever acquired another corporation, company or business which manufactured, sold, processed, distributed or contracted to apply insulation products containing asbestos.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, compound, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds that it has not identified any acquisition of an entity that was an insulation contractor as it understands this Request. Discovery and investigation are ongoing and Cleaver-Brooks reserves the right to supplement or amend this response.

45. If the answer to the above interrogatory is yes, please state the following concerning such other entity:

(a) the full and correct name;

(b) the principle place of business;

(c) the state of incorporation;

(d) the date of its acquisition by you;

(e) the products that the other entity manufactured, distributed, sold or used.

RESPONSE:

Not applicable.

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46. Did you ever stamp or imprint the name of your company, its initials or any identifying logo on any of your asbestos-containing products? If so, please describe the identifying logo or initials and the dates of its inclusion on the product and the product on which it was included.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous compound, calls for speculation, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects to the undefined term "asbestos-containing products" as overly broad, vague, and ambiguous. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request describes products as "your asbestos-containing products," which is inaccurate, misleading and argumentative.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections, each Cleaver-Brooks boiler bore the name "Cleaver-Brooks," but each boiler did not necessarily include asbestos-containing components. Discovery and investigation are ongoing and Cleaver-Brooks reserves the right to supplement or amend this response.

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47. As the date of your answers to these interrogatories, is your company still manufacturing, selling or distributing any asbestos-containing products? If so, give the brand names of each said product.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, argumentative, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. Cleaver-Brooks further objects to the undefined term "asbestos-containing products" as overly broad, vague, and ambiguous. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request mischaracterizes Cleaver-Brooks as a manufacturer, seller, or distributor of "asbestos-containing products," which is inaccurate, misleading and argumentative.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: No. By way of further response, see response to Request No. 11.

48. For each product identified as being manufactured, sold or distributed by you in interrogatories 12, 13, or 16, state whether or not:

(a) you have actual containers or photographs of containers in which said products were sold or distributed;

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(b) who is the custodian or keeper of said containers or photographs including their address and telephone number.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, compound, argumentative, unduly burdensome, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks states that while its products may have been covered for protection during shipment, they were not sold in containers.

49. From what source or sources did you obtain raw asbestos fiber beginning in 1940 and going to date, on a yearly basis?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is duplicative, argumentative, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is a prohibited fishing expedition impermissibly designed to shift the burden of

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proof. Subject to the foregoing and without waiver, Cleaver-Brooks has not identified information responsive to this Request. Discovery and investigation are ongoing and Cleaver-Brooks reserves the right to supplement or amend this response.

50. State whether or not any warnings, cautions, caveats, or directions accompanied the raw asbestos fiber referred to in the previous interrogatory and identify the nature and extend of said warnings, cautions, caveats or directions accompanying said fiber.

RESPONSE:

Not applicable.

51. State what date said warnings, cautions, caveats or directions first appeared on the mined asbestos fiber.

RESPONSE:

Not applicable.

52. If you have discontinued manufacturing and/or selling asbestos products, please state the reason or reasons therefore.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, compound, partially duplicative of other discovery, argumentative, unduly burdensome, over broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. Cleaver-Brooks further objects to the undefined term "asbestos products" as overly broad, vague, and ambiguous. Cleaver-Brooks has at certain times manufactured boilers, water purification, and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold.

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As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to and without waiving said objections, Cleaver-Brooks does not manufacture or sell any products that include an asbestos component today. Although Cleaver-Brooks' investigation is ongoing and information may be identified that modifies the following response, since its inception, Cleaver-Brooks has designed, manufactured, sold and distributed over 120,000 boilers of different styles, types, sizes, horsepower, pressures, fuel types and configurations. At certain times from the 1950s to 2006, Cleaver-Brooks also manufactured water purification and ancillary equipment. Equipment manufactured and sold by Cleaver-Brooks may have contained one or more parts or components that had some asbestos content at certain times. The vast majority of asbestos-containing parts or components included in a Cleaver-Brooks product would be internal parts or components, manufactured by companies other than Cleaver-Brooks and purchased by Cleaver-Brooks to fulfill specific requirements of form and function in its own products, not necessarily for chemical composition. Cleaver-Brooks relied upon the manufacturers of those parts and components to determine the composition of those parts and components necessary to meet the form and function requirements for incorporation into a Cleaver-Brooks boiler. The manufacturers of those boiler parts and components removed asbestos from their products at times and for reasons unknown to Cleaver-Brooks; however, in 1989, Cleaver-Brooks confirmed that the manufacturers of those parts and components no longer used asbestos in their products, which is not to suggest that such products necessarily contained asbestos up to 1989. Discovery and investigation are ongoing and Cleaver-Brooks reserves the right to supplement or amend this response.

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53. When was the first time that you received notice that any person was claiming an injury as the result of using asbestos-containing products manufactured and/or sold by your company?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is irrelevant, overly broad, unduly burdensome, vague, harassing, argumentative, and not reasonably calculated to lead to the discovery of admissible evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is a prohibited fishing expedition impermissibly designed to shift the burden of proof.

Cleaver-Brooks further objects that this Interrogatory is vague and argumentative to the extent that it assumes that Cleaver-Brooks manufactured and/or sold "asbestos-containing products," which term is undefined. This Request is also improper as it calls for confidential and privileged health information without the proper HIPAA-compliant authorization forms or a protective order. Subject to the foregoing objections and without waiver, although Cleaver-Brooks' investigation into such matters is ongoing and information may be identified that modifies the following response, Cleaver-Brooks has no information that it was named as a defendant in an asbestos-related personal injury case prior to 1985 with the exception of one claim in 1979.

54. For each such injury that you received notice of or a claim for prior to 1970, please list:

(a) the name and address of each claimant;

(b) the date of the notice of each claim;

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(c) a description of the claim (i.e. workman's compensation or a third party liability action);

(d) the type of injury allegedly sustained;

(e) the name and address of each attorney who represents individuals making such claims;

(f) the style and court number of each claim;

(g) the resolution of each claim that has been disposed of;

(h) the custodian of the records that relate to the claim (in lieu of answering the above question, you may attach copies of any and all claims).

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is irrelevant, overly broad, unduly burdensome, vague, harassing, argumentative, and not reasonably calculated to lead to the discovery of admissible evidence. This Request is also improper as it calls for confidential and privileged health information without the proper HIPAA-compliant authorization forms or a protective order. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, not applicable. See Response to Request No. 53.

55. Do you contend that insulation products containing asbestos can be manufactured or treated so as to eliminate all potential health hazards to workers installing the same? If so, please explain in detail what your contentions are and the basis for each contention.

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RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request seeks an expert opinion and is vague, ambiguous, compound, argumentative, unduly burdensome, overly broad in time and scope, and thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds that it is not qualified to render opinions with regard to medical and/ or industrial hygiene subjects and defers to its experts on all such matters.

56. Did you receive any reports or communications from your workman's compensation insurance carrier or products liability insurance carrier with regard to the hazards incident to the use of asbestos-containing insulation products? If so, please state who has possession of the contents of such reports, the location of such reports and the substance of the contents of such reports, listing for each such report the respective insurance company, its address, the agents signing such correspondence and the date of such notice or report.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, compound, argumentative, unduly burdensome, overly broad in time and scope, and

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thus irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. Cleaver-Brooks also objects that the terms "reports" and "communications" are overbroad, vague, and ambiguous.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Further, to the extent this Request seeks information about Cleaver-Brooks facilities that are not at issue in any particular case, it is irrelevant, over broad, harassing and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects to the extent Plaintiffs' Request seeks information protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, the physician-patient privilege, and/or the consulting expert privilege. Subject to the foregoing objections and without waiver, Cleaver-Brooks has not identified any responsive information to date. Discovery and investigation are ongoing and Cleaver-Brooks reserves its right to supplement or amend this response.

57. Have any of the Co-Defendants named in this litigation ever furnished you with any information as to the state of the medical knowledge regarding the connection between asbestos dust exposure and the contracting of pulmonary diseases including asbestosis and cancer.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks further objects because this Request is vague and ambiguous as to the "state of medical knowledge regarding the connection between asbestos exposure and the contracting of cancer or asbestosis," overly broad in time

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and scope, compound, and unduly burdensome and harassing. Cleaver-Brooks further objects that this Request lacks sufficient specificity regarding the type of asbestos, level, duration, and manner of alleged exposure. Cleaver-Brooks further objects to the extent the information sought in this Request is more likely to be in the possession of the third parties from whom Cleaver-Brooks purchased potentially asbestos-containing parts or components.

Cleaver-Brooks further objects to the extent this Request seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the common interest doctrine, and/or the consulting expert privilege. Plaintiffs' Request also calls for speculation and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

58. If the answer to the proceeding interrogatory is in the affirmative, please identify:

(a) what information you were furnished;

(b) who furnished that information;

(c) when that information was furnished.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks further objects because this Request is vague and ambiguous, overly broad in time and scope, compound, and unduly burdensome and harassing. Cleaver-Brooks further objects to the extent the information sought in this Interrogatory is more likely to be in the possession of the third parties from whom Cleaver-Brooks purchased potentially asbestos-containing parts or components.

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Cleaver-Brooks further objects to the extent this Request seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the common interest doctrine, and/or the consulting expert privilege. This Request also seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

59. Have you at any time since 1930 interchanged results of research tests, medical studies or experiments regarding the state of the medical knowledge regarding the connection between asbestos exposure and the contracting of pulmonary disease including lung cancer and asbestosis with any other person, including any Co-Defendants in this action?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks further objects because this Request is vague and ambiguous as to the "results of research tests, medical studies or experiments regarding the state of the medical knowledge regarding the connection between asbestos exposure and the contracting of pulmonary disease including lung cancer and asbestosis," overly broad in time and scope, compound, and unduly burdensome and harassing. Cleaver-Brooks further objects that this Request lacks sufficient specificity regarding the type of asbestos, level, duration, and manner of alleged exposure. Cleaver-Brooks further objects to the extent the information sought in this Request is more likely to be in the possession of the third parties from whom Cleaver-Brooks purchased potentially asbestos-containing parts or components.

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Cleaver-Brooks further objects to the extent this Request seeks information protected from disclosure by the attorney-client privilege, the consulting expert privilege, the common interest/joint defense privilege, and/or the work-product doctrine. This Request also calls for speculation and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is a prohibited fishing expedition impermissibly designed to shift the burden of proof.

60. If the answer to the proceeding interrogatory is in the affirmative, please state:

(a) when this interchange took place;

(b) who participated in these interchanges;

(c) summarize the contents of these interchanges or studies.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks further objects because this Request is vague and ambiguous, overly broad in time and scope, compound, and unduly burdensome and harassing. Cleaver-Brooks further objects to the extent the information sought in this Request is more likely to be in the possession of the third parties from whom Cleaver-Brooks purchased potentially asbestos-containing parts or components.

Cleaver-Brooks further objects to the extent this Request seeks information protected from disclosure by the attorney-client privilege, the consulting expert privilege, the common interest/joint defense privilege, and/or the work-product doctrine. This Request also calls for speculation and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any

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Cleaver-Brooks equipment, this Request is a prohibited fishing expedition impermissibly designed to shift the burden of proof.

61. Please state if you or anyone on your behalf ever conducted, sponsored or contributed financially to any studies or research to determine if the inhalation of asbestos fibers may be harmful.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks further objects that this Request is vague, ambiguous and overbroad in its use of the terms "studies or research," and "inhalation of asbestos fibers may be harmful," compound, and unduly burdensome and oppressive. It also calls for speculation and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence in that it is not limited to particular product, activity, or exposure at issue in this case. In particular, Plaintiffs' Request lacks sufficient specificity regarding the type of asbestos, the type of product, and the level, duration, and manner of exposure. Thus, it is a prohibited fishing expedition impermissibly designed to shift the burden of proof. Cleaver-Brooks further objects to the extent this Request assumes Cleaver-Brooks had a duty to conduct or sponsor such studies or research, which is denied. This Request also seeks information protected from disclosure by the attorney-client privilege, the consulting expert privilege, and/or the work-product doctrine. Subject to the foregoing objections and without waiver, although Cleaver-Brooks' investigation is ongoing and information may be identified that modifies the following response, Cleaver-Brooks has not identified information responsive to this Interrogatory to date.

62. If the answer to the above question is in the affirmative, please state:

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(a) by whom the research was conducted, giving complete names and addresses;

(b) the dates that each such research product or test was conducted;

(c) the complete results of each test or study;

(d) identify all documents that refer, reflect or relate to the test or study;

(e) supply copies of the reports of the research department pertaining to the use of the use by the corporation of asbestos in their manufacture of insulation products.

RESPONSE:

Not applicable.

63. Please state the names and addresses of your chief medical officers was employed by Defendant in that capacity. If you did not have a medical officer, please indicate what person or persons performed that function.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks further objects that this Request is vague, overly broad, unduly burdensome and harassing, and argumentative. It also assumes facts not in the evidence. Cleaver-Brooks further objects to any implication that it had a duty or obligation to employ a "medical officer."

Cleaver-Brooks also objects to the extent this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and to the extent it seeks information regarding products and circumstances of use or exposure that are not at issue. Because Plaintiffs' Request reaches beyond the scope of evidence, it is a prohibited fishing expedition improperly designed to shift the burden of proof. In addition, Cleaver-Brooks notes that, to the best of its knowledge,

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Plaintiffs has not alleged that Plaintiff or any identified witness was employed by Cleaver-Brooks. To the extent this Interrogatory seeks information about Cleaver-Brooks facilities and employment practices that are not at issue, it has no legitimate purpose other than to harass Cleaver-Brooks and confuse the issues. Subject to and without waiver of the foregoing objections, Cleaver-Brooks responds that it did not employ such a person.

64. Please state the names and addresses of all physicians who were employed, retained or otherwise engaged by you at any of your facilities from the years 1930 until the present.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks further objects that this Request is vague and ambiguous, overly broad in time and scope, compound, and unduly burdensome and harassing. It is also argumentative and assumes facts not in the evidence. Cleaver-Brooks further objects to any implication that it had a duty or obligation to employ a "physician."

Cleaver-Brooks also objects to the extent this Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and to the extent it seeks information regarding products and circumstances of use or exposure that are not at issue. Because Plaintiffs' Request reaches beyond the scope of evidence, it is a prohibited fishing expedition improperly designed to shift the burden of proof. In addition, Cleaver-Brooks notes that, to the best of its knowledge, Plaintiffs has not alleged that Plaintiff or any identified witness was employed by Cleaver-Brooks. To the extent this Interrogatory seeks information about Cleaver-Brooks facilities and employment practices that are not at issue, it has no legitimate purpose other than to harass Cleaver-Brooks and confuse the issues. Subject to and without

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waiver of the foregoing objections, Cleaver-Brooks responds that it did not employ such a person.

65. Please state the names and addresses of all persons employed by you from 1930 until the present time who functioned as industrial hygienists. As used in this Request, an industrial hygienist is one who performs engineering or health studies to identify and evaluate potential health hazards and suggests methods of dealing with the same.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks further objects that this Request is vague, overly broad, compound, and unduly burdensome and harassing. It is also argumentative and assumes facts not in the evidence. Cleaver-Brooks further objects to any implication that it had a duty or obligation to employ an "industrial hygienist."

Cleaver-Brooks also objects to the extent this Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and to the extent it seeks information regarding products and circumstances of use or exposure that are not at issue. Because Plaintiffs' Request reaches beyond the scope of evidence, it is a prohibited fishing expedition improperly designed to shift the burden of proof. In addition, Cleaver-Brooks notes that, to the best of its knowledge, Plaintiffs have not alleged that Plaintiff or any identified witness was employed by Cleaver-Brooks. To the extent this Request seeks information about Cleaver-Brooks facilities and employment practices that are not at issue, it has no legitimate purpose other than to harass Cleaver-Brooks and confuse the issues. Subject to and without waiver of the foregoing objections, Cleaver-Brooks responds that it did not employ such a person.

66. For each industrial hygienist listed above, please state:

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(a) the facility or office to which that individual was assigned;

(b) the complete and precise duties and responsibilities.

RESPONSE:

Not applicable.

67. Did anyone ever make any recommendations and/or suggestions to you pertaining to the risks and hazards associated with the manufacturing or use of insulation products containing asbestos.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, calls for speculation, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks objects to the extent this Request mischaracterizes Cleaver-Brooks as a manufacturer or user of "insulation products containing asbestos," which is inaccurate, misleading and argumentative. Cleaver-Brooks further objects to the extent this Request seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, the common interest doctrine, and any other applicable privilege or protection.

Cleaver-Brooks further objects that this Request lacks sufficient specificity regarding the type of asbestos, level, duration, and manner of alleged exposure. Cleaver-Brooks also objects that the terms "anyone," "recommendations," and "suggestions" are overbroad, vague, and ambiguous. Further, to the extent this Request seeks information about Cleaver-Brooks facilities that are not at issue in any particular case, it is irrelevant, over broad, harassing and not reasonably calculated to lead to the discovery of admissible evidence. As there is no evidence that Plaintiff or any identified

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witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is a prohibited fishing expedition impermissibly designed to shift the burden of proof.

68. If the answer to the above question is yes, please state:

(a) where such recommendations or suggestions were made;

(b) who made such recommendations or suggestions;

(c) to whom were these recommendations or suggestions made;

(d) the substance of the recommendations or suggestions;

(e) what actions did you take as the result of those recommendations and suggestions?

RESPONSE:

Not applicable.

69. Do you agree that there is a causal connection between the asbestos dust exposure and:

(a) asbestosis?

(b) lung cancer?

(c) mesothelioma?

(d) other cancers?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, compound, calls for speculation, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks also objects generally to this entire question because it seeks various medical and scientific opinions that Cleaver-Brooks is not qualified to render. This Request is also misleading and calls for speculation to the extent each subsection is

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without foundation and represents an incomplete hypothetical. Cleaver-Brooks also objects that the terms "causal connection" and "other cancers" is overbroad, vague, and ambiguous. Cleaver-Brooks further objects that this Request lacks sufficient specificity regarding the type of asbestos, level, duration, and manner of alleged exposure. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks defers to its medical experts on all matters relating to the causation of disease.

70. If your answer to the previous Request is yes as to any or all subparts, please identify the following as to each disease process listed above:

(a) when and how you first learned of such connection;

(b) if the knowledge was obtained by the attendance of any conference, lecture, convention, symposium, or meeting, identify such event and provide the name of the person attending or the documents obtained from that meeting;

(c) if knowledge was obtained from a medical or scientific study or any other published works, identify the same;

(d) if the knowledge was otherwise obtained, identify the manner of receipt of the document or communication.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, compound, calls for speculation, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

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Cleaver-Brooks also objects generally to this entire question because it seeks various medical and scientific opinions that Cleaver-Brooks is not qualified to render. This Request is also misleading and calls for speculation to the extent each subsection is without foundation and represents an incomplete hypothetical. Cleaver-Brooks also objects that the term "connection" is overbroad, vague, and ambiguous. Cleaver-Brooks further objects that this Request lacks sufficient specificity regarding the type of asbestos, level, duration, and manner of alleged exposure. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks defers to its medical experts on all matters relating to the causation of disease.

71. With regard to any knowledge obtained subsequent to that identified in the previous Interrogatory, please identify:

(a) all documents or other communications, oral or written, concerning the causal connection between exposure to asbestos dust or asbestos products and the disease processes identified in question No. 69 above.

(b) identify the person communicating the information.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, compound, calls for speculation, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks also objects generally to this entire question because it seeks various medical and scientific opinions that Cleaver-Brooks is not qualified to render. This

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Request is also misleading and calls for speculation to the extent each subsection is without foundation and represents an incomplete hypothetical. Cleaver-Brooks also objects that the term "causal connection" is overbroad, vague, and ambiguous. Cleaver-Brooks further objects that this Request lacks sufficient specificity regarding the type of asbestos, level, duration, and manner of alleged exposure. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks defers to its medical experts on all matters relating to the causation of disease.

72. When and by what manner were you first aware of the hazards of asbestos or asbestos-containing products to the users of those products?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, overly broad, unduly burdensome, compound, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request lacks sufficient specificity regarding the type of asbestos, level, duration, and manner of alleged exposure. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks' investigation into these matters is ongoing and while information may be identified that modifies the following response, on information and belief, Cleaver-Brooks first became

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aware of the potential hazards associated with certain exposures to asbestos around the time that OSHA was enacted.

73. Identify any medical examination programs offered or sponsored by you or your insurance carrier for employees handling or otherwise exposed to asbestos and asbestos products. With respect to each such program, please state:

(a) the manner of communication with employees about such program;

(b) whether examination was mandatory or optional;

(c) what percentage of workers permitted to undergo such examination actually participated;

(d) what percentage of works were found to have asbestosis or mesothelioma or bronchogenic carcinoma;

(e) with respect to (d), what percentage of such workers were paid disability, worker's compensation benefits or for whose benefit medical expenses were paid to undergo treatments for such conditions.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is irrelevant, overly broad, vague, argumentative, and not reasonably calculated to lead to the discovery of admissible information. This Request is also irrelevant, harassing and not reasonably calculated to lead to the discovery of admissible evidence because it is not limited to the particular product or time-frame at issue in a particular case. Cleaver-Brooks also objects that the terms "asbestos products" and "employees" are overbroad, vague, and ambiguous.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly

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burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. In addition, Cleaver-Brooks notes that, to the best of its knowledge, Plaintiffs have not alleged that Plaintiff or any identified witness was employed by Cleaver-Brooks. To the extent this Interrogatory seeks information about Cleaver-Brooks facilities and employment practices that are not at issue, it has no legitimate purpose other than to harass Cleaver-Brooks and confuse the issues. Subject to the foregoing objections and without waiver, although Cleaver-Brooks investigation into these matters is ongoing and additional information may be found which changes the following response, Cleaver-Brooks has no information responsive to this Request. If responsive information is identified, Cleaver-Brooks reserves its right to supplement this Response accordingly.

74. Identify all trade organizations, associations or other entities, including, but not limited to ATI, IHF, NAIMA, AIA, NICA, TIMA, QAMA, PICA, QAPA, to which you belonged or in which you have participated since 1925 and the years of your participation.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is irrelevant, overly broad, unduly burdensome, vague, argumentative, and not reasonably calculated to lead to the discovery of admissible evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, although Cleaver-Brooks' investigation into these matters is ongoing, and subsequent information may be identified that modifies this response, over the past 80+ years, Cleaver-Brooks has had thousands of employees and there is no practical or

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reasonable means of tracking the various organizations that these employees may have belonged to. There are no records of such historical matters relating to its individual employees or the company other than: The American Boiler Manufacturer's Association (1948 to present); The Council of Industrial Boiler Owners (early 1990's to present); and, The American Society of Mechanical Engineers (approximately 1948 to present). Cleaver-Brooks' investigation continues and if additional relevant responsive information is identified, Cleaver-Brooks will supplement this response accordingly.

75. Identify all persons attending on your behalf any meetings he by any trade organization listed in the Interrogatory stated above.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information which is irrelevant and not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is irrelevant, overly broad, unduly burdensome, vague, argumentative, and not reasonably calculated to lead to the discovery of admissible evidence. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

76. Identify the names or nature of all asbestos notes, report studies or other writings submitted by you or received by you at meetings identified in the Interrogatory stated above.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information which is irrelevant and not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is irrelevant, overly broad, unduly burdensome, vague, ambiguous, argumentative, and not

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reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks also objects that the term "asbestos notes" is vague and ambiguous. Cleaver-Brooks further objects to the extent this Request seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the common interest doctrine, and all other applicable privileges and protections. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

77. Identify all documents you received from or submitted to the trade organizations, associations or other entities identified in Interrogatory relating to the relationship between asbestos exposure and disease.

RESPONSE:

Cleaver-Brooks incorporates herein its Preliminary Statement and General Objections. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also specifically objects to this Request on the grounds that it is overly broad in time and scope, unduly burdensome, vague, ambiguous, compound, and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects because this Request is so broad that it potentially calls for the production of materials protected by the attorney-client privilege, work product doctrine, or other relevant protections. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

78. Did you direct to be performed, sponsor, finance, or receive the result of any studies or tests performed by the Saranac Lake Laboratory or the Trudeau Foundation relating to asbestos exposure and its effect on human life? If so, identify:

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(a) all documents summarizing findings or results of those studies or tests which you have in your possession or control;

(b) all communications, oral or written, between answering Defendant and Saranac personnel, including, but not limited to, Gerrit W. H. Schepers, M.D.;

(c) all documents relating to Saranac studies received or submitted by you, either directly, through associated or predecessor companies, through other companies, or through any trade associations, organizations or entities;

(d) all recommendations or findings of such studies in relation to:

(1) adequacy or inadequacy of the threshold limit values;

(2) the substitution of materials other than asbestos to be used in insulation process;

(e) where the documents and/or communications identified in this Interrogatory are presently maintained.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects to this Request on the grounds that it is overly broad in time and scope, unduly burdensome, vague, ambiguous, compound, argumentative, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects because this Request is so broad that it potentially calls for the production of materials protected by the attorney-client privilege, work product doctrine, or other relevant protections.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly

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burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, although Cleaver-Brooks' investigation into such matters is ongoing and information may be identified that changes the following response, Cleaver-Brooks has identified no information indicating that it participated in the studies or tests referenced above.

79. Identify all persons who have testified on your behalf and all documents presented to or utilized in preparation of testimony before the Occupational Safety and Health Administration, the National Institute of Occupational Safety and Health, any U.S. Congressional committee or subcommittee or governmental hearing or investigative proceeding on the subjects of biological effects on human life from exposure to asbestos and the setting, modification, feasibility and acceptance of allegedly safe or proper levels of such exposure to asbestos and asbestos products.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is irrelevant, overly broad, unduly burdensome, vague, harassing, argumentative, compound, and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects because this Request is so broad that it potentially calls for the production of materials protected by the attorney-client privilege, work product doctrine, or other relevant protections. Cleaver-Brooks also objects that this Request seeks information that is constitutionally protected pursuant to the *Noerr-Pennington* Doctrine and the First Amendment to the U.S. Constitution.

As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the

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burden of proof. Subject to the foregoing objections and without waiver, although Cleaver-Brooks' investigation into these matters is ongoing and information may be identified that changes the following response, Cleaver-Brooks is currently unaware of any such testimony before the governmental entities identified in this Request.

80. For all testimony set forth above, please identify:

(a) the dates and descriptions of the proceedings;

(b) the relationship between the person who testified or responded and you;

(c) all studies, test results or other scientific or medical documents relied upon by said person as a basis for any recommendations made or testimony given;

(d) whether any time prior to or follow such testimony you possessed knowledge of documents suggesting that existing or proposed threshold limit value were not safe or proper or that lower threshold limit values were necessary in order to prevent disease; as to this response, please identify the origin of the knowledge and all documents relating thereto;

(e) whether at any time prior to or following such testimony you were aware that the proper method for determination of safe levels of asbestos dust was to test concentrations of fibers in the air rather than the total number of particles. If your answer is in the affirmative, identify the origin of said knowledge and all documents relating thereto.

RESPONSE:

Not applicable.

81. What do you understand "threshold limit value" to mean?

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RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is irrelevant, argumentative, vague, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks also objects to the extent this Request seeks an expert medical or industrial hygiene opinion that Cleaver-Brooks is not qualified to render. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks defers to its experts on all medical and industrial hygiene issues.

82. What do you understand "dose response relationship" to mean?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is irrelevant, argumentative, vague, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks also objects to the extent this Request seeks an expert medical or industrial hygiene opinion that Cleaver-Brooks is not qualified to render. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks defers to its experts on all medical and industrial hygiene issues.

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83. What is being measured when you take the measurement of threshold limit value as you define it?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is irrelevant, argumentative, vague, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks also objects to the extent this Request seeks an expert medical or industrial hygiene opinion that Cleaver-Brooks is not qualified to render. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks defers to its experts on all medical and industrial hygiene issues.

84. Did you advertise any of your asbestos-containing products for use on ships or Navy vessels?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. This Request is also vague, overly broad and unduly burdensome. Defendant further objects that this Request is argumentative to the extent that it assumes that Cleaver-Brooks manufactured, marketed, and/or sold "asbestos-containing products," which term is undefined, overbroad, vague, and ambiguous.

As set out in the Preliminary Statement, Cleaver-Brooks has sold more than 120,000 boilers over the last eight decades as well as water purification and ancillary

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equipment. It is impossible for Cleaver-Brooks to provide the information requested for every piece of equipment it has sold without limitation. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds only that it advertised in trade or industry publications from time to time. However, Cleaver-Brooks maintains no archive of historical files with regard to advertising or promotional activities. Discovery and investigation are ongoing and Cleaver-Brooks reserves the right to supplement or amend this response.

85. If the response to Interrogatory No. 84 was yes, please state:

(a) the name of the product;

(b) in what years you advertised the product;

(c) the intended purpose of the product.

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. This Request is also vague, overly broad and unduly burdensome. Defendant further objects that this Request is argumentative to the extent that it assumes that Cleaver-Brooks manufactured, marketed, and/or sold "asbestos-containing products," which term is undefined.

As set out in the Preliminary Statement, Cleaver-Brooks has sold more than 120,000 boilers over the last eight decades as well as water purification and ancillary equipment. It is impossible for Cleaver-Brooks to provide the information requested for every piece of equipment it has sold without limitation. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks

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equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. Subject to the foregoing objections and without waiver, Cleaver-Brooks responds as follows: See response to Request No. 84.

86. Did you design any asbestos-containing products for use on ships or Navy vessels?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks objects that this Request is argumentative, harassing, overly broad in time and scope, unduly burdensome and oppressive, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence. Cleaver-Brooks also objects to the undefined term "asbestos-containing products" as overly broad, vague, and ambiguous.

As set out in the Preliminary Statement, Cleaver-Brooks has sold more than 120,000 boilers over the last eight decades as well as water purification and ancillary equipment. Equipment manufactured for use on Navy ships was made in accordance with strict military specifications. It is impossible for Cleaver-Brooks to provide the information requested for every piece of equipment it has sold without limitation. Moreover, as there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

87. Did you sell any asbestos-containing materials to the:

(a) United States government?

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(b) General Services Agency?

(c) United States Navy?

(d) any naval shipyard?

(e) any shipyard?

RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks documents or things not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks further objects that this Request is vague, ambiguous, compound, argumentative, harassing, overly broad in time and scope, unduly burdensome and oppressive, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Cleaver-Brooks further objects that this Request assumes facts not in evidence.

Cleaver-Brooks also objects to the undefined term "asbestos-containing materials" as overly broad, vague, and ambiguous. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, or for any of the entities listed in this Request, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof.

88. Do you ever conduct any dust studies in any of your asbestos product manufacturing facilities? If so, please state:

(a) the data (sic – date) of each such study;

(b) the person conducting the study;

(c) the result or conclusion;

(d) who presently has possession of the report or study.

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RESPONSE:

Cleaver-Brooks incorporates its Preliminary Statement and General Objections herein. Cleaver-Brooks objects to this Request on the grounds that it seeks information not subject to disclosure pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Cleaver-Brooks also objects that this Request is vague, ambiguous, calls for speculation, argumentative, unduly burdensome, overly broad in time and scope, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. This Request is also vague and overly broad in its use of the term "study." It is also argumentative in that it assumes Cleaver-Brooks had a duty to conduct any such study.

Cleaver-Brooks further objects to the undefined term "asbestos product" as overly broad, vague, and ambiguous. Cleaver-Brooks currently manufactures boilers and previously manufactured water purification and ancillary equipment; Cleaver-Brooks did not manufacture any asbestos-containing components in the equipment it sold. Thus, Cleaver-Brooks objects that this Request mischaracterizes Cleaver-Brooks as a manufacturer of "asbestos product(s)," which is inaccurate, misleading and argumentative. Cleaver-Brooks further objects to the extent this Request seeks information protected from discovery by the attorney-client privilege, the work product doctrine, the consulting expert privilege, and all other applicable privileges and protections. As there is no evidence that Plaintiff or any identified witness worked with or in the vicinity of any Cleaver-Brooks equipment, this Request is irrelevant, unduly burdensome, and a prohibited fishing expedition impermissibly designed to shift the burden of proof. In addition, Cleaver-Brooks notes that, to the best of its knowledge, Plaintiffs have not alleged that Plaintiff or any identified witness was employed by Cleaver-Brooks. To the extent this Interrogatory seeks information about Cleaver-Brooks facilities and employment practices that are not at issue, it has no legitimate purpose other than to harass Cleaver-Brooks and confuse the issues.

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RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
Post Office Box 7788
Columbia, South Carolina 29202
(803) 771-4400

By: _____
Steven J. Pugh
Joseph E. Thoensen

ATTORNEYS FOR DEFENDANT
CLEAVER-BROOKS, INC.

March 22nd, 2017

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CERTIFICATE OF SERVICE

I, Charity A. McQueen, an employee of Richardson Plowden & Robinson, P.A., do hereby certify that a copy of the **RESPONSES OF DEFENDANT CLEAVER-BROOKS, INC. TO PLAINTIFFS' MASTER INTERROGATORIES AND REQUESTS FOR PRODUCTION** in the above-referenced matter has been served upon the following counsel of record, through e-mail and/or the United States Mail, Postage Prepaid, First Class, addressed as follows:

Mona Lisa Wallace, Esquire
Wallace and Graham, P.A.
525 North Main Street
Salisbury, North Carolina 28144
mwallace@wallacegraham.com

Theile B. McVey, Esquire
Kassel McVey
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202
tmcvey@kassellaw.com

Jonathan Holder, Esquire
Rachel C. Moussa, Esquire
Dean Omar & Branham, LLP
3900 Elm Street
Dallas, Texas 75226
jholder@dobllp.com
rmoussa@dobllp.com

Charity A. McQueen

March 22, 2017

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Exhibit B

Rule 30(b)(6) Deposition Notices to Cleaver-Brooks

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STATE OF SOUTH CAROLINA COUNTY OF YORK	)))	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
TIMOTHY W. HOWE, as Personal Representative of the Estate of **WAYNE E. HOWE**, deceased, and **JEANETTE HOWE,** surviving spouse, Plaintiffs, v. **AIR & LIQUID SYSTEMS CORPORATION**, et al., Defendants.	)	**C/A NO. 2015-CP-46-03456** In re: Asbestos Personal Injury Litigation Coordinated Docket

PLAINTIFFS' THIRD AMENDED 30(b)(6) NOTICE OF DEPOSITION OF DEFENDANT CLEAVER BROOKS, INC.

PLEASE TAKE NOTICE that Plaintiffs, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, will take the videotaped deposition of the designated representative of Defendant **CLEAVER BROOKS INC.,** on **February 1, 2018 at 10:00 a.m. (CST)** and will take place **at the location indicated below,** at which time you are notified to appear and take part as you see fit and proper in such examination. The deposition will take place before a certified court reporter and videographer. **If necessary, the deposition shall continue day to day.**

LOCATION: **Husch Blackwell**
555 East Wells Street, Suite 1900
Milwaukee, WI, 53202

Conf. Call-in: / Passcode: To be provided prior to the deposition

The deposition is to be taken for the purpose of discovery or for use at trial, or both. The topics to be covered at the deposition are listed in Exhibit "A" attached hereto. Pursuant to Rule 30(b)(5), Plaintiffs' requested documents be produced from Defendant in the original notice, and that request in unchanged. Defendant sought protection regarding the notice from the court and

was denied. Please produce all responsive documents immediately to the extent Defendant has not done so already.

DEAN, OMAR, & BRANHAM, LLP

s/ *Jonathan M. Holder*
Jessica M. Dean (TX Bar No. 24025520)
Admitted Pro Hac Vice
Jonathan M. Holder (SC Bar No. 77935)
302 N. Market Street, Ste. 300
Dallas, TX 75202

KASSEL MCVEY ATTORNEYS AT LAW
Theile B. McVey (SC Bar No. 16682)
1330 Laurel Street
Columbia, South Carolina 29202
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Reciept, U.S. Mail Standard First Class, and/or electronic mail this 30th day of January 2018.

s/ *Jonathan M. Holder*
Jonathan M. Holder
Attorney for Plaintiff

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EXHIBIT A

For purposes of this request, the following words shall have the following meanings:

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors-in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf.

The term "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.

The term "PREMISES AT ISSUE" means the following premises at which Wayne Howe worked during his career:

1. **American Enka Corp.** – Enka, NC (1962-1965, fulltime)
2. **Crown Cork & Seal Company, Inc.** – near Spartanburg, SC (1962-1965, weekends)
3. **Celanese – Rock Hill, SC** (1967-1977)
4. **Celanese – Narrows, VA** (intermittently during 1967-1977)
5. **Bowater Southern Paper**, (aka Bowater paper mill, aka Bowater Carolina) (1977-2008)

Please provide a corporate representative to be deposed on the following subject matters:

1. The identity of any product(s) that contained any asbestos component, whether or not classified as an asbestos product by you, including but not limited to valves, boilers, pumps, turbines, steam traps, gaskets, or packing (hereinafter referred to simply as "asbestos-containing products") designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, contracted, installed, specified, required, recommended, and/or used by the Defendant including its predecessors, successors, affiliates, subcontractors, agents, assigns, subsidiary or parent companies, and any divisions or subdivisions, including but not limited to, any person, corporation, company or business entity which formed part of any combination, consolidation, merger or reorganization from which it was created or was the surviving corporation whose assets, stock, property, products or product line was acquired by it (hereinafter referred to as "the company" "you" or "your"), including: the brand name, trademark name, and generic name of the product(s); the inclusive dates of design, manufacture, fabrication, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use; a physical description of the product(s), including color, shape, size, and weight per unit, texture, the percentage of asbestos contained therein, the type of asbestos and other mineralogical content; the percentage of each type of asbestos contained therein; the amount of product(s) that were designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used; the use for which the product(s) was designed, manufactured,

fabricated, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used; and other information about the product(s).

2. The identity by manufacturer or brand name of any product(s) that contained any asbestos component, which Cleaver Brooks utilized as a component in Cleaver-Brooks Boiler Model P723-30S. (To the extent not already produced, please produce, pursuant Rule 30(b)(5) all documents referencing Cleaver Brooks Boiler Model P723-30S as well as any component part brand name or manufacturer.)

3. Information regarding the use of any asbestos-free product as a replacement, substitution, or alternative for any asbestos-containing product designed, manufactured, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, and/or used by you, including but not limited to: the name of the product; the date on which the product was discontinued or asbestos was removed from the product; the reason for the discontinuation or removal of asbestos from the product; and the identity of each employee or officer who participated in the decision or was present at any meeting at which the decision to remove or discontinue using asbestos in the product was discussed or made.

4. Information regarding all designers, manufacturers, sellers, suppliers, distributors, contractors, subcontractors, dealers, wholesalers or other entities who provided asbestos-containing products to you to market, advertise, supply and sell, including but not limited to: the name of the designer, manufacturer, seller, supplier, contractor, subcontractor, dealer, wholesaler or other entity; the brand name, trademark name and generic name of the materials supplied; the amounts supplied; the inclusive dates of supply for each material; the total dollar amount of materials supplied; the asbestos content of the materials supplied; the place to where the materials were shipped; the place where the materials were used by you; the products of yours in which the materials were incorporated; whether any documents exist regarding the materials supplied; any other information concerning the materials and the transactions.

5. Any and all information regarding contracts, agreements, arrangements, communications, sales and/or dealings between, by, or among you and (a) any of the above-captioned Plaintiff(s); (b) any of the above-captioned Plaintiff(s)' employers, (c) any of the above-captioned Plaintiff(s)' jobsites, (d) any manufacturer of asbestos-containing insulating products and/or any other asbestos-containing products you marketed, advertised, supplied, and/or sold, (e) any co-defendant named in this litigation, (f) any other persons or entities concerning any jobsites or employers at issue in the above-captioned cases, and/or (g) any other company, entity or person which did business with you for the design, manufacture, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, and/or use of asbestos-containing products in North Carolina and/or South Carolina.

6. All information concerning design, manufacture, sale, installation, inspection, service, maintenance, repair, conversion, use and replacement of your products and/or other products or equipment at any of above-captioned plaintiff(s) jobsites.

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7. Any information you have to either confirm or dispute that the products identified by the above-captioned Plaintiff(s) or any of their coworkers were or were not present at the jobsites at issue and the asbestos content or absence thereof of such products.

8. Any and all information regarding the identity of any company, person, government agency or other entity that purchased, distributed, sold, supplied, installed, applied or used asbestos-containing products marketed, advertised, supplied, and/or sold by you, including but not limited to: the identity, address and telephone number of each such entity; the date of each such transaction; the identity of the product(s) involved in each such transaction; the quantity of the product(s) involved in each such transaction; the asbestos content of the product(s) involved in each such transaction; and whether any written agreements exist reflecting the nature, terms, and extent of any such dealings.

9. Segregated sales information for every customer or purchaser for which you contracted, designed, engineered, manufactured, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used asbestos-containing products.

10. The identity and last known address and phone number of all corporate officers, officials, directors and employees having responsibility for creating, directing, executing, managing, supervising, overseeing or setting any of the following: the business, policy or procedures of your company with regard to the manufacture, design, engineering, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use of asbestos-containing products; the formulation, design, content, and wording of any warning, caveat, caution, information or statement placed on any asbestos-containing product or container for such product regarding the dangers of asbestos inhalation; the assembly, handling, application, service, maintenance, repair or use of your asbestos-containing products; and whether the assembly, handling, application, service, maintenance, repair or use of your asbestos-containing products released dust or asbestos fibers.

11. Information regarding any warning, caveat, caution, information or statement given on or with any asbestos-containing products or container by you regarding the dangers of asbestos inhalation; including but not limited to the date, content and samples of any such warning.

12. Information regarding any studies, evaluations, inquiries, investigations or analyses conducted or received by you concerning any potential hazards resulting from the release of asbestos dust or fibers during the manufacture, assembly, handling, application, installation, service, maintenance, repair, use, or removal of asbestos-containing products.

13. Information regarding the inspection of any of your facilities in any way related to asbestos, including but not limited to, the dates of the inspection(s), parties conducting the inspection(s), results of the inspection(s), and all other information related to the inspection(s).

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14. Any information gathered or received by you concerning your competitors for the design, manufacture, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use of asbestos-containing products.

15. Information about any claims for workers' compensation benefits filed by your present or former employees, officers or directors based upon pneumoconiosis, pleural disease, pulmonary fibrosis, asbestosis, lung cancer, mesothelioma, and any other cancers and lung diseases.

16. Information regarding any inquiries or communications received from any of your suppliers, customers, purchasers, product users or any other persons or entities concerning the possible, potential, alleged or actual health hazard associated with the inhalation of asbestos dust or fibers.

17. Information regarding the date, source, nature and extent of any notice or knowledge received by you or any of your employees, officers or directors, or by any of your parent or subsidiary companies, or by any of your distributors, that there was a possible, potential, alleged, or actual health hazard associated with the inhalation of asbestos dust or fibers during the manufacture, handling, application, installation, service, maintenance, repair, removal, or use of any asbestos-containing product.

18. Information concerning asbestos-related personal injury or wrongful death civil suits in which you were an interested party, which were in any way related to the manufacture, purchase, marketing, advertising, sale, supply, distribution, installation, service, maintenance, repair or use of asbestos-containing products, or any injury therefrom, including but not limited to: the court and district in which each claim was filed and heard; the case number(s) or civil action number(s); the substance of any court rulings made concerning your successor or parent liability; the names and addresses of all witnesses identified in the suit(s); whether any deposition or trial testimony was taken; whether you have copies of any of the discovery, deposition or trial testimony from the suit(s); the name, address and telephone number of the attorneys that represented you in the suit(s); and the outcome of the suit(s).

19. Information regarding all professional, trade, industrial, safety, hygiene or health associations, research foundations or organizations to which you or any of your employees, officers or directors, or any of your parent or subsidiary companies have belonged or held memberships in, including but not limited to: the name and address of the association or organization; the dates of membership; the dates, locations and subject matters of any meetings attended; the identity and location of all minutes, digests, reports, journals, periodicals, newsletters and/or other documents received from any such association or organization.

20. Any information concerning the inception, formation, incorporation, reformation, and/or re-incorporation of your company, including but not limited to the date(s), interested parties, states(s) of incorporation, and business intention or purpose.

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21. Any information concerning your past and present corporate history and structure, including but not limited to: the names and addresses of each of your past and present parent and subsidiary companies, whether the ownership was in whole or in part, as well as any companies that you have or had an interest in; your business activities over the years; the identity, title, years of employment, and other information regarding your directors, executives and employees over the years; the make-up of current and past boards of directors; your present and former assets, trade names, goodwill and liabilities; corporate transactions of which you have been a part; the location, years of operation, and business activities of each of your facilities and the facilities of your parent or subsidiary companies; and other information regarding your corporate history and structure.

22. The identity and address of all of your insurers, past and present, including but not limited to policy specifics, such as claim limits, aggregate limits, and coverage dates.

23. Financial data for your company from its inception to the present time.

24. Information regarding your record or document retention program, including the titles, names, addresses and telephone numbers of any present and former employee, officer or director responsible for the retention, retrieval, removal and/or destruction of the company's records and documents from your inception to the present time.

25. The identity and last known address and phone number of all present and former employees, officers, directors or other persons with any involvement with, or potential information about, any topic listed herein.

26. The source and basis of any information provided by you in response to any discovery request in this case.

27. Information and documents requested in Plaintiff's Requests for Production of Documents in this matter.

28. The identity and location of all records and documents in your custody or control regarding the subject matter of the foregoing paragraphs of this notice.

29. Defendant's membership in any trade organizations or trade organizations at which asbestos was discussed or participation on any committees, boards, foundations, institutes, or other bodies who discussed the use of asbestos-containing materials in the industry engaged in by Defendant including, but not limited to:
    (a) The American Society of Mechanical Engineers;
    (b) The American Society for Testing and Materials;
    (c) The American Petroleum Institute;
    (d) The Chemical Manufacturer's Association (or its predecessor, the MCA);
    (e) Chlorine Institute;
    (f) Industrial Hygiene Foundation;
    (g) The American Industrial Hygiene Association;
    (h) National Insulation Manufacturers Association;

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(i) The Asbestos Textile Institute;
(j) The Asbestos Information Association of North America;
(k) The Asbestos Information Association;
(l) The National Safety Council;
(m) ACGIH
(n) The American Occupational Medicine Association;
(o) The American Public Health Association;
(p) The American Medical Association;
(q) The American Chemical Society;
(r) NIOSH; and
(s) Any other organizations or publications/articles received, which address occupational diseases or industrial hygiene concerns relating to asbestos.

30. Any and all evidence and/or testimony that you intend to use to dispute any of the above-captioned Plaintiff(s) use and exposure to asbestos-containing products manufactured by you.

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STATE OF SOUTH CAROLINA COUNTY OF YORK **TIMOTHY W. HOWE,** as Personal Representative of the Estate of **WAYNE E. HOWE,** deceased, and **JEANETTE HOWE,** surviving spouse, Plaintiffs, v. **AIR & LIQUID SYSTEMS CORPORATION**, et al., Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT **C/A NO. 2015-CP-46-03456** In re: Asbestos Personal Injury Litigation Coordinated Docket

PLAINTIFFS' FOURTH AMENDED 30(b)(6) NOTICE OF DEPOSITION OF DEFENDANT CLEAVER-BROOKS, INC.

PLEASE TAKE NOTICE that Plaintiffs, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, will take the videotaped deposition of the designated representative of Defendant **CLEAVER-BROOKS INC.,** on **March 6, 2018 at 9:30 a.m. (CST)** and will take place **at the location indicated below,** at which time you are notified to appear and take part as you see fit and proper in such examination. The deposition will take place before a certified court reporter and videographer. If necessary, the deposition shall continue day to day.

LOCATION: **Hawkins Parnell Thackston & Young LLP**
4514 Cole Avenue
Suite 500
Dallas, TX 75205

Conf. Call-in: **866-640-4044**
Passcode: **426480**

The deposition is to be taken for the purpose of discovery or for use at trial, or both. The topics to be covered at the deposition are listed in Exhibit "A" attached hereto. Plaintiff requested

documents in the original notice and first amended notice as described in Exhibit "B" and those requests are ongoing. To the extent defendant has not provided all responsive documents, it Should do so as soon as possible.

DEAN, OMAR, & BRANHAM, LLP

s/ *Jonathan M. Holder*
Jessica M. Dean (TX Bar No. 24025520)
To be Admitted Pro Hac Vice
Jonathan M. Holder (SC Bar No. 77935)
302 N. Market Street, Ste. 300
Dallas, TX 75202

KASSEL MCVEY ATTORNEYS AT LAW
Theile B. McVey (SC Bar No. 16682)
1330 Laurel Street
Columbia, South Carolina 29202
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Reciept, U.S. Mail Standard First Class, and/or electronic mail this 5th day of March 2018.

s/ *Jonathan M. Holder*
Jonathan M. Holder
Attorney for Plaintiff

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EXHIBIT A

For purposes of this request, the following words shall have the following meanings/definitions:

The terms "RECORD" or "RECORDS" or "DOCUMENT" or "DOCUMENTS" mean any and all written, printed, typed, recorded or graphic material, however produced, or reproduced, stored, known to exist, by way of example and not by limitation, invoices, contracts evidencing purchase or receipt, ledger cards, material requests, communications, writings, printings, records, worksheets, abstracts, summaries, statistics, notes, market data, journals, ledgers, expense reports, specifications, contracts, contract bids, purchase orders, bills of lading, shipping orders, dock receipts, cancelled checks, computer print-outs, microfilm, microfiche, which in any way pertain to the document request made herein.

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors-in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf

The terms "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.

The term "PREMISES AT ISSUE" means the following premises at which Wayne Howe worked during his career:

1. American Enka Corp. – Enka, NC (1962-1965, fulltime)
2. Crown Cork & Seal Company, Inc. – around Gastonia, NC (1962-1965, weekends)
3. Celanese – Rock Hill, SC (1967-1977)
4. Celanese – Narrows, VA (intermittently during 1967-1977)
5. Bowater Southern Paper, (aka Bowater Paper Mill, aka Bowater Carolina) (1977-2008)

Please provide a corporate representative to be deposed on the following subject matters:

1. The identity of any product(s) that contained any asbestos or an asbestos component, whether or not classified as an asbestos product by you, including but not limited to valves, boilers, heaters, pumps, turbines, steam traps, air compressors, gaskets, or packing insulation, pipe, brakes or adhesives (hereinafter referred to simply as "asbestos-containing products") designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, contracted, installed, specified, required, recommended, and/or used by the Defendant including its predecessors, successors, affiliates, subcontractors, agents, assigns, subsidiary or parent companies, and any divisions or subdivisions, including but not limited to, any person, corporation, company or business entity which formed part of any combination, consolidation, merger or reorganization from which it was created or was the surviving corporation whose assets, stock, property, products or product line was acquired by it (hereinafter referred to as "the company" "you" or "your"), including: the brand name, trademark name, and generic name of the product(s); the inclusive dates of design,

manufacture, fabrication, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use; a physical description of the product(s), including color, shape, size, and weight per unit, texture, the percentage of asbestos contained therein, the type of asbestos and other mineralogical content; the percentage of each type of asbestos contained therein; the amount of product(s) that were designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used; the use for which the product(s) was designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used; and other information about the product(s).

2. Information regarding the use of any asbestos-free product as a replacement, substitution, or alternative for any asbestos-containing product designed, manufactured, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, and/or used by you, including but not limited to: the name of the product; the date on which the product was discontinued or asbestos was removed from the product; the reason for the discontinuation or removal of asbestos from the product; and the identity of each employee or officer who participated in the decision or was present at any meeting at which the decision to remove or discontinue using asbestos in the product was discussed or made.

3. Information regarding all designers, manufacturers, sellers, suppliers, distributors, contractors, subcontractors, dealers, wholesalers or other entities who provided asbestos-containing products to you to market, advertise, supply and sell, including but not limited to: the name of the designer, manufacturer, seller, supplier, contractor, subcontractor, dealer, wholesaler or other entity; the brand name, trademark name and generic name of the materials supplied; the amounts supplied; the inclusive dates of supply for each material; the total dollar amount of materials supplied; the asbestos content of the materials supplied; the place to where the materials were shipped; the place where the materials were used by you; the products of yours in which the materials were incorporated; whether any documents exist regarding the materials supplied; any other information concerning the materials and the transactions.

4. Any and all information regarding contracts, agreements, arrangements, communications, sales and/or dealings between, by, or among you and (a) any of the above-captioned Plaintiff(s); (b) any of the above-captioned Plaintiff(s)' employers, (c) any of the above-captioned Plaintiff(s)' jobsites, (d) any manufacturer of asbestos-containing insulating products and/or any other asbestos-containing products you marketed, advertised, supplied, and/or sold, (e) any co-defendant named in this litigation, (f) any other persons or entities concerning any jobsites or employers at issue in the above-captioned cases, and/or (g) any other company, entity or person which did business with you for the design, manufacture, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, and/or use of asbestos-containing products in North Carolina and/or South Carolina.

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5. All information concerning design, manufacture, sale, installation, inspection, service, maintenance, repair, conversion, use and replacement of your products and/or other products or equipment at any of above-captioned plaintiff(s) jobsites.

6. Any information you have to either confirm or dispute that the products identified by the above-captioned Plaintiff(s) or any of their coworkers were or were not present at the jobsites at issue and the asbestos content or absence thereof of such products.

7. Any and all information regarding the identity of any company, person, government agency or other entity that purchased, distributed, sold, supplied, installed, applied or used asbestos-containing products marketed, advertised, supplied, and/or sold by you, including but not limited to: the identity, address and telephone number of each such entity; the date of each such transaction; the identity of the product(s) involved in each such transaction; the quantity of the product(s) involved in each such transaction; the asbestos content of the product(s) involved in each such transaction; and whether any written agreements exist reflecting the nature, terms, and extent of any such dealings.

8. Segregated sales information for every customer or purchaser for which you contracted, designed, engineered, manufactured, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used asbestos-containing products.

9. The identity and last known address and phone number of all corporate officers, officials, directors and employees having responsibility for creating, directing, executing, managing, supervising, overseeing or setting any of the following: the business, policy or procedures of your company with regard to the manufacture, design, engineering, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use of asbestos-containing products; the formulation, design, content, and wording of any warning, caveat, caution, information or statement placed on any asbestos-containing product or container for such product regarding the dangers of asbestos inhalation; the assembly, handling, application, service, maintenance, repair or use of your asbestos-containing products; and whether the assembly, handling, application, service, maintenance, repair or use of your asbestos-containing products released dust or asbestos fibers.

10. Information regarding any warning, caveat, caution, information or statement given on or with any asbestos-containing products or container by you regarding the dangers of asbestos inhalation; including but not limited to the date, content and samples of any such warning.

11. Information regarding any studies, evaluations, inquiries, investigations or analyses conducted or received by you concerning any potential hazards resulting from the release of asbestos dust or fibers during the manufacture, assembly, handling, application, installation, service, maintenance, repair, use, or removal of asbestos-containing products.

12. Information regarding the inspection of any of your facilities in any way related to asbestos, including but not limited to, the dates of the inspection(s), parties conducting the

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inspection(s), results of the inspection(s), and all other information related to the inspection(s).

13. Any information gathered or received by you concerning your competitors for the design, manufacture, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use of asbestos-containing products.

14. Information about any claims for workers' compensation benefits filed by your present or former employees, officers or directors based upon pneumoconiosis, pleural disease, pulmonary fibrosis, asbestosis, lung cancer, mesothelioma, and any other cancers and lung diseases.

15. Information regarding any inquiries or communications received from any of your suppliers, customers, purchasers, product users or any other persons or entities concerning the possible, potential, alleged or actual health hazard associated with the inhalation of asbestos dust or fibers.

16. Information regarding the date, source, nature and extent of any notice or knowledge received by you or any of your employees, officers or directors, or by any of your parent or subsidiary companies, or by any of your distributors, that there was a possible, potential, alleged, or actual health hazard associated with the inhalation of asbestos dust or fibers during the manufacture, handling, application, installation, service, maintenance, repair, removal, or use of any asbestos-containing product.

17. Information concerning asbestos-related personal injury or wrongful death civil suits in which you were an interested party, which were in any way related to the manufacture, purchase, marketing, advertising, sale, supply, distribution, installation, service, maintenance, repair or use of asbestos-containing products, or any injury therefrom, including but not limited to: the court and district in which each claim was filed and heard; the case number(s) or civil action number(s); the substance of any court rulings made concerning your successor or parent liability; the names and addresses of all witnesses identified in the suit(s); whether any deposition or trial testimony was taken; whether you have copies of any of the discovery, deposition or trial testimony from the suit(s); the name, address and telephone number of the attorneys that represented you in the suit(s); and the outcome of the suit(s).

18. Information regarding all professional, trade, industrial, safety, hygiene or health associations, research foundations or organizations to which you or any of your employees, officers or directors, or any of your parent or subsidiary companies have belonged or held memberships in, including but not limited to: the name and address of the association or organization; the dates of membership; the dates, locations and subject matters of any meetings attended; the identity and location of all minutes, digests, reports, journals, periodicals, newsletters and/or other documents received from any such association or organization.

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19. Any information concerning the inception, formation, incorporation, reformation, and/or re-incorporation of your company, including but not limited to the date(s), interested parties, state(s) of incorporation, and business intention or purpose.

20. Any information concerning your past and present corporate history and structure, including but not limited to: the names and addresses of each of your past and present parent and subsidiary companies, whether the ownership was in whole or in part, as well as any companies that you have or had an interest in; your business activities over the years; the identity, title, years of employment, and other information regarding your directors, executives and employees over the years; the make-up of current and past boards of directors; your present and former assets, trade names, goodwill and liabilities; corporate transactions of which you have been a part; the location, years of operation, and business activities of each of your facilities and the facilities of your parent or subsidiary companies; and other information regarding your corporate history and structure.

21. The identity and address of all of your insurers, past and present, including but not limited to policy specifics, such as claim limits, aggregate limits, and coverage dates.

22. Financial data for your company from its inception to the present time.

23. Information regarding your record or document retention program, including the titles, names, addresses and telephone numbers of any present and former employee, officer or director responsible for the retention, retrieval, removal and/or destruction of the company's records and documents from your inception to the present time.

24. The identity and last known address and phone number of all present and former employees, officers, directors or other persons with any involvement with, or potential information about, any topic listed herein.

25. The source and basis of any information provided by you in response to any discovery request in this case.

26. Information and documents requested in Plaintiff's Requests for Production of Documents in this matter.

27. The identity and location of all records and documents in your custody or control regarding the subject matter of the foregoing paragraphs of this notice.

28. Defendant's membership in any trade organizations or trade organizations at which asbestos was discussed or participation on any committees, boards, foundations, institutes, or other bodies who discussed the use of asbestos-containing materials in the industry engaged in by Defendant including, but not limited to:
    (a) The American Society of Mechanical Engineers;
    (b) The American Society for Testing and Materials;
    (c) The American Petroleum Institute;
    (d) The Chemical Manufacturer's Association (or its predecessor, the MCA);

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(e) Chlorine Institute;
(f) Industrial Hygiene Foundation;
(g) The American Industrial Hygiene Association;
(h) National Insulation Manufacturers Association;
(i) The Asbestos Textile Institute;
(j) The Asbestos Information Association of North America;
(k) The Asbestos Information Association;
(l) The National Safety Council;
(m) ACGIH
(n) The American Occupational Medicine Association;
(o) The American Public Health Association;
(p) The American Medical Association;
(q) The American Chemical Society;
(r) NIOSH; and
(s) Any other organizations or publications/articles received, which address occupational diseases or industrial hygiene concerns relating to asbestos.

29. Any and all evidence and/or testimony that you intend to use to dispute any of the above-captioned Plaintiff(s) use and exposure to asbestos-containing products manufactured by you.

31. Any information about effort by Defendant to ascertain what is known or reasonably available to Defendant regarding these topics.

32. Any and all testimony, documents or information regarding Defendants affirmative defenses.

33. All efforts, resources, staff and money spent on finding, developing or locating asbestos-free alternatives for any asbestos containing components sold by Defendant on or before 2001.

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EXHIBIT B

For purposes of this request, the following words shall have the following meanings/definitions:

The terms "RECORD" or "RECORDS" or "DOCUMENT" or "DOCUMENTS" mean any and all written, printed, typed, recorded or graphic material, however produced, or reproduced, stored, known to exist, by way of example and not by limitation, invoices, contracts evidencing purchase or receipt, ledger cards, material requests, communications, writings, printings, records, worksheets, abstracts, summaries, statistics, notes, market data, journals, ledgers, expense reports, specifications, contracts, contract bids, purchase orders, bills of lading, shipping orders, dock receipts, cancelled checks, computer print-outs, microfilm, microfiche, which in any way pertain to the document request made herein.

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors-in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf

The terms "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.

The term "PREMISES AT ISSUE" means the following premises at which Wayne Howe worked during his career:

1. **American Enka Corp.** – Enka, NC (1962-1965, fulltime)
2. **Crown Cork & Seal Company, Inc.** – around Gastonia, NC (1962-1965, weekends)
3. **Celanese** – Rock Hill, SC (1967-1977)
4. **Celanese** – Narrows, VA (intermittently during 1967-1977)
5. **Bowater Southern Paper,** (aka Bowater Paper Mill, aka Bowater Carolina) (1977-2008)

Plaintiff requested in the original Notice that Defendant Cleaver-Brooks produce the following, and these requests are ongoing:

1) Any and all documents relating to the Defendant's knowledge of the potential health hazards associated with asbestos.

2) All documents which you contend support your claim that you adequately warned anybody that exposure to asbestos could cause any cancer.

3) All vendor invoice and purchase order records for all asbestos-containing products sold to any Premises at Issue between 1967–1999.

4) All Industrial Hygiene records pertaining to any Premises at Issue, including any correspondence, air monitoring and test results conducted between 1967–1999.

5) Produce all sales records, and any summaries or compilations, showing any supplier of asbestos-containing component parts which YOU utilized in any asbestos-containing product *sold or supplied to any Premises at Issue* between 1967–1999.

6) Produce all vendor invoices and purchase order records for all asbestos-containing component parts, including but not limited to gaskets, gasket material, packing, raw asbestos fiber, etc. *sold to any Defendant or predecessor of Defendant in this matter* between 1967–1999.

7) Produce all vendor invoices and purchase order records for all asbestos-containing component parts, including but not limited to gaskets, gasket material, packing, raw asbestos fiber, etc. *sold to any Premises at Issue* between 1967–1999.

8) For any asbestos-containing product YOU manufactured for, sold to, or supplied to any Premises at Issue between 1967–1999, produce all product manuals, including but not limited to any owner's manual, any shop manual, or any other repair manual or maintenance manual or other literature produced or recommended by YOU associated with such asbestos-containing product.

9) For any asbestos-containing component parts, (including but not limited to gaskets, gasket material, packing, raw asbestos fiber, etc.), which YOU sold to any Defendant or predecessor of Defendant in this matter between 1967–1999, produce all associated product manuals, including but not limited to any owner's manual, any shop manual, or any other repair manual or maintenance manual or other literature produced or recommended by YOU associated with such asbestos-containing component part.

10) For any Premises at Issue for which YOU hold any liability, produce all Industrial Hygiene records pertaining to such premises including any correspondence, air monitoring and test results conducted between 1967–1999.

11) For any asbestos-containing product manufactured by YOU at issue in this case, produce all Industrial Hygiene records including any correspondence, air monitoring and test results in any way related to asbestos, conducted at the manufacturing facilities of such asbestos-containing products in United States between 1967–1999.

12) Any and all documents relating to all precautions, warnings and actions taken by Defendant at any time to any risk from exposure to asbestos;

13) Any and all documents relating to the last year asbestos or asbestos components or asbestos products were used with Defendant's or any suppliers' asbestos-containing products and/or equipment manufactured, marketed, promoted, sold by Defendant and the reason(s) why such products were no longer used;

14) Any and all documents relating to any tests, studies, precautions, dust level counts or actions taken by Defendant or those hired by Defendant to determine the amount of asbestos released when working with or around asbestos-containing products and/or

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equipment manufactured, marketed, promoted, sold by the Defendant or any component part of asbestos-containing products and/or equipment manufactured, marketed, promoted, sold by the Defendant;

15) Any and all documents relating to any specification by Defendant in relation to the use of asbestos in any of asbestos-containing products and/or equipment manufactured, marketed, promoted, sold by the Defendant or any component part of asbestos-containing products and/or equipment manufactured, marketed, promoted, sold by the Defendant;

16) Any and all documents relating to any and all sales literature including, but not limited to sales brochures and promotional literature regarding asbestos-containing products and/or equipment manufactured, marketed, promoted or sold by Defendant;

17) Any and all documents relating to any and all lists, indexes, business cards or other documents reflecting the names of companies, individuals, or locations who sold asbestos-containing products and/or equipment manufactured, marketed, promoted, sold by Defendant;

18) Any and all documents relating to any and all warnings, caution, or hazard information concerning asbestos-containing products and/or equipment manufactured, marketed, promoted, sold by the Defendant. This request includes any and all Material Safety Data Sheets;

19) Any and all documents listing the purchasing personnel responsible for obtaining asbestos-containing products manufactured, marketed, promoted, sold by the Defendant. This request includes those responsible for purchasing who are currently employed by Defendant and all former sales people who were with Defendant;

20) Any and all documents relating to the current net worth of Defendant;

21) Any and all documents relating to the conduct of the Defendant in handling asbestos health issues;

22) Any and all documents demonstrating any and all agreements or other information regarding any work done by Defendant or by Plaintiff(s) employer(s) at any of the jobsites at issue in any of the above-captioned cases;

23) Documents relating to Defendant's membership in any trade organizations or trade organizations at which asbestos was discussed or participation on any committees, boards, foundations, institutes, or other bodies who discussed the use of asbestos-containing materials in the industry engaged in by Defendant including, but not limited to:

a) The American Society of Mechanical Engineers;
b) The American Society for Testing and Materials;
c) The American Petroleum Institute;
d) The Chemical Manufacturer's Association (or its predecessor, the MCA);
e) Chlorine Institute;

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f) Industrial Hygiene Foundation;
g) The American Industrial Hygiene Association;
h) National Insulation Manufacturers Association;
i) The Asbestos Textile Institute;
j) The Asbestos Information Association of North America;
k) The Asbestos Information Association;
l) The National Safety Council;
m) ACGIH
n) The American Occupational Medicine Association;
o) The American Public Health Association;
p) The American Medical Association;
q) The American Chemical Society;
r) NIOSH; and
s) Any other organizations or publications/articles received, which address occupational diseases or industrial hygiene concerns relating to asbestos.

24) Any and all documents that evidence any efforts or money dedicated to finding, developing or locating asbestos-free alternatives for any asbestos containing components sold by Defendant on or before 2001.

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STATE OF SOUTH CAROLINA **COUNTY OF YORK**	)))	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of WAYNE ERVIN HOWE, deceased, and JEANETTE HOWE, Plaintiffs, v. **AIR & LIQUID SYSTEMS CORPORTATION,** *et al.* Defendants.	)))))))))))))	**C/A No.: 15-CP-46-03456**

AFFIDAVIT OF TIMOTHY W. HOWE

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

Affiant, being first duly sown upon oath, states the following:

1. My name is Timothy W. Howe, I am over the age of 18 years old and I am currently residing at 920 Allendale Circle, Rock Hill, South Carolina 29732.

2. Wayne Ervin Howe is my father and I am the Personal Representative of his Estate.

3. I work at Comporium as a video services technician. I was at the entire trial (seven days). I have worked at Comporium for more than 19 years. In all of the years, I have worked at Comporium I have never taken off as many consecutive days as I did for trial. I make $33 an hour and typically work 10 hours a day.

4. My wife, Julie and my mom, Jeanette were also at trial each day. Getting my Mom to the court house and keeping her oriented was a struggle. We had to find friends to pick up

Reagan, Julie's daughter, from high school.

5. Going through the trial was incredibly difficult – not because of the logistics it was just hard reliving the hardest times in our lives. We knew from the start of the trial that the location of the Cleaver Brooks boilers was the central dispute. Sitting in court on Friday and hearing about "midnight documents" that showed that one of the boilers were not at Bowater at all was shocking. We invested ourselves to this because it was what my father wanted and it was very disappointing to learn these new facts at the end of our case. Our lawyers kept us updated on the risk so that we could make a choice on proceeding with trial and if we had known what we learned from Cleaver Brooks during trial we would not have gone through with the trial.

6. Further, Affiant sayeth naught.

Executed this 1 day of May, 2018.

Signature of Affiant

SWORN to and subscribed before me, this the 01 day of May, 2018.

NOTARY PUBLIC

STEVEN MANESS NOTARY PUBLIC SOUTH CAROLINA

Sworn to and subscribed before me
This 01 Day of May, 2018

Notary Public of South Carolina
My Commission Expires 10/21/2026

Rec. 1579

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	C/A No. 2015-CP-46-3456
Wayne Ervin Howe, an individual and Jeanette Howe, his spouse,	)	
Plaintiffs,	)	
V.	)	
Air & Liquid Systems Corporation, Individually And As Successor-In Interest To Buffalo Pumps, et al;	)	
Defendants.	)	

PLAINTIFFS' ANSWERS TO MASTER INTERROGATORIES AND REQUEST FOR DISCLOSURES (Exhibit 3)

Plaintiffs, by and through undersigned counsel, respond to the Master Interrogatories and Request for Disclosures as follows.

INTRODUCTORY STATEMENTS

Plaintiffs have not, as of the date of answering these interrogatories, completed discovery and investigation of facts, persons, documents, or other items which may be relative to the issues of the instant action. Therefore, Plaintiffs reserve the right to amend, revise or otherwise further respond to these interrogatories upon discovery of any of those items as referenced above, without prejudice to Plaintiffs nor to those responses, exhibits, attachments and objections that hereinafter follow.

INTERROGATORIES

1. Please state your full name, including aliases or nicknames; current address and telephone number, date of birth, educational background and Social Security number.

ANSWER: **Wayne Ervin Howe**
Nickname: "Thurston"
920 Allendale Circle, Rock Hill, SC 29732
(803) 328-8197
August 5, 1945
Education: Left school in 7th grade.
247-74-7385

2. State the complete address of all places you have resided in the past twenty years giving the inclusive dates of residence for each place named.

ANSWER: **1972 – present: 920 Allendale Circle, Rock Hill, SC 29732.**

3. If you are now or have ever been a member of a trade labor union, provide the following information:

(a) the name of the union or unions to which you belonged;

(b) the inclusive dates of your membership in each;

(c) the numbers and complete address of the local unions to which you have belonged; and

(d) all officers or other positions which you have held in each union, identifying the office, position, and union in which held and inclusive dates the position or office was held.

ANSWER: **Yes. Mr. Howe was a member of a paper workers' union during the time he was employed at Bowater.**

4. Identify all jobs and projects on which you worked or around asbestos or materials containing asbestos and state separately as to each job or project the following:

(a) the name and location of each job (stating the job site, city, county and state);

(b) the name and address of each employer for whom you worked;

(c) the beginning and ending dates of each job or project;

(d) the name and manufacturer of each and every product containing asbestos with which you worked or to which you were exposed on each particular job or project and a general description of each such product;

(e) the identity of your immediate superior or job superintendent on each such job or project;

(f) the identity of all person with whom you worked on each such job or project;

(g) the length of time that you worked on each such job or project;

(h) whether or not you wore a respirator or mask on each such job or project; and
(i) your specific duties on each job.

ANSWER: **Plaintiff incorporates the allegations of the Complaint as if same were fully set forth at length:**

Dates unknown	**– Charleston Naval Shipyard, Charleston, SC – shipyard supervisor, steel erection and steel decking for floors for an addition onto an existing building.**
1962 - 1965	**Associated Mechanical Erectors, Hoechst Celanese, Rock Hill, SC.; helper.**
1962 – 1965	**Crown Cork & Seal Company, Inc., American Enka; helper.**
1965 – 1967	**U.S. Army, Fort Bragg, Fayetteville, NC; mechanic**
1967 - 1977	**AME, Inc.; Fort Mill, SC; worked as a welder; built 8 precipitators and did HVAC work, rigger.**
1977 – 1978	**Ace Mechanical, Hoechst Celanese, Rock Hill, SC – moved machinery and did various mechanical work and demolition work.**
1977 – 1978	**Foundry, Greenwood, SC, supervisor, molded cast iron.**
1978 - 1985	**Beta Construction, Inc. at Bowater, Rock Hill, SC; worked with pump, valve and side cutting, ironwork rigging millwright, crane operator, welding and pipefitter.**
1985 – 2007	**Resolute FP US, Inc., Catawba, SC – Bowater; master mechanic; pipefitter, worked on pumps, valves, millwright and mechanic work.**

Discovery is ongoing. Plaintiff further incorporates the Social Security printout as if fully set out herein. Additional job sites will be identified should they become known through the course of discovery.

5. Identify all jobs you have had during your lifetime that are not listed in No. 4 above. As to each, state:

(a) the general nature of the work you performed;

(b) the name and location of each job;

(c) the name and address of each employer for whom you worked; and

(d) the beginning and ending dates of each job or project.

ANSWER: **Please refer to answer to Interrogatory No. 5, above and discovery is ongoing. Additional job sites will be identified should they become known through the course of discovery. Mr. Howe worked on a farm in about 1961 and at a gas station for a period of time; the exact dates of this job are unknown.**

6. As to each exposure to each product listed in the answer to interrogatory number 4, describe by name or other description the person documents which you claim will establish either as a witness and/or documentary evidence the fact of your exposure to the product. For each witness listed, state the witness's complete name, job title or capacity, employer, address and telephone number. For each document listed, state a description of the document in its content and the name, address and telephone number of the custodian of the document.

ANSWER: **Plaintiffs will establish exposure through co-workers, co-worker deposition testimony and the records of the various company's included in this case. Discovery is ongoing and additional exposure witnesses whom Plaintiffs intend to call will be supplied at a later date.**

7. Identify the disease or injuries for which claim is made by you in the above-captioned Complaint, and as to such disease or injury provide the following information:

(a) a description of the symptoms of the disease or injury;

(b) the date you first experienced any of the symptoms of the disease or injury described above;

(c) the names and address of each doctor or other practitioner of the healing arts who has either examined or treated you for the disease or injury described above and the dates of such treatment or examination; and

(d) the treatment provided by each doctor or other practitioner of the healing arts for the disease or injury identified above.

ANSWER: **See records on disk enclosed.**

8. State the date of the diagnosis made by any physician or other practitioner of the healing arts of the disease or injury which you set forth in your answer to interrogatory number 7 and identify the individual making such diagnosis.

ANSWER: **See records on disk enclosed.**

9. Sate the date you learned of the diagnosis of such disease or injury.

ANSWER: **See records on disk enclosed.**

10. If you have received any treatment with respect to the disease or injury set forth in your answer to interrogatory number 7, state:

(a) the name and address of each hospital, clinic or other medical facility at which you were treated or admitted;

(b) the dates on which said treatment or treatments were rendered including the dates of entry into and discharge from said hospitals, clinics or other medical facility;

(c) an itemization of the charges rendered by each hospital, clinic or other medical facility;

(d) the expenses of examination or treatment by any doctors who have examined or treated you.

ANSWER: **See records on disk enclosed.**

11. Identify each physician or other practitioner of the healing arts not previously identified herein who has examined or treated you for any reason, and for each such individual so identified provide the following information:

(a) the reason for such examination or treatment;

(b) the date of each examination or treatment; and

(c) the diagnosis resulting from each such examination or treatment.

ANSWER: **See records on disk enclosed.**

12. Identify each hospital, clinic or other medical facility not previously identified herein at which you had been examined or received medical treatment, and for each such facility identified provide the following information:

(a) the reason for such examination or treatment;

(b) the date of each such examination or treatment;

(c) if you were an inpatient, the dates of admission to and discharge from such hospital, clinic or medical facility; and

(d) the diagnosis from each such examination or treatment.

ANSWER: **See documents on disk enclosed. Plaintiff is producing the medical records for his mesothelioma in this lawsuit. Plaintiff does not have in his possession the medical records from facilities unrelated to his mesothelioma illness.**

13. If you are currently receiving medical services or treatment of any nature, whatsoever, state:

(a) the name or names of the person or persons attending you;

(b) the approximate frequency of said treatment or services; and

(c) the date you last received said treatment or services.

ANSWER: **See records on disk enclosed. Discovery is ongoing and additional records will be produced upon receipt. Plaintiff is still receiving care and treatment as needed and is still going to his healthcare providers.**

14. If you have ever had x-rays taken of your chest, provide the following information for each set of x-rays taken:

(a) the name and addresses of the office or hospital where the x-rays were taken;

(b) the reason why such x-rays were taken;

(c) the date of service on which the x-rays were taken;

(d) the information reported to you as being the x-ray diagnosis; and

(e) the identity of the person or persons who took the x-ray and the person or persons who made the diagnosis.

ANSWER: **See records on disk enclosed. Plaintiff does not have the actual films. These are available at the respective healthcare providers.**

15. If you have made any Workers' Compensation claim as a result of any injuries or diseases, provide the following information:

(a) the date you first reported to your employer the incident of your injury or disease;

(b) the date and name of the agency with which you filed a claim for Workers' Compensation benefits;

(c) the date upon which you first received Workers' Compensation benefits, either for disability or medical treatment;

(d) the name and address of the employer against whom you made said claim; and

(e) the nature of the injury or disease for which a claim was made.

ANSWER: **Plaintiffs object to providing amounts of any settlements unless and until ordered to do so by the Court. Without waiving that objection, see documents on disk enclosed.**

Additionally, during his employment at Bowater, Mr. Howe filed a workers' compensation claim when he injured his back. He was diagnosed with a herniated disc, which was surgically corrected. He does not recall the date or any details about the benefits he received. This information may be maintained by the appropriate commission in South Carolina.

16. If you have filed any claim with the Social Security Administration as a result of any injuries or disease, provide the following information:

(a) the date you filed said claim;

(b) the nature of such claim;

(c) the date upon which you first received any benefits, either for disability or for medical treatment; and

(d) the amount of benefits you are receiving and the frequency with which you receive these benefits.

ANSWER: **Plaintiff incorporates prior discovery responses herein and the documents provided on disk enclosed.**

17. If you have ever been involved in any other legal action, including criminal charges against you, provide the following information:

(a) whether you were a plaintiff or defendant;

(b) the nature of the claim made by or against you, including the nature of any criminal charge made against you;

(c) the date and place each such action was filed, giving the name of the Court, the name of the other party or parties involved, the number of such action or actions and the names of the attorneys representing each party; and

(d) the result of each such action, whether there was an appeal and the result of the appeal, and whether such case was reported, the name, volume number and page citation of the report.

ANSWER: **Plaintiff has no criminal record or convictions.**

18. Do you or your counsel have written reports from any physician or practitioner of the healing arts respecting any injuries or diseases that you have identified in your response to these interrogatories? If so, please attach a copy of said report or reports to your answers to these interrogatories.

ANSWER: **See records on disk enclosed. Discovery is ongoing and additional records will be produced upon receipt.**

19. As to any job or jobs on which you allege you were injuriously exposed to asbestos-containing material, was there any company other than your employer installing or handling asbestos-containing materials at the same job site? If so, please identify each job, its location, the approximate dates on which you worked on that job and the other company alleged to be installing or handling asbestos-containing materials at that site.

ANSWER: **Plaintiff hereby incorporates his deposition testimony from his workers' compensation case, provided on disk enclosed. Further, discovery is continuing and this response will be supplemented as needed.**

20. Do you now, or have you ever, chewed, smoked, consumed or otherwise used tobacco or tobacco products? If so, please state:

(a) the type or types of products (i.e., cigarettes, cigars, etc.);

(b) the brand name of each product listed above;

(c) the inclusive dates of use of each product listed above; and

(d) the frequency of use or amount of use (i.e., one pack a day, etc.).

ANSWER: **Plaintiff incorporates his medical records herein. The records are provided on disk enclosed.**

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents identified in response to the foregoing interrogatories.

RESPONSE: Plaintiffs object to this request to the extent it is overly broad, burdensome and premature in that discovery is just now commencing. In due course and in compliance with a scheduling order this response will be supplemented. Furthermore, Plaintiffs object to the extent the discovery request may call for disclosure of attorney-client privileged documents and work product documents and materials not yet required to be produced pursuant to the Rules of Civil Procedure. Without waiving any objections, see records on disk enclosed. Discovery is ongoing and additional records will be produced upon receipt.

2. All documents referred to in preparing the answers to the foregoing interrogatories.

RESPONSE: Plaintiffs object to this request to the extent it is overly broad, burdensome and premature in that discovery is just now commencing. In due course and in compliance with a scheduling order this response will be supplemented. Furthermore, Plaintiffs object to the extent the discovery request may call for disclosure of attorney-client privileged documents and work product documents and materials not yet required to be produced pursuant to the Rules of Civil Procedure. Without waiving any objections, see records on disk enclosed. Discovery is ongoing and additional records will be produced upon receipt.

3. Each plaintiffs' Federal and State income tax returns for the past three (3) years.

RESPONSE: Plaintiffs are not making a claim for lost wages and therefore these records are not subject to disclosure.

4. All damage studies, damage reports or damage analyses, documents containing any mention of facts or opinions which relate to damages suffered as a result of acts of any of the defendants.

RESPONSE: Plaintiffs object to this request to the extent it is overly broad, burdensome and premature in that discovery is just now commencing. In due course and in compliance with the Court's pretrial rules, this response will be supplemented. Furthermore, Plaintiffs object to the extent the discovery request may call for disclosure of attorney-client privileged documents and work product documents and materials not yet required to be produced pursuant to the Rules of Civil Procedure. Without waiving any objections, see records on disk enclosed. Discovery is ongoing and additional records will be produced upon receipt.

5. All correspondence between any defendants and any other person which plaintiffs contend relate to any matter at issue in this litigation.

RESPONSE: Plaintiffs object to this request to the extent it is overly broad, burdensome and premature in that discovery is just now commencing. Without waiving this objection, Plaintiffs have no such documents.

6. All documents which relate to or identify insulation projects or jobs upon which each plaintiff worked.

RESPONSE: Plaintiffs object to this request to the extent it is overly broad, burdensome and premature in that discovery is just now commencing. In due course and in compliance with the Court's pretrial rules, this response will be supplemented. Furthermore, Plaintiffs object to the extent the discovery request may call for disclosure of attorney-client privileged documents and work product documents and materials not yet required to be produced pursuant to the Rules of Civil Procedure. Discovery is ongoing and additional records will be produced upon receipt.

7. All documents which relate to or identify asbestos-containing materials with which each plaintiff may have worked.

RESPONSE: Plaintiffs object to this request to the extent it is overly broad, burdensome and premature in that discovery is just now commencing. Furthermore, Plaintiffs object to the extent the discovery request may call for disclosure of attorney-client privileged documents and work product documents and materials not yet required to be produced pursuant to the Rules of Civil Procedure. Discovery is ongoing and additional records will be produced upon receipt.

8. All packaging materials which plaintiffs allege were used in packaging asbestos containing materials.

RESPONSE: Plaintiffs object to this request to the extent it is overly broad, burdensome and premature in that discovery is just now commencing. Without waiving this objection, Plaintiffs have no such materials.

9. All medical, doctor or hospital reports, summaries, test results, or other records of any type which relate to each plaintiffs' medical history and/or current medical condition.

RESPONSE: See records on disk enclosed. Discovery is ongoing and additional records will be produced upon receipt.

10. All x-rays which have even been taken of each plaintiffs' chest.

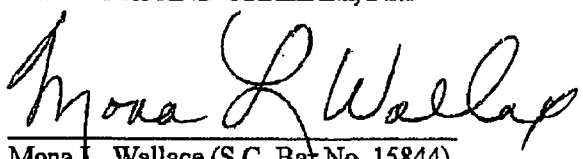
RESPONSE: None in Plaintiff's possession. The healthcare providers may have responsive documents,

11. Each plaintiff's Social Security Administration printout and work record.

RESPONSE: See Social Security records on disk enclosed.

This the 22nd day of December, 2015.

WALLACE AND GRAHAM, P.A.



Mona L. Wallace (S.C. Bar No. 15844)
525 N. Main St.
Salisbury, ~~NC 28~~144
Telephone: (704) 633-5244
mwallace@wallacegraham.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Plaintiffs' Answers to Master Interrogatories and Request for Disclosures (Exhibit 3) was served via Email and by First Class U.S. Mail to the following parties on the 29th day of December, 2015.

Steven J. Pugh, Esquire
Richardson Plowden Robinson PA
PO Drawer 7788
Columbia, SC 29202
spugh@richardsonplowden.com
Counsel for Cleaver-Brooks, Inc.

WALLACE AND GRAHAM, P.A.

Mona L. Wallace (S.C. Bar No. 15844)
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Telephone: (704) 633-5244
mwallace@wallacegraham.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA COUNTY OF YORK **TIMOTHY W. HOWE,** as Personal Representative of the Estate of **WAYNE E. HOWE,** deceased, and **JEANETTE HOWE,** surviving spouse, Plaintiffs, v. **AIR & LIQUID SYSTEMS CORPORATION**, et al., Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT **C/A NO. 2015-CP-46-03456** In re: Asbestos Personal Injury Litigation Coordinated Docket

PLAINTIFFS' FIRST AMENDED 30(b)(6) NOTICE OF DEPOSITION OF DEFENDANT CLEAVER BROOKS, INC.

PLEASE TAKE NOTICE that Plaintiffs, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, will take the videotaped deposition of the designated representative of Defendant **CLEAVER BROOKS, INC** on **January 10, 2018 at 10:00 a.m. (EST)** and will take place **at the location indicated below,** at which time you are notified to appear and take part as you see fit and proper in such examination. The deposition will take place before a certified court reporter and videographer. **If necessary, the deposition shall continue day to day.**

LOCATION: **Dean Omar Brahnam, LLP**
302 N. Market St., 3rd Floor
Dallas, TX 75202

Conf. Call-in / Passcode: To be circulated prior to the deposition.

The deposition is to be taken for the purpose of discovery or for use at trial, or both. The topics to be covered at the deposition are listed in Exhibit "A" attached hereto. Pursuant to Rule 30(b)(5), Plaintiffs' requested documents be produced from Defendant in the original notice, and

that request is unchanged. An extension is granted to Defendant to produce the requested documents, but the documents should be produced no later than 1 week prior to the deposition in order to give counsel time to review.

DEAN, OMAR, & BRANHAM, LLP

s/ *Jonathan M. Holder*
Jessica M. Dean (TX Bar No. 24025520)
To be Admitted Pro Hac Vice
Jonathan M. Holder (SC Bar No. 77935)
302 N. Market Street, Ste. 300
Dallas, TX 75202

KASSEL MCVEY ATTORNEYS AT LAW
Theile B. McVey (SC Bar No. 16682)
1330 Laurel Street
Columbia, South Carolina 29202
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Reciept, U.S. Mail Standard First Class, and/or electronic mail this 19th day of December, 2017.

s/ *Jonathan M. Holder*
Jonathan M. Holder
Attorney for Plaintiff

EXHIBIT A

Please provide a corporate representative to be deposed on the following subject matters:

1. The identity of any product(s) that contained any asbestos component, whether or not classified as an asbestos product by you, including but not limited to valves, boilers, pumps, turbines, steam traps, gaskets, or packing (hereinafter referred to simply as "asbestos-containing products") designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, contracted, installed, specified, required, recommended, and/or used by the Defendant including its predecessors, successors, affiliates, subcontractors, agents, assigns, subsidiary or parent companies, and any divisions or subdivisions, including but not limited to, any person, corporation, company or business entity which formed part of any combination, consolidation, merger or reorganization from which it was created or was the surviving corporation whose assets, stock, property, products or product line was acquired by it (hereinafter referred to as "the company" "you" or "your"), including: the brand name, trademark name, and generic name of the product(s); the inclusive dates of design, manufacture, fabrication, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use; a physical description of the product(s), including color, shape, size, and weight per unit, texture, the percentage of asbestos contained therein, the type of asbestos and other mineralogical content; the percentage of each type of asbestos contained therein; the amount of product(s) that were designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used; the use for which the product(s) was designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used; and other information about the product(s).

2. Information regarding the use of any asbestos-free product as a replacement, substitution, or alternative for any asbestos-containing product designed, manufactured, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, and/or used by you, including but not limited to: the name of the product; the date on which the product was discontinued or asbestos was removed from the product; the reason for the discontinuation or removal of asbestos from the product; and the identity of each employee or officer who participated in the decision or was present at any meeting at which the decision to remove or discontinue using asbestos in the product was discussed or made.

2. Information regarding all designers, manufacturers, sellers, suppliers, distributors, contractors, subcontractors, dealers, wholesalers or other entities who provided asbestos-containing products to you to market, advertise, supply and sell, including but not limited to: the name of the designer, manufacturer, seller, supplier, contractor, subcontractor, dealer, wholesaler or other entity; the brand name, trademark name and generic name of the materials supplied; the amounts supplied; the inclusive dates of supply for each material; the total dollar amount of materials supplied; the asbestos content of the

materials supplied; the place to where the materials were shipped; the place where the materials were used by you; the products of yours in which the materials were incorporated; whether any documents exist regarding the materials supplied; any other information concerning the materials and the transactions.

4. Any and all information regarding contracts, agreements, arrangements, communications, sales and/or dealings between, by, or among you and (a) any of the above-captioned Plaintiff(s); (b) any of the above-captioned Plaintiff(s)' employers, (c) any of the above-captioned Plaintiff(s)' jobsites, (d) any manufacturer of asbestos-containing insulating products and/or any other asbestos-containing products you marketed, advertised, supplied, and/or sold, (e) any co-defendant named in this litigation, (f) any other persons or entities concerning any jobsites or employers at issue in the above-captioned cases, and/or (g) any other company, entity or person which did business with you for the design, manufacture, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, and/or use of asbestos-containing products in North Carolina and/or South Carolina.

5. All information concerning design, manufacture, sale, installation, inspection, service, maintenance, repair, conversion, use and replacement of your products and/or other products or equipment at any of above-captioned plaintiff(s) jobsites.

6. Any information you have to either confirm or dispute that the products identified by the above-captioned Plaintiff(s) or any of their coworkers were or were not present at the jobsites at issue and the asbestos content or absence thereof of such products.

7. Any and all information regarding the identity of any company, person, government agency or other entity that purchased, distributed, sold, supplied, installed, applied or used asbestos-containing products marketed, advertised, supplied, and/or sold by you, including but not limited to: the identity, address and telephone number of each such entity; the date of each such transaction; the identity of the product(s) involved in each such transaction; the quantity of the product(s) involved in each such transaction; the asbestos content of the product(s) involved in each such transaction; and whether any written agreements exist reflecting the nature, terms, and extent of any such dealings.

8. Segregated sales information for every customer or purchaser for which you contracted, designed, engineered, manufactured, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used asbestos-containing products.

9. The identity and last known address and phone number of all corporate officers, officials, directors and employees having responsibility for creating, directing, executing, managing, supervising, overseeing or setting any of the following: the business, policy or procedures of your company with regard to the manufacture, design, engineering, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use of asbestos-containing products; the formulation, design, content, and wording of any warning, caveat, caution, information or statement placed on any asbestos-containing product or container for such product regarding the

dangers of asbestos inhalation; the assembly, handling, application, service, maintenance, repair or use of your asbestos-containing products; and whether the assembly, handling, application, service, maintenance, repair or use of your asbestos-containing products released dust or asbestos fibers.

10. Information regarding any warning, caveat, caution, information or statement given on or with any asbestos-containing products or container by you regarding the dangers of asbestos inhalation; including but not limited to the date, content and samples of any such warning.

11. Information regarding any studies, evaluations, inquiries, investigations or analyses conducted or received by you concerning any potential hazards resulting from the release of asbestos dust or fibers during the manufacture, assembly, handling, application, installation, service, maintenance, repair, use, or removal of asbestos-containing products.

12. Information regarding the inspection of any of your facilities in any way related to asbestos, including but not limited to, the dates of the inspection(s), parties conducting the inspection(s), results of the inspection(s), and all other information related to the inspection(s).

13. Any information gathered or received by you concerning your competitors for the design, manufacture, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use of asbestos-containing products.

14. Information about any claims for workers' compensation benefits filed by your present or former employees, officers or directors based upon pneumoconiosis, pleural disease, pulmonary fibrosis, asbestosis, lung cancer, mesothelioma, and any other cancers and lung diseases.

15. Information regarding any inquiries or communications received from any of your suppliers, customers, purchasers, product users or any other persons or entities concerning the possible, potential, alleged or actual health hazard associated with the inhalation of asbestos dust or fibers.

16. Information regarding the date, source, nature and extent of any notice or knowledge received by you or any of your employees, officers or directors, or by any of your parent or subsidiary companies, or by any of your distributors, that there was a possible, potential, alleged, or actual health hazard associated with the inhalation of asbestos dust or fibers during the manufacture, handling, application, installation, service, maintenance, repair, removal, or use of any asbestos-containing product.

17. Information concerning asbestos-related personal injury or wrongful death civil suits in which you were an interested party, which were in any way related to the manufacture, purchase, marketing, advertising, sale, supply, distribution, installation, service, maintenance, repair or use of asbestos-containing products, or any injury therefrom, including but not limited to: the court and district in which each claim was filed and

heard; the case number(s) or civil action number(s); the substance of any court rulings made concerning your successor or parent liability; the names and addresses of all witnesses identified in the suit(s); whether any deposition or trial testimony was taken; whether you have copies of any of the discovery, deposition or trial testimony from the suit(s); the name, address and telephone number of the attorneys that represented you in the suit(s); and the outcome of the suit(s).

18. Information regarding all professional, trade, industrial, safety, hygiene or health associations, research foundations or organizations to which you or any of your employees, officers or directors, or any of your parent or subsidiary companies have belonged or held memberships in, including but not limited to: the name and address of the association or organization; the dates of membership; the dates, locations and subject matters of any meetings attended; the identity and location of all minutes, digests, reports, journals, periodicals, newsletters and/or other documents received from any such association or organization.

19. Any information concerning the inception, formation, incorporation, reformation, and/or re-incorporation of your company, including but not limited to the date(s), interested parties, states(s) of incorporation, and business intention or purpose.

20. Any information concerning your past and present corporate history and structure, including but not limited to: the names and addresses of each of your past and present parent and subsidiary companies, whether the ownership was in whole or in part, as well as any companies that you have or had an interest in; your business activities over the years; the identity, title, years of employment, and other information regarding your directors, executives and employees over the years; the make-up of current and past boards of directors; your present and former assets, trade names, goodwill and liabilities; corporate transactions of which you have been a part; the location, years of operation, and business activities of each of your facilities and the facilities of your parent or subsidiary companies; and other information regarding your corporate history and structure.

21. The identity and address of all of your insurers, past and present, including but not limited to policy specifics, such as claim limits, aggregate limits, and coverage dates.

22. Financial data for your company from its inception to the present time.

23. Information regarding your record or document retention program, including the titles, names, addresses and telephone numbers of any present and former employee, officer or director responsible for the retention, retrieval, removal and/or destruction of the company's records and documents from your inception to the present time.

24. The identity and last known address and phone number of all present and former employees, officers, directors or other persons with any involvement with, or potential information about, any topic listed herein.

25. The source and basis of any information provided by you in response to any discovery request in this case.

26. Information and documents requested in Plaintiff's Requests for Production of Documents in this matter.

27. The identity and location of all records and documents in your custody or control regarding the subject matter of the foregoing paragraphs of this notice.

28. Defendant's membership in any trade organizations or trade organizations at which asbestos was discussed or participation on any committees, boards, foundations, institutes, or other bodies who discussed the use of asbestos-containing materials in the industry engaged in by Defendant including, but not limited to:
    (a) The American Society of Mechanical Engineers;
    (b) The American Society for Testing and Materials;
    (c) The American Petroleum Institute;
    (d) The Chemical Manufacturer's Association (or its predecessor, the MCA);
    (e) Chlorine Institute;
    (f) Industrial Hygiene Foundation;
    (g) The American Industrial Hygiene Association;
    (h) National Insulation Manufacturers Association;
    (i) The Asbestos Textile Institute;
    (j) The Asbestos Information Association of North America;
    (k) The Asbestos Information Association;
    (l) The National Safety Council;
    (m) ACGIH
    (n) The American Occupational Medicine Association;
    (o) The American Public Health Association;
    (p) The American Medical Association;
    (q) The American Chemical Society;
    (r) NIOSH; and
    (s) Any other organizations or publications/articles received, which address occupational diseases or industrial hygiene concerns relating to asbestos.

29. Any and all evidence and/or testimony that you intend to use to dispute any of the above-captioned Plaintiff(s) use and exposure to asbestos-containing products manufactured by you.

STATE OF SOUTH CAROLINA COUNTY OF YORK **TIMOTHY W. HOWE,** as Personal Representative of the Estate of **WAYNE E. HOWE,** deceased, and **JEANETTE HOWE,** surviving spouse, Plaintiffs, v. **AIR & LIQUID SYSTEMS CORPORATION**, et al., Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT **C/A NO. 2015-CP-46-03456** In re: Asbestos Personal Injury Litigation Coordinated Docket

PLAINTIFFS' SECOND AMENDED 30(b)(6) NOTICE OF DEPOSITION OF DEFENDANT CLEAVER BROOKS, INC.

PLEASE TAKE NOTICE that Plaintiffs, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, will take the videotaped deposition of the designated representative of Defendant **CLEAVER BROOKS, INC** on **January 19, 2018 at 9:30 a.m. (EST)** and will take place **at the location indicated below,** at which time you are notified to appear and take part as you see fit and proper in such examination. The deposition will take place before a certified court reporter and videographer. **If necessary, the deposition shall continue day to day**.

LOCATION: TBD

Conf. Call-in / Passcode: To be circulated prior to the deposition.

The deposition is to be taken for the purpose of discovery or for use at trial, or both. The topics to be covered at the deposition are listed in Exhibit "A" attached hereto. Pursuant to Rule 30(b)(5), Plaintiffs' requested documents be produced from Defendant in the original notice, and that request is unchanged. An extension is granted to Defendant to produce the requested

documents, but the documents should be produced no later than 1 week prior to the deposition in order to give counsel time to review.

DEAN, OMAR, & BRANHAM, LLP

s/ *Jonathan M. Holder*
Jessica M. Dean (TX Bar No. 24025520)
To be Admitted Pro Hac Vice
Jonathan M. Holder (SC Bar No. 77935)
302 N. Market Street, Ste. 300
Dallas, TX 75202

KASSEL MCVEY ATTORNEYS AT LAW
Theile B. McVey (SC Bar No. 16682)
1330 Laurel Street
Columbia, South Carolina 29202
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Reciept, U.S. Mail Standard First Class, and/or electronic mail this 9th day of January, 2018.

s/ *Jonathan M. Holder*
Jonathan M. Holder
Attorney for Plaintiff

EXHIBIT A

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors-in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf

The term "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.

The term "PREMISES AT ISSUE" means the following premises at which Wayne Howe worked during his career:

1. **American Enka Corp.** – Enka, NC (1962-1965, fulltime)
2. **Crown Cork & Seal Company, Inc.** – near Spartanburg, SC (1962-1965, weekends)
3. **Celanese** – Rock Hill, SC (1967-1977)
4. **Celanese** – Narrows, VA (intermittently during 1967-1977)
5. **Bowater Southern Paper,** (aka Bowater Paper Mill, aka Bowater Carolina) (1977-2008)

Please provide a corporate representative to be deposed on the following subject matters:

1. The identity of any product(s) that contained any asbestos component, whether or not classified as an asbestos product by you, including but not limited to valves, boilers, pumps, turbines, steam traps, gaskets, or packing (hereinafter referred to simply as "asbestos-containing products") designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, contracted, installed, specified, required, recommended, and/or used by the Defendant including its predecessors, successors, affiliates, subcontractors, agents, assigns, subsidiary or parent companies, and any divisions or subdivisions, including but not limited to, any person, corporation, company or business entity which formed part of any combination, consolidation, merger or reorganization from which it was created or was the surviving corporation whose assets, stock, property, products or product line was acquired by it (hereinafter referred to as "the company" "you" or "your"), including: the brand name, trademark name, and generic name of the product(s); the inclusive dates of design, manufacture, fabrication, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use; a physical description of the product(s), including color, shape, size, and weight per unit, texture, the percentage of asbestos contained therein, the type of asbestos and other mineralogical content; the percentage of each type of asbestos contained therein; the amount of product(s) that were designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used; the use for which the product(s) was designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used; and other information about the product(s).

2. Information regarding the use of any asbestos-free product as a replacement, substitution, or alternative for any asbestos-containing product designed, manufactured, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, and/or used by you, including but not limited to: the name of the product; the date on which the product was discontinued or asbestos was removed from the product; the reason for the discontinuation or removal of asbestos from the product; and the identity of each employee or officer who participated in the decision or was present at any meeting at which the decision to remove or discontinue using asbestos in the product was discussed or made.

2. Information regarding all designers, manufacturers, sellers, suppliers, distributors, contractors, subcontractors, dealers, wholesalers or other entities who provided asbestos-containing products to you to market, advertise, supply and sell, including but not limited to: the name of the designer, manufacturer, seller, supplier, contractor, subcontractor, dealer, wholesaler or other entity; the brand name, trademark name and generic name of the materials supplied; the amounts supplied; the inclusive dates of supply for each material; the total dollar amount of materials supplied; the asbestos content of the materials supplied; the place to where the materials were shipped; the place where the materials were used by you; the products of yours in which the materials were incorporated; whether any documents exist regarding the materials supplied; any other information concerning the materials and the transactions.

4. Any and all information regarding contracts, agreements, arrangements, communications, sales and/or dealings between, by, or among you and (a) any of the above-captioned Plaintiff(s); (b) any of the above-captioned Plaintiff(s)' employers, (c) any of the above-captioned Plaintiff(s)' jobsites, (d) any manufacturer of asbestos-containing insulating products and/or any other asbestos-containing products you marketed, advertised, supplied, and/or sold, (e) any co-defendant named in this litigation, (f) any other persons or entities concerning any jobsites or employers at issue in the above-captioned cases, and/or (g) any other company, entity or person which did business with you for the design, manufacture, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, and/or use of asbestos-containing products in North Carolina and/or South Carolina.

5. All information concerning design, manufacture, sale, installation, inspection, service, maintenance, repair, conversion, use and replacement of your products and/or other products or equipment at any of above-captioned plaintiff(s) jobsites.

6. Any information you have to either confirm or dispute that the products identified by the above-captioned Plaintiff(s) or any of their coworkers were or were not present at the jobsites at issue and the asbestos content or absence thereof of such products.

7. Any and all information regarding the identity of any company, person, government agency or other entity that purchased, distributed, sold, supplied, installed, applied or used asbestos-containing products marketed, advertised, supplied, and/or sold by you,

including but not limited to: the identity, address and telephone number of each such entity; the date of each such transaction; the identity of the product(s) involved in each such transaction; the quantity of the product(s) involved in each such transaction; the asbestos content of the product(s) involved in each such transaction; and whether any written agreements exist reflecting the nature, terms, and extent of any such dealings.

8. Segregated sales information for every customer or purchaser for which you contracted, designed, engineered, manufactured, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used asbestos-containing products.

9. The identity and last known address and phone number of all corporate officers, officials, directors and employees having responsibility for creating, directing, executing, managing, supervising, overseeing or setting any of the following: the business, policy or procedures of your company with regard to the manufacture, design, engineering, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use of asbestos-containing products; the formulation, design, content, and wording of any warning, caveat, caution, information or statement placed on any asbestos-containing product or container for such product regarding the dangers of asbestos inhalation; the assembly, handling, application, service, maintenance, repair or use of your asbestos-containing products; and whether the assembly, handling, application, service, maintenance, repair or use of your asbestos-containing products released dust or asbestos fibers.

10. Information regarding any warning, caveat, caution, information or statement given on or with any asbestos-containing products or container by you regarding the dangers of asbestos inhalation; including but not limited to the date, content and samples of any such warning.

11. Information regarding any studies, evaluations, inquiries, investigations or analyses conducted or received by you concerning any potential hazards resulting from the release of asbestos dust or fibers during the manufacture, assembly, handling, application, installation, service, maintenance, repair, use, or removal of asbestos-containing products.

12. Information regarding the inspection of any of your facilities in any way related to asbestos, including but not limited to, the dates of the inspection(s), parties conducting the inspection(s), results of the inspection(s), and all other information related to the inspection(s).

13. Any information gathered or received by you concerning your competitors for the design, manufacture, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use of asbestos-containing products.

14. Information about any claims for workers' compensation benefits filed by your present or former employees, officers or directors based upon pneumoconiosis, pleural disease, pulmonary fibrosis, asbestosis, lung cancer, mesothelioma, and any other cancers and lung diseases.

15. Information regarding any inquiries or communications received from any of your suppliers, customers, purchasers, product users or any other persons or entities concerning the possible, potential, alleged or actual health hazard associated with the inhalation of asbestos dust or fibers.

16. Information regarding the date, source, nature and extent of any notice or knowledge received by you or any of your employees, officers or directors, or by any of your parent or subsidiary companies, or by any of your distributors, that there was a possible, potential, alleged, or actual health hazard associated with the inhalation of asbestos dust or fibers during the manufacture, handling, application, installation, service, maintenance, repair, removal, or use of any asbestos-containing product.

17. Information concerning asbestos-related personal injury or wrongful death civil suits in which you were an interested party, which were in any way related to the manufacture, purchase, marketing, advertising, sale, supply, distribution, installation, service, maintenance, repair or use of asbestos-containing products, or any injury therefrom, including but not limited to: the court and district in which each claim was filed and heard; the case number(s) or civil action number(s); the substance of any court rulings made concerning your successor or parent liability; the names and addresses of all witnesses identified in the suit(s); whether any deposition or trial testimony was taken; whether you have copies of any of the discovery, deposition or trial testimony from the suit(s); the name, address and telephone number of the attorneys that represented you in the suit(s); and the outcome of the suit(s).

18. Information regarding all professional, trade, industrial, safety, hygiene or health associations, research foundations or organizations to which you or any of your employees, officers or directors, or any of your parent or subsidiary companies have belonged or held memberships in, including but not limited to: the name and address of the association or organization; the dates of membership; the dates, locations and subject matters of any meetings attended; the identity and location of all minutes, digests, reports, journals, periodicals, newsletters and/or other documents received from any such association or organization.

19. Any information concerning the inception, formation, incorporation, reformation, and/or re-incorporation of your company, including but not limited to the date(s), interested parties, states(s) of incorporation, and business intention or purpose.

20. Any information concerning your past and present corporate history and structure, including but not limited to: the names and addresses of each of your past and present parent and subsidiary companies, whether the ownership was in whole or in part, as well as any companies that you have or had an interest in; your business activities over the years; the identity, title, years of employment, and other information regarding your directors, executives and employees over the years; the make-up of current and past boards of directors; your present and former assets, trade names, goodwill and liabilities; corporate transactions of which you have been a part; the location, years of operation, and

business activities of each of your facilities and the facilities of your parent or subsidiary companies; and other information regarding your corporate history and structure.

21. The identity and address of all of your insurers, past and present, including but not limited to policy specifics, such as claim limits, aggregate limits, and coverage dates.

22. Financial data for your company from its inception to the present time.

23. Information regarding your record or document retention program, including the titles, names, addresses and telephone numbers of any present and former employee, officer or director responsible for the retention, retrieval, removal and/or destruction of the company's records and documents from your inception to the present time.

24. The identity and last known address and phone number of all present and former employees, officers, directors or other persons with any involvement with, or potential information about, any topic listed herein.

25. The source and basis of any information provided by you in response to any discovery request in this case.

26. Information and documents requested in Plaintiff's Requests for Production of Documents in this matter.

27. The identity and location of all records and documents in your custody or control regarding the subject matter of the foregoing paragraphs of this notice.

28. Defendant's membership in any trade organizations or trade organizations at which asbestos was discussed or participation on any committees, boards, foundations, institutes, or other bodies who discussed the use of asbestos-containing materials in the industry engaged in by Defendant including, but not limited to:
    (a) The American Society of Mechanical Engineers;
    (b) The American Society for Testing and Materials;
    (c) The American Petroleum Institute;
    (d) The Chemical Manufacturer's Association (or its predecessor, the MCA);
    (e) Chlorine Institute;
    (f) Industrial Hygiene Foundation;
    (g) The American Industrial Hygiene Association;
    (h) National Insulation Manufacturers Association;
    (i) The Asbestos Textile Institute;
    (j) The Asbestos Information Association of North America;
    (k) The Asbestos Information Association;
    (l) The National Safety Council;
    (m) ACGIH
    (n) The American Occupational Medicine Association;
    (o) The American Public Health Association;
    (p) The American Medical Association;
    (q) The American Chemical Society;

(r) NIOSH; and

(s) Any other organizations or publications/articles received, which address occupational diseases or industrial hygiene concerns relating to asbestos.

29. Any and all evidence and/or testimony that you intend to use to dispute any of the above-captioned Plaintiff(s) use and exposure to asbestos-containing products manufactured by you.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

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SC Court of Appeals

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

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

v.

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

Individually and as Successor-in-Interest to 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.

NOTICE OF APPEAL

Please take notice that Cleaver-Brooks, Inc. appeals (1) the circuit court's order granting Plaintiffs' Motion for Sanctions Against Cleaver-Brooks, Inc., which was entered on December 7, 2018; and (2) the circuit court's order denying Cleaver-Brooks, Inc.'s Motion to Alter or Amend Order, which was entered on January 4, 2019. Copies of both orders on appeal are attached. Cleaver-Brooks received written notice of entry of the latter of these orders on January 4, 2019, making this notice timely. Cleaver-Brooks further states that all necessary transcripts for this appeal have previously been ordered from and provided by the appropriate court reporters. Finally, pursuant to Rule 404(c), SCACR, Cleaver-Brooks attaches hereto the order admitting M. Elizabeth O'Neill *pro hac vice* in this matter, which was entered on March 6, 2018.

Signature Page Attached

Respectfully submitted,

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January 30, 2019

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PROOF OF SERVICE

I, the undersigned Legal Assistant of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Cleaver-Brooks, Inc., do hereby certify that I have served all parties in this action with a copy of the pleading(s) specified below through the United States mail, postage prepaid, at the address(es) below:

Pleading(s): Cleaver-Brooks, Inc.'s Notice of Appeal

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SC Court of Appeals

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Counsel for Respondents

By: _____
Edwin T. Mathis

January 30, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

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

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

v.

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

Individually and as Successor-in-Interest to 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,

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of whom

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

CERTIFICATE OF COUNSEL

The undersigned hereby certify that 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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