

BROWN & JONES REPORTING, INC.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROLAND L. STEVENS and SHIRLEY J.
STEVENS,

Plaintiffs,

-vs-

Case No. 3:11-CV-06073

CBS CORPORATION, et al.,

Defendants.

Video examination of JOHN F. TORNETTA,
taken at the instance of the Plaintiff, under and
pursuant to Federal Rule of Civil Procedure 30(b)(6),
before ANDREA REICHLE, a Registered Professional Reporter
and Notary Public in and for the State of Wisconsin, at
Whyte Hirshboeck Dudek, 555 East Wells Street, Suite
1900, Milwaukee, Wisconsin, on September 14, 2012,
commencing at 11:10 a.m. and concluding at 6:55 p.m.

A P P E A R A N C E S

BERGMAN DRAPER LADENBURG, PLLC, by
 MR. MATTHEW BERGMAN,
 MS. ANNA KNUDSON,
 614 1st Avenue, 4th Floor,
 Seattle, Washington 98104,
 appeared via videoconference on behalf of the
 Plaintiffs.

CARNEY BADLEY SPELLMAN, P.S., by
 MR. TIMOTHY K. THORSON,
 701 Fifth Avenue, Suite 3600,
 Seattle, Washington 98104-7010,
 appeared via videoconference on behalf of the Defendant
 Cleaver-Brooks.

GORDON THOMAS HONEYWELL, LLP, by
 MR. JAMES HORNE,
 One Union Square,
 600 University, Suite 2100,
 Seattle, Washington 98101,
 appeared via videoconference on behalf of the Defendant
 IMO Industries, Incorporated.

RIZZO MATTINGLY BOSWORTH, P.C., by
 MR. MATTHEW MATTINGLY,
 411 SW 2nd Avenue, Suite 200,
 Portland, Oregon 97204,
 appeared via telephone on behalf of the Defendant
 Warren Palms, LLC

A L S O P R E S E N T

Mr. Eric Allen, Paralegal, Bergman Draper
 Ladenburg, PLLC.
 Mr. Dean van Hoogen, Videographer.

* * * * *

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1

TRANSCRIPT OF PROCEEDINGS

11:10

2

THE VIDEOGRAPHER: We are officially on

11:10

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the record at 11:08 a.m. The date today is

11:10

4

September 14th, 2012. This is Disk No. 1 in the

11:10

5

deposition of John Tornetta.

11:10

6

This is being taken in the matter of

11:10

7

Roland Stevens, et al. versus CBS Corporation, et

11:10

8

al. This is pending in the United States District

11:10

9

Court, Western District of Washington at Racoma,

11:10

10

Case No. 11-CV-6073.

11:10

11

The deposition is taking place at the

11:10

12

Offices of Whyte Hirschboeck Dudek, located at 555

11:10

13

East Wells Street, Milwaukee, Wisconsin. My name

11:10

14

is Dean van Hoogen, videographer with Brown &

11:10

15

Jones Reporting, and the court reporter is Andrea

11:10

16

Reichle.

11:10

17

Will counsel please state their

11:10

18

appearances and whom they represent, beginning

11:10

19

with plaintiffs' counsel, and then the reporter

11:10

20

will swear in the witness.

11:10

21

MR. BERGMAN: Matthew Bergman for the

11:10

22

Plaintiff.

11:10

23

MS. KNUDSON: Anna Knudson for the

11:10

24

Plaintiff.

11:10

25

MR. THORSON: Tim Thorson for Defendant

11:10 1 Cleaver-Brooks.

11:10 2 MR. HORNE: Jim Horne for IMO
11:10 3 Industries, Incorporated.

11:10 4 MR. MATTINGLY: Michael Mattingly for
11:10 5 Warren Palms, LLC.

6 JOHN F. TORNETTA, called as a witness
7 herein, having been first duly sworn on oath, was
8 examined and testified as follows:

9 EXAMINATION

10 BY MR. BERGMAN:

11:10 11 Q Good morning, sir.

11:10 12 A Good morning.

11:10 13 Q Could you please state your full name?

11:10 14 A John F. Tornetta.

11:10 15 Q And Mr. Tornetta, how are you employed?

11:10 16 A I'm employed by Cleaver-Brooks, Inc.

11:10 17 Q And how long have you worked for Cleaver-Brooks?

11:10 18 A I started with them in 1985.

11:10 19 Q And what position do you hold with the company,
11:10 20 sir?

11:10 21 A Manager of technical services.

11:10 22 Q And what do those duties entail?

11:10 23 A A large portion of my duties is working with our
11:10 24 attorneys around the country and product liability
11:10 25 cases, lawsuits or any other issues, related to

11:10 1 product liability.

11:10 2 Q And can you briefly describe your educational
11:10 3 background since high school?

11:10 4 A I went to -- after high school, I went to a
11:10 5 three-year trade school called Williamson Trade
11:10 6 School in Media, Pennsylvania. That's the formal
11:11 7 training or education after high school.

11:11 8 Q And can you describe the training and experience
11:11 9 that you have in the subject matter of boilers?

11:11 10 A I worked with the company for 27 years in service,
11:11 11 training, and different management positions
11:11 12 within the company.

11:11 13 MR. BERGMAN: Okay. Madam Court
11:11 14 Reporter, will you please open up Exhibit 1 and
11:11 15 hand it -- and mark it and hand it to the witness.

11:12 16 (Exhibit No. 1 was marked.)

11:12 17 BY MR. BERGMAN:

11:12 18 Q Mr. Tornetta, do you understand that you have been
11:12 19 designated by Cleaver-Brooks to testify on behalf
11:12 20 of the company on certain specific subject matters
11:12 21 in connection with this lawsuit?

11:12 22 A Yes.

11:12 23 Q And you understand the testimony that you're
11:12 24 giving is going to be on behalf of and by
11:12 25 Cleaver-Brooks?

11:12 1 A Yes, I do.

11:12 2 Q And I want to go through these subject areas, if I
11:12 3 could with you, sir. First, if you could look to
11:12 4 the second page of Exhibit 1.

11:12 5 A Okay.

11:12 6 Q And the first subject matter that we would like to
11:12 7 address is, "Cleaver-Brooks' historic knowledge of
11:12 8 human health hazards associated with asbestos."

11:12 9 Are you the witness who is going to be
11:12 10 testifying on behalf of Cleaver-Brooks on that
11:12 11 subject?

11:12 12 A Yes.

11:12 13 MR. THORSON: And let me just, at this
11:12 14 point, make a statement for the record.
11:12 15 Yesterday, Mr. Bergman and I had a conference to
11:13 16 discuss the scope of today's deposition and the
11:13 17 very subject -- the very subject matters and
11:13 18 topics that are going to appear in the notice of
11:13 19 deposition. And I think we had a constructive and
11:13 20 productive discussion about Cleaver-Brooks'
11:13 21 position.

11:13 22 Most of the topics, if not all of the
11:13 23 topics, parallel -- closely parallel specific
11:13 24 interrogatories that have previously been
11:13 25 propounded to Cleaver-Brooks in this -- in this

11:13 1 litigation, and Cleaver-Brooks has stated a
11:13 2 variety of objections to those requests, and those
11:13 3 interrogatories.

11:13 4 Mr. Bergman and I spoke briefly, but I
11:13 5 think constructively, about the nature of those
11:13 6 objections, and, in fact, while Cleaver-Brooks
11:13 7 takes the position that Mr. Tornado is certainly
11:13 8 the most appropriate person to address those
11:13 9 various topics, nonetheless those topics are -- a
11:13 10 number of those topics are -- for a practical
11:13 11 matter, are impractical for anyone to answer for
11:14 12 the reasons that we have set forth in our answers
11:14 13 to interrogatories.

11:14 14 Mr. Bergman and I agreed that it was not
11:14 15 necessary in the circumstances for Cleaver-Brooks
11:14 16 to proceed with a motion to squash or for any kind
11:14 17 of productive order. We are producing
11:14 18 Mr. Tornado today in the spirit of good faith,
11:14 19 and we do believe that he is the most appropriate
11:14 20 person to set forth Cleaver's responses to these
11:14 21 various topics.

11:14 22 Have I at least accurately summarized
11:14 23 what -- Mr. Bergman, what you and I discussed
11:14 24 yesterday?

11:14 25 MR. BERGMAN: Yes.

11:14 1 MR. THORSON: Okay. All right. Thank
11:14 2 you.

11:14 3 BY MR. BERGMAN:

11:14 4 Q Mr. Tornado, the second subject matter is,
11:14 5 "Cleaver-Brooks' membership in trade
11:14 6 organizations."

11:14 7 And every question that I ask you
11:14 8 regarding Exhibit 1 will be subject to your
11:14 9 Counsel's comments -- or I won't say objections.
11:14 10 But are you the witness who will be testifying on
11:14 11 behalf of Cleaver-Brooks on that subject?

11:15 12 A Yes.

11:15 13 Q The third subject -- and I should clarify that
11:15 14 Mr. Thorson and I communicated, and the third
11:15 15 subject pertains to, "Cleaver-Brooks' answers to
11:15 16 interrogatories and requests for production in
11:15 17 asbestos litigation, including the above-captioned
11:15 18 case," and we have clarified that we are only
11:15 19 referring to interrogatories and requests for
11:15 20 productions propounded in this case, as well as
11:15 21 the ACR 26 cases filed by my firm in 1980 and
11:15 22 2004.

11:15 23 So with that clarification, sir, are you
11:15 24 the witness who is going to testify on that
11:15 25 subject?

11:15 1 A Yes.

11:15 2 MR. THORSON: And let me just qualify
11:15 3 that matter. You were kind enough to provide me
11:15 4 with that qualification last evening.

11:15 5 Mr. Tornetta and I have not had an
11:15 6 opportunity to review, nor has he reviewed, the
11:15 7 2004 interrogatories that you referenced. And if
11:16 8 we get to that point of that deposition where you
11:16 9 want to use those interrogatory answers with him,
11:16 10 I would ask for the courtesy of an opportunity for
11:16 11 both of us to have the chance to look over the
11:16 12 interrogatories. And if we request the
11:16 13 opportunity, to confer about them.

11:16 14 MR. BERGMAN: If Mr. Tornetta needs to
11:16 15 request that, obviously.

11:16 16 MR. THORSON: Thank you.

11:16 17 BY MR. BERGMAN:

11:16 18 Q The fourth in the subject area is,
11:16 19 "Cleaver-Brooks' manufacture, sale, distribution,
11:16 20 supply, and/or specification of
11:16 21 asbestos-containing products."

11:16 22 Once again, subject to your Counsel's
11:16 23 comments, are you the witness designated by
11:16 24 Cleaver-Brooks to testify on that subject?

11:16 25 A Yes, I am.

11:16 1 Q The fifth subject is, "Cleaver-Brooks' sale,
11:16 2 distribution, and specification of
11:16 3 asbestos-containing replacement parts, including
11:16 4 gaskets, packing, and insulation, to the United
11:16 5 States Navy."

11:16 6 Are you the witness who is going to
11:16 7 testify on that subject?

11:16 8 A Yes.

11:16 9 Q And the sixth subject is, "Cleaver-Brooks' sale,
11:17 10 distribution, and specification of
11:17 11 asbestos-containing replacement parts, including
11:17 12 gaskets, packing, and insulation, to Puget Sound
11:17 13 Naval Shipyard."

11:17 14 Once again, subject to your Counsel's
11:17 15 comments, are you the witness designated by
11:17 16 Cleaver-Brooks to testify on that subject?

11:17 17 A Yes, I am.

11:17 18 Q The seventh subject is, "Cleaver-Brooks' revenues
11:17 19 from sales of asbestos-containing replacement
11:17 20 parts, including gaskets, packing, and insulation,
11:17 21 to the United States Navy from 1954 to 1988."

11:17 22 Are you the witness testifying on that
11:17 23 subject matter?

11:17 24 A Yes.

11:17 25 Q No. 8 is, "Cleaver-Brooks' revenues from sales of

11:17 1 asbestos-containing replacement parts, including
11:17 2 gaskets, packing, and insulation, to Puget Sound
11:17 3 Naval Shipyard from 1954 to 1988."

11:17 4 Again, sir, are you the witness
11:17 5 designated by Cleaver-Brooks to testify on that
11:17 6 subject matter?

11:17 7 A Yes, I am.

11:17 8 Q And finally, sir, it's topic 8 (verbatim),
11:18 9 "Cleaver-Brooks' actions, if any, taken in
11:18 10 response to its knowledge of asbestos hazards,
11:18 11 including but not limited to, warnings,
11:18 12 experimentation with non-asbestos-containing
11:18 13 products, medical screening of its employees, and
11:18 14 consultation with physicians and/or industrial
11:18 15 hygienists."

11:18 16 Once again, sir, subject to your
11:18 17 Counsel's comment, are you the witness to testify
11:18 18 on behalf of Cleaver-Brooks on that subject
11:18 19 matter?

11:18 20 A Yes, I am, and I think you said topic 8, but I
11:18 21 believe it's topic 9.

11:18 22 Q Thank you for that clarification, sir. You are
11:18 23 correct. Looking at topic 7 on Exhibit 1, is it
11:18 24 true that Cleaver-Brooks does not have any
11:18 25 documents that would provide information regarding

11:18 1 that subject?

11:18 2 A Any documents we would have would be related to a
11:18 3 specific boiler that we sold to the U.S. Navy,
11:19 4 which I think we've provided some commercial
11:19 5 records for all the boilers that I think we're
11:19 6 talking about, I think, so far. So it would be
11:19 7 within those.

11:19 8 We don't have a historical record of
11:19 9 everything we ever sold to the Navy. It's all
11:19 10 related to specific boilers.

11:19 11 Q Well, would it be fair to say, sir, that
11:19 12 Cleaver-Brooks is not able to calculate the
11:19 13 overall or total revenue from sales of
11:19 14 asbestos-containing replacement parts to the
11:19 15 United States Navy in the 1954-to-1988 time frame?

11:19 16 MR. THORSON: I will object to the form
11:19 17 of the question. Assumes facts not in evidence.

11:19 18 THE WITNESS: We couldn't do that in a
11:19 19 broad "this is everything that ever went to a
11:19 20 Navy" -- if we had a particular boiler we were
11:19 21 looking at, we could see if there were any sales
11:19 22 of that sort and look at the revenues from those
11:19 23 sales, if it was available, yes. But in a broad
11:19 24 sense, the overall to the Navy, no, we could not.

11:20 25 BY MR. BERGMAN:

11:20 1 Q Could the -- and does Cleaver-Brooks have records
11:20 2 documenting the overall sales of
11:20 3 asbestos-containing replacement parts outside the
11:20 4 context of the United States Navy?

11:20 5 MR. THORSON: Object to the form of the
11:20 6 question. Overly broad.

11:20 7 THE WITNESS: No. All of our --

11:20 8 BY MR. BERGMAN:

11:20 9 Q Do you understand the question, sir?

11:20 10 A Yes, I think I do.

11:20 11 Q Okay.

11:20 12 A And the answer is no, we do not. Records we have
11:20 13 are related to specific boilers. So if we are
11:20 14 looking at a specific boiler, we could see if
11:20 15 there was an asbestos-containing replacement part
11:20 16 sold for that particular boiler, but we don't have
11:20 17 a, let's say, file or common record on every part
11:20 18 we ever sold, no.

11:20 19 BY MR. BERGMAN:

11:20 20 Q Okay. And to expand upon that, if I could, sir,
11:20 21 does Cleaver-Brooks maintain, then, records of
11:20 22 aftermarket sales to its boiler companies --
11:21 23 excuse me, to its boiler customers in any one
11:21 24 location?

11:21 25 A Yes, I think you'll see in some of the records we

11:21 1 supplied, there's some evidence of that as well,
11:21 2 where it shows a part sale to a customer after the
11:21 3 sale of the product, the boiler itself.

11:21 4 Q And so --

11:21 5 MR. THORSON: Let me just move to strike
11:21 6 the non-responsive portion of the answer. I think
11:21 7 he may have misunderstood the scope of your
11:21 8 question.

11:21 9 BY MR. BERGMAN:

11:21 10 Q Does -- so are records of all aftermarket sales to
11:21 11 a boiler company contained in the particular file
11:21 12 pertaining to the particular boiler?

11:21 13 MR. THORSON: Object to the form of the
11:21 14 question. I think you said sales to a boiler
11:21 15 company.

11:21 16 MR. BERGMAN: Sales to a customer.

11:21 17 MR. THORSON: Object to form.

11:21 18 BY MR. BERGMAN:

11:21 19 Q Do you understand the question, sir?

11:21 20 A I think so. I think you're asking if we sold a
11:21 21 part to a customer after the boiler was sold,
11:22 22 would those records be contained within the
11:22 23 commercial -- or within the records for that
11:22 24 boiler.

11:22 25 Q Yes, sir.

11:22 1 A And the answer to that is yes.

11:22 2 Q Okay. And does that pertain to all aftermarket
11:22 3 sales?

11:22 4 A All aftermarket sales for that particular boiler,
11:22 5 yes, I guess is the way I would put that.

11:22 6 Q Okay. Once again, sir, if you could look with me
11:22 7 to topic 8 on page 2 of Exhibit 1, pertaining to
11:22 8 Cleaver-Brooks' revenues from sales of
11:22 9 asbestos-containing replacement parts to Puget
11:22 10 Sound Naval Shipyard.

11:22 11 Would it also be your answer that
11:22 12 Cleaver-Brooks does not have sales organized by
11:22 13 locations such as Puget Sound Naval Shipyard?

11:23 14 A Well, I believe we do in relation to the boilers
11:23 15 that were shipped that we have records of shipping
11:23 16 to Puget Sound Naval Shipyard. So that one is a
11:23 17 little different, and it's talking about a
11:23 18 specific site, not a broad customer.

11:23 19 So within the records for the boilers we
11:23 20 shipped to Puget Sound Naval Shipyard, if there
11:23 21 was a part sold after the boiler, it would be
11:23 22 within those records.

11:23 23 Q And in -- for how long did that practice -- well,
11:23 24 does that practice continue to the present day?
11:23 25 And by "that practice," sir, I mean the practice

11:23 1 of documenting sales to Cleaver-Brooks' boilers in
11:23 2 the boiler -- in the particular boiler file.

11:23 3 MR. THORSON: I will object to the form
11:23 4 of the question. I believe it assumes facts not
11:23 5 in evidence, but you can answer.

11:23 6 THE WITNESS: Yes, it does continue to
11:23 7 today. If we're -- if a part is sold for a
11:24 8 specific unit boiler, the record for that specific
11:24 9 part sale or parts sale, whatever it may be, goes
11:24 10 within the records for that specific boiler.

11:24 11 BY MR. BERGMAN:

11:24 12 Q And is Cleaver-Brooks still furnishing parts --
11:24 13 replacement parts to boilers that it originally
11:24 14 sold, say, in the 1960s?

11:24 15 A Boy, I'm not sure I know the answer to that. I
11:24 16 don't -- I don't see the sales -- everyday sales
11:24 17 of any aftermarket parts. So it would be a bit of
11:24 18 a guess for me to say, yeah, definitely we are. I
11:24 19 guess I wouldn't be surprised.

11:24 20 Q Okay. And that would be because a boiler, if
11:24 21 properly maintained, can last decades?

11:24 22 A Yeah, I don't know that I -- I would say multiple
11:24 23 decades, but perhaps, yes, it depends on how it's
11:24 24 maintained, you're right.

11:25 25 MR. THORSON: I will just belatedly

11:25 1 object to the form of the last question. I
11:25 2 believe it was an incomplete hypothetical.

11:25 3 MR. BERGMAN: If the court reporter
11:25 4 could open Envelope 2 -- I'm sorry, Envelope 3,
11:25 5 and mark it as Exhibit 2.

11:25 6 (Exhibit No. 2 was marked.)

11:26 7 THE WITNESS: Okay.

11:26 8 BY MR. BERGMAN:

11:26 9 Q Mr. Tornetta, if you could turn to the last page
11:26 10 of Exhibit 2.

11:26 11 A Yes.

11:26 12 Q And is that your signature, sir?

11:26 13 A Yes, it is.

11:26 14 Q And did you review the answers set forth in
11:26 15 Exhibit 2 prior to signing under the verification
11:26 16 section on the last page of the exhibit?

11:26 17 A Yes.

11:26 18 Q I want to ask you some questions regarding --
11:26 19 regarding these answers, and I would like you, if
11:26 20 you could, sir, to please, on page 6 of Exhibit 2,
11:26 21 read the second full paragraph of Cleaver-Brooks'
11:26 22 verified answers.

11:26 23 MR. THORSON: I'm sorry. There were a
11:26 24 couple things there. One, I appreciate the
11:27 25 courtesy of the copy you handed me, but I think

11:27 1 this may be a work copy. It has handwriting on
11:27 2 it. I believe I've got my own set, but I would
11:27 3 like to know -- I think you're referring to the
11:27 4 interrogatory -- the exhibit you handed
11:27 5 Mr. Tornetta is the first set of interrogatories
11:27 6 in Cleaver-Brooks' answers. Those answers were
11:27 7 supplemented.

11:27 8 MR. BERGMAN: I understand.

11:27 9 MR. THORSON: So I didn't bring a
11:27 10 supplemented -- the original set, which -- which
11:27 11 answer are you referring to?

11:27 12 MR. BERGMAN: These were the ones -- and
11:27 13 we're going to be talking about a number of them,
11:27 14 but these are the ones that were subpoenaed by
11:27 15 your firm on June 4th.

11:27 16 MR. THORSON: Okay. And which response
11:27 17 in particular are you referring to now?

11:27 18 MR. BERGMAN: I'm starting with
11:27 19 Interrogatory No. 1, which is on page 6. I
11:27 20 brought the supplemental responses but not the
11:27 21 original. Thanks, Anne.

11:28 22 MS. KNUDSON: You're welcome.

11:28 23 MR. THORSON: There's marginality on
11:28 24 these. I will agree you're not waiving any work
11:28 25 product or attorney-client privileges. I --

11:28 1 THE WITNESS: Just so you know, that's
11:28 2 on my copy as well. There's things written in the
11:28 3 margins.

11:28 4 MR. BERGMAN: All right. Well, unless
11:28 5 you can interpret Sam's --

11:28 6 MR. THORSON: All right. We're in
11:28 7 Interrogatory No. 1. Sorry, Counsel.

11:28 8 BY MR. BERGMAN:

11:28 9 Q Okay. Mr. Tornetta, would you please read the --
11:28 10 and I'm directing your attention to page 6 of
11:28 11 Exhibit 2, if you would be so kind as to read the
11:28 12 second full paragraph of those answers.

11:28 13 A Beginning with "Since the 1930s's," is that the
11:28 14 paragraph?

11:28 15 Q Yeah.

11:28 16 A "Since the 1930's, Cleaver-Brooks has designed,
11:28 17 manufactured, sold, and distributed over 120,000
11:28 18 boilers of different styles, types, sizes,
11:29 19 horsepower, pressures, fuel types, and
11:29 20 configurations. Various individual boilers
11:29 21 manufactured and sold by Cleaver-Brooks may have
11:29 22 contained one or more parts or components which
11:29 23 had some asbestos content. Each and every
11:29 24 asbestos-containing part or component was
11:29 25 manufactured by companies other than

11:29 1 Cleaver-Brooks and were purchased by
11:29 2 Cleaver-Brooks on the open market."

11:29 3 Q So by this answer, Cleaver-Brooks is indicating
11:29 4 that it did not itself manufacture
11:29 5 asbestos-containing products, but incorporated
11:29 6 those products in at least some of its boilers.
11:29 7 Would that be a fair statement, sir?

11:29 8 A Yeah. I --

11:29 9 MR. THORSON: Object to the form of the
11:29 10 question. I think the answer speaks for itself.

11:29 11 THE WITNESS: I think it's more properly
11:29 12 we didn't make asbestos-containing components for
11:29 13 the boilers we made.

11:29 14 BY MR. BERGMAN:

11:29 15 Q Okay. You didn't make asbestos-containing
11:30 16 components, but incorporated asbestos-containing
11:30 17 components in at least some of the boilers that
11:30 18 Cleaver-Brooks made?

11:30 19 A Yes.

11:30 20 Q And does Cleaver-Brooks have any record of
11:30 21 purchases of asbestos-containing components on the
11:30 22 open market as referenced in -- in response to
11:30 23 Interrogatory 1 on page 6 of Exhibit 2?

11:30 24 A No, we don't have purchasing records going back to
11:30 25 those times.

11:30 1 Q Okay. How far back do Cleaver-Brooks' purchasing
11:30 2 records go?

11:30 3 A I believe, based on our document retention policy,
11:30 4 I believe it's seven years, but I -- it could be
11:30 5 10, but it certainly isn't much further -- any
11:30 6 than that.

11:30 7 Q Okay. So Cleaver-Brooks has no knowledge
11:31 8 regarding the identities of manufacturers of the
11:31 9 asbestos-containing components that it
11:31 10 incorporated into its boilers?

11:31 11 MR. THORSON: Object to the form of the
11:31 12 question.

11:31 13 THE WITNESS: No, I don't believe I
11:31 14 could say that. Our records call out, in certain
11:31 15 instances, manufacturers of those various
11:31 16 components. They may not be to a point where you
11:31 17 can determine the exact manufacturer because it
11:31 18 may list more than one or, in fact, in some
11:31 19 instances, say we're equal, which would leave it
11:31 20 pretty much open, but I think if you look through
11:31 21 some of the records we provided, you will see
11:31 22 names of some of those manufacturers.

11:31 23 Q Fair enough, sir. And let me refine my question,
11:31 24 then, and indicate that outside -- in outside --
11:31 25 outside of specifications and records that you've

11:32 1 referred to, Cleaver-Brooks has no sales records
11:32 2 identifying the manufacturers of the
11:32 3 asbestos-containing components that it
11:32 4 incorporated into its boilers; is that correct?

11:32 5 MR. THORSON: Object to the form.

11:32 6 THE WITNESS: That I believe would be
11:32 7 correct, yes.

11:32 8 BY MR. BERGMAN:

11:32 9 Q Okay. So the only basis of Cleaver-Brooks'
11:32 10 knowledge regarding the identity of the
11:32 11 manufacturers of asbestos-containing components
11:32 12 that it incorporated into its boilers would be in
11:32 13 specifications produced by the company?

11:32 14 A Yes, I would refer to them as the drawings and
11:32 15 parts descriptions, but yes.

11:32 16 Q Okay. And we'll talk about some of those later.
11:33 17 Are you able, sir, to provide us with an estimate
11:33 18 of the percentage of Cleaver-Brooks' boilers
11:33 19 constructed in the 1950s that incorporated
11:33 20 asbestos-containing components?

11:33 21 A No, I couldn't provide that estimate.

11:33 22 Q Okay. And how about for the 1960s?

11:33 23 A No. Again, I couldn't provide an estimate for
11:33 24 that.

11:33 25 Q Okay. And just for the record, how about 1970s?

11:33 1 A I couldn't provide an estimate for that either.

11:33 2 Q Okay, sir. Can you provide us with a general
11:33 3 description of asbestos-containing components that
11:33 4 were incorporated in Cleaver-Brooks' boilers in
11:33 5 the 1950s and 1960s?

11:33 6 MR. THORSON: Object to the form of the
11:33 7 question. It's overly broad. Assume facts not in
11:33 8 evidence.

11:33 9 THE WITNESS: I guess I -- I would
11:34 10 hesitate to look at it generally since we made so
11:34 11 many different boilers and types of boilers, and
11:34 12 narrowing it, quite frankly, down to the '50s and
11:34 13 '60s, I'm not sure I could.

11:34 14 If we referred to some of the documents
11:34 15 that we produced in this case, I think that you'll
11:34 16 see where there was some gasket materials. There
11:34 17 was some insulation materials. Possibly might
11:34 18 differentiate between a rope and gasket material.
11:34 19 I think there may have been some board materials
11:34 20 in those boilers that we were -- that we had
11:34 21 produced the drawings for.

11:34 22 Q Okay. I want to respond to your concern, for want
11:34 23 of a better word, on narrowing it down to '50s and
11:34 24 '60s. I appreciate that, sir.

11:34 25 Are you able to -- and I want to ask you

11:34 1 about the insulation that -- the
11:35 2 asbestos-containing insulation that may have been
11:35 3 incorporated in Cleaver-Brooks' boilers. Can you
11:35 4 describe in any greater detail the type of
11:35 5 insulation that you were referring to?

11:35 6 MR. THORSON: Object to the form of the
11:35 7 question. It's overly broad.

11:35 8 THE WITNESS: The type of insulation
11:35 9 that was, quite frankly, on my mind when I said
11:35 10 that, was an insulating material that's -- that
11:35 11 you will see on the drawings for the boilers, I
11:35 12 believe, at Whidbey Island. It was a
11:35 13 castable-type insulation in the front door -- or
11:35 14 front inner door, I'll call it.

11:35 15 Q Is that called Vee Block?

11:35 16 A In that case, I believe it was referred to as Vee
11:35 17 Block, yes.

11:35 18 Q And, sir, are you personally familiar with Vee
11:35 19 Block?

11:35 20 MR. THORSON: Object to the form of the
11:35 21 question. Vague.

11:35 22 THE WITNESS: I guess I'm familiar with
11:36 23 what it is and -- work goes in that particular
11:36 24 boiler, yes.

11:36 25 BY MR. BERGMAN:

11:36 1 Q Okay. Let me ask you in -- in a prior deposition,
11:36 2 you had indicated that you actually mixed Vee
11:36 3 Block or used Vee Block in the course of your
11:36 4 professional experience. Is that indeed the case,
11:36 5 sir?

11:36 6 A Is that -- I'm sorry. I lost your last word
11:36 7 there.

11:36 8 Q Have you actually used Vee Block yourself in the
11:36 9 course of your professional training and
11:36 10 experience?

11:36 11 A Yes, I have.

11:36 12 MR. THORSON: Let me just object to the
11:36 13 form of the question.

11:36 14 THE WITNESS: Sorry.

11:36 15 MR. THORSON: It's vague.

11:36 16 BY MR. BERGMAN:

11:36 17 Q And, sir, can you describe what Vee Block is used
11:36 18 for in a Cleaver-Brooks' boiler? What function it
11:36 19 serves?

11:36 20 A It's a -- the particular boilers we were looking
11:36 21 at in this case that we provided the drawings, it
11:37 22 was used as an insulation material between the
11:37 23 fire side in the front end of the boiler and the
11:37 24 combustion air side.

11:37 25 Q And can you describe for -- in layman's terms, the

11:37 1 difference between fire side and combustion air
11:37 2 side in the context of boiler operation?

11:37 3 A The combustion air side is the air used --
11:37 4 delivered to the burner for the combustion
11:37 5 process. So it's ambient air. That's whatever
11:37 6 ambient air temperature is.

11:37 7 The fire side of the boiler is the side
11:37 8 of the boiler that's after the combustion process
11:37 9 where the heat transfer is taking place through
11:37 10 the tubes.

11:37 11 Q Sir, how does Vee Block come packaged?

11:37 12 MR. THORSON: Object to the form of the
11:37 13 question. It's vague and ambiguous. Overly
11:37 14 broad.

11:37 15 THE WITNESS: In the times I've been
11:38 16 involved with it, it was in a bag.

11:38 17 BY MR. BERGMAN:

11:38 18 Q And we'll go into this in a little more detail
11:38 19 later, but how is Vee Block prepared for
11:38 20 application and then applied?

11:38 21 A In the times I've been involved with it, it was
11:38 22 mixed with water and then put in whatever space
11:38 23 with a trowel.

11:38 24 Q And when it's mixed with water, is that -- could
11:38 25 you -- is that done in a bucket or a mixer or a

11:38 1 trough or something else?

11:38 2 MR. THORSON: Object to the form.

11:38 3 THE WITNESS: I don't recall exactly
11:38 4 what I used to mix in it, but certainly, depending
11:38 5 on the amount of material you're mixing, it would
11:38 6 determine the vessel you will put in to mix it.

11:38 7 BY MR. BERGMAN:

11:38 8 Q So it could be any of the mixing receptacles that
11:38 9 I previously described based on the amount that
11:38 10 was required for a particular job?

11:39 11 A Yes.

11:39 12 Q If you would be so kind, sir, the -- to read the
11:39 13 next paragraph on your response to Interrogatory
11:39 14 No. 1 set forth in -- on page 6 of Exhibit 2.

11:39 15 A "Boiler design was a continuing process at
11:39 16 Cleaver-Brooks and the design of various parts,
11:39 17 components, sub-assemblies, and other elements of
11:39 18 boilers was constantly changing. Many of the
11:39 19 parts and components of the boilers were
11:39 20 manufactured by others and the identity of those
11:39 21 manufacturers frequently changed as did the design
11:39 22 and manufacture of their various products.
11:39 23 Further, each Cleaver-Brooks' boiler is configured
11:39 24 to the unique specifications and requirements of
11:40 25 each customer. For all of these reasons, each

11:40 1 Cleaver-Brooks' boiler is unique."

11:40 2 Q Sir, I want to address the statement that
11:40 3 Cleaver-Brooks made that the identify of the
11:40 4 manufacturers of asbestos-containing components
11:40 5 frequently changed.

11:40 6 What was the basis of Cleaver-Brooks'
11:40 7 knowledge in providing that information to us?

11:40 8 A If you look at some of the drawings we had
11:40 9 forwarded for the boilers, in particular, Whidbey
11:40 10 Island, and other ones I have come across in doing
11:40 11 this, you will see many of those drawings refer to
11:40 12 a manufacturer and then other potential
11:40 13 manufacturers of a particular product. So it was
11:40 14 a choice, not a design issue -- it was a
11:40 15 what-can-we-get type issue for a manufacturing
11:40 16 plant. So they could have used any of those
11:41 17 manufacturers, or as I pointed out earlier, in
11:41 18 some of those cases, or equal, which would have
11:41 19 left it out there for anybody else.

11:41 20 Q I want to follow up on that. "Or equal" would
11:41 21 mean that even a manufacturer that is not listed
11:41 22 on the documents that you provided -- and by this,
11:41 23 I mean the manufacturer of asbestos-containing
11:41 24 component, by -- could -- could be used by
11:41 25 Cleaver-Brooks if it met the technical

11:41 1 specifications required to fulfill the particular
11:41 2 role that the -- that the component was designed
11:41 3 for?

11:41 4 A Correct, for asbestos-containing component or any
11:41 5 component, actually, whether that was an
11:41 6 asbestos-containing component or not.

11:41 7 Q Okay. Can you provide a little bit more
11:41 8 illumination on that, sir?

11:42 9 A I'm not sure I can. I'm not sure what you're
11:42 10 looking for.

11:42 11 Q Okay. Let me -- let me try to expand on that a
11:42 12 little bit. The asbestos-containing components
11:42 13 that Cleaver-Brooks incorporated on its boilers
11:42 14 were utilized, fulfilled for a particular purpose
11:42 15 on the operation of a boiler; is that correct?

11:42 16 MR. THORSON: Object to the form of the
11:42 17 question. It mischaracterizes testimony and form.
11:42 18 Assumes facts not in evidence.

11:42 19 THE WITNESS: I would say.

11:42 20 BY MR. BERGMAN:

11:42 21 Q Did I -- did I accurately describe your testimony,
11:42 22 sir?

11:42 23 A Well, I would say I would -- I would correct it
11:42 24 slightly in that you're correct that we -- that we
11:42 25 picked a product for its form -- or for its

11:42 1 function. I wouldn't say that we necessarily
11:42 2 picked it to be an asbestos-containing product for
11:42 3 its function, which is what I was getting at when
11:43 4 I was saying whether it was asbestos-containing or
11:43 5 not. We would have chosen a gasket or whatever it
11:43 6 may be for a particular function.

11:43 7 If one supplier had asbestos in that
11:43 8 product, that gasket, for that function, then yes,
11:43 9 it would have been asbestos-containing component.
11:43 10 If another manufacturer had a gasket or whatever
11:43 11 it may be that formed -- performed the same
11:43 12 function and we used that, it may not have been an
11:43 13 asbestos-containing component. That's why I threw
11:43 14 that in there.

11:43 15 Q I appreciate that clarification, sir. And I
11:43 16 understand what you're saying. Let me try to
11:43 17 incorporate that into my next question, which is
11:43 18 that when a specification stated a particular
11:43 19 manufacturer and stated "or equal," that would
11:43 20 mean that any product that fulfilled the function
11:44 21 required could be substituted; is that correct?

11:44 22 A Yes.

11:44 23 Q Okay. And so, referring now specifically to
11:44 24 asbestos-containing components, because that's
11:44 25 what we're here to talk about, mostly, would it be

11:44 1 fair to say that there was no -- that the
11:44 2 manufacturers of the asbestos-containing
11:44 3 components that Cleaver-Brooks incorporated into
11:44 4 its boilers changed frequently?

11:44 5 A Yes, I believe so.

11:44 6 Q Okay. And when we used the word "component," sir,
11:45 7 with respect to asbestos that might have --
11:45 8 asbestos that may have been incorporated into
11:45 9 Cleaver-Brooks' boilers, do you understand that to
11:45 10 include Vee Block?

11:45 11 A Yes, I believe so.

11:45 12 Q Okay. And other refractory -- in other words,
11:45 13 when we're talking about components, we're not
11:45 14 just talking about metal objects that can be
11:45 15 screwed onto a boiler. We're talking about,
11:45 16 essentially, materials that are mixed and applied
11:45 17 to the boiler?

11:45 18 MR. THORSON: Object to the form of the
11:45 19 question.

11:45 20 THE WITNESS: In addition to components
11:45 21 that could be just screwed on or attached to the
11:45 22 boiler, yes, I think that's what you meant.

11:45 23 BY MR. BERGMAN:

11:45 24 Q It is, sir. And I appreciate your clarification
11:45 25 on that. Sir, if you could turn with me, please,

11:46 1 to page 9 on Exhibit 2.

11:46 2 A Okay.

11:46 3 Q And I would ask you to simply read to yourself,
11:46 4 the Interrogatory No. 7, and your answer to that.
11:46 5 You don't need to read it out loud. If you could
11:46 6 read it to yourself. Take as much time as you
11:46 7 want, then I will ask you a few questions about
11:46 8 that.

11:47 9 A Okay.

11:47 10 Q So, sir, did -- did Cleaver-Brooks have a
11:47 11 technical staff that would assist in the erection
11:47 12 of its boilers at its customer location?

11:47 13 A We certainly didn't have anyone assisting an
11:47 14 erection of our boilers because our boilers
11:47 15 weren't erected on-site. They were packaged
11:47 16 boilers.

11:47 17 Q Well-stated. Thank you. Would it be fair to you
11:48 18 to say installation instead of erection?

11:48 19 A I guess that's what I was going to get at. We
11:48 20 wouldn't have been involved in installation
11:48 21 either. That's not what we got into. We did have
11:48 22 a, and do have a -- you referred to a technical
11:48 23 staff or a service group that would be involved
11:48 24 in, I guess I will refer to it, as warranty
11:48 25 issues, new products, that type of thing, where

11:48 1 there's assistance needed in the field. But
11:48 2 certainly not anybody that was doing day-to-day
11:48 3 work, you know, on a boiler, maintenance-type
11:48 4 work, installing a boiler or anything like that,
11:48 5 but they -- we did have a technical staff of sorts
11:48 6 and do.

11:48 7 Q And would your -- yeah. And would your technical
11:48 8 staff make visits, if you would, to locations
11:48 9 where Cleaver-Brooks' boilers were operating to
11:49 10 address technical issues that may arise?

11:49 11 MR. THORSON: I will object to the form
11:49 12 of the question as being overly broad and vague as
11:49 13 to time period.

11:49 14 MR. BERGMAN: In the 1950s and '60s.

11:49 15 THE WITNESS: Yes. If required or
11:49 16 needed for a particular job, it would have been.
11:49 17 I don't think I found any in any of the boilers
11:49 18 we're talking about here where that happened. But
11:49 19 yes, if it was needed, we may have had somebody go
11:49 20 to a site.

11:49 21 BY MR. BERGMAN:

11:49 22 Q But the -- I want to be -- would "installation" be
11:49 23 the correct term as opposed to "erection" in
11:49 24 connection with putting a Cleaver-Brooks' boiler
11:49 25 online?

11:49 1 A In connection with putting a Cleaver-Brooks'
11:49 2 boiler online, I guess I would more term it
11:49 3 start-up of the boiler. Installation is usually
11:49 4 done by, you know, others, not necessarily
11:49 5 somebody who's all that familiar with a boiler,
11:50 6 that's starting a boiler.

11:50 7 Q Okay. Would Cleaver-Brooks' technical personnel
11:50 8 be involved in the start-up of a new
11:50 9 Cleaver-Brooks' boiler?

11:50 10 MR. THORSON: Object to the form.

11:50 11 MR. BERGMAN: Typically in the 1950s and
11:50 12 60s, subject to your Counsel's objection.

11:50 13 MR. THORSON: Overly broad.

11:50 14 THE WITNESS: Not typically, as you
11:50 15 said, I guess I would say it. Certainly, did it
11:50 16 ever happen; it may have happened. But on a
11:50 17 typical basis, no, that wasn't the normal way for
11:50 18 it to be done.

11:50 19 BY MR. BERGMAN:

11:50 20 Q What was the normal way for a start-up of a
11:50 21 Cleaver-Brooks' boiler to take place?

11:50 22 MR. THORSON: Same objection.

11:50 23 THE WITNESS: There would have been a
11:50 24 local company that was familiar with boilers that
11:50 25 would have started up the boiler.

11:50 1 BY MR. BERGMAN:

11:50 2 Q Okay. And did Cleaver-Brooks have manufacturers'
11:50 3 reps around the country that were familiar in that
11:51 4 start-up procedure for Cleaver-Brooks' boilers?

11:51 5 MR. THORSON: Object to the form.

11:51 6 THE WITNESS: Yes, we did have
11:51 7 manufacturers and did have manufacturers
11:51 8 representatives.

11:51 9 BY MR. BERGMAN:

11:51 10 Q And do the manufacturers representatives assume
11:51 11 responsibility for start-up-related tasks of
11:51 12 Cleaver-Brooks' boilers?

11:51 13 MR. THORSON: Object to the form.
11:51 14 Overly broad. Vague.

11:51 15 THE WITNESS: Again, depending on the
11:51 16 product, yes, they may have.

11:51 17 BY MR. BERGMAN:

11:51 18 Q Okay. Are you familiar with a company called Cole
11:51 19 Industrial?

11:51 20 A Yes.

11:51 21 Q And what is the basis of your understanding of
11:51 22 that company?

11:51 23 A They are our representative -- manufacturers
11:51 24 representative in the Northwestern United States.

11:51 25 Q Okay. And have been since 1964; is that correct?

11:51 1 A I don't know the year off the top of my head, but
11:51 2 I'm familiar with them as long as I've been here.

11:51 3 Q Okay. Do manufacturers -- well, let me -- in the
11:52 4 1960s, did manufacturers' reps undergo training by
11:52 5 Cleaver-Brooks in the startup maintenance and
11:52 6 operation of Cleaver-Brooks' boilers?

11:52 7 A In the 1960s, I certainly couldn't tell you from a
11:52 8 personal experience. So I can't say for certain,
11:52 9 no. I -- since they were a representative, I
11:52 10 would have to say more than likely they went
11:52 11 through some type of training, whatever that was.

11:52 12 Q But Cleaver-Brooks would expect that its
11:52 13 manufacturers representatives -- well, strike
11:52 14 that. Cleaver-Brooks would expect that its
11:52 15 representative would be fully conversed in the
11:52 16 installation, operation, and maintenance of
11:53 17 Cleaver-Brooks' boilers, correct?

11:53 18 MR. THORSON: Object to the form of the
11:53 19 question.

11:53 20 THE WITNESS: I'm not sure I would
11:53 21 include installation in that part because I'm not
11:53 22 familiar with our reps, at least in those time
11:53 23 periods doing installation, but certainly the
11:53 24 operation and maintenance, yes.

11:53 25 BY MR. BERGMAN:

11:53 1 Q And the startup?

11:53 2 A And the startup, yes.

11:53 3 Q Sir, if you would kindly turn to page 11 of
11:53 4 Exhibit 2.

11:53 5 A Yes.

11:53 6 Q And once again -- actually, if we could, move
11:53 7 to -- look at page 10 and 11. Please read
11:53 8 Interrogatory No. 9 and your response, and take as
11:54 9 much time as you need. I'm going to ask you just
11:54 10 a few questions about that.

11:54 11 A Okay.

11:54 12 Q Can you describe -- well, were you the individual
11:54 13 that was tasked with locating records pertaining
11:54 14 to boilers at specific locations at issue in this
11:54 15 case?

11:54 16 A Yes, I was.

11:54 17 Q And can you describe the efforts that you
11:54 18 undertook to locate those records?

11:54 19 A To -- the first part of the process is to
11:54 20 determine whether there's a boiler at a specific
11:54 21 site. So I would have looked -- we have a series
11:54 22 of index cards, literally four-by-six index cards,
11:54 23 that have our -- are filed alphabetically by job
11:54 24 site, name -- job site name, I should say, and
11:55 25 location being city and state. And then on that

11:55 1 card, if there happens to be one, would be a unit
11:55 2 number and sometimes a model number.

11:55 3 So I would have searched through those
11:55 4 cards -- or did search through those cards.
11:55 5 There's several groups of them, depending on the
11:55 6 products. So it's more than one search in one
11:55 7 place. Then once -- if I -- in this particular
11:55 8 case, when I found the card for U.S. Naval Air
11:55 9 Station, Whidbey Island, I would have gone with
11:55 10 that unit number to the commercial records, wanted
11:55 11 to verify that that's -- there were other records
11:55 12 related to that index card and that would have
11:55 13 been the commercial records we were talking about
11:55 14 in this particular response.

11:55 15 Q And, sir, are the index cards that you testified
11:55 16 to organized by location or customer or some other
11:56 17 method?

11:56 18 A They're organized alphabetically by location,
11:56 19 which as you probably are aware of, may be
11:56 20 different than the customer. The boiler may have
11:56 21 been owned by a contractor who is technically the
11:56 22 customer but went to the U.S. Navy, Whidbey
11:56 23 Island. So it would be under U.S. Navy, Whidbey
11:56 24 Island.

11:56 25 Q Okay. I'm not sure I understood your answer, sir,

11:56 1 so I want to be -- so, for instance, for the four
11:56 2 boilers identified on page 11 of Exhibit 2, the
11:56 3 index card indicated, was it Whidbey Island,
11:56 4 Washington, or was it U.S. Navy or something else?
11:56 5 I'm just curious what you looked under to
11:56 6 successfully locate these four boilers.

11:57 7 A Anytime I would be looking under anything with the
11:57 8 Navy, to be honest, I would be looking under both
11:57 9 U.S. Navy, as well as Naval Air Station, in this
11:57 10 case, as well as Whidbey Island Naval Air Station,
11:57 11 and different iterations of that.

11:57 12 So I can't recall off the top of my head
11:57 13 how this particular one was filed, but I would
11:57 14 have looked through many different combinations,
11:57 15 since they're alphabetical, that I could have come
11:57 16 up with.

11:57 17 Q And in your -- this -- to be fair, sir, this isn't
11:57 18 the first time you have conducted a search like
11:57 19 this?

11:57 20 A No, it is not.

11:57 21 Q Okay. And in your experience, sir, is it
11:57 22 sometimes necessary to try a couple of different
11:57 23 headings before you're able to locate the
11:57 24 particular boiler at issue?

11:57 25 A Yes, I guess I never looked at it as trying

11:57 1 different headings. It was trying -- it was
11:57 2 looking under the reasonable ways you could
11:58 3 alphabetically list something. So I do as many
11:58 4 different ways as I think, you know, make sense.
11:58 5 So I certainly looked under U.S. Navy, looked
11:58 6 under Whidbey Island, looked under Naval Air
11:58 7 Station, and any other iteration that I can think
11:58 8 of.

11:58 9 Q And so, in your experience, sir, you don't always
11:58 10 find the card on the first -- first try?

11:58 11 A I guess I would call that whole thing my first
11:58 12 try.

11:58 13 Q Okay.

11:58 14 A I'm not sure what you mean.

11:58 15 Q You don't always find the -- for instance, you
11:58 16 don't always find the card on your first -- on the
11:58 17 first word you seek to find alphabetically in the
11:58 18 card pile?

11:58 19 A Correct. I wouldn't just take, if somebody wrote
11:58 20 it out as United States Navy, Naval Air Station,
11:58 21 Whidbey Island, and only search under "U." I
11:59 22 would search under other ones.

11:59 23 Q Okay. I understand, sir. And you typically do
11:59 24 search under several; is that correct?

11:59 25 A Yes.

11:59 1 MR. THORSON: Object to the form of the
11:59 2 question.

11:59 3 THE WITNESS: Certainly where it makes
11:59 4 sense.

11:59 5 BY MR. BERGMAN:

11:59 6 Q Okay. And how many cards are there in this
11:59 7 alphabetical file, sir?

11:59 8 A Oh, I think we've estimated to be in the area of
11:59 9 80 or 90,000.

11:59 10 Q And does the card file pertain to boilers that are
11:59 11 presently operating or boilers that -- or all
11:59 12 boilers that Cleaver-Brooks sold in the last 50
11:59 13 years or more?

11:59 14 A All boilers and it would go back to 1932. And I
11:59 15 would add just -- beyond the cards, there is also
11:59 16 a printout from the 1990s of our order entry
12:00 17 system at that time once things became a little
12:00 18 more computerized where I would have looked
12:00 19 through that, too. Again, that's an alphabetical
12:00 20 list as well. But generally, that is boilers
12:00 21 shipped after the late '80s, actually, into the
12:00 22 early '90s.

12:00 23 Q Okay. And so Mr. Tordnetta, just so I'm clear on
12:00 24 the record, you said there are at least 80,000
12:00 25 cards in the Cleaver-Brooks' files referencing

12:00 1 sales of Cleaver-Brooks' boilers from 1932
12:00 2 forward?

12:00 3 A Yes.

12:00 4 MR. BERGMAN: If the court reporter
12:00 5 could kindly take exhibit -- or envelope 8.

12:01 6 (Exhibit No. 3 was marked.)

12:01 7 BY MR. BERGMAN:

12:01 8 Q Okay. Mr. Tornetta, can you, please -- can you
12:01 9 identify Exhibit 3 for us?

12:01 10 A It appears to be a picture of a Cleaver-Brooks'
12:02 11 nameplate.

12:02 12 Q Okay. And in the middle of Exhibit 3, there's a
12:02 13 schematic of a hand with fire coming out of it.
12:02 14 Do you see that, sir?

12:02 15 A Yes, I do.

12:02 16 Q And is that the Cleaver-Brooks' logo?

12:02 17 A It has changed on-and-off over the years, but yes,
12:02 18 it's, for as long as I can recall, the hand with
12:02 19 the flame coming out of it was part of our
12:02 20 nameplate in some way.

12:02 21 Q And during what period was Exhibit 3 a
12:02 22 representative of the nameplate that was used on
12:02 23 Cleaver-Brooks' boilers?

12:02 24 A Oh, I'm not sure I could say that for certain.
12:03 25 Our nameplates have changed many times over the

12:03 1 years, colors, looks. I'm not sure I could pick
12:03 2 out a particular time for this particular one.

12:03 3 Q Okay. Just respecting your answer, sir, is there
12:03 4 a general time you're able to associate with
12:03 5 Exhibit 3?

12:03 6 MR. THORSON: Object to form.

12:03 7 THE WITNESS: No, I don't believe I
12:03 8 could. It certainly isn't more recent because
12:03 9 we've changed the hand and flame a little bit
12:03 10 different. But no, I don't think I could nail
12:03 11 down a before then/after then, type time.

12:03 12 BY MR. BERGMAN:

12:03 13 Q And how have -- how has Cleaver-Brooks changed its
12:03 14 hand and flame insignia?

12:03 15 A Oh, I guess I'm thinking about more recently we've
12:03 16 changed it to -- I refer to it as more of a
12:03 17 cartoon figure of it, but I'm sure people won't
12:03 18 like hearing me say that, at least our marketing
12:04 19 people.

12:04 20 Q All right. And, sir, was every Cleaver-Brooks'
12:04 21 boiler marked with a labeling plate such as it
12:04 22 appears on Exhibit 3?

12:04 23 MR. THORSON: Object to the form of the
12:04 24 question.

12:04 25 THE WITNESS: I'm not sure I can say

12:04 1 every one had a plate, you know, similar to or
12:04 2 like this. Every one would have said
12:04 3 "Cleaver-Brooks" on it somewhere. And normally it
12:04 4 was prominently displayed, but whether it's, you
12:04 5 know, this particular one or one, you know,
12:04 6 similar to it, whatever that may be, I couldn't
12:04 7 say for certain every one did.

12:04 8 BY MR. BERGMAN:

12:04 9 Q And, typically, sir, was there any look --
12:04 10 particular location on the boiler -- on the
12:04 11 Cleaver-Brooks' boiler where the Cleaver-Brooks'
12:04 12 nameplate was installed?

12:04 13 A No, I guess I couldn't say "typically." It would
12:04 14 depend a lot on the product, whether it was on the
12:05 15 front or on the side. Sometimes different sizes,
12:05 16 it would go on the side versus the front. But I'm
12:05 17 not sure I could give you a typical place for it.
12:05 18 Certainly it was visible.

12:05 19 Q Okay. And in addition to the nameplates, were
12:05 20 there other locations on a Cleaver-Brooks' boiler
12:05 21 where the Cleaver-Brooks' name and/or insignia was
12:05 22 emblazoned?

12:05 23 A There normally would have also been, what I refer
12:05 24 to, as a data plate on the boiler, which would be
12:05 25 the one -- usually that's a bit smaller. That's

12:05 1 the one that would list the model number, the unit
12:05 2 number, in some cases, electrical characteristics
12:05 3 of the burner, that type of thing.

12:05 4 Q And was there any location on a Cleaver-Brooks'
12:05 5 boiler where the nameplate, if you would, that you
12:05 6 described would be affixed?

12:05 7 MR. THORSON: Object to the form of the
12:06 8 question. You mean the data plate or the
12:06 9 nameplate?

12:06 10 MR. BERGMAN: The data plate.

12:06 11 MR. THORSON: I think it's overly broad.

12:06 12 THE WITNESS: You changed that to data
12:06 13 plate, I think?

12:06 14 MR. BERGMAN: Yes.

12:06 15 THE WITNESS: Now, again, you know,
12:06 16 it -- I couldn't say "typically," you know. With
12:06 17 both of them, the front or side are certainly a
12:06 18 location I've seen them on. But other than that,
12:06 19 I don't think I could narrow it down.

12:06 20 BY MR. BERGMAN:

12:06 21 Q Sir, in addition to nameplates or data plates, was
12:06 22 the Cleaver-Brooks' name ever cast in any of the
12:06 23 metal fixtures or components that comprise the
12:06 24 Cleaver-Brooks' boiler?

12:06 25 MR. THORSON: Object to the form of the

12:06 1 question. Overly broad.

12:06 2 THE WITNESS: No, it was not.

12:06 3 BY MR. BERGMAN:

12:06 4 Q Okay. Was the Cleaver-Brooks' name, to your
12:06 5 knowledge, either in terms of a -- well, strike
12:07 6 that. Was there any other manner besides the
12:07 7 nameplates referenced in Exhibit 3 to this
12:07 8 deposition or the data plates that you described
12:07 9 in which the Cleaver-Brooks' name was attached to
12:07 10 or displayed on a Cleaver-Brooks' boiler?

12:07 11 MR. THORSON: Same objection.

12:07 12 THE WITNESS: I don't believe so, no.

12:07 13 BY MR. BERGMAN:

12:07 14 Q Was the Cleaver-Brooks' name ever affixed, in any
12:07 15 manner, to the rear door of a Cleaver-Brooks'
12:07 16 boiler?

12:07 17 A No, I don't believe so.

12:07 18 Q Okay. Why is that, sir?

12:07 19 MR. THORSON: Object to the form of the
12:07 20 question. It's vague.

12:07 21 THE WITNESS: I guess I have never seen
12:07 22 any evidence of that in our documents, and I have
12:07 23 never seen it in my experience of boilers either.

12:07 24 BY MR. BERGMAN:

12:08 25 Q Again, looking at page 11 to Interrogatory

12:08 1 No. 10 -- I'm sorry. Page 11 to Exhibit 2.

12:08 2 A Okay.

12:08 3 Q I'm referring again -- what does "horsepower of a
12:08 4 boiler" mean?

12:08 5 A It's a unit of measuring the capacity of a boiler,
12:08 6 typically restricted to fire tube boilers in its
12:08 7 use. But it's a unit of measurement equal to one
12:08 8 horsepower is the production of 34.5 pounds of
12:08 9 steam per hour.

12:08 10 Q And how does the concept of horsepower pertain to
12:09 11 a boiler such Cleaver-Brooks that is not used for
12:09 12 propulsion purposes?

12:09 13 MR. THORSON: Object to the form of the
12:09 14 question. It's vague.

12:09 15 THE WITNESS: Our boilers weren't used
12:09 16 for propulsion purposes, deep water propulsion, I
12:09 17 guess I would say. But it was just a unit of
12:09 18 measurement that, in that particular market, is
12:09 19 used. Whether it's used to drive something or not
12:09 20 really doesn't matter. It's just a measurement of
12:09 21 capacity. And capacity in pounds of steam per
12:09 22 hour is the equivalent.

12:09 23 BY MR. BERGMAN:

12:09 24 Q So if -- looking at the four boilers referenced on
12:09 25 page 11 of Exhibit 2, where does it indicate what

12:09 1 the horsepower of those particular components was?

12:09 2 A In the model number, the number directly behind
12:10 3 the hyphen. So, for example, in the first listed
12:10 4 one where it says "CV500-50," pound symbol, "15,"
12:10 5 the "dash 50" is the horsepower. So it's a
12:10 6 50-horsepower motor.

12:10 7 Q If you could turn with me, sir, to page 14 of
12:10 8 Exhibit 2.

12:10 9 A Okay.

12:10 10 Q If you could read, to yourself, Request For
12:10 11 Production No. 5 and your sworn response.

12:10 12 A Okay.

12:11 13 Q Does -- is it possible for Cleaver-Brooks to
12:11 14 determine the volume of replacement components
12:11 15 that it supplied to the United States government
12:11 16 in any particular year?

12:11 17 MR. THORSON: Object to the form of the
12:11 18 question. Assumes facts not in evidence and
12:11 19 overly broad.

12:11 20 THE WITNESS: No. Only if we were
12:11 21 looking at a specific boiler and a specific site
12:11 22 could we look at what we supplied, if anything.

12:12 23 BY MR. BERGMAN:

12:12 24 Q Okay. And so -- and so Cleaver-Brooks cannot
12:12 25 provide information regarding its sales of

12:12 1 replacement components to the United States
12:12 2 government in any series of years as well?

12:12 3 MR. THORSON: Same objection.

12:12 4 THE WITNESS: That is correct, yes.

12:12 5 BY MR. BERGMAN:

12:12 6 Q In the absence of a particular boiler that's
12:12 7 identified, there are no sales records maintained
12:12 8 by Cleaver-Brooks regarding some furnishment of
12:13 9 replacement components, correct?

12:13 10 A Correct.

12:13 11 Q Was there a -- and I guess let me reference the
12:13 12 time frame of 1960s. Was there a parts department
12:13 13 of Cleaver-Brooks?

12:13 14 A I'm not sure I can say for certain that was the
12:13 15 case. I wasn't here in the '60s. Essentially
12:13 16 when I arrived in '85, there was a very small
12:13 17 parts department of a couple people. And my
12:13 18 understanding is that had been there for some
12:13 19 time. So I'm not sure that gets us back to the
12:13 20 '60s with my personal knowledge, but I think there
12:13 21 was probably a person that handled inquiries like
12:13 22 that at least.

12:13 23 Q Okay. So how would the ordering of parts take
12:13 24 place -- the ordering and sale and supply of parts
12:14 25 take place?

12:14 1 MR. THORSON: Object to the form of the
12:14 2 question. It's overly broad and vague. You can
12:14 3 answer.

12:14 4 THE WITNESS: I'm not sure I can answer
12:14 5 that in relation to the 1960s other than to look
12:14 6 at some of the records that we've produced where
12:14 7 there were some supply of parts where an order
12:14 8 came in, we fulfilled the order, and then invoiced
12:14 9 it.

12:14 10 BY MR. BERGMAN:

12:14 11 Q Okay. So can -- does Cleaver-Brooks have any
12:14 12 knowledge regarding its policies, practices, and
12:14 13 procedures for furnishing replacement component
12:14 14 parts to its boilers in the 1960s?

12:14 15 MR. THORSON: Same objection.

12:14 16 THE WITNESS: Other than the knowledge
12:14 17 of looking through the records for a boiler and
12:14 18 seeing how that was done in a particular instance,
12:14 19 I would say no, we don't.

12:14 20 BY MR. BERGMAN:

12:14 21 Q And how about the 1970s, same answer?

12:15 22 A Yeah. Certainly the general knowledge as I
12:15 23 expressed before of having a person or several
12:15 24 people to answer those inquiries. Yeah, I
12:15 25 wouldn't have an answer beyond that.

12:15 1 Q Okay. And did the parts department maintain
12:15 2 records of sales of components in the 1960s?

12:15 3 A From everything I have seen, the records all
12:15 4 filtered back into the unit file or records. So
12:15 5 when a part was sold for a particular one, that's
12:15 6 where it went. So I'm not aware of any other
12:15 7 common records for just parts, no.

12:15 8 Q Okay. And how do you know, sir, that every sale
12:15 9 of replacement components generated a document in
12:16 10 a file of the particular boiler for which the
12:16 11 components were sought?

12:16 12 A I guess my only way of knowing that is by seeing
12:16 13 the evidence of it as we look through our records
12:16 14 and seeing that. But can I say that happened
12:16 15 every time? Certainly not. I haven't looked at
12:16 16 every record we have for every boiler.

12:16 17 Q Okay. Based on your previous testimony, you don't
12:16 18 know whether that was, in the '60s, the policy and
12:16 19 procedure of the parts department to record every
12:16 20 sale in the file of the particular boiler; is that
12:16 21 correct?

12:16 22 A I think that I know that our general practice in
12:16 23 those time periods, and before even, and after,
12:16 24 has always been that the unit commercial records
12:17 25 are where everything gets filtered to. So that's

12:17 1 the extent of my knowledge of that.

12:17 2 Q And, respectfully, sir, how do you know that --
12:17 3 how do you know that took place in the '60s and
12:17 4 '70s?

12:17 5 MR. THORSON: Object to the form of the
12:17 6 question. I think it's been asked and answered.
12:17 7 You can answer again.

12:17 8 THE WITNESS: Because I see it in the
12:17 9 evidence of the records that I look at in doing
12:17 10 this. There's -- there -- you will see records of
12:17 11 sales of all different types of components for
12:17 12 specific boilers in those time periods.

12:17 13 BY MR. BERGMAN:

12:17 14 Q But you don't know whether every sale was
12:17 15 reflected in a record in the boiler file; is that
12:17 16 correct?

12:17 17 MR. THORSON: Object to the form of the
12:17 18 question. Asked and answered.

12:17 19 THE WITNESS: I certainly couldn't say
12:17 20 that every time, everywhere it happened, but I
12:17 21 don't have any reason to believe it didn't happen
12:17 22 that way.

12:18 23 BY MR. BERGMAN:

12:18 24 Q Okay. And I just want to -- and the basis of your
12:18 25 knowledge is your review of boiler files conducted

12:18 1 in conjunction with litigation support for
12:18 2 Cleaver-Brooks; is that correct?

12:18 3 A That's part of it, as well as my review of records
12:18 4 over the years prior to being involved in the
12:18 5 litigation, as well as my experience with the way
12:18 6 we did things prior to that as well.

12:18 7 Q And that was an experience that commenced in 1985;
12:18 8 is that correct?

12:18 9 A Yes.

12:18 10 Q Okay. And just so -- just so we're clear -- and I
12:18 11 respect where you're coming from, sir. I don't
12:18 12 want to belabor it. I want to make sure I
12:18 13 understand. Are we still on?

12:18 14 A Yes.

12:18 15 Q Okay. We had a little -- did you -- have you
12:18 16 spoken to anybody regarding the practices,
12:19 17 procedures, and policies of the parts department
12:19 18 at Cleaver-Brooks in the 1960s and 1970s?

12:19 19 MR. THORSON: At any time, has he spoken
12:19 20 to someone at any time, specifically for this
12:19 21 deposition or --

12:19 22 MR. BERGMAN: Any time.

12:19 23 THE WITNESS: Certainly when I started
12:19 24 doing this particular job in 2001, there was
12:19 25 someone who did it before me, and he and I had

12:19 1 discussions like that, and he went back into the
12:19 2 '60s.

12:19 3 BY MR. BERGMAN:

12:19 4 Q And who was that gentleman?

12:19 5 A He's retired now. His name is George Provance.

12:19 6 Q And Mr. Provance was your predecessor, so to
12:19 7 speak?

12:19 8 A Yes.

12:19 9 Q And is Mr. Provance still living?

12:19 10 A I believe so, yes.

12:19 11 Q And do you know where he lives?

12:19 12 A He's in the Milwaukee area. At least the last I
12:19 13 knew, yes.

12:19 14 Q Okay. And his first name, sir?

12:20 15 A George.

12:20 16 Q George. And what role -- what job, if any, did
12:20 17 Mr. Provance have at Cleaver-Brooks?

12:20 18 A Oh, I'm not sure I remember his entire history.
12:20 19 But I know he took a -- I won't say similar track,
12:20 20 but a track through the company starting in
12:20 21 service as I did and different management
12:20 22 positions in the company, and eventually I think
12:20 23 when he retired, he was a vice president of
12:20 24 technical services.

12:20 25 Q And do you know how old a man Mr. Provance is,

12:20 1 approximately?

12:20 2 A I think he's at least in his mid-70s.

12:20 3 Q And did you have discussions with Mr. Provance
12:20 4 regarding an effort he and others were taking in
12:21 5 1989 to determine the presence or absence of
12:21 6 asbestos-containing components in Cleaver-Brooks'
12:21 7 boilers?

12:21 8 A I guess I'm not sure I classify it as discussions.
12:21 9 Certainly we -- he told me that was done, yes.

12:21 10 Q And can you -- can you describe what Mr. Provance
12:21 11 told you what he did in 1989 and what he
12:21 12 determined?

12:21 13 A Boy, I'm not sure of the exact words, certainly.
12:21 14 From my understanding, they looked at the product
12:21 15 we were building at that time and the supplier of
12:21 16 the components we were using of those products,
12:21 17 and asked those suppliers if they could determine
12:21 18 whether or not there was -- or any asbestos in the
12:21 19 components we were getting at that time, and there
12:21 20 was not. So I think there was a -- go ahead.

12:22 21 Q And by "that time," you mean 1989?

12:22 22 A Yes.

12:22 23 Q And that was the first time that Cleaver-Brooks
12:22 24 had undertaken an effort to determine whether or
12:22 25 not asbestos components were present in its

12:22 1 boilers?

12:22 2 MR. THORSON: Object to the form of the
12:22 3 question.

12:22 4 THE WITNESS: I guess I would say it was
12:22 5 the first time we took the broad look to see what
12:22 6 we were being supplied with and if there was still
12:22 7 any asbestos in it, yes.

12:22 8 MR. BERGMAN: Mr. Tornetta, I want to be
12:22 9 respectful of your time and also your stamina and
12:22 10 the calls of nature. And so if you would like to
12:22 11 take a break at this juncture, I'm completed with
12:22 12 the exhibit. But if you and your counsel would
12:22 13 like to take a break now, that's fine, or we can
12:23 14 go on. I want to be respectful of you, sir.

12:23 15 MR. THORSON: Why don't we take a break.
12:23 16 Take five or ten minutes and come back. For my
12:23 17 benefit, if no one else's.

12:23 18 MR. BERGMAN: And I will be segueing
12:23 19 into that -- the 2004 interrogatory response on
12:23 20 the next sweep. I'm happy to set up a situation
12:23 21 where you have a -- you can have a discussion
12:23 22 about -- ask the court reporter to leave and have
12:23 23 a discussion with Mr. Tornetta at that point.

12:23 24 MR. THORSON: So you're planning to go
12:23 25 into the interrogatories in 2004 at this point?

12:23 1 MR. BERGMAN: I am. Well, in the next
12:23 2 kind of swoop of questioning.

12:23 3 MR. THORSON: Okay. Yeah. And are
12:23 4 those in front of him at this time? Do you want
12:23 5 to open up the next exhibit so he has a chance to
12:23 6 look it over over the break?

12:23 7 MR. BERGMAN: Sure. Is that No. 6?
12:23 8 Yes. Madam Court Reporter, could you open
12:24 9 envelope 6 and provide it to the witness? And
12:24 10 then if you would -- and I say this with all
12:24 11 respect, be so kind as to vacate yourself from the
12:24 12 environment so that Mr. Thorson and Mr. Tornetta
12:24 13 could have a discussion.

12:24 14 THE VIDEOGRAPHER: We are off the record
12:24 15 at 12:24 p.m.

12:25 16 (Exhibit Nos. 4 and 5 were marked.)

12:46 17 (Recess taken.)

12:46 18 THE VIDEOGRAPHER: We are back on the
12:46 19 record at 12:46 p.m.

12:46 20 BY MR. BERGMAN:

12:46 21 Q Mr. Tornetta, if you would be so kind as to look
12:46 22 at Exhibit 5.

12:46 23 A Okay.

12:46 24 Q And in particular, look at page 13.

12:46 25 A Okay.

12:46 1 Q Under the certification, is that -- is that your
12:46 2 signature, sir?

12:46 3 A Yes, it is.

12:46 4 Q Okay. And did you review the interrogatory
12:46 5 answers and requests for production requests set
12:47 6 forth in Exhibit 5 prior to executing your
12:47 7 signature on page 13 of Exhibit 5?

12:47 8 A Yes, I did.

12:47 9 Q And if you could turn to page 4 of Exhibit 5.

12:47 10 A Okay.

12:47 11 Q What is your understanding of what Vee Block is?

12:47 12 MR. THORSON: Object to the form. Asked
12:47 13 and answered.

12:47 14 THE WITNESS: A castable installation, I
12:48 15 guess, is the way I would characterize it.

12:48 16 BY MR. BERGMAN:

12:48 17 Q Okay. Now, in your understanding, is Vee Block a
12:48 18 trade name, or is Vee Block more of a general
12:48 19 description of a particular refractory product?

12:48 20 MR. THORSON: Objection. Foundation.
12:48 21 Vague as to time.

12:48 22 MR. BERGMAN: In the 1960s and '70s.

12:48 23 THE WITNESS: I only understand it as
12:48 24 a -- I guess I would classify it as a trade name.
12:48 25 I think that's what we referred to, you know, Vee

12:48 1 Block Mix in some of our drawings and some of the
12:48 2 drawings we've seen. I think that was a name of
12:48 3 Kaiser who was the supplier of that, that
12:48 4 I've -- I believe is in some of the information we
12:48 5 sent.

12:48 6 BY MR. BERGMAN:

12:48 7 Q Do you understand -- when Cleaver-Brooks'
12:48 8 documents refer to Vee Block, are they referring
12:49 9 specifically to Kaiser Vee Block or to the type
12:49 10 of -- or a particular type of refractory product?

12:49 11 MR. THORSON: Object to the form of the
12:49 12 question. Overly broad. Vague.

12:49 13 THE WITNESS: I think if you look at the
12:49 14 drawings we supplied in this case, it's referring
12:49 15 to a specific part number, and when you look at
12:49 16 that part number description we supplied, it calls
12:49 17 out, I believe, Kaiser as the manufacturer of it.

12:49 18 And I would just -- it's probably me
12:49 19 being more fussy than anything. I'm not sure I
12:49 20 would classify it as a refractory material versus
12:49 21 a castable installation.

12:49 22 BY MR. BERGMAN:

12:49 23 Q And can you enlighten me in the difference, then,
12:49 24 between refractory material and castable
12:49 25 installation material?

12:49 1 A In my mind, a refractory material is a harder --
12:49 2 "harder" is probably not the right word, but a
12:50 3 higher strength material that, in essence, doesn't
12:50 4 do much insulation and, in fact, transfers heat.
12:50 5 An insulation material insulates.

12:50 6 Q And so the proper term of the Vee Block would be a
12:50 7 castable?

12:50 8 A I would prefer -- I would call it a castable
12:50 9 insulation. I'm sure you will see it referred to
12:50 10 as refractory. But as I say, it might just be my
12:50 11 insidiousness.

12:50 12 Q Does -- well, it's very helpful, sir, for those of
12:50 13 us who don't have your experience to benefit from.
12:50 14 So thank you for that.

12:50 15 Is a -- does the term "castable" simply
12:50 16 mean that it is cast in -- as -- you know, mixed
12:50 17 with water and cast in some form as opposed to a
12:50 18 block that's put together in the solvent form?

12:51 19 MR. THORSON: Object to form.

12:51 20 THE WITNESS: That's the way I would use
12:51 21 that term, yes.

12:51 22 BY MR. BERGMAN:

12:51 23 Q Okay. Now, do these specifications for Vee Block
12:51 24 in Cleaver-Brooks' documents require Kaiser Vee
12:51 25 Block or would an equal designation apply as well?

12:51 1 MR. THORSON: Object to the form.

12:51 2 Overly broad. Vague.

12:51 3 THE WITNESS: I think I would have to
12:51 4 look to be certain, but I -- because I don't
12:51 5 remember off the top of my head, but if you look
12:51 6 at the documents we supplied, I think you will see
12:51 7 that it -- that is one instance where it doesn't
12:51 8 say they're equal. It just says Kaiser.

12:51 9 BY MR. BERGMAN:

12:51 10 Q Okay. And we'll go through these, sir, in more
12:51 11 detail, but in some instances there's a reference
12:51 12 to Kaiser, and some instances there is not. And I
12:52 13 guess the -- let me -- to kind of explain what I'm
12:52 14 talking about. Can you see me, sir?

12:52 15 A Yes, I can.

12:52 16 Q Okay. So here is a box of Kleenex, but it's
12:52 17 actually, if I look at the bottom, it's from
12:52 18 Kirkland, which is the CostCo brand. But if I
12:52 19 should choke up at the -- at the solemnity of our
12:52 20 experience and have to dry my eyes, I would say,
12:52 21 "Pass me a Kleenex," even though it is not a
12:52 22 Kleenex manufactured by Kimberly-Clark Company.

12:52 23 And so when I'm trying to elicit you
12:52 24 analyzing that example is whether or not the Vee
12:52 25 Block referenced in Cleaver-Brooks' documents

12:52 1 specifically refers to the Vee Block manufactured
12:53 2 by Kaiser or would refer to as, in the case of
12:53 3 Kleenex, something that fulfilled the same role?

12:53 4 MR. THORSON: Object to the form of the
12:53 5 question. Are we referring to the references in
12:53 6 Cleaver-Brooks' documents that have been produced
12:53 7 in this case with respect to the boilers in this
12:53 8 case or something broader than that?

12:53 9 MR. BERGMAN: There are a lot of
12:53 10 references to Vee Block in Kaiser -- in
12:53 11 Cleaver-Brooks' documents produced in this case,
12:53 12 as well as in other sources.

12:53 13 MR. THORSON: I will object to the form
12:53 14 of the question as being overly broad and vague.
12:53 15 You can answer, if you're able to, Mr. Tornetta.

12:53 16 THE WITNESS: I think it may be helpful
12:53 17 once we start looking at it to work through this,
12:53 18 but if you look at the references that I believe
12:53 19 you're thinking of, the multiple references of Vee
12:53 20 Block in our documents, in all cases, those will
12:53 21 refer to a part number.

12:53 22 And, then, in addition to that, we also
12:54 23 provided a description of that part number. The
12:54 24 description of that part number that we used, I
12:54 25 believe, references Kaiser, which means at any

12:54 1 time, that part number is referenced regardless of
12:54 2 the extent of the text in the bill of material
12:54 3 where it may just say, "Vee Block," or it may just
12:54 4 say, "Insulation," whatever it may say, regardless
12:54 5 of what it says in that field, what drives what
12:54 6 was used was the part number description, which is
12:54 7 the one that I believe references Kaiser.

12:54 8 BY MR. BERGMAN:

12:54 9 Q And does Cleaver-Brooks have any sales records
12:54 10 documenting purchases of Vee Block from Kaiser?

12:54 11 MR. THORSON: Object to the form of the
12:54 12 question. Overly broad.

12:54 13 THE WITNESS: I think as I said before,
12:54 14 no, we don't go back to those years with sales or
12:55 15 purchase records.

12:55 16 BY MR. BERGMAN:

12:55 17 Q And do you have a vendor file in your parts
12:55 18 department referencing Kaiser?

12:55 19 A I certainly can't say for certain, but I know it
12:55 20 wouldn't go back to the years we're talking about.

12:55 21 Q And the basis for your testimony, so I understand
12:55 22 it, for concluding that the Vee Block makes
12:55 23 reference to the Kaiser product is a document
12:55 24 spelling out Vee Block in particular, is that --
12:55 25 spelling out the name Kaiser in particular; is

12:56 1 that correct?

12:56 2 A Yes, for that particular part number that's
12:56 3 identified on the drawings.

12:56 4 MR. THORSON: I will belatedly object to
12:56 5 the last question as being vague. Sorry, Counsel.

12:56 6 BY MR. BERGMAN:

12:56 7 Q And, Mr. Tornetta, is there any other information
12:56 8 that you are relying upon, other than the
12:56 9 documents that you referred to, for the conclusion
12:56 10 that the Vee Block product is -- was originally
12:56 11 manufactured by Kaiser?

12:56 12 MR. THORSON: Object to the form of the
12:56 13 question.

12:56 14 THE WITNESS: I don't believe so. And,
12:56 15 again, I'm pretty certain that is one -- I would
12:56 16 have to look at the document. That is one that
12:56 17 didn't say "or equal." We may open up the rest of
12:56 18 these packets and find otherwise, but I'm going
12:56 19 with that assumption right now.

12:56 20 Q I understand, sir. I appreciate that. I'm not
12:56 21 going to hold you to that until we've gone through
12:56 22 the documents.

12:56 23 A Sure.

12:56 24 Q So I think we're clear. You have not had any
12:57 25 conversations with anybody at Cleaver-Brooks

12:57 1 regarding the identity of Vee Block and Kaiser.
12:57 2 You were relying upon the documents exclusively?

12:57 3 MR. THORSON: Hold on. Before you
12:57 4 answer that question. That question I'm sure was
12:57 5 not intended to elicit privileged communications
12:57 6 with counsel for Cleaver-Brooks, and knowing
12:57 7 Mr. Bergman as I do, he would not be trying to get
12:57 8 that information. Nonetheless, Mr. Tornado, you
12:57 9 are not to disclose the facts or content of any
12:57 10 communications with any legal counsel for
12:57 11 Cleaver-Brooks in any context. With that
12:57 12 qualification, you can answer, if you understand
12:57 13 the question.

12:57 14 MR. BERGMAN: I just want to know what
12:57 15 Cleaver-Brooks' position is, sir.

12:57 16 THE WITNESS: My understanding of where
12:57 17 that material comes from comes from the documents
12:57 18 I looked at, yes.

12:57 19 BY MR. BERGMAN:

12:58 20 Q How was the Vee Block packaged?

12:58 21 MR. THORSON: Object to the form of the
12:58 22 question. It is overly broad. Vague as to time.
12:58 23 It's also been asked and answered.

12:58 24 THE WITNESS: I believe I mentioned
12:58 25 before that I am familiar with it coming in bags.

12:58 1 BY MR. BERGMAN:

12:58 2 Q If you could, sir, please turn to page 7 of
12:58 3 Exhibit 5.

12:59 4 A Okay.

12:59 5 Q If you could read Interrogatories No. 6 and 7 and
12:59 6 your responses. I will ask you some questions
12:59 7 about that, but please take as much time as you
12:59 8 need to review those answers.

12:59 9 A Okay.

12:59 10 Q So Interrogatory No. 6 asks how much Vee Block
12:59 11 Cleaver-Brooks purchased on an annual basis, and
12:59 12 am I correct that Cleaver-Brooks cannot -- has no
12:59 13 records indicating how much it purchased?

12:59 14 A Correct, historically. I don't even think I could
12:59 15 figure it out today, but -- for this year, but
01:00 16 historically, no, we have no way to do that.

01:00 17 Q Okay. So in the '60s and '70s, Cleaver-Brooks
01:00 18 cannot provide any testimony regarding how much,
01:00 19 if any, Vee Block it purchased?

01:00 20 A Correct.

01:00 21 MR. THORSON: I will object to the form
01:00 22 of the question as being vague. And not to be
01:00 23 picky, the question also refers to -- the
01:00 24 interrogatories that Mr. Bergman is referencing
01:00 25 appears to be referencing two -- two labels or

01:00 1 possibly two products. One, which is called
01:00 2 V-Block, "V," the letter "V," dash, "Block Mix."
01:00 3 And the other, in quotes, being "Vee," V-E-E,
01:00 4 dash, "Block Mix," and it's unclear whether the
01:00 5 question is referring to one product, two
01:00 6 products, a product whose name changed over the
01:00 7 years. So I think the question is vague and
01:00 8 ambiguous. I think he answered, though.

01:01 9 BY MR. BERGMAN:

01:01 10 Q So just so we're clear, Cleaver-Brooks cannot say
01:01 11 how much Vee Block it purchased in a given year
01:01 12 throughout the 1960s and '70s?

01:01 13 MR. THORSON: Same objection.

01:01 14 THE WITNESS: No, I don't believe there
01:01 15 is any way we can do that.

01:01 16 BY MR. BERGMAN:

01:01 17 Q All right. Interrogatory No. 7 indicates that
01:01 18 Cleaver-Brooks did not re-label Vee Block. First
01:01 19 of all, when you answered that question, what did
01:01 20 you understand re-labeling to mean, so that we're
01:01 21 on the same page?

01:01 22 A I believe it means to take, in this particular
01:01 23 case, a bag of material and put our name on it in
01:01 24 some way in lieu of the manufacturer's name.

01:01 25 Q Okay. And how do you know that that did not

01:02 1 occur?

01:02 2 A I'm not aware of that being our practice, in
01:02 3 general, let alone being our practice specifically
01:02 4 for that, of re-labeling product, unless someone
01:02 5 stretches it and says by putting it in our boiler
01:02 6 and labeling our boiler, it's re-labeling it, but
01:02 7 I don't think that's what you mean.

01:02 8 Q Okay. When Cleaver-Brooks -- and we will get into
01:02 9 this in a minute. When Cleaver-Brooks --
01:02 10 Cleaver-Brooks would sell Vee Block as a
01:02 11 replacement component to its customer, correct?

01:02 12 MR. THORSON: Object to the form of the
01:02 13 question. It's overly broad. Vague.

01:02 14 THE WITNESS: If someone had asked for
01:02 15 it, we would have sold that to them. I didn't see
01:02 16 any evidence of that in the commercial records we
01:02 17 looked at. And quite frankly, for a
01:02 18 commodity-type of material like that, to purchase
01:02 19 it from the manufacturer of the boiler would be a
01:02 20 little unusual, but I can't say it never happened,
01:03 21 no.

01:03 22 BY MR. BERGMAN:

01:03 23 Q And you indicated it was not Cleaver-Brooks'
01:03 24 practice to re-label component parts that it sold.
01:03 25 What was the basis for that testimony, sir?

01:03 1 A Certainly my experience with the company, my
01:03 2 experience looking at records for the company, the
01:03 3 records we've talked about, as well as I'm sure
01:03 4 it's a discussion that I had with Mr. Provance at
01:03 5 one time when I first started doing this with him.

01:03 6 Q And Mr. Provance indicated to you that
01:03 7 Cleaver-Brooks had not re-labeled products?

01:03 8 A Correct.

01:03 9 Q Okay. If you could -- I would like to direct your
01:04 10 attention to page 8 on Exhibit 5.

01:04 11 A Okay.

01:04 12 Q And if you could, please, read for me the question
01:04 13 and the answer.

01:04 14 MR. THORSON: Which Interrogatory,
01:04 15 Counsel?

01:04 16 MR. BERGMAN: Interrogatory No. 8, set
01:04 17 forth on page 8 to Exhibit 5.

01:04 18 THE WITNESS: Okay. "Question, did
01:04 19 Cleaver-Brooks ever place asbestos-related
01:04 20 warnings on the "Vee Block Mix" or "Vee-Block Mix"
01:04 21 refractory cement that it sold prior to 1975?

01:04 22 "Answer, See Answer and objections to
01:05 23 Interrogatory No. 1. Cleaver-Brooks further
01:05 24 objects on the grounds that the Interrogatory
01:05 25 assumes facts not in evidence. Subject to and

01:05 1 without waiving these objections, Cleaver-Brooks
01:05 2 is not aware of any asbestos-related health or
01:05 3 safety hazard in connection with normal
01:05 4 manufacture, installation, or use of its products,
01:05 5 and therefore employed no such warnings with
01:05 6 regard to asbestos."

01:05 7 BY MR. BERGMAN:

01:05 8 Q And so does Cleaver-Brooks mean by that answer
01:05 9 that no warnings were ever provided in connection
01:05 10 with the use and application of Vee Block in
01:05 11 connection with Cleaver-Brooks' boilers?

01:05 12 MR. THORSON: Object to the form of the
01:05 13 question. It's overly broad.

01:05 14 THE WITNESS: I think that would apply
01:05 15 to Vee Block as well as other components, yes. I
01:05 16 think that's what the answer says.

01:05 17 BY MR. BERGMAN:

01:06 18 Q And look at Interrogatory No. 9 set forth on page
01:06 19 8 to Exhibit 5, just go ahead and read that --
01:06 20 read that Interrogatory and the Answer. I will
01:06 21 ask you a question.

01:06 22 MR. THORSON: Read it out loud?

01:06 23 MR. BERGMAN: No, sir. Read it to
01:06 24 yourself.

01:06 25 THE WITNESS: Okay.

01:06 1 BY MR. BERGMAN:

01:06 2 Q So you previously testified that Cleaver-Brooks
01:06 3 has no records regarding the volume of purchases
01:06 4 of Vee Block that it made in the 1960s and '70s.
01:06 5 Is it also true that Cleaver-Brooks has no records
01:06 6 of the volume of sales of Vee Block in the 1960s
01:07 7 and 1970s?

01:07 8 A Correct. With -- again, the exception of looking
01:07 9 at an individual product or boiler that was
01:07 10 shipped and whether there was Vee Block as part of
01:07 11 that boiler, but certainly not on an overall
01:07 12 basis, no.

01:07 13 Q Okay. So Cleaver-Brooks cannot provide
01:07 14 information regarding how much Vee Block it sold
01:07 15 to customers in the 1960s and 1970s?

01:07 16 MR. THORSON: Object to the form of the
01:07 17 question. Vague.

01:07 18 THE WITNESS: No. I'm not aware of a
01:07 19 way we could do -- provide that, no.

01:07 20 BY MR. BERGMAN:

01:07 21 Q Okay. So the answer to my question is "yes"?

01:07 22 A Correct, correct.

01:08 23 Q Okay. Thank you. If you could, sir, please turn
01:08 24 to page 9 of Exhibit 5.

01:08 25 A Okay.

01:08 1 Q And look at Request Production No. 2 and your
01:08 2 response. I will ask you a question or two about
01:08 3 that.

01:08 4 A Okay.

01:08 5 Q What did you do in response to Request For
01:08 6 Production No. 2 to determine whether or not
01:09 7 responsive documents were in Cleaver-Brooks'
01:09 8 possession?

01:09 9 A Well, I think at this particular time, we had
01:09 10 already provided the Whidbey Island boilers'
01:09 11 commercial records and drawings, possibly. And we
01:09 12 were in the process of providing the -- at this
01:09 13 particular time, the commercial records or copying
01:09 14 the commercial records for PSNS. Other than that,
01:09 15 I don't have a historical record of catalogs or
01:09 16 product lists or whatever that might be. So it
01:09 17 would be related to the particular products we're
01:09 18 talking about.

01:09 19 Q So Cleaver-Brooks -- so, first of all, sir, in
01:09 20 response to Requests For Production No. 2, you
01:09 21 made an inquiry and determined whether or not
01:10 22 there were catalogs, products list, part lists,
01:10 23 manuals, or similar documents furnished to
01:10 24 potential customers which mentioned V-Block Mix or
01:10 25 Vee-Block Mix.

01:10 1 A I did that in relation to the sites we were
01:10 2 talking about. I don't have a way to do that in
01:10 3 relation to everything. We don't have a
01:10 4 historical record of those types of things. I
01:10 5 can't say for this particular request for
01:10 6 production I did any inquiries on that because
01:10 7 those are inquiries I've done many times in the
01:10 8 past to realize there are no historical records of
01:10 9 things of that sort.

01:10 10 Q So Cleaver-Brooks, in its possession, has no
01:10 11 catalogs, product lists, part lists, manuals, or
01:10 12 similar documents that it had furnished to
01:10 13 potential customers mentioning V-Block Mix or
01:10 14 Vee-Block Mix?

01:10 15 MR. THORSON: Object to the form of the
01:11 16 question. I think it mischaracterizes his
01:11 17 testimony. You can answer again.

01:11 18 THE WITNESS: In a general form, no. In
01:11 19 a form related to what does this particular boiler
01:11 20 have, certainly I guess that would fit under the
01:11 21 title product lists. And I think you would have
01:11 22 seen in some of the commercial records we
01:11 23 supplied, there were some, for lack of a better
01:11 24 term, catalogs as part of those records. So I
01:11 25 certainly couldn't say we don't have them. I

01:11 1 don't have them in a place where I can go grab,
01:11 2 "here's all the catalogs," or things of that sort.
01:11 3 There's no historical record of such materials.

01:11 4 BY MR. BERGMAN:

01:11 5 Q So outside of documents that are contained in
01:11 6 particular boiler files, Cleaver-Brooks does not
01:11 7 have in its possession documents responsive to
01:11 8 Request Production No. 2 set forth on page 9 of
01:11 9 Exhibit 5?

01:12 10 A Correct, in a historical sense. Certainly we
01:12 11 would have a manual for a product today.

01:12 12 Q Today?

01:12 13 A Yes, but certainly not a historical sense and
01:12 14 going back to the time periods we're talking
01:12 15 about.

01:12 16 Q And by those time periods, we're talking about the
01:12 17 '60s and '70s?

01:12 18 A I think that's what you limited it to for most of
01:12 19 what we've been talking about, yes.

01:12 20 Q Okay. Request for Production No. 4 on page 10 of
01:12 21 Exhibit 5, that simply reiterates what was set
01:12 22 forth in the -- in -- in response -- or
01:12 23 Interrogatory No. 9 regarding the absence of any
01:12 24 records on sales of Vee Block?

01:12 25 A Yes.

01:13 1 MR. BERGMAN: Okay. Madam Court
01:13 2 Reporter, if you would be so kind as to open up
01:13 3 envelope 5, and label it as Exhibit 6 and provide
01:13 4 it to Mr. Tornetta.

01:13 5 (Exhibit No. 6 was marked.)

01:13 6 BY MR. BERGMAN:

01:13 7 Q Okay. All right. Mr. Tornetta, if you would be
01:14 8 so kind as to look at Exhibit 6 and direct your
01:14 9 attention to the very last page.

01:14 10 A Okay.

01:14 11 Q Verification. Is that your signature, sir?

01:14 12 A Yes, it is.

01:14 13 Q And prior to executing your signature on page 17
01:14 14 of Exhibit 6, did you review the responses
01:14 15 provided therein?

01:14 16 A Yes, I did.

01:14 17 Q If you would be so kind, sir, as to read to
01:14 18 yourself Interrogatory No. 1 in the
01:15 19 Cleaver-Brooks' response. I have a few questions
01:15 20 to ask you on that.

01:15 21 A Okay.

01:15 22 Q I want to say this with the -- with the greatest
01:15 23 respect and not in an argumentative fashion, can
01:15 24 you explain for us why it was not possible for
01:15 25 Cleaver-Brooks to furnish an answer to

01:15 1 Interrogatory No. 1?

01:15 2 MR. THORSON: Object to the form of the
01:15 3 question. The interrogatory answer specifies in
01:15 4 great length the reasons why the interrogatory's
01:16 5 objectionable. Mr. Tornetta, you are advised not
01:16 6 to disclose any communications with counsel and so
01:16 7 forth, but I don't understand Mr. Bergman to be
01:16 8 wanting that information. So if you can answer
01:16 9 the question without disclosing communications
01:16 10 from counsel, by all means, do so.

01:16 11 THE WITNESS: As I read it, the
01:16 12 interrogatory requests an untold number of records
01:16 13 basically for every product between '54 and '84
01:16 14 that contain asbestos. And in that general sense,
01:16 15 I don't have a way to answer that other than to
01:16 16 explain to you why I don't have an answer to that,
01:16 17 which I believe the interrogatory does.

01:16 18 And as you'll see later, we answered it
01:16 19 with respect to the sites that were at issue in
01:17 20 this particular instance and provided documents
01:17 21 for those and information on those.

01:17 22 BY MR. BERGMAN:

01:17 23 Q We're just talking about too many boilers over too
01:17 24 many years to be able to provide an answer to
01:17 25 Interrogatory No. 1 --

01:17 1 MR. THORSON: Object to the form of the
01:17 2 question. There is an answer to Interrogatory
01:17 3 No. 1. Assumes facts not in evidence. Overly
01:17 4 broad. You can answer.

01:17 5 THE WITNESS: I would say too many
01:17 6 different boilers over too many different years
01:17 7 and different requirements and requests as its
01:17 8 outlined in our response and answer to
01:17 9 Interrogatory No. 1.

01:17 10 BY MR. BERGMAN:

01:17 11 Q Were there any boilers manufactured by
01:17 12 Cleaver-Brooks between 1954 and, say, 1974 that
01:18 13 did not contain any asbestos-containing products,
01:18 14 if you can answer?

01:18 15 A I don't think I have an accurate way to answer
01:18 16 that because I haven't looked at every boiler
01:18 17 between '54 and '74, whatever it was. I have
01:18 18 certainly run into boilers in the '70s, I can't
01:18 19 say exactly where, that did not have
01:18 20 asbestos-containing components, but I can't give
01:18 21 you an exact year that was. So I don't think I
01:18 22 can answer that without looking at literally every
01:18 23 file in those time frames.

01:18 24 THE VIDEOGRAPHER: Excuse me. This is
01:18 25 the videographer.

01:18 1 BY MR. BERGMAN:

01:18 2 Q Let me ask you it this way. Of the boilers that
01:18 3 you have reviewed, either in the course of your
01:18 4 work in litigation-related issues or in your
01:18 5 technical work prior to then, have you ever run
01:18 6 across a Cleaver-Brooks' boiler manufactured prior
01:19 7 to 1972 that did not have any asbestos-containing
01:19 8 components within it?

01:19 9 MR. THORSON: Object to the form of the
01:19 10 question as being overly broad and vague.

01:19 11 THE WITNESS: I think what I just said
01:19 12 earlier was I know I've come across one in the
01:19 13 '70s. Whether I can narrow that down prior to
01:19 14 1972, I can't. And I think the videographer has a
01:19 15 comment.

01:19 16 THE VIDEOGRAPHER: We have five minutes
01:19 17 of recording time left.

01:19 18 MR. BERGMAN: We can go ahead and change
01:19 19 the tape.

01:19 20 THE VIDEOGRAPHER: We are off the record
01:19 21 at 1:19 p.m.

01:19 22 (Discussion off the record.)

01:22 23 THE VIDEOGRAPHER: We are back on the
01:22 24 record at 1:22 p.m.

01:22 25 BY MR. BERGMAN:

01:23 1 Q Mr. Tornetta, I want to refine -- or ask you, if
01:23 2 you could, to refine your previous answer
01:23 3 somewhat. You had indicated, as I understood your
01:23 4 testimony, sir, that you came across boilers in
01:23 5 the '70s that did not have asbestos components.

01:23 6 Are you aware of any Cleaver-Brooks'
01:23 7 boiler manufactured prior to 1970 that did not
01:23 8 have asbestos components within it?

01:23 9 MR. THORSON: Object to the form. Asked
01:23 10 and answered. You can answer.

01:23 11 THE WITNESS: I can't say I could come
01:23 12 up with one in my mind. But, again, I haven't
01:23 13 looked at every boiler in the '60s or '50s or
01:23 14 '40s. So without doing that, I wouldn't be able
01:23 15 to really answer that.

01:23 16 BY MR. BERGMAN:

01:23 17 Q Of course you haven't, sir. So I guess I will ask
01:23 18 my question -- of the boilers that you have
01:23 19 reviewed that were manufactured prior to 1970, did
01:24 20 you find any that did not have any asbestos
01:24 21 components within it?

01:24 22 MR. THORSON: Object to the form. Asked
01:24 23 and answered.

01:24 24 THE WITNESS: I can't say I recall any
01:24 25 off the top of my head, no.

01:24 1 BY MR. BERGMAN:

01:24 2 Q Sir, if you would be so kind as to turn to page 11
01:24 3 of Exhibit 6.

01:24 4 A Okay.

01:24 5 Q And, actually, the question starts on page 10, if
01:25 6 you could briefly -- or not briefly, take as much
01:25 7 time, look at the interrogatory and your response.
01:25 8 I will have a few questions about that.

01:25 9 A Okay.

01:25 10 Q Sir, how is it that in the supplemental
01:25 11 interrogatory response, you were able to come up
01:25 12 with additional boilers manufactured by
01:25 13 Cleaver-Brooks at Puget Sound Naval Shipyard that
01:25 14 had not been previously identified in your
01:25 15 responses?

01:25 16 MR. THORSON: I'll object to that
01:25 17 question. I believe that it calls for privileged
01:25 18 communications. Counsel, I think I can address
01:25 19 that and explain the -- explain that by virtue of
01:26 20 the flow of information between counsel. If you
01:26 21 would like me to address that on the record, I
01:26 22 would be happy to do so.

01:26 23 MR. BERGMAN: We don't need to do that
01:26 24 at this point.

01:26 25 MR. THORSON: Well, I -- Mr. Tordnetta, I

01:26 1 would advise you not to answer that question if
01:26 2 you're -- if you would be divulging any
01:26 3 communications with counsel. And, frankly, I'm
01:26 4 not -- I'm not confident how you could answer that
01:26 5 question without doing so. So unless we can have
01:26 6 a different question or -- I instruct you not to
01:26 7 answer.

01:26 8 BY MR. BERGMAN:

01:26 9 Q Let me rephrase the question. Look at Responses
01:26 10 to Interrogatory 10 -- excuse me, Interrogatory 9.
01:26 11 Mr. Tornetta, did you subsequently, to your search
01:26 12 for Whidbey Island boilers, conduct a search for
01:26 13 boilers at Puget Sound Naval Shipyard?

01:27 14 MR. THORSON: You can answer that
01:27 15 question.

01:27 16 THE WITNESS: Yes, I did.

01:27 17 BY MR. BERGMAN:

01:27 18 Q Okay. And what steps did you go through to
01:27 19 conduct that search and to identify the boilers
01:27 20 set forth in Response to Interrogatory No. 9 of
01:27 21 Exhibit 6?

01:27 22 A The same steps that I described for the U.S. Navy,
01:27 23 Naval Air Station, Whidbey Island. It would have
01:27 24 gone through the index cards, and again, that
01:27 25 printout I discussed, as well as once I found

01:27 1 something, the commercial records to verify that
01:27 2 information, and I've since copied those
01:27 3 commercial records and sent them along.

01:27 4 Q Okay. And what did you ultimately find the
01:27 5 boilers under? And by that, I mean, sir, was it
01:27 6 location, Navy, something else, as the -- as the
01:27 7 word that gave rise to the alphabetical indexes?

01:28 8 A You know, I can't tell you that off the top of my
01:28 9 head. I don't recall exactly what it was. Again,
01:28 10 I would have looked under -- or I did look under
01:28 11 exactly the way I described it for Whidbey Island.
01:28 12 The U.S. Navy, Puget Sound, Naval Shipyard, that
01:28 13 type of, you know, detail in looking at the
01:28 14 alphabetical listing of it.

01:28 15 What I found it under, I don't recall.
01:28 16 I'm sure as we look at those documents, I believe
01:28 17 it will give a name on the cover page of each
01:28 18 commercial record, and that it usually coincides
01:28 19 with what's on the inside of the index card.

01:28 20 Q Where are the -- can you describe the manner in
01:28 21 which these index cards are stored?

01:28 22 A In drawers. Almost as in a card catalog-type file
01:29 23 in a library, if anyone remembers what that was.

01:29 24 Q I confess that I do and give my age. I know my
01:29 25 kids have no idea what that is. They don't know

01:29 1 what a rotary phone is.

01:29 2 Sir, are those files, are they -- do
01:29 3 they have a -- like in -- I mean, harkening back
01:29 4 to sixth grade, do these card piles have, like, a
01:29 5 metal tube down the bottom that holds them into
01:29 6 place, or are they loosely held within each
01:29 7 drawer?

01:29 8 A They're loosely held within each drawer. There's
01:29 9 no -- nothing keeping it in the drawer other than
01:29 10 gravity, I guess, is the way I would put it.

01:29 11 Q Okay. And those cards have been in the file
01:29 12 since -- well, those files started about 80 years
01:30 13 ago, in the '30s?

01:30 14 A I'm not sure when they actually started typing
01:30 15 them and putting them on cards. They include
01:30 16 information going back 80 years, but it may have
01:30 17 been 10, 20 years before someone said, "Oh, we
01:30 18 should, you know, write down every one." I really
01:30 19 don't know if it goes back that far. But yes,
01:30 20 they have been in the company for a long, long
01:30 21 time.

01:30 22 Q And there have been a lot of people prior to you
01:30 23 that have utilized those cards over the years?

01:30 24 MR. THORSON: Object to the form of the
01:30 25 question. You can answer.

01:30 1 THE WITNESS: I'm not sure how to
01:30 2 characterize "a lot." Certainly people within the
01:30 3 company have had access to look at those cards.

01:30 4 BY MR. BERGMAN:

01:30 5 Q Have you ever found a card that was misfiled?

01:30 6 A I'm not sure I have. Other than, you know, not --
01:31 7 as I said, in the way I would search for names
01:31 8 like these, someone might classify, if I found it
01:31 9 under Puget Sound, it being misfiled because it
01:31 10 wasn't first under U.S. Navy. I wouldn't consider
01:31 11 that misfiled, but I don't recall coming across a
01:31 12 card as I've thumbed through others and said, "Oh,
01:31 13 this one doesn't belong here," no.

01:31 14 Q Has there ever been an instance where you have not
01:31 15 been able to find a card referencing a
01:31 16 Cleaver-Brooks' boiler in a particular location
01:31 17 where you have subsequently discovered that a
01:31 18 boiler does indeed exist there?

01:31 19 MR. THORSON: Object to the form of the
01:31 20 question. Overly broad. Vague.

01:31 21 THE WITNESS: The only instances like
01:31 22 that I can recall were instances where the name of
01:32 23 the facility was different, either what I was
01:32 24 being asked was different than what we had
01:32 25 classified it as, or the name of the facility had

01:32 1 since changed and no one passed along that
01:32 2 information. But I don't recall anywhere there
01:32 3 was a certainty a boiler was there and that place
01:32 4 was always ABC company and whatever Michigan, and
01:32 5 we didn't find a card, no.

01:32 6 Q What did you do to determine whether or not a
01:32 7 Cleaver-Brooks' boiler was present at the facility
01:32 8 in Flint, Michigan, identified in our discovery
01:32 9 requests?

01:32 10 A In Flint, Michigan?

01:32 11 Q Yes, sir.

01:33 12 A I looked under similar type things with the names.
01:33 13 I would have looked under the U.S. Navy. I can't
01:33 14 recall. Was it -- training center, I believe.
01:33 15 There was some other names for it as well. I
01:33 16 don't recall what they were. But I looked under
01:33 17 every iteration and name I was aware of to see if
01:33 18 I could find any information on a boiler we may
01:33 19 have shipped there.

01:33 20 Q And to be more fair, sir, let me direct your
01:33 21 attention to page 15 of Exhibit 6.

01:33 22 A Okay. Okay.

01:33 23 Q And, then, in response to this request for
01:33 24 production, did you look for Cleaver-Brooks'
01:33 25 boilers at all in those locations utilizing the

01:34 1 methodology that you previously testified you
01:34 2 employ?

01:34 3 A I believe all except Eastern Electric.

01:34 4 Q And was that because Eastern Electric was just too
01:34 5 vague to --

01:34 6 MR. THORSON: I will object. I believe
01:34 7 that would call for him to disclose communications
01:34 8 with counsel. Counsel, there was no allegation of
01:34 9 exposure to a Cleaver-Brooks' boiler at Eastern
01:34 10 Electric, and that was the basis for our --

01:34 11 MR. BERGMAN: I understand.

01:34 12 MR. THORSON: We did not perform a
01:34 13 search test at that site, as we stated in our
01:34 14 objections.

01:34 15 MR. BERGMAN: Okay. Mr. Tornaetta, I
01:34 16 have -- we can either -- how are you feeling, sir?
01:34 17 Do you want to take a break now? Let's ask the
01:34 18 court reporter to chime in now. Do you want to
01:34 19 take a lunch break now? We have about another
01:34 20 half-hour. It's completely up to you guys.

01:34 21 MR. THORSON: You think you have another
01:34 22 half-hour of questioning?

01:35 23 MR. BERGMAN: 20 minutes or so.

01:35 24 MR. THORSON: It sounds like Mr. Bergman
01:35 25 anticipates finishing somewhere in the half-hour

01:35 1 range or thereabouts. Is there a preference on
01:35 2 your end in Milwaukee about taking a break for
01:35 3 some lunch and coming back or pressing through?
01:35 4 Either one is fine.

01:35 5 THE WITNESS: I think we're all good
01:35 6 here for pressing through.

01:35 7 MR. THORSON: Good.

01:35 8 BY MR. BERGMAN:

01:35 9 Q All right. Let me direct your attention to
01:35 10 Exhibit 4.

01:35 11 A Okay.

01:35 12 Q Sir, if you could look at page 20 of Exhibit 4,
01:35 13 and I will ask you whether that is your signature?

01:35 14 A Yes, it is.

01:36 15 Q In 2004, did you review these answers prior to
01:36 16 affixing your signature on page 20 to Exhibit 4?

01:36 17 A I must say, I don't recall that, but my practice
01:36 18 is yes, I don't sign anything I don't review. So
01:36 19 I will say yes, I did.

01:36 20 Q Okay. And did you also review Exhibit 4 with your
01:36 21 counsel today?

01:36 22 MR. THORSON: I will stipulate that
01:36 23 we -- during the earlier break, we briefly went
01:36 24 through it; is that correct, Mr. Tornetta?

01:36 25 THE WITNESS: Yes, it is. I would

01:36 1 characterize it as scanned over.

01:36 2 BY MR. BERGMAN:

01:36 3 Q Okay. All right. If you could, please, sir, look
01:37 4 at page 8 to Exhibit 4.

01:37 5 A Okay.

01:37 6 Q And if you could look to Interrogatory No. 2 and
01:37 7 your response. You don't need to read it. I will
01:37 8 ask you a question about that.

01:37 9 A Okay. I have read it or scanned it.

01:37 10 Q Okay. So my understanding is, based on this, is
01:37 11 in 1967, Cleaver-Brooks became a subsidiary of
01:37 12 Aqua-Chem?

01:37 13 A Correct.

01:37 14 Q And that prior to that time, Cleaver-Brooks was
01:37 15 not a division of Aqua Chem?

01:37 16 A Correct.

01:37 17 Q Would it be accurate to say, then, sir that any
01:38 18 document referring to Cleaver-Brooks as a division
01:38 19 of Aqua Chem would have taken -- would have been
01:38 20 generated after the merger in 1967?

01:38 21 A Any document roughly after '67. I can't say for
01:38 22 certain as of that exact date, it was a dead
01:38 23 cut-off, but yes, I've dated things in a similar
01:38 24 way.

01:38 25 MR. THORSON: Let me just belatedly

01:38 1 object to the last question as I believe it was
01:38 2 overly broad and vague.

01:38 3 BY MR. BERGMAN:

01:38 4 Q So recognizing that there might have been some
01:38 5 holdover for -- after the transaction in 1970, it
01:38 6 would be fair to say that any document that
01:38 7 says -- any Cleaver-Brooks document that says
01:38 8 Cleaver-Brooks, a division of Aqua-Chem, would
01:38 9 have been generated after the 1968 merger?

01:38 10 MR. THORSON: Same objection.

01:38 11 THE WITNESS: Yes. And, essentially,
01:39 12 I'm not sure you're interested in more current
01:39 13 stuff, but we've since changed back to
01:39 14 Cleaver-Brooks, Inc. since 19 --

01:39 15 BY MR. BERGMAN:

01:39 16 Q When did that take place, sir?

01:39 17 A Since 2006.

01:39 18 Q So any document prior to 1990, would a -- would
01:39 19 have been -- okay. I think we're clear.

01:39 20 A Yes, I think we are.

01:40 21 Q Could you please -- I'm going to direct your
01:40 22 attention to Exhibit 4 on page 15.

01:40 23 A Okay.

01:40 24 Q If you would, please, sir, read Interrogatory 11
01:40 25 and Cleaver-Brooks' sworn response.

01:40 1 A To myself or out loud?

01:40 2 Q Out loud, if you would, please.

01:40 3 A For any product?

01:40 4 MR. THORSON: The question and answer?

01:40 5 MR. BERGMAN: If you would, please.

01:40 6 MR. THORSON: Okay.

01:40 7 MR. BERGMAN: Yeah, the question and
01:40 8 answer, sir.

01:40 9 THE WITNESS: "Question, for any
01:40 10 product, item, or piece of equipment identified in
01:40 11 response to Interrogatories 6 or 7, identify all
01:40 12 warnings you employed to protect the purchasers
01:40 13 and users of said products, items, or pieces of
01:40 14 equipment from asbestos-related harm, including in
01:40 15 your answer the text of said warning and the date
01:40 16 on which it commenced.

01:40 17 "Response, Cleaver-Brooks is not aware
01:40 18 of any asbestos-related health or safety hazards
01:40 19 in connection with normal manufacture,
01:40 20 installation, or use of its products, and
01:41 21 therefore employed no such warnings with regard to
01:41 22 asbestos."

01:41 23 BY MR. BERGMAN:

01:41 24 Q Now, when Cleaver-Brooks indicated that it was not
01:41 25 aware of any safety hazards in connection with the

01:41 1 normal manufacture, installation, or use of its
01:41 2 products, did that answer include component parts
01:41 3 that were sold after sale?

01:41 4 MR. THORSON: Object to the form of the
01:41 5 question. You mean the use of the component parts
01:41 6 or the use of the Cleaver-Brooks' products?

01:41 7 BY MR. BERGMAN:

01:41 8 Q When Cleaver-Brooks makes reference to its
01:41 9 products, what are you referring to?

01:41 10 A Products by --

01:41 11 Q For the record, I'm referring to the reference of
01:41 12 its products set forth in response to
01:41 13 Interrogatory No. 11 on page 14 of Exhibit 4.

01:41 14 A Products we sell, whether they were boilers or
01:41 15 potentially, I suppose, the component parts we may
01:42 16 have sold.

01:42 17 Q Okay. So this Answer to Interrogatory 11 refers
01:42 18 to any product that Cleaver-Brooks may have sold?

01:42 19 A Yes.

01:42 20 MR. THORSON: I will object to the form
01:42 21 of the question as being overly broad. Vague.
01:42 22 Calls for speculation.

01:42 23 BY MR. BERGMAN:

01:42 24 Q Looking to page 51 in Exhibit 4.

01:42 25 A Okay.

01:42 1 Q Could you please read the question and
01:42 2 Cleaver-Brooks' response?

01:42 3 MR. THORSON: Which question?

01:42 4 MR. BERGMAN: Interrogatory No. 15 set
01:42 5 forth on page 15 of Exhibit 4.

01:42 6 THE WITNESS: "Question, identify all
01:42 7 measures you employed to protect your employees
01:42 8 from asbestos-related disease.

01:42 9 "Response, Cleaver-Brooks is not aware
01:42 10 of any asbestos-related health or safety hazards
01:42 11 in connection with the normal manufacture,
01:43 12 installation, or use of its products, and
01:43 13 therefore employed no such measures. See also
01:43 14 response to Interrogatory No. 22."

01:43 15 BY MR. BERGMAN:

01:43 16 Q Mr. Tornetta, it's been eight years since you
01:43 17 furnished this response to Exhibit 15. And in
01:43 18 that intervening time period, has Cleaver-Brooks
01:43 19 acquired any additional information that would
01:43 20 cause it to change its sworn response to
01:43 21 Interrogatory No. 15, set forth on page 15 of
01:43 22 Exhibit 4?

01:43 23 MR. THORSON: And, again, just by way of
01:43 24 objection, I believe, in fairness and in the
01:43 25 interest of completeness, since the answer to that

01:43 1 interrogatory references a response to
01:43 2 Interrogatory No. 22. I believe that the response
01:44 3 to Interrogatory No. 2 should be reflected in the
01:44 4 record at this time.

01:44 5 BY MR. BERGMAN:

01:44 6 Q Okay. Let me revise my question in deference to
01:44 7 Counsel's comment. I won't call that objection.

01:44 8 So, Mr. Tornetta, in the eight years
01:44 9 that have elapsed since Cleaver-Brooks provided a
01:44 10 sworn response to Interrogatory 15, page 15 of
01:44 11 Exhibit 4, has Cleaver-Brooks acquired any
01:44 12 additional information that would cause it to
01:44 13 change its response set forth on page 15 and 17 of
01:44 14 Exhibit 4?

01:44 15 A No, we haven't received any additional information
01:44 16 that would change that response, which includes
01:45 17 that Cleaver-Brooks has never received from an
01:45 18 employee a worker compensation claim related to
01:45 19 asbestos exposure or related asbestos injury.

01:45 20 Q Okay. So it remains Cleaver-Brooks' testimony
01:45 21 today that it is not aware of any asbestos-related
01:45 22 health or safety hazards -- I'm sorry.

01:45 23 It remains Cleaver-Brooks' testimony
01:45 24 today that it did not employ any measures to
01:45 25 protect its employees from asbestos-related

01:45 1 disease?

01:45 2 MR. THORSON: Object to form of the
01:45 3 question.

01:45 4 THE WITNESS: Yes, because we are not
01:45 5 aware of asbestos-related health or safety hazards
01:45 6 with the normal manufacturing installation or use
01:46 7 of our products, correct.

01:46 8 BY MR. BERGMAN:

01:46 9 Q So just so we're clear, on the record,
01:46 10 Cleaver-Brooks never utilized any measures to
01:46 11 protect its employees from asbestos-related harm?

01:46 12 MR. THORSON: Object to the form of the
01:46 13 question. Assumes facts not in evidence. It's
01:46 14 been asked now three times.

01:46 15 THE WITNESS: Correct. Again, as I
01:46 16 said, and as this response says, and several
01:46 17 others do, we're not aware of that
01:46 18 asbestos-related hazard from those actions.

01:46 19 BY MR. BERGMAN:

01:46 20 Q And if we could turn back, sir, to page 14 of
01:46 21 Exhibit 4.

01:46 22 A Okay.

01:46 23 Q And directing your attention, once again, to
01:46 24 Interrogatory No. 11, in the eight years that has
01:46 25 elapsed since Cleaver-Brooks provided its sworn

01:46 1 response, has Cleaver-Brooks acquired any
01:47 2 additional information that would cause it to
01:47 3 change its sworn answer to Interrogatory No. 11?

01:47 4 MR. THORSON: I will object to the form
01:47 5 of the question as vague. Ambiguous.

01:47 6 THE WITNESS: No, we haven't. It would
01:47 7 be the same response today as it was eight years
01:47 8 ago.

01:47 9 MR. BERGMAN: Sir, this would probably
01:47 10 be an opportune time for us to take a break. I
01:47 11 know you have been at it for a while and the court
01:47 12 reporter has been at it for awhile.

01:47 13 MR. THORSON: So five minutes?

01:47 14 MR. BERGMAN: No. Didn't we want to
01:47 15 take a lunch break?

01:47 16 MR. THORSON: Oh, I'm sorry. I thought
01:47 17 you said you had 20 minutes to half-hour of
01:47 18 questioning to go.

01:47 19 MR. BERGMAN: We can go off the record.

01:47 20 THE VIDEOGRAPHER: We are off the record
01:47 21 at 1:47 p.m.

01:47 22 (Lunch recess, 1:47 p.m. to 2:45 p.m.)

02:45 23 THE VIDEOGRAPHER: We are back on the
02:45 24 record at 2:44 p.m.

02:45 25 BY MR. BERGMAN:

02:45 1 Q Sir, prior to the break, we were looking at
02:45 2 Exhibit 4. I would ask you to turn, if you would,
02:45 3 sir, to page 8 of Exhibit 4.

02:45 4 A Okay.

02:45 5 Q If you could, please, read Interrogatory No. 5 in
02:45 6 Cleaver-Brooks' response.

02:45 7 MR. THORSON: Wait. Exhibit 4?

02:45 8 THE WITNESS: Yeah. You must be mixed
02:45 9 up.

02:45 10 MR. THORSON: There's no Interrogatory 5
02:45 11 on page 8.

02:45 12 MR. BERGMAN: Page 9.

02:45 13 MR. THORSON: 9, okay.

02:45 14 THE WITNESS: Okay. Did you want me to
02:45 15 read that out loud or to myself? I don't recall.

02:45 16 MR. BERGMAN: If you could read it out
02:45 17 loud, please, sir.

02:45 18 THE WITNESS: "Question, state the date
02:45 19 on which you learned that asbestos poses a hazard
02:45 20 to human health.

02:46 21 "Response, any information that this
02:46 22 defendant may have with regard to this subject
02:46 23 would be information acquired by individual
02:46 24 employees through the general media. Defendant
02:46 25 has no record of the acquisition of any such

02:46 1 information."

02:46 2 Q So first question, sir, in the eight years since
02:46 3 you signed the interrogatories set forth in
02:46 4 Exhibit 4, has Cleaver-Brooks acquired any
02:46 5 additional information enlightening it on when it
02:46 6 learned that asbestos posed a potential danger to
02:46 7 human health?

02:46 8 MR. THORSON: I'm assuming Counsel
02:46 9 intentionally means to exclude any information
02:46 10 conveyed through Cleaver-Brooks' counsel.
02:46 11 Mr. Tornetta, you are not to disclose or refer to
02:46 12 any communications from Counsel. With that
02:46 13 qualification, you can answer.

02:46 14 THE WITNESS: No, I would say we haven't
02:46 15 received any other information that would make
02:46 16 that answer change.

02:46 17 BY MR. BERGMAN:

02:46 18 Q So as of -- in 2012, Cleaver-Brooks cannot provide
02:47 19 a date when it learned that asbestos was hazardous
02:47 20 to human health?

02:47 21 MR. THORSON: Object to the form of the
02:47 22 question. It's vague.

02:47 23 THE WITNESS: That would be correct,
02:47 24 yes.

02:47 25 MR. BERGMAN: Okay.

02:47 1 MR. THORSON: Almost assumes facts.

02:47 2 Excuse me.

02:47 3 BY MR. BERGMAN:

02:47 4 Q And is it also -- are you familiar, sir, with the
02:47 5 term "MSDS"?

02:47 6 A Yes, I believe so.

02:47 7 Q And what do you understand that term to be?

02:47 8 A Material safety data sheet.

02:47 9 Q And at any time, did Cleaver-Brooks furnish a
02:47 10 material safety data sheet to customers that made
02:48 11 any reference to asbestos or asbestos-containing
02:48 12 products?

02:48 13 MR. THORSON: Object to the form of the
02:48 14 question. Overly broad. Vague. You can answer.

02:48 15 THE WITNESS: I'm not aware of any
02:48 16 MSDS's we had with relation to asbestos products.

02:48 17 BY MR. BERGMAN:

02:48 18 Q So just so I'm clear, Cleaver-Brooks never
02:48 19 supplied a customer with an MSDS relating to
02:48 20 asbestos and asbestos hazards?

02:48 21 MR. THORSON: Same objection.

02:48 22 THE WITNESS: I've never found any
02:48 23 record of that, and I'm not aware of it, no.

02:48 24 BY MR. BERGMAN:

02:48 25 MR. BERGMAN: If the court reporter

02:49 1 would, open package 16. This can be off the
02:49 2 record. Madam Court Reporter, there should be an
02:49 3 original and copy; is that correct?

02:49 4 THE VIDEOGRAPHER: We are off the record
02:49 5 at 2:49 p.m.

02:51 6 (Exhibit Nos. 7 and 7A were marked.)

02:51 7 THE VIDEOGRAPHER: We are back on the
02:51 8 record at 2:51 p.m.

02:51 9 BY MR. BERGMAN:

02:51 10 Q Mr. Tordnetta, I'm handing you Exhibits 7 and
02:51 11 Exhibit 7A. Can you tell us what Exhibit 7 is?

02:51 12 MR. THORSON: Object to the form of the
02:51 13 question. I think it's vague.

02:52 14 BY MR. BERGMAN:

02:52 15 Q Can you identify Exhibit 7 for us, please?

02:52 16 A It says on the title of this several-page booklet,
02:52 17 I guess I will call it, stapled booklet, "Rear
02:52 18 Door Refractory Repair Or Replacement, Boiler
02:52 19 Diameters, 36, 48, 60, 78, 96," all inches.

02:52 20 Q And have you seen Exhibit 7 prior to today, sir?

02:52 21 A I believe I've come across it in the past. I'm
02:52 22 not sure I can weed out whether I came across it
02:52 23 in the past in depositions where it's been given
02:52 24 to me to look at or whether I've run into it in my
02:52 25 work at Cleaver-Brooks. I can't determine which

02:52 1 one is which.

02:52 2 Q Okay. And if you could then look at 7A as well,
02:52 3 and just indicate for the record whether 7A
02:52 4 appears to be a true and accurate copy of
02:52 5 Exhibit 7.

02:52 6 A Okay. Certainly, without reading every word, it
02:53 7 looks to be a copy of it, yes.

02:53 8 Q Okay. If you could refer to Exhibit 7 for us,
02:53 9 sir, and I guess my overall question is, are you
02:54 10 able to date that document? Please take -- I'm
02:54 11 going to be asking plenty of questions about that
02:54 12 document, so please take as much time as you would
02:54 13 like to look over it?

02:54 14 MR. THORSON: I will object to the form
02:54 15 of the question. There's no foundation whatsoever
02:54 16 supplied as to this document. Lack of foundation.
02:54 17 Also, calls the witness to speculate on a document
02:54 18 whose authenticity has not been established. With
02:54 19 that, you can answer --

02:54 20 BY MR. BERGMAN:

02:54 21 Q Let me ask a few questions in light of Counsel's
02:54 22 objection. Sir, if you could look at the front
02:54 23 page of Exhibit 7.

02:54 24 A Yes.

02:54 25 Q And you see there's a reference to Cleaver-Brooks?

02:54 1 A Yes.

02:54 2 Q And what is the logo between the words "Cleaver"
02:54 3 and "Brooks" on the first page of Exhibit 7?

02:54 4 A That is the hand and flame logo we were discussing
02:55 5 earlier.

02:55 6 Q Is that the Cleaver-Brooks logo?

02:55 7 A It has been, yes.

02:55 8 Q Okay. And is the font and typeface of the
02:55 9 Cleaver-Brooks' writing on page 1 of the Exhibit 7
02:55 10 similar to the font and typeface on Exhibit 3?

02:55 11 A When you say "page 1," you mean not page 1 as in
02:55 12 the numbered page, but the cover page?

02:55 13 Q The cover page.

02:55 14 A Okay. I just want to make sure we're talking
02:55 15 about the same thing. It looks similar to it,
02:55 16 yes.

02:55 17 Q Okay. And does Exhibit 7 appear to you to be an
02:56 18 authentic Cleaver-Brooks' document?

02:56 19 MR. THORSON: Object to the form of the
02:56 20 question. Vague. Ambiguous. Calls for
02:56 21 speculation. Lack of foundation.

02:56 22 THE WITNESS: I'm not sure what I could
02:56 23 qualify as authentic Cleaver-Brooks' document.
02:56 24 Certainly, I've run into this before in at least
02:56 25 this setting. I'm not sure I can answer that as

02:56 1 far as authentic. I don't have any reason to
02:56 2 believe otherwise, I guess, is the way I would put
02:56 3 it.

02:56 4 BY MR. BERGMAN:

02:56 5 Q Okay. And in the course of your work for
02:56 6 Cleaver-Brooks, both as a technical employee and
02:56 7 in litigation support, have you run across
02:56 8 technical manuals such that's set forth in
02:56 9 Exhibit 7 prior to today?

02:56 10 MR. THORSON: Object to the form of the
02:56 11 question. It's vague.

02:57 12 THE WITNESS: Certainly I've run across
02:57 13 manuals of varying types, so I'm not sure I'd say
02:57 14 exactly like this, but certainly I have come
02:57 15 across their manuals.

02:57 16 BY MR. BERGMAN:

02:57 17 Q Okay. What would be the purpose of a -- well,
02:57 18 strike that. Would it be fair to say that -- to
02:57 19 describe Exhibit 7 as a manual?

02:57 20 MR. THORSON: Object to the form of the
02:57 21 question. Calls for speculation. Assumes facts
02:57 22 not in evidence. And lack of foundation. You can
02:57 23 answer.

02:57 24 THE WITNESS: I'm not certain I would
02:57 25 call it a manual -- I guess I -- I don't know how

02:57 1 any particular person would define "manual."

02:57 2 There are certainly instructions within it.

02:57 3 BY MR. BERGMAN:

02:57 4 Q Okay. What would you -- in your words, sir, how
02:57 5 would you describe Exhibit 7?

02:57 6 MR. THORSON: Same objections.

02:57 7 THE WITNESS: I guess I would call it a
02:57 8 guide for repair or replacement of rear door
02:57 9 refractory.

02:57 10 BY MR. BERGMAN:

02:57 11 Q Okay. And to whom was this guide directed?

02:58 12 MR. THORSON: Objection. Lack of
02:58 13 foundation. Assumes facts not in evidence. Calls
02:58 14 for speculation. Lack of foundation.

02:58 15 THE WITNESS: I don't see anything on
02:58 16 here that would indicate one way or the other who
02:58 17 it would be directed to. Essentially this type of
02:58 18 work, refractory type of work, isn't your, you
02:58 19 know, everyday maintenance person in a facility.
02:58 20 So it may have been more directed towards people
02:58 21 who did refractory-type work. But there's nothing
02:58 22 on here that would indicate to me one way or the
02:58 23 other.

02:58 24 BY MR. BERGMAN:

02:58 25 Q Would it be directed toward individuals outside

02:58 1 the Cleaver-Brooks' factory?

02:58 2 MR. THORSON: Same objections.

02:58 3 MR. BERGMAN: I will give you a standing
02:58 4 objection on that, Counsel. I understand your
02:58 5 position.

02:58 6 MR. THORSON: You can answer.

02:58 7 THE WITNESS: Again, nothing on here
02:58 8 tells me that one way or the other. You said
02:58 9 outside of the Cleaver-Brooks' factory, did you
02:59 10 say?

02:59 11 MR. BERGMAN: Yes, sir. Do you
02:59 12 understand the question?

02:59 13 THE WITNESS: Yes. I just want to make
02:59 14 sure I heard it correctly.

02:59 15 MR. BERGMAN: Okay.

02:59 16 THE WITNESS: I can't imagine why it
02:59 17 would be needed in the Cleaver-Brooks factory. So
02:59 18 I guess my answer to that would be yes.

02:59 19 BY MR. BERGMAN:

02:59 20 Q So it would be directed toward either users of
02:59 21 Cleaver-Brooks' boilers or individuals who are
02:59 22 tasked with repairing and renewing and maintaining
02:59 23 Cleaver-Brooks' boilers, correct?

02:59 24 MR. THORSON: Same objection. It also
02:59 25 calls for speculation.

02:59 1 THE WITNESS: I would probably correct
02:59 2 the user part. Again, that goes back to the --
02:59 3 what I originally said about it. I think we're
02:59 4 dealing with something that's a little more
02:59 5 sophisticated in how it's done than somebody that
02:59 6 simply would turn on the switch of a boiler and
02:59 7 make sure it had pressure in it.

03:00 8 BY MR. BERGMAN:

03:00 9 Q Okay. So it would be directed toward individuals
03:00 10 who were tasked with maintaining Cleaver-Brooks'
03:00 11 boilers as opposed to simply using them in the
03:00 12 course of daily life?

03:00 13 MR. THORSON: That's also an incomplete
03:00 14 hypothetical. Same objections.

03:00 15 THE WITNESS: Yeah, that's probably --
03:00 16 you know, the only way I can think to describe it,
03:00 17 yes.

03:00 18 BY MR. BERGMAN:

03:00 19 Q Okay. Would Cleaver-Brooks expect individuals who
03:00 20 are repairing its boilers to follow the procedures
03:00 21 set forth in Exhibit 7?

03:00 22 MR. THORSON: Same objections. Assumes
03:00 23 facts.

03:00 24 THE WITNESS: I would say our
03:00 25 expectations would be that they would do what they

03:00 1 felt was the right way, whether they followed
03:00 2 those procedures or not. I'm not sure we had any
03:00 3 expectations one way or the other.

03:01 4 BY MR. BERGMAN:

03:01 5 Q But in providing this document -- well, I guess
03:01 6 the -- in that case, why did Cleaver-Brooks
03:01 7 provide the documents set forth in Exhibit 7?

03:01 8 MR. THORSON: I will object to the form
03:01 9 of the question. That's not what he said. He did
03:01 10 not say this was provided to anybody. Same
03:01 11 objections as previously stated.

03:01 12 BY MR. BERGMAN:

03:01 13 Q Let's try -- did Cleaver-Brooks provide this
03:01 14 document to individuals outside of Cleaver-Brooks'
03:01 15 factory?

03:01 16 A I don't have any records to show that one way or
03:01 17 the other. So I don't know. It's certainly
03:01 18 outside of our factory right now. So I would say
03:01 19 it eventually ended up outside of our factory.

03:01 20 Q Okay. And do you have any reason to dispute, sir,
03:01 21 that the documents set forth in Exhibit 7 was
03:01 22 provided to individuals charged with maintaining
03:01 23 Cleaver-Brooks' boilers outside of the company
03:02 24 back then?

03:02 25 A I'm not sure I can even answer that. I think you

03:02 1 would have to ask the individuals you're talking
03:02 2 about whether it was provided to them. I don't
03:02 3 know how I could answer that question.

03:02 4 Q Cleaver-Brooks printed a document that was
03:02 5 professionally typeset with extensive drawings,
03:02 6 figures, charts, and instructions?

03:02 7 MR. THORSON: Object to -- if that's a
03:02 8 question, I will object to the form of it.
03:02 9 There's no foundation and it assumes facts not in
03:02 10 evidence.

03:02 11 BY MR. BERGMAN:

03:02 12 Q Are you suggesting that this document was not
03:02 13 provided to customers and other users of
03:02 14 Cleaver-Brooks' products?

03:02 15 MR. THORSON: Same objections.

03:02 16 THE WITNESS: No. I think what I said
03:03 17 was I didn't know how to answer your question,
03:03 18 which seemed to me, at least, to broadly ask
03:03 19 whether or not we provided this to individuals of
03:03 20 this, that, or the other type. I don't know. You
03:03 21 have to ask those individuals whether they
03:03 22 received it.

03:03 23 Again, it obviously went outside of our
03:03 24 factory because it is currently outside of our
03:03 25 factory. We didn't make it up for nothing, I

03:03 1 suppose. But I certainly can't sit here and
03:03 2 testify that someone received this that I don't
03:03 3 know who they are and I haven't asked them if they
03:03 4 received it.

03:03 5 BY MR. BERGMAN:

03:03 6 Q I understand. But would it be fair to say, sir,
03:03 7 that the purpose of Exhibit 7 was to instruct
03:03 8 individuals on the proper maintenance and repair
03:03 9 of rear door refractory of Cleaver-Brooks'
03:03 10 boilers?

03:03 11 MR. THORSON: Object to the form of the
03:03 12 question. Assumes authenticity. Lack of
03:03 13 foundation. Calls for speculation. Assumes
03:04 14 facts.

03:04 15 THE WITNESS: I would -- I'm not sure I
03:04 16 would say that is completely what this is. It's
03:04 17 talking about replacement. I'm not sure it talks
03:04 18 too much about maintenance. And I would refer to
03:04 19 it as a guide for that. Whether that's an
03:04 20 instruction or not, you would have to tell me.
03:04 21 But certainly there are instructions within it.

03:04 22 BY MR. BERGMAN:

03:04 23 Q And in providing guidance to customers on the
03:04 24 repair or replacement of rear door refractories,
03:04 25 Cleaver-Brooks certainly expected that customers

03:04 1 would heed its guidance, correct?

03:04 2 MR. THORSON: Object to the form.

03:04 3 THE WITNESS: I'm not sure I could
03:04 4 answer what we expected a customer to do with this
03:04 5 document. Certainly we made it for a reason. I'm
03:04 6 not sure how to answer your question, to be quite
03:04 7 honest with you.

03:04 8 BY MR. BERGMAN:

03:04 9 Q Okay. And what was the reason that you understood
03:04 10 Exhibit 7 to have been made for?

03:05 11 MR. THORSON: Objection. Assumes facts.
03:05 12 Lack of foundation. Calls for speculation.

03:05 13 THE WITNESS: It says, "Rear door
03:05 14 refractory repair or replacement." It is guidance
03:05 15 on rear door refractory repair or replacement.

03:05 16 BY MR. BERGMAN:

03:05 17 Q If you could turn to the second page of Exhibit 7.

03:05 18 A The second unnumbered page or page No. 2?

03:05 19 Q It is unnumbered, sir. So yes, it is unnumbered.

03:05 20 MR. THORSON: Material list, is that it?

03:05 21 MR. BERGMAN: Yes.

03:05 22 THE WITNESS: Okay. I'm there.

03:05 23 BY MR. BERGMAN:

03:05 24 Q And I would like you, first of all, just to take
03:05 25 as much time as you need just to familiarize

03:05 1 yourself with page 2 of Exhibit 7. I'm going to
03:06 2 ask you some questions about it once you've had a
03:06 3 chance to review it.

03:06 4 A Okay. Okay. I'm ready.

03:06 5 Q Are we still on?

03:06 6 A Can you hear me okay?

03:06 7 MR. THORSON: You just suddenly got
03:06 8 quiet again.

03:06 9 THE WITNESS: One second. Can you hear
03:06 10 me any better? How about that? Can you hear me?

03:07 11 MR. THORSON: That's better.

03:07 12 THE WITNESS: Are you all right with
03:07 13 that? We're working on microphones again. Sorry.

03:07 14 MR. BERGMAN: Okay.

03:07 15 THE WITNESS: Okay. I'm ready when you
03:07 16 are.

03:07 17 BY MR. BERGMAN:

03:07 18 Q You've had a chance to familiarize yourself with
03:07 19 the second unnumbered page of Exhibit 7?

03:07 20 A Yes.

03:07 21 Q Okay. I want to ask you some questions regarding
03:07 22 the particular parts set forth on that page. And
03:07 23 in general, can you describe how the parts
03:07 24 numbering system at Cleaver-Brooks worked in the
03:08 25 '60s and '70s?

03:08 1 MR. THORSON: Let me just -- do I have a
03:08 2 continuing objection as to all questions related
03:08 3 to this exhibit?

03:08 4 MR. BERGMAN: Yes, you certainly do.

03:08 5 MR. THORSON: Okay.

03:08 6 THE WITNESS: I guess I'm not sure what
03:08 7 you're looking for with that. We had part numbers
03:08 8 and those part numbers would have had descriptions
03:08 9 for those part numbers, similar to what you've
03:08 10 seen in the documents we've produced.

03:08 11 BY MR. BERGMAN:

03:08 12 Q So looking in the upper left corner of the second
03:08 13 page of Exhibit 7 and recognizing Counsel has a
03:08 14 standing objection to the utilization of this
03:08 15 document, it indicates part No. 872-162 Vee Block
03:08 16 Mix. And I guess my question to you is, what
03:08 17 system did Cleaver-Brooks utilize to characterize
03:08 18 part numbers in the construction and maintenance
03:09 19 and repair of its boilers?

03:09 20 MR. THORSON: Objection. Vague.

03:09 21 THE WITNESS: I'm not sure I understand
03:09 22 that. 872-162 is the part number for Vee Block
03:09 23 Mix. I think if you look at our drawings we
03:09 24 produced, you will see that as well. I'm not sure
03:09 25 what you're looking for.

03:09 1 BY MR. BERGMAN:

03:09 2 Q Okay. So did the part number -- was that the same
03:09 3 for the construction of the boiler and the supply
03:09 4 of replacement components for the boiler?

03:09 5 A The part number would be the part number, yes.
03:09 6 Whether it was a component in the boiler or
03:09 7 something after the fact, the part number would
03:09 8 have been the same number.

03:09 9 Q Okay. And does Cleaver-Brooks today have any
03:09 10 master list of part numbers that was in use in the
03:10 11 1960s and 1970s?

03:10 12 A I have part numbers on reels of microfilm, which
03:10 13 is what we've provided -- the appropriate ones
03:10 14 with the drawings we provided. So is that what
03:10 15 you're talking about?

03:10 16 Q No, sir. I'm talking about whether there was a
03:10 17 master list, a parts list, maintained by
03:10 18 Cleaver-Brooks in the 1960s and '70s identifying
03:10 19 all of the parts that were available for
03:10 20 post-market sale and, you know, by type and
03:10 21 number.

03:10 22 A No.

03:10 23 Q Okay. And is your testimony that no document ever
03:10 24 existed or that there is no document available
03:10 25 today?

03:11 1 MR. THORSON: And just for
03:11 2 clarification, Counsel, are you referring to a
03:11 3 list outside the contents of a particular
03:11 4 commercial file for Cleaver-Brooks' boilers?

03:11 5 MR. BERGMAN: Yes, I am, yes.

03:11 6 THE WITNESS: The documents we would
03:11 7 have are the parts descriptions I described on the
03:11 8 reels of microfilm, which we produced various ones
03:11 9 that are related to the boilers we produced
03:11 10 documents on. A list of those, other than
03:11 11 appearing in various manuals, possibly, as parts,
03:11 12 I'm not aware that we have anything like that, no.

03:11 13 BY MR. BERGMAN:

03:11 14 Q You've never seen a master parts list?

03:11 15 MR. THORSON: Same objections. It's
03:11 16 vague.

03:11 17 THE WITNESS: No, I guess, if I
03:11 18 understand what you're talking about as a master
03:11 19 parts list, no. And, again, I'm not including --

03:11 20 MR. BERGMAN: Well, I --

03:11 21 THE WITNESS: I'm sorry.

03:11 22 MR. BERGMAN: I interrupted you, sir. I
03:12 23 apologize.

03:12 24 THE WITNESS: I'm certainly not
03:12 25 including 2012, what's in our computer system for

03:12 1 parts and components that are used to building a
03:12 2 boiler today.

03:12 3 MR. BERGMAN: Of course not.

03:12 4 THE WITNESS: I'm talking historically.

03:12 5 The only list of parts in documents we would have
03:12 6 would be the reels of microfilm I talked about.

03:12 7 BY MR. BERGMAN:

03:12 8 Q Okay. And are you aware of any significance to
03:12 9 the prefix in a Cleaver-Brooks' part number? And
03:12 10 by that I mean, the number 872, prior to the
03:12 11 actual parts number? And please take your time to
03:12 12 review page 2 of Exhibit 7 if that helps.

03:12 13 A I'm not aware necessarily of what it actually
03:12 14 means, but you will see, as you go across there,
03:13 15 that many of the ones on that list start with 872.
03:13 16 Some are 853s. I'm not quite sure it tells me
03:13 17 anything in relation to, you know, what is that
03:13 18 part, other than it's just numbered under 872 and
03:13 19 then whatever the next numbers are.

03:13 20 Q So we know that -- from looking at page 2 of
03:13 21 Exhibit 7, we know that 87 -- that part number
03:13 22 872-162 is Vee Block Mix; is that correct?

03:13 23 A That's what it says there, yes.

03:13 24 Q And looking down from that column on page -- the
03:13 25 second column on page 2 of Exhibit 7, it indicates

03:13 1 various pounds of Vee Block Mix corresponding with
03:13 2 various diameters of Cleaver-Brooks' boilers, do
03:14 3 you see that, sir?

03:14 4 A That's what it says there, yes.

03:14 5 Q And what does that mean?

03:14 6 MR. THORSON: Objection. Calls for
03:14 7 speculation. You can answer.

03:14 8 THE WITNESS: I believe it's the weight
03:14 9 of material needed for that particular boiler
03:14 10 size.

03:14 11 BY MR. BERGMAN:

03:14 12 Q Okay. So the bigger the boiler, the more, for
03:14 13 instance, Vee Block would be required to replace
03:14 14 a -- repair or replace a rear door refractory; is
03:14 15 that correct?

03:14 16 MR. THORSON: Object to the form.
03:14 17 Assumes facts. You can answer.

03:14 18 THE WITNESS: If that particular boiler
03:14 19 required Vee Block Mix, yes, that would be true.

03:14 20 BY MR. BERGMAN:

03:14 21 Q Okay. And just so we're clear, these parts
03:14 22 numbers that we've been referring to set forth on
03:14 23 page 2 of Exhibit 7 are Cleaver-Brooks' numbers,
03:14 24 correct?

03:14 25 MR. THORSON: Objection. Calls for

03:14 1 speculation.

03:14 2 THE WITNESS: Yes, they are, unless, as
03:15 3 in the next column, it calls out, as well, some
03:15 4 other manufacturer's number.

03:15 5 BY MR. BERGMAN:

03:15 6 Q Okay. The numbering system is a Cleaver-Brooks'
03:15 7 numbering system, correct?

03:15 8 MR. THORSON: Same objections.

03:15 9 THE WITNESS: Correct.

03:15 10 BY MR. BERGMAN:

03:15 11 Q So part No. 872-61, and I'm making reference to
03:15 12 the third column on page 2 of Exhibit 7, refers to
03:15 13 asbestos board and -- is that correct?

03:15 14 A Yes. It says, "Quarter-inch asbestos board J.M.
03:15 15 106 or equal."

03:15 16 Q Okay. Did Cleaver-Brooks provide J.M. 106 to
03:15 17 customers?

03:16 18 MR. THORSON: Object to the form of the
03:16 19 question. It's vague. Ambiguous. Overly broad.

03:16 20 THE WITNESS: I believe if you look in
03:16 21 the documents we provided on these boilers, you
03:16 22 will see incidents where that was part of the
03:16 23 boiler we provided, yes.

03:16 24 BY MR. BERGMAN:

03:16 25 Q Okay. And part No. 872-22, I'm referring to the

03:16 1 fourth column on the second page of Exhibit 7,
03:16 2 what product is that?

03:16 3 A That says, "One-and-a-half-inch Hi-Temp insulating
03:16 4 block."

03:16 5 Q Is that an asbestos product, sir?

03:16 6 MR. THORSON: Objection. Foundation.
03:16 7 Vague. Overly broad.

03:16 8 THE WITNESS: I don't know. I would
03:16 9 have to look at the manufacturer of it and see if
03:16 10 they were able to tell me.

03:16 11 BY MR. BERGMAN:

03:17 12 Q Looking at part 872-167, the fifth column on page
03:17 13 2 of Exhibit 7, what is that product?

03:17 14 A It says, "One-Inch Hi-Temp insulating block." It
03:17 15 appears to be the same as the fourth column,
03:17 16 except a different dimension, thickness dimension.

03:17 17 Q Okay. And, then, the sixth column on the second
03:17 18 page of Exhibit 7, part No. 872-86. Are you
03:17 19 familiar with a product called Furnas-Crete?

03:17 20 A Yes, and I think it says "Furnas-Crete" there, "or
03:17 21 equal," and I think it's 872-96. Since I have the
03:18 22 original, it might be a little easier for me to
03:18 23 see.

03:18 24 Q Okay. In any event, what is "Furnas-Crete"?

03:18 25 A That is a high-strength castable refractory that,

03:18 1 in this particular case, is used on the lower
03:18 2 half -- outside of the lower half of the rear
03:18 3 door.

03:18 4 Q Okay.

03:18 5 A And you will also see that on the materials we
03:18 6 provided on the specific boilers in this case.

03:18 7 Q Okay. And, then, moving back to the fourth and
03:18 8 fifth columns on the second page of Exhibit 7,
03:18 9 there are various amounts of square feet listed as
03:18 10 the columns go down. Can you explain why that is?

03:18 11 A The diameter of the door is changing.

03:18 12 Q Okay. So is more material -- more insulating
03:19 13 block required when the diameter of the door
03:19 14 increases?

03:19 15 MR. THORSON: Object to the form of the
03:19 16 question. It's overly broad.

03:19 17 THE WITNESS: Yes. I think the equation
03:19 18 for area of a circle is " $2 \pi r$ ". So as the
03:19 19 diameter goes up, so does the area.

03:19 20 BY MR. BERGMAN:

03:19 21 Q Okay. And then the seventh column is part No.
03:19 22 853-348. What is that product?

03:19 23 MR. THORSON: I think that may be the
03:19 24 eighth column, just for the record.

03:19 25 MR. BERGMAN: Yes, it is.

03:19 1 BY MR. BERGMAN:

03:19 2 Q Counsel is correct. It's the 8th column on page 2
03:19 3 of Exhibit 7. What is that product, sir?

03:19 4 A That says, "3-Ply quarter-inch Asbestos Rope J.M.
03:19 5 No. 4202 or equal."

03:20 6 Q Okay. And what is that rope used for, sir, if you
03:20 7 know?

03:20 8 A I would have to look at the drawings to determine
03:20 9 what they're saying it's used for in this. If we
03:20 10 looked at the drawings for the products that we
03:20 11 supplied the documents for, we could probably
03:20 12 determine that a little easier.

03:20 13 Q Okay. We will get there in short order, sir. The
03:20 14 ninth column, sir, part No. 853-249, what is that
03:20 15 product, sir?

03:20 16 A It says, "Five-Eighths-inch by five-eighths-inch
03:20 17 Asbestos Rope."

03:20 18 Q Okay. Now, looking -- we're still on page 2 of
03:20 19 Exhibit 7. Now we're on the lower box. And
03:21 20 there's reference to part No. 872-26. Do you see
03:21 21 that, sir?

03:21 22 A Yes, I do.

03:21 23 Q And what does that refer to?

03:21 24 A It says, "Asbestos Cement J.M. No. 450 or equal."

03:21 25 Q Can you remind us what the "or equal" means?

03:21 1 MR. THORSON: Object to form.

03:21 2 THE WITNESS: It would be -- or
03:21 3 something that fits the same application.

03:21 4 BY MR. BERGMAN:

03:21 5 Q Okay. And, finally, if you could work to the
03:21 6 third column from the right on the lower box on
03:21 7 page 2 of Exhibit 7, it makes reference to part
03:21 8 853-249. What product is that?

03:22 9 A That, again, says, "Five-Eighths-inch Asbestos
03:22 10 Rope."

03:22 11 Q Okay. And could you please read the note to us on
03:22 12 the lower right-hand side of page 2 of Exhibit 7?

03:22 13 A "Note: If possible, make certain that all
03:22 14 necessary parts and materials are on hand before
03:22 15 commencing major repairs, involving extended
03:22 16 interruption of service."

03:22 17 Q And now, could you look and read on the lower left
03:22 18 corner on the second page of Exhibit 7?

03:22 19 A The asterisk?

03:22 20 Q The double asterisk?

03:22 21 A The double?

03:22 22 Q Yes, sir.

03:22 23 A "Order by part number and amount required."

03:23 24 Q Does the second page of Exhibit 7 represent
03:23 25 products that Cleaver-Brooks offered for sale?

03:23 1 MR. THORSON: Object to the form of the
03:23 2 question. Overly broad. Compound. Vague.

03:23 3 THE WITNESS: I think as I responded
03:23 4 before, if someone asked us for it, we would sell
03:23 5 it to them.

03:23 6 BY MR. BERGMAN:

03:23 7 Q Okay. And in these -- on the second page of
03:23 8 Exhibit 7, indeed, wouldn't it be fair to say that
03:23 9 Cleaver-Brooks is offering its products for sale?

03:23 10 MR. THORSON: Object to the form of the
03:23 11 question. Argumentative.

03:23 12 THE WITNESS: I guess one could
03:23 13 interpret it that way.

03:23 14 BY MR. BERGMAN:

03:23 15 Q Okay. Well, how do you interpret it, sir?

03:23 16 A That here is a guide of the products, guideline
03:24 17 for the products.

03:24 18 Q Okay. And by indicating "order by part number,"
03:24 19 it would be fair to say that Cleaver-Brooks is
03:24 20 encouraging customers to purchase those products,
03:24 21 would it not?

03:24 22 MR. THORSON: I will object to the form
03:24 23 of the question. That mischaracterizes the
03:24 24 document. The double asterisk "order by part
03:24 25 number" refers to one item in front of several

03:24 1 dozen columns.

03:24 2 THE WITNESS: I am not sure I would
03:24 3 characterize it as encouraging anyway. But
03:24 4 certainly if somebody called us up and asked for
03:24 5 part No. 872-196, we would ask them how much and
03:24 6 what their purchase order number was.

03:24 7 BY MR. BERGMAN:

03:24 8 Q And would those products be sold at a profit?

03:24 9 MR. THORSON: Object to the form. Calls
03:24 10 for speculation. Assumes facts.

03:24 11 THE WITNESS: I don't believe we're a
03:24 12 nonprofit organization.

03:24 13 BY MR. BERGMAN:

03:24 14 Q Okay. And so Cleaver-Brooks -- whatever -- for
03:24 15 instance, part No. 872-26, whatever it cost
03:25 16 Cleaver-Brooks to acquire from the manufacturer,
03:25 17 Cleaver-Brooks would mark up that product
03:25 18 appropriately?

03:25 19 MR. THORSON: Objection. Incomplete
03:25 20 hypothetical. Assumes facts. Vague.

03:25 21 THE WITNESS: Yes, it would be marked up
03:25 22 appropriately from us and whoever else might be in
03:25 23 that chain before or after us, which, quite
03:25 24 frankly, is the reason -- it would be unusual for
03:25 25 someone to abide -- buy commodities like this from

03:25 1 us, but that's not what you asked.

03:25 2 BY MR. BERGMAN:

03:25 3 Q Okay. Why do you think it would be unusual to buy
03:25 4 commodities from -- from Cleaver-Brooks?

03:25 5 A For the reason you just stated and that
03:25 6 Cleaver-Brooks would have marked up that product.
03:25 7 Where someone -- for some of these products here,
03:25 8 the more commodity-type products, I guess I would
03:26 9 call them, could go down the street to a local
03:26 10 supply house and purchase similar products without
03:26 11 paying shipping on 60 to 350 pounds of a mix, dry
03:26 12 mix that's going to be shipped, as well as our
03:26 13 mark up.

03:26 14 Q Looking at the second -- the lower box on page 2
03:26 15 of Exhibit 7, part 872-26.

03:26 16 A Yes.

03:26 17 Q Can you explain why the volumes of cement
03:26 18 increased as the cost -- rose --

03:26 19 A Again, not knowing exactly where on these drawings
03:26 20 they show that product being used, as I thumb
03:26 21 through here quickly, I would have to look at the
03:27 22 drawings that -- for a particular boiler to see
03:27 23 exactly where it's used, but I will say that it's
03:27 24 more than likely due to the fact that the diameter
03:27 25 of the door is increasing.

03:27 1 Q If you can turn to the fourth page of Exhibit 7.

03:27 2 A Page 3 or page 1?

03:27 3 Q Sir, it's the third page -- well --

03:27 4 A There's page numbers on the bottom after the
03:27 5 drawing. Well, maybe your page numbers are cut
03:28 6 off.

03:28 7 Q I see, yes. Page -- it must be page 1,
03:28 8 "Indications."

03:28 9 A Yes, okay.

03:28 10 Q Can you describe for us the function of the rear
03:28 11 door on a Cleaver-Brooks' boiler?

03:28 12 A Well, I think if you read the first paragraph and
03:28 13 the four bullets under there, it will do that for
03:28 14 you: It retains heat, it directs combustion
03:28 15 gases, prevents leakage of combustion gases, and
03:28 16 provides access for inspecting, cleaning, etc.

03:28 17 Q So it would be fair to say it's a fairly important
03:28 18 part in the effective operation of a
03:28 19 Cleaver-Brooks' boiler?

03:28 20 A Just as important as all the other parts, yes.

03:29 21 Q Going back if we would, sir, to the first page of
03:29 22 Exhibit 7.

03:29 23 A Okay.

03:29 24 Q Are you able to provide a date for when this
03:29 25 document was prepared?

03:29 1 MR. THORSON: Objection. Assumes facts.

03:29 2 THE WITNESS: No. Other than as we've
03:29 3 talked about earlier today, it does refer to
03:29 4 division of Aqua-Chem, Inc., which means it would
03:29 5 be post 1967, roughly.

03:29 6 BY MR. BERGMAN:

03:29 7 Q And do you know how long Exhibit 7 was provided by
03:30 8 Cleaver-Brooks to individuals outside the factory?

03:30 9 MR. THORSON: Objection. Assumes facts.

03:30 10 THE WITNESS: No, I wouldn't have any
03:30 11 idea.

03:30 12 BY MR. BERGMAN:

03:30 13 Q Okay. If you could look with me, then, on page 1,
03:30 14 toward the lower left portion. It says, "Check
03:30 15 condition of tadpole gasket on rear flange of
03:30 16 boiler door." Do you know what a tadpole gasket
03:30 17 is?

03:30 18 A Yes, I do, and I think this actually says, "Check
03:30 19 condition of tadpole gasket on rear flange of
03:30 20 boiler body."

03:30 21 Q Thank you. What is a tadpole gasket?

03:30 22 A It's a gasket that when you cut a cross section of
03:31 23 it, it looks like a tadpole. It has a head and a
03:31 24 tail.

03:31 25 Q And what is it used for?

03:31 1 MR. THORSON: Objection. It's overly
03:31 2 broad. Vague.

03:31 3 THE WITNESS: I think in the particular
03:31 4 cases we're looking at here and in the documents
03:31 5 we provided, it was used for a -- the -- what we
03:31 6 would call the door or head gasket in the front
03:31 7 and rear of the boiler, as well as a gasket along
03:31 8 the baffle and some of the boilers we looked at.
03:31 9 There may be another gasket around where the
03:31 10 burner opening in the front is.

03:31 11 BY MR. BERGMAN:

03:31 12 Q Sir, No. 3, and I'm referring to the first
03:31 13 numbered page of Exhibit 7, states, "Check
03:31 14 condition of asbestos pulp protecting tadpole
03:31 15 gasket." First of all, do you know what asbestos
03:31 16 pulp is?

03:32 17 A I believe they're referring to the part No. 872-26
03:32 18 we saw on the last page, which was the J.M. 450 or
03:32 19 equal cement.

03:32 20 Q Could you please read to yourself the second
03:32 21 paragraph on the right column of numbered page 1
03:32 22 of Exhibit 7?

03:32 23 MR. THORSON: Paragraph beginning, "It
03:32 24 is normal"?

03:32 25 MR. BERGMAN: Yes.

03:32 1 THE WITNESS: Okay.

03:33 2 BY MR. BERGMAN:

03:33 3 Q Was it anticipated by Cleaver-Brooks that, over
03:33 4 time, the refractory on the rear doors would break
03:33 5 down and need to be replaced?

03:33 6 A Again, I think we talked a little bit about that
03:33 7 earlier. It certainly would depend on how the
03:33 8 boiler was operated and treated over the years.
03:33 9 I've certainly seen boilers of many years with the
03:33 10 original refractory and ones that didn't go that
03:33 11 long. So I guess it would depend on which boiler
03:33 12 we're talking about.

03:33 13 Q But at least in over enough period of time, it
03:33 14 would be -- it was at least anticipated that some
03:33 15 boilers would have the refractory rear door break
03:33 16 down and require replacement?

03:33 17 MR. THORSON: Object to form. Overly
03:34 18 broad.

03:34 19 THE WITNESS: That's probably a decent
03:34 20 characterization of it, yes, characterization.

03:34 21 BY MR. BERGMAN:

03:34 22 Q If you could look with me to page 2 of Exhibit --
03:35 23 the numbered page 2 of Exhibit 7.

03:35 24 A Okay.

03:35 25 Q And can you, in general terms, describe the

03:35 1 diagram set forth on that page?

03:35 2 A It's a cross section of a rear door.

03:35 3 Q Okay. Do you have a pen with you, sir?

03:35 4 A No, I don't.

03:35 5 Q Would the court reporter provide you with a pen?

03:35 6 A Okay.

03:35 7 Q If you could take Exhibit 7A.

03:35 8 A Okay.

03:35 9 Q Which is the copy?

03:35 10 A Yes.

03:35 11 Q And if on 7A -- first of all, was the block mix an
03:35 12 asbestos product?

03:35 13 MR. THORSON: Object to the form of the
03:36 14 question. Vague. Vague as to time.

03:36 15 BY MR. BERGMAN:

03:36 16 Q In 1967 or afterward?

03:36 17 A I don't know if we're in that time period. I have
03:36 18 no idea. It says that -- it refers to it -- no,
03:36 19 it doesn't on this one. I think you will find in
03:36 20 some of our drawings that we provided it calls it
03:36 21 asbestos. Whether or not it was at that time, I
03:36 22 would have to go to the manufacturer and see
03:36 23 whether it was.

03:36 24 Q And that manufacturer would be Kaiser
03:36 25 Refractories?

03:36 1 MR. THORSON: Object to the form. Calls
03:36 2 for speculation.

03:36 3 THE WITNESS: I believe that was what we
03:36 4 discussed before. Again, I would have to look at
03:36 5 those drawings to see if they said "Kaiser or
03:36 6 equal" or not. I don't recall.

03:36 7 BY MR. BERGMAN:

03:36 8 Q Okay. I will represent to you, sir, that in 1967,
03:36 9 at least through 1974, Kaiser Vee Block was an
03:36 10 asbestos-containing product. Assume that to be
03:37 11 true -- assuming that to be true, was the Vee
03:37 12 Block Mix identified on page 2 of Exhibit 7 an
03:37 13 asbestos product?

03:37 14 MR. THORSON: I will object to the form
03:37 15 of the question. Also assumes facts. Incomplete
03:37 16 hypothetical. Calls for speculation.

03:37 17 THE WITNESS: I think that's what you
03:37 18 just testified to.

03:37 19 BY MR. BERGMAN:

03:37 20 Q So insofar as it was a Kaiser Vee Block product,
03:37 21 it would have been asbestos-containing?

03:37 22 MR. THORSON: Based on your
03:37 23 representation, Counsel, that it was
03:37 24 asbestos-containing?

03:37 25 MR. BERGMAN: Yes.

03:37 1 MR. THORSON: You can answer.

03:37 2 THE WITNESS: If you're telling me it
03:37 3 was asbestos-containing and I am to assume that
03:37 4 you are correct, then yes, I suppose it was, if
03:37 5 you're testifying to that, yes.

03:37 6 BY MR. BERGMAN:

03:37 7 Q Okay. Could you -- and then with respect to the
03:38 8 insulating block identified on page 2 to
03:38 9 Exhibit 7, was that an asbestos-containing
03:38 10 product?

03:38 11 MR. THORSON: Object to form.

03:38 12 THE WITNESS: I don't know. I would
03:38 13 have to look at the part numbers for it and the
03:38 14 part description to see if there's a manufacturer
03:38 15 listed and whether or not that manufacturer could
03:38 16 be contacted to see if it was.

03:38 17 BY MR. BERGMAN:

03:38 18 Q Okay. Clearly looking, once again, down at page 2
03:38 19 of the diagram, the quarter-inch asbestos board
03:38 20 was clearly an asbestos product, correct?

03:38 21 A Well, that's what it says there. Whether or not
03:38 22 it was asbestos the entire time this document was
03:38 23 used, or even when this document was produced, I
03:38 24 certainly couldn't say. I would have to check
03:38 25 with -- I think they refer to it as J.M. 106 or

03:39 1 equal to see if it was.

03:39 2 Q Could you please -- looking at page 4 of
03:40 3 Exhibit 7, if you could read from -- to yourself,
03:40 4 from where it indicates a note all the way to the
03:40 5 end of section 1 before we start on section 2.

03:40 6 A And you're talking about page No. 4?

03:40 7 Q Yes, sir.

03:40 8 A And reading again -- I'm sorry. I was looking to
03:40 9 make sure I had the right thing.

03:40 10 Q Starting from "Note."

03:40 11 MR. THORSON: The left-hand column on
03:40 12 the upper right-hand -- upper left-hand corner?

03:40 13 MR. BERGMAN: Yes, please.

03:40 14 THE WITNESS: Through what again?

03:40 15 MR. BERGMAN: The left-hand column
03:40 16 starting on "Note" through the bottom of the
03:40 17 right-hand column before you get to section 2.

03:40 18 THE WITNESS: Okay. Okay.

03:42 19 BY MR. BERGMAN:

03:42 20 Q What is the purpose of the caution label on page 4
03:42 21 of Exhibit 7?

03:42 22 MR. THORSON: Excuse me. Excuse me.
03:42 23 Just an objection to the form. I think the
03:42 24 document speaks for itself. It calls for the
03:42 25 witness to speculate. You can answer.

03:42 1 THE WITNESS: I think it's bringing up
03:42 2 the fact that, depending on the specific boiler,
03:42 3 things may be different than what it shows, and
03:42 4 it's just bringing that to light.

03:42 5 BY MR. BERGMAN:

03:42 6 Q Is it -- and why is it -- why is the caution label
03:42 7 circled in bold face?

03:42 8 MR. THORSON: Same objections.

03:42 9 THE WITNESS: I think I would have to
03:42 10 ask the person who drafted the document. I have
03:42 11 no idea.

03:43 12 BY MR. BERGMAN:

03:43 13 Q Would you agree that the purpose is to draw the
03:43 14 reader's attention to a potential hazard arising
03:43 15 out of the replacement of refractory materials on
03:43 16 Cleaver-Brooks' boiler doors?

03:43 17 MR. THORSON: I will object to the
03:43 18 characterization of this -- this paragraph or this
03:43 19 section. There's no reference to refractory here.
03:43 20 Misleading. Mischaracterizes the document. You
03:43 21 can answer.

03:43 22 THE WITNESS: I don't believe it's
03:43 23 talking about a hazard at all. It's just bringing
03:43 24 light to the fact that if you're doing this type
03:43 25 of work, be aware that things are not always

03:43 1 exactly the way they show in here, which is -- I
03:43 2 agree with you completely, I would look at the
03:43 3 specific drawings, which ultimately is what's
03:43 4 being said in the very last paragraph of that
03:43 5 section, where it says, "Be prepared to include
03:43 6 the model and serial number of the boiler." So
03:44 7 those specific drawings could be looked at to see
03:44 8 just how that particular boiler was put together,
03:44 9 which goes back to this being a guide to give
03:44 10 someone an idea.

03:44 11 BY MR. BERGMAN:

03:44 12 Q Because using the wrong parts in rear door
03:44 13 refractory repair or replacement could be
03:44 14 dangerous?

03:44 15 MR. THORSON: Object to the form of the
03:44 16 question. It's vague as to "the wrong parts."

03:44 17 THE WITNESS: I'm not sure I'd
03:44 18 characterize it as being dangerous. Using the
03:44 19 wrong parts may not work. They're talking
03:44 20 specifically in that -- in this section about the
03:44 21 length of the baffle. If the baffle that someone
03:44 22 puts in is too long or too short, then when you
03:44 23 close it back up, the baffle is going to break
03:45 24 against the tube sheet or it's not going to meet
03:45 25 the tube sheet. I'm not sure I would refer to

03:45 1 that as hazardous. It just wouldn't work
03:45 2 properly.

03:45 3 BY MR. BERGMAN:

03:45 4 Q Okay. All right. If you could turn with me to
03:45 5 page 5 of Exhibit 7.

03:45 6 A Okay.

03:45 7 Q Could you please read the note on page 5 of
03:45 8 Exhibit 7?

03:45 9 MR. THORSON: Out loud or to himself?

03:45 10 MR. BERGMAN: Out loud.

03:45 11 THE WITNESS: "Note, when insulation or
03:45 12 refractory must be removed from all or most of the
03:45 13 rear door prior to repair, it should be removed in
03:45 14 this order: Upper half, baffle tiles, lower half.
03:45 15 In replacing the insulation in the refractory is
03:45 16 replaced in this order: Baffle tiles, lower half,
03:45 17 upper half."

03:45 18 Q Okay. And if you could they be read the bottom
03:46 19 paragraph on the left-hand side of page 5 of
03:46 20 Exhibit 7 going into the right-hand column?

03:46 21 MR. THORSON: Paragraph beginning
03:46 22 "removal of"?

03:46 23 MR. BERGMAN: Yes.

03:46 24 THE WITNESS: "Removal of Vee Block Mix
03:46 25 and refractory. This material can best be removed

03:46 1 with the aid of electric or air hammer, if
03:46 2 available. Caution should be used to avoid
03:46 3 damaging or dislodging cup head insulation pins
03:46 4 and/or refractory anchors, both of which are
03:46 5 normally concealed by refractory or Vee Block Mix.
03:46 6 If any of these are knocked loose or damaged, they
03:46 7 should either be reaffixed or replaced with new
03:46 8 ones, welded to the steel shell of the rear door
03:46 9 in the same manner and location. If any of the
03:46 10 old refractory or Vee Block is to be left, it
03:46 11 should be undercuts as to anchor the new material
03:46 12 firmly in place. All dust, dirt, and foreign
03:47 13 materials should be carefully cleaned from the
03:47 14 door after removal of the refractory or Vee Block
03:47 15 Mix before commencing to replace it."

03:47 16 BY MR. BERGMAN:

03:47 17 Q Sir, is this work described on page 5 of Exhibit 7
03:47 18 the work that you had personally performed in your
03:47 19 prior employment history with Cleaver-Brooks?

03:47 20 A I'm trying to see, you know. I've done a lot of
03:47 21 different work on boilers. I'm not certain I have
03:47 22 torn out the refractory on a rear door. So I
03:47 23 can't say for certain. But I certainly wouldn't
03:47 24 say I definitely didn't. I don't remember every
03:47 25 place I ever went to.

03:47 1 Q Okay. Have you ever seen others tearing out the
03:47 2 refractory on the rear door on the Cleaver-Brooks'
03:47 3 boiler?

03:47 4 MR. THORSON: Not to be picky here. But
03:47 5 that note says Vee Block Mix and/or refractory.
03:47 6 Your question is just about refractory, or are you
03:48 7 broader than that?

03:48 8 BY MR. BERGMAN:

03:48 9 Q Have you ever seen anybody -- have either yourself
03:48 10 or somebody else -- strike that. Have you or
03:48 11 somebody you have observed undertaken the work
03:48 12 process described on page 5 that you just read to
03:48 13 us?

03:48 14 A Not that I can come up with in my mind at this
03:48 15 moment. I don't recall that being something I
03:48 16 stood there and watched someone do or did myself.
03:48 17 But, again, I've seen lots of different boilers in
03:48 18 25-plus years.

03:48 19 Q Sir, you read a work process to us regarding
03:48 20 removal of Vee Block and refractory with the aide
03:48 21 of an electric or air handler. Is it possible to
03:48 22 perform that work as described from page 5 of
03:49 23 Exhibit 7 without creating dust?

03:49 24 MR. THORSON: Objection. Calls for
03:49 25 speculation.

03:49 1 THE WITNESS: Not recalling a time when
03:49 2 I did it, I don't necessarily know the answer to
03:49 3 that. I'm not quite sure, to be honest with you,
03:49 4 why the material on a door that I'm replacing the
03:49 5 material in would be affixed so tightly that it
03:49 6 would require that type of equipment to get it
03:49 7 out. Certainly the reason for replacing it is
03:49 8 that it has deteriorated, which would indicate to
03:49 9 me that it's in a position where it's literally
03:49 10 falling out. So I guess I have no way to really
03:49 11 answer your question.

03:49 12 BY MR. BERGMAN:

03:49 13 Q Okay. Your -- based on your prior testimony, sir,
03:49 14 you are familiar with Vee Block and have used Vee
03:49 15 Block; is that correct?

03:49 16 A Yes.

03:49 17 MR. THORSON: Object to the form of the
03:50 18 question.

03:50 19 BY MR. BERGMAN:

03:50 20 Q And you're familiar with the consistency of Vee
03:50 21 Block; is that also correct?

03:50 22 MR. THORSON: Same objection.

03:50 23 THE WITNESS: Yes.

03:50 24 BY MR. BERGMAN:

03:50 25 Q And have you, in the course of your career, ever

03:50 1 used an electric air hammer -- an electric or a
03:50 2 pneumatic hammer or chisel?

03:50 3 MR. THORSON: In connection with Vee
03:50 4 Block?

03:50 5 MR. BERGMAN: No. Just in general.

03:50 6 THE WITNESS: In the course of my
03:50 7 career, no, I don't believe so -- well, I -- I've
03:50 8 used a hammer drill, I'm sure, drilling through
03:50 9 concrete.

03:50 10 BY MR. BERGMAN:

03:50 11 Q Okay. So is it possible to remove Vee Block with
03:50 12 a pneumatic chisel or hammer without creating
03:50 13 dust?

03:50 14 MR. THORSON: Objection. Calls for
03:51 15 speculation. Also asked and answered. Lack of
03:51 16 foundation.

03:51 17 THE WITNESS: Again, without being the
03:51 18 person to do that, I can't say. I think that
03:51 19 would be a question for someone who is more
03:51 20 qualified to answer that.

03:51 21 BY MR. BERGMAN:

03:51 22 Q Okay. And just so -- I respect where you're
03:51 23 coming from, sir. So what type of person would be
03:51 24 more qualified than you to answer that question?
03:51 25 I'm not saying -- I don't mean any disrespect in

03:51 1 that question, sir. I'm just trying to ascertain
03:51 2 who would be better qualified to opine on that
03:51 3 issue?

03:51 4 A I would think if you're looking at dust, it would
03:51 5 be people like industrial hygienists and things of
03:51 6 that sort.

03:51 7 Q Okay. Would an individual whose job it is to
03:51 8 replace Vee Block and insulation and refractory on
03:51 9 the rear doors of Cleaver-Brooks' boilers be in a
03:52 10 better position than you to opine on whether or
03:52 11 not dust is created when a pneumatic hammer is
03:52 12 utilized to remove the material?

03:52 13 MR. THORSON: Object to the form of the
03:52 14 question. It's overly broad. It's an incomplete
03:52 15 hypothetical. And it calls for speculation. Also
03:52 16 assumes facts not in evidence.

03:52 17 THE WITNESS: I'm not quite sure how to
03:52 18 answer that other than to say if somebody was
03:52 19 there and saw the dust versus me not being there,
03:52 20 not seeing the dust, if there is any, or lack of
03:52 21 dust, I think they would be in a better position,
03:52 22 yes.

03:52 23 BY MR. BERGMAN:

03:52 24 Q And you're certainly not saying, sir, that dust is
03:52 25 not created when Vee Block is removed from a rear

03:52 1 door of a Cleaver-Brooks' boiler with a pneumatic
03:53 2 chisel or hammer?

03:53 3 A I think you're throwing a hypothetical out there
03:53 4 that I have no idea of the condition, so I have no
03:53 5 way to answer that question.

03:53 6 Q Okay. I'm going to sum up in a minute, and let me
03:53 7 just -- I make clear that we -- make sure we
03:53 8 understand each other. And I just want to find
03:53 9 out what Cleaver-Brooks' answer is on this. So I
03:53 10 want to be as clear as I possibly can. The work
03:53 11 practice described on page 5 of Exhibit 7
03:53 12 pertaining to removal of Vee Block Mix and
03:53 13 refractory, is it Cleaver-Brooks' testimony that
03:53 14 it is possible to perform that work without
03:53 15 creating dust?

03:53 16 MR. THORSON: Object to the form of the
03:53 17 question. Asked and answered. If you have
03:54 18 anything to add to your previous answer or if you
03:54 19 want to clarify, Mr. Tornetta, go ahead.

03:54 20 THE WITNESS: I don't have anything to
03:54 21 add. I said before I don't have an answer to that
03:54 22 question. I do not know. I didn't do it.

03:54 23 BY MR. BERGMAN:

03:54 24 Q So just so we're clear, Cleaver-Brooks can't say
03:54 25 one way or the other?

03:54 1 MR. THORSON: Same objections.

03:54 2 THE WITNESS: I believe if -- yes, that
03:54 3 is true.

03:54 4 BY MR. BERGMAN:

03:54 5 Q Okay. Looking to the bottom right-hand paragraph
03:54 6 on page 5 of Exhibit 7.

03:54 7 A Yes.

03:54 8 Q Could you read that paragraph?

03:54 9 A "Before proceeding with baffle tile replacement,
03:54 10 clean out the tile channel, removing the old
03:55 11 strips of quarter-inch asbestos board. Inspect
03:55 12 the cap-screws used to clamp the tiles in place;
03:55 13 replace these if they are seriously rusted or
03:55 14 damaged."

03:55 15 Q Okay. Do you know what method was used to remove
03:55 16 old strips of quarter-inch asbestos board?

03:55 17 MR. THORSON: Object to the form of the
03:55 18 question. It's overly broad. Vague.

03:55 19 THE WITNESS: Other than reaching in and
03:55 20 pulling it out, no.

03:55 21 BY MR. BERGMAN:

03:55 22 Q You don't know whether or not any manual or power
03:55 23 tools would be required to perform that function?

03:55 24 MR. THORSON: Same objections.

03:55 25 THE WITNESS: Looking at what they're

03:55 1 talking about, I don't see any type of glue or
03:55 2 anything around that, or I'm not aware if there's
03:55 3 any glue or anything around that, so I can't
03:55 4 imagine it would need anything more than reaching
03:55 5 in and pulling it out, as I said.

03:56 6 BY MR. BERGMAN:

03:56 7 Q If you could, please, sir, on page 6 of Exhibit 7,
03:56 8 read for us, please, the paragraph entitled,
03:56 9 "Insulating block installation."

03:56 10 A "Insulating block installation: Cut a circular
03:56 11 hold in the center of twelve-inch by twelve-inch
03:56 12 by quarter-inch asbestos board. (See Bill of
03:56 13 Materials) large enough to clear the inner
03:56 14 projection of the sight tube nipple (figure 1).
03:56 15 Press this board tightly to the metal inner
03:56 16 surface of the door. Then install the insulating
03:56 17 block as shown on figure 4, leaving clearance
03:56 18 around the sight tube nipple for installation of
03:56 19 the sight tube. When positioning the second layer
03:56 20 of insulating block, stagger the seams and joints.
03:56 21 Fill all cracks and voids with asbestos cement
03:57 22 (Johns-Manville No. 450 mixed with water). Note
03:57 23 that the space between the door metal and the
03:57 24 baffle support channel (figure 4) must be
03:57 25 completely filled in with insulating block."

03:57 1 Q Okay. And do you see figure 4 on page 7?

03:57 2 A Yes, I do.

03:57 3 Q Okay. And based upon your knowledge and
03:57 4 experience and expertise in the field of boilers,
03:57 5 are you able to attribute the various components
03:57 6 referenced in the paragraph you just read to the
03:57 7 drawing set forth in figure 4 on page 7 of
03:58 8 Exhibit 7?

03:58 9 A I believe if you look at the labels, it will
03:58 10 correspond to what was said in that paragraph.

03:58 11 Q Okay. So looking at the paragraph that you just
03:58 12 read, I want to try to break that down, if I
03:58 13 could. And I guess the first question that I
03:58 14 wanted to ask is, would cutting a circular hole in
03:58 15 the center of the twelve-inch by twelve-inch by
03:58 16 quarter-inch asbestos board result in dust
03:58 17 emissions?

03:58 18 MR. THORSON: Object to the form of the
03:58 19 question. It's an incomplete hypothetical. It's
03:58 20 overly broad. Calls for speculation.

03:58 21 THE WITNESS: I wouldn't have any idea.

03:58 22 BY MR. BERGMAN:

03:58 23 Q Okay. You don't know -- and Cleaver-Brooks
03:58 24 doesn't know one way or the other whether that
03:58 25 work would generate dust?

03:59 1 MR. THORSON: Counsel, I just want to
03:59 2 state an objection here. That question asking for
03:59 3 Cleaver-Brooks' position, I believe, is outside
03:59 4 the scope of the notice of deposition here. It
03:59 5 doesn't follow from the topics. I'm allowing you
03:59 6 some leeway in questioning about work procedures
03:59 7 and so forth, asking the witness to speculate
03:59 8 about dust emissions from hypothetical procedures,
03:59 9 but I would ask that we respect the scope of the
03:59 10 notice and we respect Mr. Tornetta's time.

03:59 11 I'm not going to instruct him not to
03:59 12 answer that question, but I do believe that's
03:59 13 outside the scope of the deposition notice. Go
03:59 14 ahead, Mr. Tornetta, if you can answer the
03:59 15 question.

03:59 16 THE WITNESS: I don't believe I'm
03:59 17 qualified to answer a question like that.

03:59 18 BY MR. BERGMAN:

03:59 19 Q Okay. The insulating block referred to on page 6
03:59 20 in the paragraph that you just read of Exhibit 7,
04:00 21 does that confirm to the insulation block on the
04:00 22 second -- on number -- page of Exhibit 7,
04:00 23 designated part No. 872-22 or 872-167?

04:00 24 MR. THORSON: Same objection.

04:00 25 THE WITNESS: I believe so.

04:00 1 BY MR. BERGMAN:

04:00 2 Q Okay. Looking at figure 4, set forth on page 7 of
04:00 3 Exhibit 7, you see the insulation block depicted
04:00 4 therein?

04:00 5 A Yes.

04:00 6 Q Was it necessary to cut the insulation block in
04:00 7 order to install it on the rear door of the
04:01 8 Cleaver-Brooks' boiler as represented in figure 4
04:01 9 on page 7 of Exhibit 7?

04:01 10 MR. THORSON: Same objection. Overly
04:01 11 broad. Calls for speculation. And it's an
04:01 12 incomplete hypothetical.

04:01 13 THE WITNESS: I guess I would have to
04:01 14 see the specifics on that boiler and the shape
04:01 15 that the insulation box came in to determine that
04:01 16 for sure. So I couldn't say broadly one way or
04:01 17 the other.

04:01 18 BY MR. BERGMAN:

04:01 19 Q Looking at -- looking simply at the diagram -- or
04:01 20 looking simply at figure 4 on page 7 of 6 and 7 --
04:01 21 on page 7 of Exhibit 7, can you state one way or
04:02 22 the other whether the insulation block depicted in
04:02 23 the manner installed -- in the manner set forth in
04:02 24 figure 4 would have to be cut to conform to that
04:02 25 integration?

04:02 1 MR. THORSON: Same objections.

04:02 2 THE WITNESS: And the same answer. I
04:02 3 think that's what I was answering to. The part
04:02 4 description doesn't call out a dimension other
04:02 5 than thickness, so I'm not sure what boiler we're
04:02 6 talking about, what size we're talking about. If
04:02 7 we looked at a particular boiler, we might be able
04:02 8 to determine that. But based on this, I can't say
04:02 9 for certain one way or the other.

04:02 10 BY MR. BERGMAN:

04:02 11 Q It would depend on the type of boiler that was
04:02 12 undergoing the rear door refractory repair or
04:02 13 replacement?

04:02 14 A It would depend on the boiler.

04:02 15 Q Okay. And, finally, looking at the paragraph you
04:03 16 just read on page 6 of Exhibit 7, it indicates,
04:03 17 "Fill all cracks and voids with asbestos cement
04:03 18 mixed with water."

04:03 19 MR. THORSON: Well, that's not exactly
04:03 20 what it says, Counsel. Would you please read it
04:03 21 as it is?

04:03 22 MR. BERGMAN: Yes, of course. "Fill all
04:03 23 cracks with -- cracks and voids with asbestos
04:03 24 cement (Johns-Manville No. 50" --

04:03 25 MR. THORSON: 450.

04:03 1 MR. BERGMAN: -- "450 mixed with
04:03 2 water)."

04:03 3 MR. THORSON: Thank you.

04:03 4 BY MR. BERGMAN:

04:03 5 Q Do you see that?

04:03 6 A Yes, I do.

04:03 7 Q Have you ever seen asbestos cement mixed with
04:03 8 water?

04:03 9 A I don't believe I have, not that I could say for
04:03 10 certain, no.

04:03 11 Q So Cleaver-Brooks doesn't know what, if anything,
04:04 12 would occur when that mixing process took place?

04:04 13 MR. THORSON: Object to the form of the
04:04 14 question. That calls for speculation. It's an
04:04 15 incomplete hypothetical. And to the extent you're
04:04 16 asking Cleaver-Brooks' position, that is not --
04:04 17 that is outside the scope of the notice of this
04:04 18 deposition. You can answer, if you are able to,
04:04 19 as to your own personal knowledge.

04:04 20 THE WITNESS: I don't know of any other
04:04 21 knowledge beyond that, no.

04:04 22 MR. BERGMAN:

04:04 23 MR. THORSON: Counsel, when you get to
04:04 24 an appropriate break -- it doesn't need to be
04:04 25 here, but an appropriate time, would you -- I

04:04 1 would like to stand up and stretch.

04:04 2 MR. BERGMAN: Absolutely, sure, sure.

04:04 3 We'll work our way through.

04:04 4 BY MR. BERGMAN:

04:04 5 Q Could you look at page 8, sir?

04:04 6 A Okay.

04:05 7 Q And we're talking about page 8 -- numbered page 8
04:05 8 of Exhibit 7. Could you please read the
04:05 9 cautionary instruction words?

04:05 10 A The line under the "Caution"? Is that what you're
04:05 11 talking about?

04:05 12 Q Read the whole thing, if you would, please.

04:05 13 A "Do not force the rod into the insulating block at
04:05 14 the rear door of castable material when forming
04:05 15 the moisture vent holes."

04:05 16 Q And why would it be necessary to issue a
04:05 17 cautionary instruction with respect to forcing the
04:05 18 rod into the insulating block?

04:05 19 MR. THORSON: Objection. Calls for
04:05 20 speculation. Lack of foundation. Assumes facts.

04:05 21 THE WITNESS: I don't know.

04:06 22 BY MR. BERGMAN:

04:06 23 Q If you could look to Exhibit 9 -- I'm sorry, I
04:06 24 misspoke, Mr. Tornetta, page 9 of Exhibit 7.
04:06 25 Could you please read the two paragraphs on the

04:06 1 left side to yourself?

04:06 2 A Okay.

04:06 3 Q You testified earlier today that in the course of
04:07 4 your professional experience, you have applied Vee
04:07 5 Block on boilers; is that correct?

04:07 6 A Yes.

04:07 7 Q Do the instructions set forth on page 9 of
04:07 8 Exhibit 7 appear to you to be consistent with the
04:07 9 application method that you employed?

04:07 10 A I wasn't applying it on a rear door. However,
04:07 11 it's consistent with the way you would apply Vee
04:07 12 Block Mix in a vertical situation.

04:07 13 Q Okay. Turning to page 7 -- I'm sorry, page 10 in
04:08 14 Exhibit 7.

04:08 15 A Okay.

04:08 16 Q Could you please read the paragraph on the lower
04:08 17 right-hand corner of page 10 of Exhibit 7?

04:08 18 MR. THORSON: Out loud or to himself,
04:08 19 Counsel?

04:08 20 MR. BERGMAN: Out loud, please.

04:08 21 THE WITNESS: Starting with "apply an
04:08 22 asbestos pulp"?

04:08 23 MR. BERGMAN: If you would, please.

04:08 24 THE WITNESS: "Apply an asbestos pulp
04:08 25 seal (Johns-Manville No. 450 cement mixed with

04:08 1 water) around entire door circumference, placing
04:08 2 asbestos pulp just within the inside diameter of
04:08 3 the tadpole gasket, as shown in figure 8. The lip
04:08 4 of the baffle tile should be filled with the same
04:08 5 mixture. On closing the door, this pulp will
04:08 6 squeeze out and protect the tadpole gasket and the
04:08 7 asbestos rope along the horizontal center line of
04:08 8 the tube sheet, forming a seal between the
04:08 9 refractory surface and tube sheet (figure 8)."

04:09 10 BY MR. BERGMAN:

04:09 11 Q Okay. Then if you could look with me to the upper
04:09 12 right-hand corner on page 10 of Exhibit 7, it
04:09 13 states, "Caution: Avoid freezing of uncured
04:09 14 mixtures during cold weather." Do you know why
04:09 15 Cleaver-Brooks would deliver that cautionary
04:09 16 instruction?

04:09 17 A No, other than if something is wet and it freezes,
04:09 18 it may change its properties.

04:09 19 Q And wouldn't work the way it was supposed to work?

04:09 20 A I don't know that. I'm not sure what they're
04:09 21 talking about.

04:09 22 MR. BERGMAN: Did you want to take a
04:09 23 break?

04:09 24 MR. THORSON: If this is a convenient
04:09 25 time, let's take a break now.

04:10 1 MR. BERGMAN: Ten minutes?

04:10 2 MR. THORSON: Ten minutes is just fine.

04:10 3 THE VIDEOGRAPHER: This is the end of

04:10 4 Disk No. 2. We are off the record at 4:09 p.m.

04:10 5 (Recess taken.)

04:27 6 (Exhibit No. 8 was marked.)

04:27 7 THE VIDEOGRAPHER: We are back on the
04:28 8 record at 4:27 p.m.

04:28 9 BY MR. BERGMAN:

04:28 10 Q Mr. Tornetta, you've been handed Exhibit 8. I
04:28 11 would ask you to please take your time and review
04:28 12 it. First question would be, can you identify it?

04:28 13 MR. THORSON: I would note, Counsel, it
04:28 14 bears Bates stamp numbers in the lower right-hand
04:28 15 corner on the first page. Are those Bates numbers
04:28 16 from production in this case? It says CV00220,
04:28 17 and I know in this case there's at least a similar
04:28 18 prefix and document numbering system. If you
04:28 19 could say for the record whether that comes from
04:28 20 this case, I'd appreciate it.

04:28 21 MR. THORSON: I will rely on my
04:28 22 distinguished colleague.

04:28 23 MR. THORSON: So that's a production
04:28 24 from -- if it's a production at all, it's from a
04:28 25 different case?

04:28 1 MS. KNUDSON: Yes.

04:28 2 MR. THORSON: Do you know what case it's
04:28 3 from?

04:29 4 MS. KNUDSON: No.

04:29 5 THE WITNESS: Okay. I have looked
04:29 6 through this.

04:29 7 BY MR. BERGMAN:

04:29 8 Q Do you know what it is?

04:29 9 A Well, it starts out the first page is a service
04:29 10 parts bulletin that's labeled, then the next four
04:29 11 pages appear to be an undated, incomplete,
04:29 12 unnumbered specification of some type.

04:29 13 Q Okay. What is a -- directing your attention to
04:29 14 the first page of Exhibit 8, what is a service
04:29 15 parts bulletin?

04:29 16 A A bulletin that may have gone out to our service
04:29 17 people or possibly our representatives.

04:29 18 Q Okay. And those would be factory representatives
04:29 19 like Cole Industrial and other such entities?

04:29 20 A Possibly, yes.

04:29 21 Q Okay. So it was at least we know that page -- the
04:30 22 first page of Exhibit 8 was something that would
04:30 23 be sent outside of Cleaver-Brooks' factory?

04:30 24 MR. THORSON: Object to the the form of
04:30 25 the question. Assumes facts. Lack of foundation.

04:30 1 Calls for speculation.

04:30 2 THE WITNESS: That's the way it appears.

04:30 3 BY MR. BERGMAN:

04:30 4 Q Okay. Do you know what -- looking at the upper
04:30 5 right-hand corner of the first page of Exhibit 8,
04:30 6 what Manual No. 9 refers to?

04:30 7 A No, I don't have any historical record of these
04:30 8 sales parts or service parts bulletins.

04:30 9 Q Have you seen a bulletin such as Exhibit 8, at
04:30 10 least the first page, before?

04:30 11 A I've seen other service parts bulletins, yes.

04:30 12 Q Okay. And what is the purpose of a service parts
04:30 13 bulletin?

04:30 14 MR. THORSON: Object to the form of the
04:30 15 question. Overly broad.

04:30 16 THE WITNESS: In this particular case,
04:31 17 it appears it was to talk about -- or advise about
04:31 18 making sure the rear door was sealed properly.

04:31 19 BY MR. BERGMAN:

04:31 20 Q And then looking at the subsequent pages of
04:31 21 Exhibit 8, does it appear to be a specification
04:31 22 for a 60-inch diameter rear head?

04:31 23 A As I pointed out before, it appears to be an
04:31 24 unnumbered, undated, incomplete specification
04:31 25 which is not part of the document, or at least it

04:31 1 doesn't appear to be, part of the document which
04:32 2 starts out with page No. 1.

04:32 3 Q Okay. And on what basis, sir, do you draw the
04:32 4 conclusion --

04:32 5 THE WITNESS: Tim, your papers are on
04:32 6 the speaker. Sorry. I didn't mean to cut you
04:32 7 off.

04:32 8 MR. THORSON: Sorry.

04:32 9 BY MR. BERGMAN:

04:32 10 Q Sir, on what basis do you draw the conclusion that
04:32 11 the second, third, fourth, and fifth pages of
04:32 12 Exhibit 8 are not related to the first page of
04:32 13 Exhibit 8?

04:32 14 A I don't believe there's any reference to it in the
04:32 15 first page. While I've been presented this group
04:32 16 of documents in the past in depositions, and they
04:32 17 always seem to come to me from our -- your
04:32 18 colleagues in this format, I don't believe they --
04:32 19 they came together like that originally.

04:32 20 MR. BERGMAN: All right. Well, let's do
04:32 21 this, then. If the court reporter would be so
04:33 22 kind as to take the second, third, fourth, and
04:33 23 fifth pages of Exhibit 8 and redesignate them as
04:33 24 Exhibit 9. We will at least suspend the cycle of
04:33 25 error that my colleagues have perpetrated.

04:33 1 MR. THORSON: And so Exhibit -- what was
04:33 2 previously marked as Exhibit A now will be --
04:33 3 excuse me, Exhibit 8 will now be a one-page
04:33 4 document?

04:33 5 MR. BERGMAN: Yes.

04:33 6 (Exhibit No. 9 was marked.)

04:33 7 THE WITNESS: Okay. That's been done.

04:33 8 BY MR. BERGMAN:

04:33 9 Q Okay. And Mr. Tordnetta, your conclusion that now
04:33 10 the new Exhibit 9 is incomplete is based on the
04:33 11 fact that there is no page 2?

04:34 12 A Correct. And it's not dated. I, quite frankly,
04:34 13 don't know -- there's no number on it, so I would
04:34 14 have no way to trace it and see what exactly it's
04:34 15 for other than what the title block there says.

04:34 16 Q Okay. And from your previous testimony, I
04:34 17 garnered that you have seen Exhibit 9 before?

04:34 18 A Yes, in the deposition -- in the context of
04:34 19 depositions, yes, I have.

04:34 20 Q Okay.

04:34 21 MR. THORSON: And if I could just make a
04:34 22 clarifying request, on both Exhibits 8 and 9 as
04:34 23 we've seen on other exhibits marked in this
04:34 24 deposition, they -- both of these exhibits appear
04:34 25 to have someone's handwriting and marking on them.

04:34 1 So. For example, on Exhibit 8, there's a question
04:34 2 mark and something drawn on top and manual 9 is
04:34 3 circled, and then on Exhibit 9 -- on page 3 of
04:34 4 Exhibit 9, there's some marginality handwritten
04:35 5 notes and so forth. Maybe they're Counsel's
04:35 6 notes, as we saw, I think, on some of the other
04:35 7 deposition exhibits. Maybe they're not. But if
04:35 8 Counsel could clarify to that, I would appreciate
04:35 9 it so we don't create a record of exhibits that
04:35 10 contain someone's notes. And if we can identify
04:35 11 that, let's do that.

04:35 12 MR. BERGMAN: Let's do that.

04:35 13 MR. BERGMAN: So in the rush to get the
04:35 14 materials to Mr. Tornetta in time and to get
04:35 15 everything ready, unfortunately, some of my
04:35 16 working copies were inadvertently copied as
04:35 17 exhibit copies, and so I believe that the
04:35 18 marginality that you've been referring to is mine.

04:35 19 MR. THORSON: Thank you.

04:35 20 MR. BERGMAN: I certainly recognize the
04:35 21 illegibility. What I would propose is that we go
04:35 22 through and provide the court reporter with clean
04:35 23 copies for the final exhibits for this deposition,
04:36 24 giving Counsel the opportunity to inspect to make
04:36 25 sure we are substituting the correct copies.

04:36 1 MR. THORSON: Thank you, Counsel.

04:36 2 BY MR. BERGMAN:

04:36 3 Q So I want to ask you some questions about
04:36 4 Exhibit 9, Mr. Tornado. And I guess the first
04:36 5 question I would like to ask you, on the first
04:36 6 page of Exhibit 9, are you familiar with Weber's
04:36 7 48 High Temp block?

04:36 8 A I've seen that description before, yes.

04:36 9 Q And what do you understand that product to be,
04:36 10 sir?

04:36 11 A High temperature block insulation.

04:36 12 Q And what -- are you aware of whether or not
04:36 13 Cleaver-Brooks' boilers utilized Weber's 48 High
04:37 14 Temp block as a component?

04:37 15 MR. THORSON: Object to the form of the
04:37 16 question. It's vague. Overly broad.

04:37 17 THE WITNESS: I haven't come across that
04:37 18 I can recall, again, without seeing them again,
04:37 19 where that's been called out in the documents we
04:37 20 previously provided in this case, but I do recall
04:37 21 seeing that in the past used in other boilers.

04:37 22 BY MR. BERGMAN:

04:37 23 Q Do you know whether -- and I will direct your
04:37 24 attention back to Exhibit 7 on the second page --
04:37 25 not the number, but the second page.

04:37 1 A Okay.

04:37 2 Q Do you know whether part -- part No. 872-22 and
04:37 3 872-167 is Weber's 48 High Temp block?

04:38 4 MR. THORSON: Objection. Form. Calls
04:38 5 for speculation. Overly broad. Lack of
04:38 6 foundation.

04:38 7 THE WITNESS: I certainly don't recall
04:38 8 all our part numbers in the descriptions. I would
04:38 9 have to look at those part numbers to be sure.
04:38 10 Off the top of my head, I can't say. It may be.
04:38 11 I'm not sure.

04:38 12 BY MR. BERGMAN:

04:38 13 Q Okay. And just -- in the course of the extensive
04:38 14 reviews that you've done in this case and other
04:38 15 cases, Mr. Tornetta, have you seen a part number
04:38 16 associated with Weber's 48?

04:38 17 A Any component we used would have a part number
04:38 18 associated with it, so yes.

04:38 19 Q Okay. Looking at the second page of Exhibit 9,
04:38 20 there's reference to J.M. 450. Do you see that,
04:39 21 sir?

04:39 22 A Yes, I do.

04:39 23 Q And, then, cross referencing that to the second
04:39 24 full page -- the second page unnumbered of
04:39 25 Exhibit 7, does that conform to part 872-26?

04:39 1 A I think 872-26 did say J.M. 450 -- just a second,
04:39 2 or equal, yes.

04:39 3 Q If you could look to the third page of Exhibit 9.

04:40 4 A Okay. Page 4 of 5, you're talking about?

04:40 5 Q I am, yes.

04:40 6 A Or sheet 4 of 5, I should say.

04:40 7 Q Yeah.

04:40 8 A Okay.

04:40 9 Q Have you seen that document before, sir?

04:40 10 A Again, I've seen this compilation of documents in
04:40 11 the past in the context of depositions.

04:40 12 Q What does it appear to you to be?

04:40 13 MR. THORSON: Objection. Calls for
04:40 14 speculation. Lack of foundation. Assumes facts.

04:40 15 THE WITNESS: I think it's sheet 4 of 5
04:40 16 of this unnumbered, undated, incomplete, what says
04:40 17 "specification" on the bottom.

04:40 18 BY MR. BERGMAN:

04:40 19 Q Do you have any reason to believe this is not a
04:40 20 general Cleaver-Brooks' document?

04:41 21 A If it was -- if Cleaver-Brooks put this document
04:41 22 together, it would be dated, numbered, and
04:41 23 complete. This just says S-nothing. There's no
04:41 24 number to it. I have no idea how to interpret
04:41 25 this document and haven't been able to since it's

04:41 1 been put in front of me the first time.

04:41 2 Quite frankly, when you look at some of
04:41 3 the text on page 3 of 5, you see it looks odd as
04:41 4 it gets into the properties of the different
04:41 5 components, the font changes. So I don't know if
04:41 6 that was a copy issue, shrinking, blowing up, or
04:41 7 what. I just -- I have no idea. Again, it's an
04:41 8 unnumbered, undated, incomplete set of papers.

04:41 9 Q Sir, have you seen the format represented by
04:42 10 Exhibit 9 in other documents that you know to be
04:42 11 genuine and authentic? And by "format," I mean
04:42 12 not the text, but the manner in which the document
04:42 13 is framed with the Cleaver-Brooks' designation on
04:42 14 the bottom and the statement on the left side that
04:42 15 this drawing is the property of Cleaver-Brooks'?

04:42 16 MR. THORSON: Object to the form of the
04:42 17 question. It's vague.

04:42 18 MR. BERGMAN: Do you understand my
04:42 19 question, sir?

04:42 20 THE WITNESS: Yes, I believe so. And
04:42 21 yes, the shell of this document, I guess I would
04:42 22 call it, which are the title block, the frame
04:42 23 around it, and various notes is familiar to me and
04:42 24 our drawing system.

04:42 25 BY MR. BERGMAN:

04:42 1 Q Okay. And what is a rear head on a 60-inch
04:43 2 Cleaver-Brooks' boiler?

04:43 3 A I believe we're talking about the rear door.

04:43 4 Q Oh, okay. Are -- is it ever -- are you generally
04:43 5 familiar with the maintenance repair of rear doors
04:43 6 on Cleaver-Brooks' boilers?

04:43 7 MR. THORSON: Object to the form of the
04:43 8 question. It's vague.

04:43 9 THE WITNESS: I think we talked about
04:43 10 that earlier. Yeah, I'm generally familiar with
04:43 11 that.

04:43 12 BY MR. BERGMAN:

04:43 13 Q Is it ever the practice to remove the rear door
04:43 14 prior to replacing the refractory contained
04:43 15 thereon?

04:43 16 A It can be. Normally, it would be, in the
04:44 17 instances I'm aware of, laid down in the boiler
04:44 18 room and poured that way. It's usually related to
04:44 19 the fact it's a little simpler to pour it in a
04:44 20 horizontal position than in a vertical position.
04:44 21 And, quite frankly, it's a heavy door. So,
04:44 22 normally, if they lay it down, it's right where
04:44 23 the boiler is.

04:44 24 Q So the answer to my question would be yes?

04:44 25 MR. THORSON: Can we have the question

04:44 1 back, please?

04:44 2 (Requested question read.)

04:44 3 THE WITNESS: And the answer was, it can
04:44 4 be, yes.

04:46 5 MR. BERGMAN: If the court reporter
04:46 6 could open Exhibit 22 -- or -- not exhibit, but
04:46 7 envelope 22. And before handing it to the
04:47 8 witness, remove the last two pages.

04:47 9 (Exhibit No. 10 was marked.)

04:47 10 BY MR. BERGMAN:

04:48 11 Q Mr. Tornetta, this is a document that has been
04:48 12 provided to you at least in one prior deposition.
04:48 13 My question is, do you recognize it?

04:48 14 A I certainly don't recall every document that's
04:48 15 been put in front of me in depositions. And,
04:48 16 actually, I think this is -- I would guess many
04:48 17 documents, when you look at the different formats.
04:48 18 I certainly have seen things of this type before.
04:48 19 Whether I've come across this specific one, I
04:48 20 certainly couldn't say for sure.

04:48 21 Q Okay. And, again, I would ask you to look through
04:48 22 Exhibit 10 and my question is a simple one. Does
04:48 23 it appear to you to be copies of advertisements
04:48 24 for Cleaver-Brooks' boilers?

04:48 25 MR. THORSON: And while he's doing that,

04:49 1 I will just state a general objection to lack of
04:49 2 foundation, lack of any show of authenticity, but
04:49 3 we can certainly answer as to what this appears to
04:49 4 be.

04:50 5 THE WITNESS: I would say certainly not
04:50 6 every page is an advertisement, or what could be
04:50 7 characterized as an advertisement. Some are cover
04:50 8 pages, presumably, which may be a presumption, of
04:50 9 the magazine from which the following pages came
04:50 10 out of, but in general, it looks like a group of
04:50 11 advertisements over the years, yes. You did hear
04:50 12 that, right? Is my microphone --

04:51 13 MR. BERGMAN: Yeah.

04:51 14 THE WITNESS: I want to make sure my
04:51 15 microphone is still working.

04:51 16 MR. BERGMAN: Yeah, it is. Could the
04:51 17 witness please be handed envelope -- or could the
04:51 18 court reporter open exhibit 39 (verbatim) and
04:51 19 provide it to the witness as an exhibit.

04:52 20 (Exhibit No. 11 was marked.)

04:52 21 BY MR. BERGMAN:

04:52 22 Q Mr. Tornetta, are you familiar with heating and
04:52 23 ventilating air conditioning guide?

04:52 24 MR. THORSON: This document or just in
04:52 25 general?

04:52 1 MR. BERGMAN: The guide itself.

04:52 2 MR. THORSON: I will object to the form
04:52 3 of the question. It's vague.

04:52 4 THE WITNESS: No, I'm not.

04:52 5 BY MR. BERGMAN:

04:52 6 Q Okay. I will -- this is a voluminous document. I
04:52 7 will ask you to turn to the last page of
04:52 8 Exhibit 11 and ask you whether that appears to be
04:52 9 an advertisement for a Cleaver-Brooks' boiler?

04:53 10 MR. THORSON: Object to the form of the
04:53 11 question.

04:53 12 THE WITNESS: It shows the
04:53 13 Cleaver-Brooks' company, it appears to be some
04:53 14 type of advertisement, as well as Cyclotherm. To
04:53 15 be quite honest, I'm not quite sure it's from the
04:53 16 same book. Because if you look at the preceding
04:53 17 page, it would say the page number and 1951 guide
04:53 18 and things of that sort at the top, but perhaps
04:53 19 it's an appendix that didn't do that. Without the
04:53 20 whole guide, I guess it would be hard to say if
04:53 21 it's part of that document. But yes --

04:53 22 BY MR. BERGMAN:

04:53 23 Q In fairness -- I didn't mean to cut you off,
04:53 24 Mr. Tornetta. In fairness, I'm not asking you to
04:53 25 opine whether it's the same document or not.

04:53 1 A Oh, I thought when I was handed the stapled set of
04:54 2 sheets together, they were assumed to be part of
04:54 3 the same thing.

04:54 4 Q They are, but that's for me to testify to, not
04:54 5 you.

04:54 6 A Okay.

04:54 7 MR. BERGMAN: Could the witness please
04:54 8 be handed the document contained in envelope 40.
04:54 9 (Exhibit No. 12 was marked.)

04:54 10 BY MR. BERGMAN:

04:54 11 Q Mr. Tornetta, I will represent to you that
04:54 12 Exhibit 12 is a segment from the 1952 heating and
04:55 13 ventilating air conditioning guide. My question
04:55 14 to you is, once again, a simple one, which is
04:55 15 whether or not the last page of Exhibit 12 depicts
04:55 16 an advertisement?

04:55 17 MR. THORSON: I will object to the form
04:55 18 of the question. Lacks foundation. I will also
04:55 19 object to both this document and the previous
04:55 20 exhibit, Exhibit 11, as not appearing to
04:55 21 constitute a document at all, but rather a
04:55 22 collection of pages. So certainly as to
04:55 23 foundation and authenticity. You can answer, if
04:55 24 you're able, as to what it appears to be,
04:55 25 Mr. Tornetta.

04:55 1 THE WITNESS: I'm sorry. Was there a
04:55 2 question that you actually asked in that? I
04:55 3 missed it.

04:55 4 MR. BERGMAN: Yes, indeed, sir.

04:55 5 BY MR. BERGMAN:

04:55 6 Q On Exhibit 12, does the -- if you look at the last
04:56 7 page, page No. 1353, does that appear to be a
04:56 8 Cleaver-Brooks advertisement?

04:56 9 MR. THORSON: Object to the form of the
04:56 10 question. You can answer.

04:56 11 THE WITNESS: Yeah, it's a -- whether it
04:56 12 was used for advertising, I suppose it is, since
04:56 13 it gives a telephone directory number. It appears
04:56 14 to be a Cleaver-Brooks' Company part and Babcock &
04:56 15 Wilcox part on the last page.

04:56 16 MR. BERGMAN: Could the witness please
04:56 17 be handed document exhibit 41, and I will
04:56 18 incorporate in my questioning pertaining to this
04:56 19 document Counsel's objections with respect to
04:56 20 Exhibit 12.

04:57 21 (Exhibit No. 13 was marked.)

04:57 22 THE WITNESS: Okay. I have it.

04:57 23 BY MR. BERGMAN:

04:57 24 Q Okay. And subject to and incorporating Counsel's
04:57 25 prior objections, I will represent to you that

04:57 1 this is the 1953 Heating and Ventilating Air
04:57 2 Conditioning Guide, and once again, on the last
04:57 3 page of this excerpt from said guide, does that
04:57 4 appear to be a Cleaver-Brooks' advertisement?

04:57 5 A Yes.

04:57 6 MR. BERGMAN: Could the witness please
04:57 7 be handed envelope 42?

04:58 8 (Exhibit No. 14 was marked.)

04:58 9 BY MR. BERGMAN:

04:58 10 Q Okay. Mr. Tornetta, I'm once again incorporating
04:58 11 your Counsel's prior objections to the last
04:58 12 exhibits. I will represent to you that this is a
04:58 13 1954 Heating Guide, or an excerpt therefrom, and I
04:58 14 simply want to ask you whether on the last page of
04:59 15 that document, it appears to be a Cleaver-Brooks'
04:59 16 advertisement?

04:59 17 A Yes, it does.

04:59 18 MR. BERGMAN: Could the witness please
04:59 19 be handed envelope -- the document in envelope 43?

04:59 20 (Exhibit No. 15 was marked.)

04:59 21 BY MR. BERGMAN:

04:59 22 Q Okay. Once again, incorporating your Counsel's
05:00 23 prior objections, in the 1955 Heating Ventilating
05:00 24 Air Conditioning Guide. And once again, subject
05:00 25 to those objections by your Counsel, does the last

05:00 1 page of this excerpt represent Cleaver-Brooks'
05:00 2 advertising?

05:00 3 A Yes, it appears to.

05:00 4 MR. BERGMAN: Could the witness please
05:00 5 be handed the document in envelope 44?

05:01 6 (Exhibit No. 16 was marked.)

05:01 7 BY MR. BERGMAN:

05:01 8 Q Okay. Exhibit 16 is an excerpt from a 1956
05:01 9 Heating Ventilating Air Conditioning Guide.
05:01 10 Subject, once again, to your Counsel's prior
05:01 11 objections, does the last page of that excerpt
05:01 12 appear to have a Cleaver-Brooks' advertisement on
05:01 13 it?

05:01 14 A Yes, it does.

05:01 15 MR. BERGMAN: If the witness could
05:01 16 please be handed exhibit 45 -- document in
05:01 17 envelope 45.

05:02 18 (Exhibit No. 17 was marked.)

05:02 19 THE WITNESS: Okay. I have it.

05:02 20 BY MR. BERGMAN:

05:02 21 Q I'm handing you -- or you've been handed Exhibit
05:02 22 17, the excerpt from a 1957 Heating and
05:02 23 Ventilating Air Conditioning Guide, and, again,
05:02 24 subject to your Counsel's prior objections, does
05:02 25 the last page of that exhibit appear to be a

05:02 1 Cleaver-Brooks' advertisement?

05:02 2 A Yes, it does.

05:02 3 MR. BERGMAN: Could the witness please
05:02 4 be handed the documents in envelope 46?

05:03 5 (Exhibit No. 18 was marked.)

05:03 6 THE WITNESS: Okay.

05:03 7 BY MR. BERGMAN:

05:03 8 Q I'm handing you Exhibit 18. I will represent the
05:03 9 the 1959 Heating Ventilating Air Conditioning
05:03 10 Guide, an excerpt from that guide, I should say,
05:03 11 and again, incorporating your Counsel's objections
05:03 12 from the prior use of the exhibit -- or a prior
05:03 13 exhibit, does the last page appear to have -- be a
05:03 14 Cleaver-Brooks' advertisement?

05:03 15 A Yes, it does.

05:03 16 MR. BERGMAN: Okay. And could the
05:03 17 witness be handed the document in envelope 47?

05:04 18 (Exhibit No. 19 was marked.)

05:04 19 THE WITNESS: Okay.

05:04 20 BY MR. BERGMAN:

05:04 21 Q You've been handed Exhibit 19, which is an excerpt
05:04 22 from a 1960 Heating and Ventilating Air
05:04 23 Conditioning Guide. Subject to and incorporating
05:04 24 your Counsel's prior objections, does the last
05:04 25 page appear to be a Cleaver-Brooks' advertisement?

05:05 1 A Yes, it does.

05:05 2 MR. BERGMAN: Could the witness please
05:05 3 be handed the document in envelope 25?

05:06 4 (Exhibit No. 20 was marked.)

05:06 5 THE WITNESS: Okay.

05:06 6 BY MR. BERGMAN:

05:06 7 Q Mr. Tornetta, can you identify Exhibit 20?

05:06 8 A It says at the top, "Quotation," written at the
05:06 9 top, and then "General Service Report" to Fred
05:06 10 Schmidt from Don Harper, regarding Cabot Corp.,
05:06 11 Machinery Division, boiler -- excuse me, boiler
05:06 12 No. 0-18796. That's, I guess, about the only way
05:06 13 I could identify it.

05:06 14 Q Does it appear to be -- the upper left-hand
05:06 15 corner, does that appear to be the Cleaver-Brooks'
05:07 16 logo and address -- sir, do you need a minute?

05:07 17 A No, I'm fine. Thank you.

05:07 18 Q Get a glass of water.

05:07 19 A I have a glass of water right here. I'm fine.

05:07 20 Q Okay. All right. Does that appear to be
05:07 21 Cleaver-Brooks' logo and address?

05:07 22 MR. THORSON: Object to the form of the
05:07 23 question. It's vague.

05:07 24 THE WITNESS: Certainly our name and our
05:07 25 address. I'm not sure I see a logo anywhere, but

05:07 1

--

05:07 2

BY MR. BERGMAN:

05:07 3

Q Okay. Have you seen documents such as Exhibit 20 in the format -- not necessarily the text, but the general format entitled "General Service Report"?

05:07 4

05:07 5

05:07 6

A Yes, I have.

05:07 7

Q Okay. And does the format appear to be similar to those documents -- does the format in Exhibit 20 appear to you to be similar to the format of the documents that you've seen in Cleaver-Brooks' records?

05:08 8

05:08 9

05:08 10

05:08 11

05:08 12

MR. THORSON: Object to the form. It's vague.

05:08 13

05:08 14

THE WITNESS: The headings and things of that sort, yes, they do.

05:08 15

05:08 16

BY MR. BERGMAN:

05:08 17

Q Okay. Looking toward the item indicated by No. 9 in the -- about two-thirds of the way down Exhibit 20, do you see that, sir?

05:08 18

05:08 19

05:08 20

A Yes, I do.

05:08 21

Q Okay. And it indicates, "Asbestos cement"?

05:08 22

A And then gives a part number behind it of 872-26, yes.

05:08 23

05:08 24

Q And do you understand 872-26 to be the part number for asbestos cement?

05:08 25

05:08 1 A I believe if we go back several exhibits, you will
05:09 2 see that as the J.M. 450 or equal material, yes.

05:09 3 MR. BERGMAN: Okay. Let's turn, if we
05:09 4 could, sir -- or if the court reporter would
05:09 5 kindly give the witness exhibit -- or envelope 27.

05:10 6 (Exhibit No. 21 was marked.)

05:10 7 BY MR. BERGMAN:

05:10 8 Q Mr. Tornetta, you've been handed Exhibit 21. I
05:10 9 would like you to please take your time to review
05:10 10 that document. Once you've completed your review,
05:10 11 my first question will be, can you identify it?

05:11 12 A They appear to be the drawings I pulled for at
05:11 13 least part of the boilers shipped to the Naval Air
05:11 14 Station in Whidbey Island.

05:11 15 Q Okay. I'm going to work through those documents
05:11 16 for you -- with you.

05:11 17 MR. THORSON: Let me just, before we go
05:11 18 on, state for the record, I don't think this was
05:11 19 the Counsel's intent, but the cover letter on
05:12 20 Exhibit 21 refers to a scope of documents, not all
05:12 21 of which are attached to this letter. So it is
05:12 22 not a complete exhibit. And with the cover letter
05:12 23 attached to it, we should state that, for the
05:12 24 record, just so no one misunderstands, there are
05:12 25 some 30 documents or so that appear not to be

05:12 1 included as a part of this exhibit that were
05:12 2 referenced in the cover letter.

05:12 3 MR. BERGMAN: Point well taken.

05:12 4 BY MR. BERGMAN:

05:12 5 Q Mr. Tornetta, could you turn to the first page of
05:12 6 Exhibit 21, Bates stamped CB 171?

05:12 7 A Okay. I'm there.

05:12 8 Q What is that document, sir?

05:12 9 A It is a drawing, what I would refer to as a higher
05:12 10 level drawing, of the boiler and base frame for a
05:13 11 50-horsepower low pressure boiler related to the
05:13 12 three 1959 boilers, shipped to Whidbey Island --
05:13 13 Naval Air Station, Whidbey Island.

05:13 14 Q Okay. And would this be a document used by
05:13 15 Cleaver-Brooks in constructing the boilers or a
05:13 16 document used by the customers in operating and
05:13 17 maintaining the boilers?

05:13 18 MR. THORSON: Object to the form.

05:13 19 THE WITNESS: Used by Cleaver-Brooks in
05:13 20 construction -- constructing the boilers.

05:13 21 BY MR. BERGMAN:

05:13 22 Q Okay. And looking at the upper left, kind of, box
05:13 23 of Bates stamp No. 171 on Exhibit 21, there's --
05:13 24 indicates item 31. Do you see that, sir?

05:13 25 A Yes.

05:13 1 Q And it says -- it looks like there's -- it says
05:13 2 "required," and it's -- there's a five hatch. Do
05:14 3 you know what that refers to?

05:14 4 A I think it's pound, and I'm not sure if it's a
05:14 5 five or three, but it could be either.

05:14 6 Q Okay. And, then, the part number is 872-26, and
05:14 7 again, we're referring to Bates stamp 171 of
05:14 8 Exhibit 21. Is that the part number for J.M. 450
05:14 9 asbestos cement?

05:14 10 A Yes. If you look further into the documents
05:14 11 provided, you will see that part number and that
05:14 12 description.

05:14 13 Q Okay. Looking at the next page of Exhibit 21,
05:14 14 Bates stamp No. 172.

05:15 15 A Yes.

05:15 16 Q There is -- there's reference to lagging. What is
05:15 17 your understanding as to what the lagging was or
05:15 18 is with reference to the 1959 boilers shipped by
05:15 19 Cleaver-Brooks to the Whidbey facility?

05:15 20 A That's the term that we used for the sheet metal
05:15 21 exterior over, in this case, the microlite blanket
05:15 22 insulation around the shell of the boiler.

05:15 23 Q Okay. And is it -- it was -- was that shell --
05:15 24 you said a microlite?

05:15 25 A Yes.

05:15 1 Q What is microlite, sir?

05:15 2 A It's called out in that material list as
05:15 3 insulation blanket microlite 8305, it looks like.
05:15 4 As far as I know, it's nonasbestos material. I
05:16 5 was never told otherwise. I believe it's a
05:16 6 blanket-type insulation similar to fiberglass.

05:16 7 Q And is that part number -- well, for instance,
05:16 8 107-69M --

05:16 9 A No. It's part numbers -- it's item number -- if
05:16 10 you want to follow it that way, looking at that
05:16 11 bill of material, item Nos. 10 and 11, and it's
05:16 12 872, it looks like, 159.

05:16 13 Q Okay. All right. And so the lagging referenced
05:16 14 on page 172 on Exhibit 21 is the metal skin of the
05:16 15 boiler; is that correct?

05:16 16 A Correct.

05:16 17 Q Okay.

05:16 18 A Metal skin -- just not to confuse it with the
05:16 19 shell of the boiler, it's the metal skin over that
05:16 20 microlite insulation.

05:17 21 Q Okay. And, then, if you could, please, turn to
05:17 22 the document referenced by CB 175 on Exhibit 21.

05:17 23 A Okay.

05:17 24 Q What is that document, sir?

05:17 25 A That is a drawing for the rear door of the boilers

05:17 1 that went to Whidbey Island in 1959.

05:17 2 Q And there's a reference in the upper left-hand
05:17 3 corner to V-Block Mix and it says "asbestos." Do
05:17 4 you see that?

05:17 5 A Yes.

05:18 6 Q And that's 872-162 part number?

05:18 7 A Yes.

05:18 8 Q And does that correspond to the V-Block mixed
05:18 9 referenced on the second page unnumbered on
05:18 10 Exhibit 16?

05:18 11 A Yes, it does.

05:18 12 MR. THORSON: Object to form of the
05:18 13 question.

05:18 14 THE WITNESS: I'm sorry.

05:18 15 BY MR. BERGMAN:

05:18 16 Q And looking again at Bates stamp 175 of
05:18 17 Exhibit 21, there's a product at the second box in
05:18 18 the upper left-hand corner, 872-105. Do you see
05:18 19 that product?

05:18 20 A Yes, I do.

05:18 21 Q And it indicates "cement, asbestos furnace"?

05:19 22 A Yes. And then "J-M Firite."

05:19 23 Q And so is -- so 872-105 is the part number for J-M
05:19 24 Firite, and that's F-I-R-I-T-E?

05:19 25 A That's what it says there, yes.

05:19 1 Q And drawing your attention to Cleaver-Brooks'
05:19 2 Bates stamp No. 180 on Exhibit 21, what is the
05:20 3 plate-head?

05:20 4 A That is called out in that -- the bill of material
05:20 5 under Item No. 1? Is that what you're talking
05:20 6 about?

05:20 7 Q It indicates "Plate-head-front."

05:20 8 A I'm sorry. I didn't see that down in the drawing.

05:20 9 Q Yes, sir.

05:20 10 A This drawing is of the inner door front plate
05:20 11 assembly.

05:20 12 Q All right. So essentially it's the front door --

05:20 13 A No. It's the inner door.

05:20 14 Q -- the plate? Okay. But it's the inside inner --
05:20 15 it's the inner door of the front of the boiler as
05:20 16 opposed to the rear door that we've been talking
05:20 17 about in some detail today?

05:20 18 A Yes. It's the one I discussed earlier that
05:20 19 separates the blue gas side from the combustion
05:20 20 air side in the front of the boiler.

05:20 21 Q Okay. And, once again, looking at the part
05:21 22 number, 872-162, there's reference to Asbestos
05:21 23 V-Block Mix, correct?

05:21 24 A Yes. It says, "V-Block Mix, Asbestos, part No.
05:21 25 872-162."

05:21 1 Q If you could turn with me, sir, to page 193 to
05:21 2 Exhibit 21.

05:21 3 A 193, you said?

05:22 4 Q Yes, sir.

05:22 5 A Okay. I'm there.

05:22 6 Q Okay. There's a part -- a J.M. 106 millboard.

05:22 7 A Yes.

05:22 8 Q And that's part No. 872-61?

05:22 9 A Yes.

05:22 10 Q And does that correspond, looking at the second
05:22 11 page unnumbered of Exhibit 16 --

05:22 12 MR. THORSON: I'm sorry. Go ahead.

05:22 13 BY MR. BERGMAN:

05:22 14 Q -- to the product set forth in the third column on
05:22 15 that page, sir?

05:22 16 MR. THORSON: Object to form. It's
05:22 17 vague. Calls for speculation.

05:22 18 THE WITNESS: Yes, it appears to be.

05:22 19 BY MR. BERGMAN:

05:22 20 Q And looking at Bates stamp No. 197 of Exhibit 21.

05:23 21 A Yes.

05:23 22 Q There's a reference to the 872-162 product, and it
05:23 23 indicates Kaiser Vee-Block; is that correct?

05:23 24 A Yes.

05:23 25 MR. THORSON: I will object to the form

05:23 1 of the question. That's an incomplete reference
05:23 2 to what the document says.

05:23 3 BY MR. BERGMAN:

05:23 4 Q Why don't you read for me what it says,
05:23 5 Mr. Tornetta.

05:23 6 A It says, "872-162, Refractory, Vee-Block Mix,
05:23 7 Kaiser," and parentheses, "50 pound bags."

05:23 8 Q Okay. Is this the only reference that you've seen
05:23 9 connecting Kaiser to the Vee Block Mix, or have
05:23 10 you seen other documents in the course of your
05:24 11 review establishing that connection?

05:24 12 MR. THORSON: Outside the context of
05:24 13 this case, you mean?

05:24 14 MR. BERGMAN: Yes, sir.

05:24 15 THE WITNESS: Boy, I certainly wouldn't
05:24 16 want to sit here and testify I have never seen the
05:24 17 name Kaiser in any other context than that. It
05:24 18 may have shown up on other drawings, in the bills
05:24 19 of materials. I don't know. It certainly didn't
05:24 20 show up in the other ones here.

05:24 21 BY MR. BERGMAN:

05:24 22 Q Okay. And recognizing, sir, that in the course of
05:24 23 your current job requirements, you have to review
05:24 24 a lot of documents and give a lot of depositions,
05:24 25 I'm only asking for what you recall here today.

05:24 1 And so my question is, are -- sitting
05:24 2 here today, do you recall coming across the name
05:24 3 Kaiser in connection with Vee Block -- the Vee
05:25 4 Block product outside of this case?

05:25 5 A You know, the only place I can think of is that
05:25 6 undated, unnumbered, incomplete specification, I
05:25 7 think, actually mentioning Kaiser next to the Vee
05:25 8 Block.

05:25 9 MR. BERGMAN: Okay. If you could -- if
05:25 10 the court reporter can provide the witness with
05:25 11 the document in envelope 28.

05:26 12 (Exhibit No. 22 was marked.)

05:26 13 THE WITNESS: Okay.

05:26 14 BY MR. BERGMAN:

05:26 15 Q Mr. Tornetta, do you recognize Exhibit 22?

05:26 16 A It looks to be a letter from Cole Industrial to
05:26 17 the Cleaver-Brooks service department.

05:26 18 MR. THORSON: Let me just -- again, this
05:26 19 document appears to have a bunch of marginality on
05:26 20 it, and it appears to have some kind of Bates
05:26 21 reference number. Is that a reference number from
05:26 22 this case, Counsel?

05:26 23 MR. BERGMAN: It is, yes.

05:26 24 MR. THORSON: Because I don't recognize
05:26 25 it from this case. If you will give me a chance,

05:26 1 I can check my documents to see whether or not it
05:26 2 corresponds to a document that I have seen in this
05:26 3 case. I take that back. The marginality threw
05:27 4 me. So yes, it does appear to be CB000056
05:27 5 produced in this case. I apologize.

05:27 6 BY MR. BERGMAN:

05:27 7 Q Mr. Tornetta, looking at the, kind of, the upper
05:27 8 right-hand quadrant of Exhibit 22, it references
05:27 9 serial numbers of -- are those the three boilers
05:27 10 that Cleaver-Brooks furnished to the Whidbey
05:27 11 facility in 1959?

05:27 12 A I believe so, yes.

05:27 13 Q Okay. And this is a -- you indicated it was a
05:27 14 correspondence from Cole Industrial to
05:27 15 Cleaver-Brooks?

05:27 16 A Yes, that's what it says.

05:27 17 Q Why would it be written on the Cleaver-Brooks'
05:28 18 stationary?

05:28 19 A It was pretty common for our representatives to
05:28 20 actually use our stationary and talk
05:28 21 back-and-forth with us.

05:28 22 Q And it indicates that it asks that a parts list
05:28 23 and operating manual be provided. Was it common
05:28 24 for Cleaver-Brooks to receive requests for part
05:28 25 lists five years after their boilers were

05:28 1 installed at a particular location?

05:28 2 MR. THORSON: Object to the form. You
05:28 3 can answer.

05:28 4 THE WITNESS: I think it asks for an
05:28 5 operating manual, including the parts list, which
05:28 6 I took to be an operating manual that is inclusive
05:28 7 of. But certainly for somebody to ask for a
05:28 8 manual some time after a boiler shipped wouldn't
05:28 9 be unheard of. In fact, it appears to have
05:29 10 happened here in 1964.

05:29 11 BY MR. BERGMAN:

05:29 12 Q So your -- Cleaver-Brooks would expect its
05:29 13 manufacturer reps to remain engaged with customers
05:29 14 years after the sale was transacted?

05:29 15 MR. THORSON: Object to the form of the
05:29 16 question. It's vague.

05:29 17 THE WITNESS: I think it would depend on
05:29 18 the customer. I don't know that I can answer that
05:29 19 in a general form. Apparently they at least
05:29 20 maintained engagement to this point. I would have
05:29 21 to look at the rest of our records to see if there
05:29 22 was further engagement.

05:29 23 BY MR. BERGMAN:

05:29 24 Q And based upon your knowledge and experience and
05:29 25 research into the Cleaver-Brooks company, was it

05:29 1 common for manufacturers' representatives to
05:29 2 remain in contact with customers years after the
05:30 3 original sale?

05:30 4 MR. THORSON: Object to the form of the
05:30 5 question. It's overly broad. Vague.

05:30 6 THE WITNESS: I guess I couldn't answer
05:30 7 to is it common. I'm not sure exactly what would
05:30 8 constitute common. Is it something that happened?
05:30 9 Yes. Did it happen in every case? No.

05:30 10 BY MR. BERGMAN:

05:30 11 Q Okay. Is it surprising to you that five years
05:30 12 after the sale of Cleaver-Brooks boiler, a
05:30 13 manufacturers' rep would still be in contact with
05:30 14 the customer with reference to said boilers?

05:30 15 MR. THORSON: Object to the form of the
05:30 16 question. It also mischaracterizes the document
05:30 17 and assumes facts not in evidence.

05:30 18 THE WITNESS: I guess I'm never
05:30 19 surprised by anything anymore. So I guess no, it
05:30 20 wouldn't be surprising to me. It obviously
05:30 21 happened here. As far as them asking us, one
05:30 22 would assume someone asked them, but that's not in
05:30 23 this document.

05:31 24 MR. BERGMAN: And if the witness could
05:31 25 be passed the document in envelope 29.

05:31 1 (Exhibit No. 23 was marked.)

05:32 2 THE WITNESS: Okay.

05:32 3 BY MR. BERGMAN:

05:32 4 Q Can you identify Exhibit 23?

05:32 5 A It appears to be somebody responding to Frank J.
05:32 6 Erickson in Mount Vernon, Washington, about an
05:32 7 operating manual back in 1959.

05:32 8 MR. BERGMAN: Okay. Could the witness
05:32 9 please be handed exhibit 30 -- I'm sorry, not
05:32 10 exhibit 30, envelope 30.

05:33 11 (Exhibit No. 24 was marked.)

05:33 12 THE WITNESS: Okay.

05:33 13 BY MR. BERGMAN:

05:33 14 Q Would you identify exhibit 30 -- I'm sorry,
05:33 15 Exhibit 24 for us, please, sir?

05:33 16 A It appears to be a portion of the documents we
05:33 17 produced about the Whidbey Island boilers, and it
05:33 18 looks to be the start-up reports or at least
05:33 19 portions of the start-up reports for the three
05:34 20 boilers in 1959.

05:34 21 Q And were these start-up reports -- first of all,
05:34 22 was the form of this document prepared by
05:34 23 Cleaver-Brooks?

05:34 24 A Yes.

05:34 25 Q And was Cole Industrial the organization that

05:34 1 filled out the report?

05:34 2 A Give me a moment to look for a name.

05:34 3 Q Please take your time, sir. Please take your
05:34 4 time.

05:34 5 A In what you've given me back here, I don't see,
05:35 6 unless I'm missing it, their name. And I don't
05:35 7 recognize the name of the field representative
05:35 8 that signed it, but I -- there may be other
05:35 9 documents that are not provided back to me, in
05:35 10 this case, that would clear that up. I don't
05:35 11 know.

05:35 12 Q Was it important that the customer be provided
05:35 13 with a face-to-face instruction on the proper use
05:35 14 of a Cleaver-Brooks' boiler at the time of
05:35 15 start-up?

05:35 16 MR. THORSON: Object to the form of the
05:35 17 question. It's overly broad and vague.

05:35 18 THE WITNESS: I guess I'm not sure how
05:35 19 to characterize that. Certainly we had somebody
05:35 20 fill out this form which includes things that
05:36 21 asked about whether the operator was told this,
05:36 22 that, or the other thing. So I think the document
05:36 23 speaks for itself as far as importance.

05:36 24 BY MR. BERGMAN:

05:36 25 Q So it was important to Cleaver-Brooks that certain

05:36 1 information be furnished to the operator at the
05:36 2 time of set-up prior to the lighting off of the
05:36 3 Cleaver-Brooks' boiler?

05:36 4 MR. THORSON: Object to the form of the
05:36 5 question. It's vague as to "operator." Overly
05:36 6 broad.

05:36 7 THE WITNESS: Yeah, I don't know that I
05:36 8 can answer that the way you worded it, but
05:36 9 certainly we had a form that someone filled out
05:36 10 and supplied to us, asking these questions.

05:36 11 BY MR. BERGMAN:

05:36 12 Q And there was certain information that
05:36 13 Cleaver-Brooks expected its representatives to
05:37 14 provide to customers at the time of set-up, set up
05:37 15 before the boilers were turned on; is that
05:37 16 correct?

05:37 17 MR. THORSON: Object to the form.
05:37 18 Vague.

05:37 19 THE WITNESS: Yes, there are all sorts
05:37 20 of blanks on that form to fill in.

05:37 21 MR. BERGMAN: Please provide the witness
05:37 22 with exhibit -- or envelope 31.

05:38 23 (Exhibit No. 25 was marked.)

05:38 24 THE WITNESS: Okay.

05:38 25 BY MR. BERGMAN:

05:38 1 Q Can you identify Exhibit 25, sir?

05:38 2 A Again, it seems to be various pages from the
05:38 3 documents we produced. One of which is a credit
05:38 4 memo to Power & Controls, Inc., for the U.S. Naval
05:38 5 Air Station; it looks like Whidbey Island. The
05:38 6 second page appears to be a proposal which
05:38 7 continues on the third page from 1958.

05:38 8 Q Okay. First of all, regarding the bank 1959
05:39 9 credit memo, first page of Exhibit 25, how much
05:39 10 did Cleaver-Brooks charge for the three boilers
05:39 11 delivered to the Naval Air Station in -- on -- in
05:39 12 Washington in 1959?

05:39 13 MR. THORSON: Charged for freight? For
05:39 14 purchase price? I'm sorry. What are we
05:39 15 referring -- what do you mean by "charge,"
05:39 16 Counsel, if I could ask?

05:39 17 BY MR. BERGMAN:

05:39 18 Q The \$12,669, what does that -- what was that
05:39 19 charge for?

05:39 20 A I would have to look more accurate, or to be more
05:40 21 accurate, I would have to look at the actual
05:40 22 invoice which would show what was invoiced. This
05:40 23 is a credit memo that is calculating commission.
05:40 24 It does say, near the bottom, "Price to customer,
05:40 25 \$12,820." However, I would want to look at the

05:40 1 invoice that we provided to you, which isn't part
05:40 2 of this yet, to determine whether that was one
05:40 3 boiler or three boilers. Without the invoice, I
05:40 4 can't really answer that accurately.

05:40 5 Q Okay. I will endeavor to locate that for you,
05:40 6 Mr. Tornetta. It would be fair to say, though,
05:40 7 that the amount that the U.S. government paid for
05:40 8 this was \$12,828; is that correct?

05:40 9 A I don't know what the U.S. government paid. I'm
05:40 10 not sure we sold it directly to the U.S.
05:40 11 government. Again, I would have to look at the
05:41 12 invoice. It appears as though -- in looking at
05:41 13 the other documents, it's hard to say if this was
05:41 14 sold to a contractor or not. So the difference
05:41 15 between what a contractor paid for it and what the
05:41 16 U.S. government paid that contractor, if, in fact
05:41 17 that's what happened, which I can't tell from
05:41 18 this, I don't know.

05:41 19 It does refer to sold to Bellingham
05:41 20 Supply, Inc., which I'm assuming is a contractor
05:41 21 and not the U.S. government. So I couldn't tell
05:41 22 you what the U.S. government paid.

05:41 23 Q Do you have any reason to dispute that the U.S.
05:41 24 government paid more than \$10,000 for the three
05:42 25 boilers delivered by Cleaver-Brooks to the Whidbey

05:42 1 Island Naval Air Station in 1959?

05:42 2 MR. THORSON: 10,000 for all three
05:42 3 total --

05:42 4 MR. BERGMAN: Yes.

05:42 5 MR. THORSON: -- or 10,000 per boiler?

05:42 6 MR. BERGMAN: 10,000 for all three
05:42 7 total.

05:42 8 THE WITNESS: I don't have any reason to
05:42 9 know one way or the other what the U.S.
05:42 10 government paid. For all I know, the contractor
05:42 11 could have put it in for less than the cost. The
05:42 12 answer is I don't know. You would have to ask the
05:42 13 U.S. government.

05:42 14 BY MR. BERGMAN:

05:42 15 Q If you could look to the third page of Exhibit 25.

05:42 16 A Yes.

05:42 17 Q It states that, "This quotation includes the
05:42 18 services of a Cleaver-Brooks factory trained Field
05:42 19 Engineer to initially inspect the units, fire and
05:42 20 instruct operators in operation and maintenance."
05:43 21 Do you see that?

05:43 22 A That's what that says, yes.

05:43 23 Q Was that a valuable service?

05:43 24 MR. THORSON: Object to the form of the
05:43 25 question. It's vague.

05:43 1 THE WITNESS: I guess you would have to
05:43 2 ask whoever purchased it from us. That is the
05:43 3 start-up that -- we looked at the start-up report
05:43 4 from that's being discussed there.

05:43 5 BY MR. BERGMAN:

05:43 6 Q But in calculating the price for a Cleaver-Brooks'
05:43 7 boiler, at least the three boilers at issue in
05:43 8 1959, one of the benefits that Cleaver-Brooks
05:43 9 conferred upon its customers was not simply the
05:43 10 physical boiler, but the expertise in service and
05:43 11 experience of its factory-trained field
05:43 12 representatives, correct?

05:43 13 MR. THORSON: Object to the form of the
05:43 14 question. It's overly broad. It's vague. Also I
05:43 15 believe it's outside the scope of the 30(b)(6)
05:44 16 notice.

05:44 17 THE WITNESS: That is what this document
05:44 18 seems to say -- or the third page of what you had
05:44 19 given me, I should say, not document.

05:44 20 MR. BERGMAN: If the witness could
05:44 21 please be provided with the document contained in
05:44 22 envelope 32.

05:45 23 (Exhibit No. 26 was marked.)

05:45 24 BY MR. BERGMAN:

05:45 25 Q Okay. Please take a look at those documents, sir,

05:45 1 and after you review them, if you can identify
05:45 2 them.

05:45 3 A These appear to be the drawings and parts
05:45 4 descriptions for the 19, I believe, 78 boiler
05:45 5 shipped to the Naval Air Station at Whidbey Island
05:45 6 that were referenced in a previous exhibit in
05:45 7 Mr. Thorson's letter to you -- or to your firm.

05:46 8 Q And Mr. Tordnetta, you're referring to the letter
05:46 9 from Mr. Thorson set forth on the first page of
05:46 10 Exhibit 21?

05:46 11 A That sounds correct, yes.

05:46 12 Q If you could, please, turn with me, sir, to
05:47 13 document Bates stamp No. 210 of Exhibit 26.

05:47 14 A Okay.

05:47 15 Q And do you see in the upper left corner --

05:47 16 A What am I seeing in the upper left corner?

05:47 17 Q Okay. There's reference to part No. 872-26.

05:47 18 A Yes.

05:47 19 Q "Asbestos cement"?

05:47 20 A Yes, I do see that.

05:47 21 Q And does that correspond to the number set forth
05:48 22 on the second unnumbered page of Exhibit 16?

05:48 23 A Yes, I believe so.

05:48 24 MR. THORSON: Let me belatedly object to
05:48 25 the form of the question. I think it's vague as

05:48 1 to the word "correspond."

05:48 2 BY MR. BERGMAN:

05:48 3 Q And if you could, sir, please turn with me to
05:48 4 Bates No. 212 of Exhibit 26.

05:48 5 A Okay.

05:48 6 Q And if you could look with me at the upper
05:48 7 right-hand corner. First of all, sir, what is
05:48 8 document 212 of Exhibit 26?

05:49 9 A This is the rear head for the 1970- -- or drawing,
05:49 10 I should say, of the rear head for the 1978 boiler
05:49 11 that was shipped to Naval Air Station Whidbey
05:49 12 Island.

05:49 13 Q Okay. Looking at the upper right-hand corner,
05:49 14 there's reference to part numbers. Do you see
05:49 15 that, sir?

05:49 16 A Yes.

05:49 17 Q And it makes reference to 872-61, both parts No. 3
05:49 18 and 4.

05:49 19 A Yes.

05:49 20 Q And does that conform to, on the second unnumbered
05:49 21 page of Exhibit 16, third paragraph, the part
05:50 22 872-61?

05:50 23 MR. THORSON: Object to the form of the
05:50 24 question. It's vague as to the term "correspond."

05:50 25 THE WITNESS: I think you mean the third

05:50 1 column, not third paragraph.

05:50 2 MR. BERGMAN: Yes, I did, sir. Thank
05:50 3 you.

05:50 4 THE WITNESS: Yes, both of this and that
05:50 5 have part No. 872-61, and I think they both say
05:50 6 board asbestos dimension and J.M. No. 106.

05:50 7 BY MR. BERGMAN:

05:50 8 Q Okay. And, similarly, once again, looking in the
05:50 9 upper right quadrant of Document 212 of
05:50 10 Exhibit 26, there's reference to Vee-Block Mix
05:50 11 asbestos?

05:50 12 A Yes.

05:50 13 Q And does that -- and that indicates part 872-162?

05:50 14 A Yes, it does.

05:50 15 Q And does that correspond to, subject to Counsel's
05:51 16 objection, the second column on the second
05:51 17 unnumbered page of Exhibit 16?

05:51 18 MR. THORSON: Object to the form of the
05:51 19 question. It's vague as to "correspond." And
05:51 20 when you said the column, do you mean the heading
05:51 21 of the column, Counsel, or do you mean the
05:51 22 quantities set forth in the column underneath it?

05:51 23 BY MR. BERGMAN:

05:51 24 Q I mean, does the product -- does the part number
05:51 25 872-162 set forth on the upper right quadrant of

05:51 1 Bates stamp 212 of Exhibit 26 correspond to the
05:51 2 part number set forth in the second column first
05:51 3 row of the second page unnumbered of Exhibit 16?

05:51 4 MR. THORSON: I will object to the form
05:51 5 of the question.

05:51 6 THE WITNESS: Yes, they both call out
05:52 7 872-162 Vee Block Mix. However, if your
05:52 8 representation earlier about the asbestos content
05:52 9 of Vee Block Mix was correct, this particular
05:52 10 drawing in referencing asbestos would be
05:52 11 incorrect.

05:52 12 BY MR. BERGMAN:

05:52 13 Q You don't know, do you, whether the Vee Block --
05:52 14 how long the Vee Block Mix that was used on the
05:52 15 1978 boiler and referenced in the upper right-hand
05:52 16 quadrant of Exhibit 212 of Exhibit 26 was in the
05:52 17 Cleaver-Brooks factory before it was installed, do
05:52 18 you?

05:52 19 A I think earlier you represented that the Vee Block
05:53 20 Mix didn't have asbestos after some point in '74.
05:53 21 Certainly we wouldn't have had bags of materials
05:53 22 like that in the factory for four years. Can I
05:53 23 say specifically how long? No.

05:53 24 Q How do you know that -- how do you know that you
05:53 25 wouldn't have had bags of refractory in the

05:53 1 factory for any period of time?

05:53 2 MR. THORSON: Well, I object. That's
05:53 3 not what he said, Counsel. He said for four
05:53 4 years. He didn't say for any period of time.

05:53 5 MR. BERGMAN: For four years.

05:53 6 THE WITNESS: Because I would consider
05:53 7 that a ridiculous amount of time for stock to be
05:53 8 sitting around not being used and a plant maybe
05:53 9 using that stock. But I said no, I can't say for
05:53 10 certain, no.

05:53 11 BY MR. BERGMAN:

05:53 12 Q And in any event, Cleaver-Brooks' documents dated
05:54 13 1978 refer to the Vee Block Mix as an asbestos
05:54 14 product; is that correct?

05:54 15 MR. THORSON: Object to the form of the
05:54 16 question. The document speaks for itself. The
05:54 17 question is argumentative. It's also getting very
05:54 18 late in the day. It's 6:00 in Milwaukee where the
05:54 19 witness is and the reporter and the videographer.
05:54 20 This deposition has been ongoing now for
05:54 21 approaching seven hours.

05:54 22 I would ask that we -- in the little
05:54 23 time that's remaining in the deposition under
05:54 24 federal rules, I would ask that we get to
05:54 25 questions that have some substance to them and not

05:54 1 argue with the witness.

05:54 2 MR. BERGMAN: Court Reporter, Madam
05:54 3 Court Reporter, how much time has been expended on
05:54 4 actual questioning, excluding breaks and lunch and
05:54 5 things like that?

05:55 6 (Discussion off the record.)

05:55 7 BY MR. BERGMAN:

05:55 8 Q Sir, directing your attention to Exhibit 26, Bates
05:55 9 stamp 212. Do you see that document, sir?

05:55 10 A Yes.

05:55 11 Q Okay. Cleaver-Brooks has no independent knowledge
05:55 12 that the Vee Block Mix referenced on that page as
05:55 13 part No. 872-162 was not asbestos-containing,
05:56 14 correct?

05:56 15 MR. THORSON: Object to the form of the
05:56 16 question. Vague. Ambiguous. Argumentative.

05:56 17 THE WITNESS: Other than your
05:56 18 representation to me earlier in this deposition,
05:56 19 no.

05:56 20 BY MR. BERGMAN:

05:56 21 Q And I'm sorry, the sound was a little bit garbled.
05:56 22 Could you repeat the answer, sir? It was not your
05:56 23 fault.

05:56 24 A I'm saying other than your representation of the
05:56 25 dates of asbestos being in Vee Block Mix earlier

05:56 1 in this deposition, no, we do not.

05:56 2 Q In looking, sir, at Bates No. 223 of Exhibit 36.

05:57 3 A Okay.

05:57 4 Q You have -- that references, once again, product
05:57 5 872-26?

05:57 6 A Yes, it does.

05:57 7 Q And Cleaver-Brooks would not dispute that that is
05:57 8 an asbestos-containing product, would you?

05:57 9 MR. THORSON: Object to the form of the
05:57 10 question. It's vague.

05:57 11 THE WITNESS: Again, I would have to
05:57 12 check with the manufacturer of that product for
05:57 13 the time period we're talking about to see whether
05:57 14 or not it was a truly asbestos-containing product.
05:57 15 The description says that word, but whether or not
05:58 16 it was certainly would be something the
05:58 17 manufacturer of that product should be able to
05:58 18 tell us -- or may be able to tell us. I don't
05:58 19 know.

05:58 20 BY MR. BERGMAN:

05:58 21 Q And in any event, Cleaver-Brooks today has no
05:58 22 knowledge as to how long that product, and by
05:58 23 "that product," I mean the product referenced on
05:58 24 page -- or Bates No. 223 of Exhibit 26, was
05:58 25 sitting around either in a distribute -- wholesale

05:58 1 distributor's warehouse or in Cleaver-Brooks'
05:58 2 supply storage area prior to its installation on
05:58 3 the boilers that -- boiler that was installed in
05:58 4 1978 at Whidbey Island?

05:58 5 A I would have no information on that.

05:59 6 Q Okay. And because Cleaver-Brooks has no records
05:59 7 available documenting its purchase of replacement
05:59 8 components or because -- strike that.

05:59 9 Because Cleaver-Brooks has no documents
05:59 10 available memorializing its purchase of components
05:59 11 and parts for its boilers, Cleaver-Brooks has no
05:59 12 ability to establish, one way or another, when the
05:59 13 components identified in Exhibit 26 were
05:59 14 purchased?

05:59 15 MR. THORSON: Object to the form of the
05:59 16 question. It's vague. Argumentative. Lack of
06:00 17 foundation. Calls for speculation.

06:00 18 THE WITNESS: As I said just two seconds
06:00 19 ago, I have no information on that, no.

06:00 20 BY MR. BERGMAN:

06:00 21 Q Okay. There's just no way of knowing when these
06:00 22 products --

06:00 23 A You can ask it as many times as you like. I'm
06:00 24 sorry.

06:00 25 MR. THORSON: Mr. Tornado, let him

06:00 1 finish his question. I think it's an
06:00 2 objectionable question, but let's at least do him
06:00 3 the courtesy of allowing him to finish. Go ahead,
06:00 4 Counsel.

06:00 5 MR. BERGMAN: That's okay. I will move
06:00 6 on.

06:00 7 MR. BERGMAN: Could the witness, please,
06:00 8 be provided with the document in envelope 33.

06:01 9 (Exhibit No. 27 was marked.)

06:01 10 THE WITNESS: Okay.

06:01 11 BY MR. BERGMAN:

06:01 12 Q And can you identify that document for us, sir?

06:01 13 A It appears to be various pages of the information
06:01 14 we provided on the boilers, at least based on the
06:01 15 unit number, shipped in 1978 to Whidbey Island,
06:01 16 including the cover sheet off what was, at one
06:01 17 time, a hard file. Yeah, it appears to be.

06:01 18 Q And the unit number, if you could look, sir, at
06:02 19 the top -- at the upper right-hand corner of
06:02 20 Exhibit 27, L-66335?

06:02 21 A Yes, on the top of CB000047.

06:03 22 MR. BERGMAN: Could you please, sir --
06:03 23 I'm sorry, could the court reporter please give
06:03 24 the witness the document in envelope 34.

06:03 25 (Exhibit No. 28 was marked.)

06:03 1 THE WITNESS: Okay.

06:03 2 BY MR. BERGMAN:

06:03 3 Q Can you identify that document for us, please,
06:03 4 sir?

06:03 5 A I guess I wouldn't call it a document. It is part
06:03 6 of the --

06:03 7 Q That's there. Let --

06:03 8 A -- the documents that we provided to you regarding
06:04 9 the Whidbey Island Naval Air Station boiler we
06:04 10 shipped in '78, it appears.

06:04 11 Q And so -- and it -- that shipment was also through
06:04 12 Cole Industrial?

06:04 13 A Without the invoice, I'm not sure if it was
06:04 14 through Cole Industrial. This document certainly
06:04 15 has their name on it -- or this page in the second
06:04 16 page and third page certainly have their name on
06:04 17 it. Without looking at it and me having a
06:04 18 photographic memory of what I provided to you, I
06:04 19 can't say for certain.

06:04 20 MR. THORSON: The record should also
06:04 21 reflect that this document, like a number of
06:04 22 others, also appears to contain marginality,
06:04 23 handwritten notes of Counsel, that don't appear to
06:04 24 be original to the document.

06:04 25 MR. BERGMAN: And afterward, we will

06:05 1 work with Counsel and the court reporter to
06:05 2 provide the records of the document --

06:05 3 THE VIDEOGRAPHER: We can't hear with
06:05 4 the papers on the microphone.

06:05 5 MR. BERGMAN: Could the witness be
06:05 6 provided with the document in envelope 37.

06:06 7 (Exhibit No. 29 was marked.)

06:06 8 THE WITNESS: Okay.

06:06 9 BY MR. BERGMAN:

06:06 10 Q Is -- can you identify 29 for us, please,
06:06 11 Mr. Tornetta?

06:06 12 A As I stated with several others, it appears to be
06:06 13 pieces of paper from what we produced regarding
06:06 14 the boiler shipped in '78 to Whidbey Island. This
06:06 15 appears to be the start-up report for that
06:06 16 boiler -- I'm sorry, the boiler shipped to Whidbey
06:06 17 Island in 1978.

06:06 18 Q Okay. This is a start-up report form that was
06:06 19 prepared by Cleaver-Brooks for use by its field
06:06 20 representatives?

06:06 21 A Yes, similar to the other one we talked about,
06:06 22 yes.

06:06 23 MR. THORSON: And this document, again,
06:07 24 also contains -- what appears to contain
06:07 25 Plaintiff's Counsel's notes or someone's

06:07 1 handwritten notes on the document that are not
06:07 2 original to the document itself, just for the
06:07 3 record.

06:07 4 BY MR. BERGMAN:

06:07 5 Q And are the items in the questions set forth in
06:07 6 the form represented by Exhibit 29 questions that
06:07 7 Cleaver-Brooks wanted its field representatives to
06:07 8 answer prior to the time a Cleaver-Brooks' boiler
06:07 9 was lit the first time by the customer?

06:08 10 MR. THORSON: Object to the form of the
06:08 11 question.

06:08 12 THE WITNESS: There are blanks here to
06:08 13 fill in. I'm not sure I would characterize it as
06:08 14 before it was lit that these had to be filled out,
06:08 15 but certainly this is a form we had, and they're
06:08 16 blanks to fill in on that form indicating there
06:08 17 would be a request for that information.

06:08 18 BY MR. BERGMAN:

06:08 19 Q And indeed the form specifically identifies
06:08 20 Mr. Wayne McAninch, M-C-A-N-I-N-C-H, as being the
06:08 21 individual who the field representative spoke with
06:08 22 regarding the items set forth on the checklist,
06:08 23 correct?

06:08 24 A That is the name listed under "operating
06:08 25 instructions" given to -- in that blank, yes.

06:09 1 MR. BERGMAN: Can the -- if the witness
06:09 2 can please be provided with exhibit -- I'm sorry,
06:09 3 the documents in envelope 36.

06:09 4 (Exhibit No. 30 was marked.)

06:09 5 THE WITNESS: Okay.

06:09 6 BY MR. BERGMAN:

06:09 7 Q Can you identify that for us, please?

06:09 8 A Again, as with several others, this is a series of
06:10 9 pages from the commercial records that we provided
06:10 10 to you in relation to the boiler shipped in 1978
06:10 11 to Whidbey Island, Naval Air Station.

06:10 12 MR. THORSON: I would also note there's
06:10 13 marginality on this document as well that appears
06:10 14 to have been added by Plaintiff's Counsel.

06:10 15 BY MR. BERGMAN:

06:10 16 Q And what is the nature of the communication set
06:10 17 forth in Exhibit 30?

06:10 18 A It looks as though we are passing along a warning
06:10 19 or recall for -- I'm not sure if they actually
06:10 20 called that that on their document, related to the
06:10 21 McDonnell & Miller water level controls that ITT
06:11 22 McDonnell & Miller had passed to us. We are,
06:11 23 therefore, passing that on to our customer.

06:11 24 Q How come?

06:11 25 A Because they asked us to.

06:11 1 Q Why did Cleaver-Brooks feel a need to communicate
06:11 2 safety information to a customer two years after
06:11 3 the sale of its boiler?

06:11 4 MR. THORSON: Object to the form of the
06:11 5 question. Asked and answered.

06:11 6 THE WITNESS: I think if you look at the
06:11 7 letter from ITT McDonnell & Miller, it asks us to
06:11 8 do that, or we were asked that that be done, so we
06:11 9 did what our supplier of the product asked us to
06:11 10 do with regard to the warning.

06:11 11 BY MR. BERGMAN:

06:11 12 Q If Cleaver-Brooks had learned of the potential
06:12 13 hazard of the McDonald -- McDonnell & Miller
06:12 14 component through its own research as opposed to
06:12 15 at the behest of McDonnell & Miller, would it
06:12 16 still have communicated the safety information to
06:12 17 its customer two years after the sale?

06:12 18 MR. THORSON: Object to the form of the
06:12 19 question. That is an incomplete hypothetical. It
06:12 20 calls for speculation. It's overly broad and
06:12 21 vague and doesn't really appear to have anything
06:12 22 at all to do with the notice of deposition in this
06:12 23 case.

06:12 24 THE WITNESS: I could only guess. I
06:12 25 would have no information to tell me one way or

06:12 1 the other. Apparently here we were asked to by
06:12 2 the supplier of that product and we did. What we
06:12 3 would have done if we had found another way would
06:12 4 only be a guess or speculation on my part.

06:13 5 BY MR. BERGMAN:

06:13 6 Q Why was an identical letter written to Ault Field
06:13 7 as set forth in Bates No. 4 of Exhibit 30 and to
06:13 8 Talleys Plumbing Bates No. 8 of Exhibit 30?

06:13 9 MR. THORSON: Object to the form of the
06:13 10 question. It calls for speculation.

06:13 11 THE WITNESS: I could only speculate
06:13 12 that the -- it is because Talleys Plumbing was the
06:13 13 purchaser and Ault Fied was the end user -- or
06:13 14 Whidbey Island, I think, is another name for Ault
06:14 15 Field.

06:14 16 BY MR. BERGMAN:

06:14 17 Q Was this letter composed by Cleaver-Brooks? And
06:14 18 by "this letter," I mean the letter set forth in
06:14 19 Exhibit 30.

06:14 20 MR. THORSON: Objection. Foundation.
06:14 21 Calls for speculation.

06:14 22 THE WITNESS: I would have no idea who
06:14 23 actually composed what is in CB00004, whether or
06:14 24 not Mr. Rexroat, whose name is at the top
06:14 25 left-hand corner, as the person who composed it or

06:14 1 not, it certainly is under his letterhead.

06:14 2 However, you will see quotes of verbatim parts of
06:14 3 the ITT McDonnell & Miller on here.

06:14 4 BY MR. BERGMAN:

06:14 5 Q But at least you would agree that there are
06:14 6 contents that, while some of the June 20th, 1980,
06:15 7 letter quotes verbatim the ITT communication, some
06:15 8 of it is not a verbatim quote?

06:15 9 MR. THORSON: Object to the form of the
06:15 10 question. The document speaks exactly to that. I
06:15 11 can't imagine what possibly Mr. Tornado could
06:15 12 add. I will object. You can answer.

06:15 13 THE WITNESS: There are sections that's
06:15 14 in quotes and there are sections that are not in
06:15 15 quotes.

06:15 16 BY MR. BERGMAN:

06:15 17 Q Could you please read the second to last paragraph
06:15 18 on the letter of Exhibit 30, first page?

06:15 19 A "Your immediate action in complying with McDonnell
06:15 20 & Miller's recommendations is essential since a
06:15 21 float separation of the type described will render
06:15 22 the control inoperative and may result in boiler
06:15 23 damage and possible serious injury or death."

06:16 24 MR. BERGMAN: Could the witness please
06:16 25 be provided with a document contained in

06:16 1 envelope 11, and could the original be marked 31
06:16 2 and the copy marked 31A.

06:17 3 THE VIDEOGRAPHER: We have five minutes
06:17 4 of recording time left.

06:17 5 MR. BERGMAN: Why don't we flip it right
06:17 6 now.

06:17 7 THE VIDEOGRAPHER: All right. This is
06:17 8 the end of Disk No. 2. We are off the record at
06:17 9 6:17 p.m.

06:27 10 (Recess taken.)

06:27 11 (Exhibit Nos. 31 and 31A were marked.)

06:27 12 THE VIDEOGRAPHER: We are back on the
06:27 13 record at 6:27 p.m.

06:27 14 BY MR. BERGMAN:

06:27 15 Q Mr. Tornetta, would you please take a look at
06:27 16 Exhibit 31.

06:27 17 A Okay.

06:27 18 Q My question is, can you identify it?

06:27 19 A It says, "Boiler operating manual, progress and
06:28 20 monitor."

06:28 21 Q Okay. And is that the Cleaver-Brooks logo on the
06:28 22 bottom of the first page of Exhibit 31?

06:28 23 MR. THORSON: Object to the form of the
06:28 24 question. It's vague.

06:28 25 THE WITNESS: It looks familiar to the

06:28 1 Cleaver-Brooks and the flame and the hand we
06:28 2 discussed earlier today.

06:28 3 BY MR. BERGMAN:

06:28 4 Q In looking at the lower left-hand corner, are you
06:28 5 able to date that document, sir?

06:28 6 A It has and it's written very small, 4/61, which
06:28 7 could mean fourth month of 1961.

06:28 8 MR. THORSON: I will object. Lack of
06:28 9 foundation. Calls for speculation.

06:28 10 BY MR. BERGMAN:

06:28 11 Q If you could turn, sir, to page 5-1 of Exhibit 31.

06:29 12 A Okay.

06:29 13 Q And if you could please read the center section of
06:29 14 that page?

06:29 15 A "Repair or replacement parts for either progress
06:29 16 or monitor boilers should be ordered from your
06:29 17 Cleaver-Brooks representative or the
06:29 18 Cleaver-Brooks Company, Milwaukee 12, Wisconsin."

06:30 19 MR. BERGMAN: Could the witness please
06:30 20 be provided with documents that are in
06:30 21 exhibit 12 -- envelope 12, and could the court
06:30 22 reporter mark the original 32 and the copy 32A.

06:31 23 (Exhibit Nos. 32 and 32A were marked.)

06:31 24 THE WITNESS: Okay. I have the
06:31 25 exhibits.

06:31 1 BY MR. BERGMAN:

06:31 2 Q Can you identify Exhibit 32 for us, sir?

06:31 3 A It says, "Model 4, Steam and Hot Water, Operation,
06:31 4 Service and Parts Manual, 1500 through 6000, Fuel:
06:31 5 Light Oil, Gas, or Combination."

06:31 6 Q And is that the Cleaver-Brooks logo in the lower
06:31 7 right-hand corner of the first page of Exhibit 32?

06:31 8 MR. THORSON: Object to the form of the
06:31 9 question. Vague.

06:32 10 THE WITNESS: It looks to be, yes.

06:32 11 BY MR. BERGMAN:

06:32 12 Q Okay. And looking at the lower left-hand corner of
06:32 13 the first page of Exhibit 32, can you date that
06:32 14 document for us, please, sir?

06:32 15 A Not on the first page, but on the second page, I
06:32 16 think it says, "Rev 9/76." You may not have a
06:32 17 copy of the cover that I have.

06:32 18 Q Okay. Does that appear, then, to be September of
06:32 19 1976?

06:32 20 MR. THORSON: Object to the form of the
06:32 21 question. Document speaks for itself. You're
06:32 22 asking the witness to speculate. Lack of
06:32 23 foundation.

06:32 24 THE WITNESS: That's what it reads, yes.

06:32 25 BY MR. BERGMAN:

06:32 1 Q If you could turn to, please, sir, 7- -- or
06:32 2 section 7, page 5?

06:32 3 A Okay. I'm there.

06:33 4 Q Looking at the section "Refractory."

06:33 5 A Yes.

06:33 6 Q Do you see the section that says, "872-26"?

06:33 7 A Yes, I do.

06:33 8 Q "Insulation cement"?

06:33 9 A "Cement insulating," yes.

06:33 10 Q Okay. And does that entry -- does that part
06:33 11 number correspond to the part number set forth on
06:33 12 page 2 unnumbered of Exhibit 16? And please feel
06:33 13 free to refer back to Exhibit 16, if that would
06:33 14 aid your reference.

06:33 15 MR. THORSON: I will object to the form
06:33 16 of the question, and I will also object to this
06:33 17 line of questioning. This is so far field,
06:33 18 Counsel.

06:33 19 This is a manual -- purports to be a
06:34 20 manual that relates to a water tube boiler. There
06:34 21 are no allegations in this case whatsoever of any
06:34 22 exposure to any water tube boilers. I would --
06:34 23 again, I think you are pressing the limits of good
06:34 24 faith in a deposition of 30(b)(6) notice, Counsel.

06:34 25 Can you satisfy me as to what possible

06:34 1 relevance this kind of questioning has? It is now
06:34 2 past 6:30 where the witness is and the court
06:34 3 reporter and the videographer. The deposition has
06:34 4 been underway for going on eight hours. Why are
06:34 5 you showing him a document relating to a boiler
06:34 6 that has no role in this case?

06:34 7 MR. BERGMAN: I'm asking him about a
06:34 8 part No. 872-26.

06:34 9 BY MR. BERGMAN:

06:34 10 Q My question to you is, does that correspond to the
06:34 11 872-26 identified on Exhibit 16, page --
06:35 12 unnumbered page 2?

06:35 13 MR. THORSON: Same objections. And if
06:35 14 we don't get closer to something that has
06:35 15 something to do with this case soon, Counsel, we
06:35 16 will adjourn and go to the Judge.

06:35 17 THE WITNESS: The part number is
06:35 18 certainly 872-26 in both those instances. Whether
06:35 19 or not J.M. 450 was available in 1976, if that's
06:35 20 what this manual is from or later, I have no idea.
06:35 21 So I'm not sure I would -- I would characterize it
06:35 22 as corresponding. The part numbers are certainly
06:35 23 equal.

06:35 24 MR. BERGMAN: If the witness could
06:35 25 please be shown the documents in envelope 15, and

06:35 1 if the court reporter could make -- label the
06:36 2 original documents Exhibit 33 and the copy 33A.
06:37 3 (Exhibit Nos. 33 and 33A were marked.)

06:37 4 THE WITNESS: Okay.

06:37 5 BY MR. BERGMAN:

06:37 6 Q Can you identify that for us, please, sir?

06:37 7 A This says, "Cleaver-Brooks Model CB Packaged
06:37 8 Boilers, Operation, Service, and Parts Manual, 50
06:37 9 through 100 Horsepower, Fuel: Light Oil, Heavy
06:37 10 Oil, Gas, Or Combination."

06:37 11 Q Okay. And are you able to ascertain the date of
06:37 12 that document?

06:37 13 MR. THORSON: Objection. Lack of
06:37 14 foundation. Calls for speculation.

06:37 15 THE WITNESS: Again, going to the second
06:37 16 page of the booklet that's the original, it does
06:37 17 say, "Rev 1/80."

06:37 18 BY MR. BERGMAN:

06:38 19 Q Turning to section 8, page 8 of Exhibit 33.

06:38 20 A Okay.

06:38 21 Q Looking at part -- in the upper left-hand section.
06:38 22 Are you following me, sir?

06:38 23 A Yes, I am.

06:38 24 Q And it indicates part No. 87 -- it's cement,
06:38 25 Vee-Block Mix, 50 pound bag. Do you see that?

06:38 1 A That's what it says, yes.

06:38 2 Q And does it correspond -- does the part
06:38 3 No. 872-162 correspond to the part number set
06:38 4 forth on page 2 unnumbered of Exhibit 16?

06:38 5 MR. THORSON: Object to the form of the
06:38 6 question. You're asking him to compare two
06:38 7 numbers to see if the two numbers are the same?
06:38 8 Is that it?

06:38 9 MR. BERGMAN: Mm-hmm.

06:38 10 MR. THORSON: We will stipulate that
06:38 11 identical numbers are identical to each other. Do
06:39 12 we need to do more than that? I mean, really,
06:39 13 Counsel.

06:39 14 BY MR. BERGMAN:

06:39 15 Q Second question on section 8-8.

06:39 16 A Yes.

06:39 17 Q Can you read the product set forth on 872-26?

06:39 18 A It says, "872-26, cement asbestos."

06:39 19 Q In 1988, was Cleaver-Brooks selling asbestos
06:39 20 cement by the pound?

06:39 21 MR. THORSON: Object to the form of the
06:39 22 question. Vague. Calls for speculation.

06:39 23 THE WITNESS: I would answer it the same
06:39 24 way I talked about the 872-26 in the last manual,
06:39 25 in that while the numbers are the same, whether or

06:39 1 not J.M. 450 was available and/or an asbestos
06:39 2 product at that time, I wouldn't know. And I
06:39 3 think you meant to say 1980, since I think this
06:40 4 manual is from 1980 or appears to be. I may be
06:40 5 wrong in thinking that's what you meant.

06:40 6 BY MR. BERGMAN:

06:40 7 Q Okay. But was Cleaver-Brooks in 1980 selling
06:40 8 asbestos cement under the part number 872-26 by
06:40 9 the pound and by bulk?

06:40 10 MR. THORSON: Same objection.

06:40 11 THE WITNESS: As I just said, I would
06:40 12 have to look at the manufacturer of that product,
06:40 13 872-26, as it was described in our detailed parts
06:40 14 description in the documents we provided to you
06:40 15 prior about the other -- the boilers at Whidbey
06:40 16 Island or the other ones. And determine through
06:40 17 the manufacturer, if possible, whether or not that
06:40 18 material had asbestos or not. I don't know.

06:41 19 BY MR. BERGMAN:

06:41 20 Q So it's possible that Cleaver-Brooks in 1980 would
06:41 21 publish a parts list offering cement -- asbestos
06:41 22 cement that did not contain asbestos?

06:41 23 MR. THORSON: Object to form of the
06:41 24 question. Argumentative. Calls for speculation.
06:41 25 Lack of foundation. Assumes facts.

06:41 1 THE WITNESS: As I said, I would have to
06:41 2 check with the manufacturer. Is that a
06:41 3 possibility that that word is incorrect in this
06:41 4 particular manual? Absolutely, that's a
06:41 5 possibility.

06:41 6 BY MR. BERGMAN:

06:41 7 Q Well, you don't know one way or the other, do you,
06:41 8 sir?

06:41 9 A I think my answer the last three times you asked
06:41 10 this was "I don't know."

06:41 11 Q Okay. And the prior designation of J-M 450 in the
06:41 12 document that you testified to indicate "J-M 450
06:41 13 or equal," do they not, sir?

06:42 14 MR. THORSON: Object to the form of the
06:42 15 question. Mischaracterizes testimony. Overly
06:42 16 broad. Compound. You can answer.

06:42 17 THE WITNESS: I believe it said that in
06:42 18 the rear door refractory replacement guide. I
06:42 19 don't know that it said that in the part
06:42 20 description that we supplied you for the 872-26
06:42 21 part that was supplied with the Whidbey Island
06:42 22 boilers. I would have to go back and look at
06:42 23 that.

06:42 24 BY MR. BERGMAN:

06:42 25 Q But based upon -- based upon page 8 -- section 8,

06:42 1 page 8, of Exhibit 33, Cleaver-Brooks cannot
06:43 2 exclude the possibility that in 1980 it was
06:43 3 selling asbestos cement by the pound, can it?

06:43 4 MR. THORSON: Object to the form of the
06:43 5 question. It's argumentative. It calls for
06:43 6 speculation. The question has been asked and
06:43 7 answered repeatedly. You can answer.

06:43 8 THE WITNESS: As I said before, I don't
06:43 9 know. I don't have the information to tell me,
06:43 10 one way or the other.

06:43 11 MR. BERGMAN: And could the witness be
06:43 12 provided with the document -- or documents in
06:43 13 envelope 13, and will the court reporter kindly
06:43 14 mark the original Exhibit 34 and the copy 34A.

06:44 15 (Exhibit Nos. 34 and 34A were marked.)

06:45 16 THE WITNESS: I have it.

06:45 17 BY MR. BERGMAN:

06:45 18 Q Can you identify Exhibit 34 for us, please, sir?

06:45 19 A It says, "Cleaver-Brooks Model, CB Packaged
06:45 20 Boilers, Operation, Service, and Parts Manual, 50
06:45 21 through 100 Horsepower, Fuel: Light Oil, Heavy
06:45 22 Oil, Gas, Or Combination."

06:45 23 Q And what is the date of the document set forth in
06:45 24 Exhibit 34?

06:45 25 MR. THORSON: Object to the form.

06:45 1 Foundation. Document speaks for itself.

06:45 2 THE WITNESS: It appears to say,
06:45 3 "Revised 12/88."

06:45 4 BY MR. BERGMAN:

06:45 5 Q If you could turn with me, sir, to section 8.4 of
06:45 6 Exhibit 34.

06:45 7 A Okay.

06:45 8 Q And you see the section marked "Refractory"?

06:45 9 A Yes, I do.

06:45 10 Q Can Cleaver-Brooks say, one way or the other,
06:45 11 whether the cement Vee Block Mix designated by
06:45 12 part 872-162 was asbestos-containing?

06:46 13 MR. THORSON: Object to the form of the
06:46 14 question. Calls for speculation.

06:46 15 THE WITNESS: Again, going back to your
06:46 16 stipulation earlier -- your noting earlier of the
06:46 17 years of asbestos being in Kaiser Vee Block, since
06:46 18 this manual appears to be from 1988, some 14 years
06:46 19 after what you said was the cut-off, I think that
06:46 20 assertion would be ridiculous.

06:46 21 BY MR. BERGMAN:

06:46 22 Q But outside of any information that I might or
06:46 23 might not have, does Cleaver-Brooks have any
06:46 24 knowledge, one way or the other, whether the Vee
06:46 25 Block Mix identified on page -- section 8, page 4,

06:46 1 of Exhibit 34 was asbestos-containing?

06:47 2 A I would say, at this moment, Cleaver-Brooks does.
06:47 3 I'm assuming you're an honest man, and you
06:47 4 wouldn't have represented something different than
06:47 5 it to be. So, at this moment, yes, Cleaver-Brooks
06:47 6 does.

06:47 7 BY MR. BERGMAN:

06:47 8 Q Okay. Outside of my representation, does
06:47 9 Cleaver-Brooks have knowledge on that subject,
06:47 10 sir?

06:47 11 A I don't believe so, not that I know -- can put my
06:47 12 finger on, other than, again, your representation.
06:47 13 But since you excluded that from the question, no.

06:47 14 Q Okay. And last question, sir, once again, looking
06:47 15 at page -- section 8, page 4, of Exhibit 34, can
06:47 16 Cleaver-Brooks say, one way or the other, whether
06:47 17 the insulating cement identified on that page as
06:47 18 part No. 872-26 was asbestos-containing?

06:47 19 MR. THORSON: Object to the form of the
06:47 20 question. Vague. Calls for speculation. You can
06:48 21 answer.

06:48 22 THE WITNESS: As I said what seems like
06:48 23 four or five other times now, not without
06:48 24 information from the supplier of that product. So
06:48 25 I don't know.

06:48 1 BY MR. BERGMAN:

06:48 2 Q And Cleaver-Brooks does not have any records today
06:48 3 regarding the supplier of the insulation cement
06:48 4 identified on page 8 -- section 8, page 4, of
06:48 5 Exhibit 34; is that correct?

06:48 6 A I believe we have the parts description which
06:48 7 you've been shown. Did you say records of, or did
06:48 8 you say records of purchase? I don't -- I may
06:48 9 have missed --

06:48 10 Q Records of purchase, yes, records of purchase.

06:48 11 A We don't have records of purchase, no, other than
06:48 12 the part number that describes the material that
06:48 13 was called out.

06:48 14 Q Okay. Mr. Tornetta, in your deposition in 2004,
06:49 15 you testified that there was never a conscious
06:49 16 decision to stop using asbestos in Cleaver-Brooks'
06:49 17 boilers.

06:49 18 MR. THORSON: Counsel, let's -- would
06:49 19 you give us a page -- page reference, please?

06:49 20 MR. BERGMAN: Yeah. Most definitely.
06:49 21 Page 15.

06:50 22 MR. THORSON: Give me a minute, please.

06:50 23 MR. BERGMAN: Please take your time.

06:50 24 MR. THORSON: Okay. So if I may, I
06:50 25 would like to read the passage that I think --

06:50 1 because I think you mischaracterized --

06:50 2 MR. BERGMAN: Let me --

06:50 3 MR. THORSON: The conscious decision
06:50 4 language you referenced wasn't his testimony. It
06:50 5 was the question -- it was the question -- it was
06:50 6 the questioner's question, and Mr. Tornetta's
06:50 7 answer doesn't mention anything like that. So if
06:50 8 you're not going to put that in front of him, I
06:50 9 would like to at least read that sentence.

06:50 10 BY MR. BERGMAN:

06:50 11 Q Let me withdraw the question and ask Mr. Tornetta,
06:50 12 simply, was there ever a conscious decision by
06:50 13 Cleaver-Brooks to stop using asbestos components
06:50 14 in its boilers?

06:50 15 MR. THORSON: Object to the form of the
06:51 16 question. It's vague. Overly broad.

06:51 17 THE WITNESS: The manufacturers --

06:51 18 MR. THORSON: I was also going to -- go
06:51 19 ahead, John.

06:51 20 THE WITNESS: I was going to say. The
06:51 21 manufacturers that those components that we
06:51 22 purchased that had or may have had asbestos
06:51 23 removed the asbestos components of those parts at
06:51 24 times unknown to us and for reasons unknown to us.
06:51 25 So I would say the answer to your question is no

06:51 1 with that explanation.

06:51 2 BY MR. BERGMAN:

06:51 3 Q When was the last time, sir, you've testified in
06:51 4 an asbestos case?

06:51 5 A I would say a couple months ago. July sometime, I
06:52 6 believe.

06:52 7 Q And, sir, how frequently are you called upon to
06:52 8 testify on asbestos cases?

06:52 9 A On a fairly regular basis.

06:52 10 Q Every couple months?

06:52 11 A No, I wouldn't characterize it like that. It's
06:52 12 been over a few dozen in my 10, 11 years now.

06:52 13 MR. BERGMAN: At this point, Madam Court
06:52 14 Reporter, how much time are -- what time are we
06:52 15 at?

06:52 16 THE COURT REPORTER: We're at about six
06:52 17 hours.

06:52 18 MR. BERGMAN: At this juncture, we
06:52 19 have -- I will state for the record that we are
06:52 20 still awaiting documents that we have requested
06:52 21 pertaining to the Cleaver-Brooks' boilers that
06:52 22 were installed at Puget Sound Naval Shipyard. We
06:53 23 reserve our right to reopen this deposition to
06:53 24 question the witness on those documents as they
06:53 25 have not been produced today. With that

06:53 1 reservation, we will conclude our examination, and
06:53 2 thank the witness for his time and testimony.

06:53 3 MR. THORSON: And let me just state for
06:53 4 the record that this deposition was noted up by
06:53 5 Plaintiff's Counsel at a time of their choosing.
06:53 6 If there was outstanding document production, that
06:53 7 was not something that was -- that was something
06:53 8 that they knew at the time they noted this
06:53 9 deposition.

06:53 10 This deposition has now been going on
06:53 11 for approaching eight hours from when
06:53 12 Mr. Tornetta, the court reporter, and the
06:53 13 videographer were instructed to attend. It has
06:53 14 been a very long day. It is 7:00 -- approaching
06:53 15 7:00 in Milwaukee, and I should say that if this
06:53 16 deposition is -- you mean to resume it at some
06:54 17 further -- some later date, you will need to
06:54 18 confer with Counsel, and I anticipate you will
06:54 19 need to make a motion to do so. I believe this
06:54 20 has not been a constructive use of anyone's time,
06:54 21 for the most part, and I think it's -- it has been
06:54 22 an enormous indulgence for Mr. Tornetta to sit
06:54 23 through all of this.

06:54 24 So as far as we're concerned, this
06:54 25 deposition is concluded at this point in time,

06:54 1 absent a meeting of Counsel and on that order from
06:54 2 Judge Layton instructing him to go forward subject
06:54 3 to some later production.

06:54 4 MR. BERGMAN: Okay. We will have to
06:54 5 agree to disagree on that, Counsel. We can go off
06:54 6 the record now. Before we go off the record, a
06:54 7 couple of housekeeping matters -- well, first of
06:54 8 all, Mr. Tornetta, if you need to go, I don't know
06:54 9 that you need to stick around for this, but I just
06:55 10 want to state for the record that we would like --
06:55 11 we want to retain custody of the original manuals
06:55 12 and the manuals that are designated as, for
06:55 13 instance, 34A should be part of the record.

06:55 14 We would also like to, in conference
06:55 15 with counsel and the court reporter, substitute
06:55 16 any exhibits that were inadvertently provided to
06:55 17 the witness with marginalia and writing on them.
06:55 18 And with those clarifications, I think we can go
06:55 19 off the record.

06:55 20 THE VIDEOGRAPHER: We are off the record
06:55 21 at 6:55 p.m.

22 (Proceedings adjourned at 6:55 p.m.)

23

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1 STATE OF)
2 COUNTY OF) SS:
3
4

5 I, JOHN F. TORNETTA, do hereby certify
6 that I have read the foregoing transcript of
7 proceedings, taken on September 14, 2012, at Whyte
8 Hirshboeck Dudek, 555 East Wells Street, Suite 1900,
9 Milwaukee, Wisconsin, and the same is true and correct,
10 except for the list of corrections noted on the annexed
11 page.

12
13 Dated at _____
14 this _____ day of _____, 2012.

15
16
17 _____
18 JOHN F. TORNETTA
19

20 Subscribed and sworn to before me
21 this _____ day of _____ 2012.

22
23 _____
24 Notary Public

25 My Commission Expires:

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