

VOLUME I
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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

EARL W. TREDINNICK, III and *
KIMBERLY TREDINNICK, his *
spouse, *
Plaintiffs, * Index No.
vs. * I2008-10509
*
A.W. CHESTERTON COMPANY, et *
al., *
Defendants. *

DEPOSITION OF RILEY POWER, INC.

through its designee, MICHAEL SMITH

Friday, September 11, 2009

Cetrulo & Capone

Two Seaport Lane

Boston, Massachusetts

----- DEANNA L. VEINOTTE, RPR, CRR, CCP -----

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1 INDEX 2 3 WITNESS PAGE 4 MICHAEL SMITH 5 6 Examination by Mr. Vona 9 7 Examination by Mr. Radcliffe 208 8 9 10 11 12 13 14 EXHIBITS 15 16 NO. DESCRIPTION PAGE 17 1 Notice of Taking Deposition 16 18 2 Deposition dated May 13, 2009 37 19 3 Document dated 6/23/59 50 20 4 Document dated 12/11/59 56 21 5 Document dated 3/60 59 22 6 Document titled Contract Material 23 Requisition 61 24 7 Document titled Contract Material Requisition 64	1 26 Document titled Contract Material 2 Requisition 125 3 27 Document titled Contract Material 4 Requisition 127 5 28 Document dated 3/15/51 131 6 29 Document dated 11/28/52 132 7 30 Document dated February 13, 1990 8 from the Environmental Protection 9 Agency 136 10 31 Document titled Contract Material 11 Requisition 138 12 32 Document titled Contract Material 13 Requisition 140 14 33 Blown-up diagram 148 15 34 Document dated 3/22/55 148 16 35 Document dated 3/22/55 150 17 36 Document dated 1/12/56 152 18 37 Blown-up diagram 165 19 38 Letter dated February 2, 1967 165 20 39 Document dated July 31, 1951 170 21 40 Document titled Section C, 22 Boilers and Equipment 174 23 41 Document dated 10/1/71 175 24 42 Document dated May 28, 1971 179 43 Letter dated July 22, 1971 183 44 Document titled Contract Price dated 7/18/69 187 45 Letter dated May 7, 1969 190

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6 1 46 Letter dated March 23, 1970 191 2 47 Drawing dated October 15, 1931 197 3 48 Document titled Power 204 4 5 Original exhibits returned to Keith Vona with 6 copies distributed to all counsel of record 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	8 1 MR. COMERFORD: John Comerford, same 2 firm. 3 MR. RADCLIFFE: Tom Radcliffe for 4 Riley Power, Inc. 5 MR. SAUL: Jason Saul from Cetrulo & 6 Capone for Riley Power, Inc. 7 MR. WHITCOMB: James Whitcomb, 8 Phillips Lytle for Riley Power, Inc. Just 9 before we get going, it is standard practice in 10 the Eighth Judicial District to reserve all 11 objections, except as to form, until trial. I 12 assume that's even in the video. I assume 13 that's acceptable to all at the table? 14 MR. VONA: Yes. 15 MS. FRAIN: Toni Frain for Frontier 16 Insulation Contractors. 17 MR. GELLMAN: Ryan Gellman, Colucci & 18 Gallagher for Niagara Insulations. 19 MR. VONA: Anybody else on the phone? 20 (No response.) 21 MR. COMERFORD: I just want to put on 22 the record that Crane Co. is a defendant in 23 this case and they had notice of this 24 deposition.
7 1 ----- 2 P R O C E E D I N G S 3 10:04 a.m. 4 ----- 5 THE VIDEOGRAPHER: My name is Bill 6 Slater of Veritext. Today's date is September 7 11, 2009. The time is approximately 10:04 a.m. 8 This deposition is being held at the offices of 9 Cetrulo & Capone located at 2 Seaport Lane, 10 Boston, Massachusetts. 11 The caption in this case is In Re: 12 Eighth Judicial District Asbestos Litigation 13 related to Earl W. Tredinnick, III and Kimberly 14 Tredinnick versus A.W. Chesterton Company, et 15 al. in the Supreme Court, State of New York, 16 County of Erie, Index No. I2008-10509. The 17 name of the witness is Michael Smith. 18 At this time the attorneys will 19 identify themselves and the parties they 20 represent, after which the court reporter, 21 Deanna Veinotte of Veritext, will swear in the 22 witness and we can proceed. 23 MR. VONA: Keith Vona from Lipsitz & 24 Ponterio on behalf of the plaintiffs.	9 1 * * * * * 2 MICHAEL SMITH, Deponent, having first been 3 satisfactorily identified and duly sworn by the 4 Notary Public, deposes and states as follows: 5 * * * * * 6 EXAMINATION CONDUCTED 7 BY MR. VONA: 8 Q. Good morning, Mr. Smith. 9 A. Good morning. 10 Q. As you already heard, my name is Keith 11 Vona. I'm from Lipsitz & Ponterio in Buffalo. 12 I have some questions for you today. You and I 13 first met just a few moments ago before we 14 started, right? 15 A. Yes. 16 Q. Now, you've done these depositions 17 before, so I don't really feel the need to go 18 through the rules or anything like that. Do 19 you have any problem with that if we just get 20 going? 21 A. No. 22 Q. How many depositions have you given in 23 the context of asbestos? 24 A. I believe this is about the 19th one.

10 1 Q. All right. And when did you first 2 start doing that? 3 A. About four years ago. 4 Q. Okay. When was your last deposition 5 with regard to asbestos? 6 A. It was either May or June this year. 7 Q. Okay. How many have you given this 8 year? 9 A. Depositions or cases? 10 Q. Depositions. 11 A. I believe this will be the eighth. 12 Q. This year? 13 A. This year. 14 Q. Okay. Now, you're appearing on behalf 15 of Riley Stoker today, correct? 16 A. I'm here to answer questions at the 17 request of Riley Stoker attorneys. 18 Q. Okay. And are you represented by the 19 Riley Stoker attorneys today? 20 A. I don't know how to answer that. 21 Q. Okay. 22 MR. VONA: Mr. Radcliffe, are you 23 representing Mr. Smith today? Is there an 24 attorney/client privilege?	12 1 MR. VONA: It is Tredinnick. 2 MR. RADCLIFFE: Sorry. 3 MR. VONA: That's fine. 4 Q. Do you know if he's alive or dead? 5 A. I don't. 6 Q. Okay. Do you know what disease he's 7 suffering from? 8 MR. RADCLIFFE: Object to the form. 9 A. According to the information I read in 10 the depositions, I believe it was mesothelioma. 11 Q. Okay. Do you know what he did for a 12 living? 13 A. He was a boilermaker for about 30-some 14 years. 15 Q. Okay. Do you know what boilermakers 16 do? 17 A. Yes. 18 Q. What do they do? 19 A. Essentially, there are two forms: 20 One, in the field boilermakers who work during 21 the erection and repair of pressure vessels 22 under the ASME code; and there's another group 23 that actually works, for instance, in the Riley 24 shop. They're a boilermaker union that do the
11 1 MR. RADCLIFFE: There's an 2 attorney/client privilege between me and Riley 3 Power, and to the extent that Mr. Smith is a 4 designee of Riley Power, that attorney/client 5 privilege applies to him. 6 MR. VONA: Would you be willing to 7 stipulate that Mr. Smith is appearing as a 8 corporate representative to Riley Stoker today? 9 MR. RADCLIFFE: I'll stipulate that he 10 is appearing in response to your deposition 11 notice. 12 MR. VONA: Okay. Is he the person 13 most knowledgeable with regard to Riley Stoker 14 for this deposition? 15 MR. RADCLIFFE: That is the 16 designation made by Riley Power, yes. 17 MR. VONA: Okay. Thank you. 18 Q. Mr. Smith, I'd like to ask you a few 19 questions about my client. Do you know my 20 client's name? 21 A. Earl W. Tredinnick, III. 22 Q. Close enough. 23 MR. RADCLIFFE: How do you pronounce 24 it?	13 1 actual fabrication of the boiler components. 2 Q. Okay. And do you know which type of 3 boilermaker Mr. Tredinnick is? And by the way, 4 he is alive. 5 A. Okay. His deposition stated that he 6 basically was working in the field in the 7 traditional sense of the boilermaker. 8 Q. To just keep it straight and simple, 9 he worked on boilers as a boilermaker, correct? 10 A. Yes. He also testified he worked on 11 other things, too, which was really pipefitter 12 work I thought, but he did work on boilers. 13 Q. Okay. Now, just preliminarily, the 14 last deposition I read was in May of this year, 15 and at that time you were compensated \$100 an 16 hour. Has that changed at all? 17 A. No. 18 Q. Nothing for the current times? 19 A. No. 20 Q. Okay. In anticipation for this 21 deposition, who did you speak to? 22 A. The Riley attorneys. 23 Q. Meaning Mr. Radcliffe? 24 A. Jason Saul primarily yesterday and the

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14 1 day before. 2 Q. Okay. And you mentioned that you read 3 Mr. Tredinnick's deposition; is that right? 4 A. Yes. 5 Q. Do you know which volumes you read? 6 A. I read four. I read -- I believe it 7 was two in October of '08. There's another 8 one, I believe it was called Volume 3, in 9 November, followed by a video deposition. 10 Q. All right. Did you review anything 11 else in preparation for this case? 12 A. I reviewed the contract documents for 13 the contracts as I understood it to be an issue 14 here at the four sites in New York. 15 Q. Okay. 16 MR. RADCLIFFE: We also supplied 17 Mr. Smith with some documents related to 18 DuPont, Bethlehem Steel, and Chevrolet. 19 MR. VONA: Are these documents that 20 were provided to my office? 21 MR. RADCLIFFE: I'll provide them to 22 you right now if you'd like to see them. 23 MR. VONA: I would have preferred it 24 before the deposition, but we'll address that	16 1 A. I heard about it, probably the first 2 time, about a month ago. 3 Q. Okay. If you don't mind, could I just 4 take a quick look at your binder? 5 A. (Handing binder.) 6 Q. Very good. Thank you. 7 MR. VONA: Now, I want to have this 8 deposition notice marked as Smith 1. 9 (Exhibit 1, Notice of Taking 10 Deposition, so marked.) 11 Q. I want to show you what's been marked 12 as Smith Exhibit 1. You've seen something like 13 this before, I'm assuming, deposition notices? 14 A. I have seen deposition notices in the 15 past. 16 Q. Have you seen that one? 17 A. No. 18 Q. Okay. Have you ever appeared in a 19 courtroom for Riley Stoker at trial? 20 A. On asbestos? 21 Q. Yes. 22 A. No. 23 Q. And just so we're clear, all my 24 questions are going to be related to asbestos
15 1 if we get to it. 2 MR. WHITCOMB: In response, there was 3 no demand for those that I know of, Keith. 4 MR. VONA: That's fine. 5 MR. WHITCOMB: They're documents that 6 have previously been produced in this 7 litigation. 8 MR. VONA: Okay. 9 MR. WHITCOMB: And other related 10 asbestos litigation. 11 MR. VONA: That's fine. 12 A. I also reviewed portions of my book 13 that I brought to every deposition that has 14 information that we've accumulated over time. 15 Q. Okay. I believe back in May, unless 16 the court reporter made a mistake, it was a 17 blue binder. That one is black; is that right? 18 A. This is the same binder to the best of 19 my knowledge. 20 Q. Okay. Have you added any material 21 since May? 22 A. No. 23 Q. Okay. When did you first hear about 24 this deposition?	17 1 today. Okay? You've never appeared in court 2 then? 3 A. No. 4 Q. Okay. Now, before you came here for 5 this deposition, what did you do to prepare 6 yourself other than look at the documents and 7 the testimony? Anything else? 8 A. Such as? 9 Q. I'm asking you. Did you do anything 10 else? Did you talk to any employees of Riley 11 prior to coming here? 12 A. No. 13 Q. Okay. Did you talk to anybody besides 14 the lawyers? 15 A. No. 16 Q. All right. Did you look at any other 17 documents besides the contract documents you 18 alluded to? 19 A. And the -- 20 Q. And what Mr. Radcliffe said? 21 A. No. 22 Q. All right. Any other type of research 23 that you did? 24 A. No other research.

18 1 Q. Now, I'll try and shortcut a lot of 2 this stuff because you've been through these 3 depositions before. Are you still 65 years 4 old, or did you have a birthday? 5 A. Yes. No, I'm 65. 6 Q. And you have a bachelor's in civil 7 engineering, correct? 8 A. Yes. 9 Q. And also an MBA? 10 A. Yes. 11 Q. And you are a licensed professional 12 engineer? 13 A. Yes. 14 Q. And have been since 1972, close? 15 A. Yes. 16 Q. All right. You retired from Riley 17 Stoker in 2006; is that right? 18 A. Yes. 19 Q. And you started with them in 1973 as a 20 boiler design engineer? 21 A. Yes. 22 Q. All right. And if you could, just 23 walk the jury through your positions at Riley 24 just briefly. I don't need a lot of detail,	20 1 there. 2 In 1999 I returned to Riley as 3 director of the aftermarket projects group. 4 And in 2005 I became director of the parts 5 group again until I retired in July of 2006. 6 Q. All right. And I believe you 7 mentioned earlier you've been giving 8 depositions for about four years? 9 A. Yes. 10 Q. So would it be accurate that you 11 started giving depositions defending Riley 12 Stoker in the asbestos context before you 13 retired? 14 A. Before full retirement, yes. There 15 was a period of time where I had gone as a 16 contract employee still working for Riley. I 17 was doing special assignments for them and they 18 asked me to take this one on at that time. And 19 I did it, then I went back full-time, and then 20 I left full-time and started this again. 21 Q. Do you recall who approached you first 22 to ask you to appear on behalf of Riley Stoker? 23 A. It was the corporate attorney. 24 Q. For Riley?
19 1 but just give them a thumbnail sketch. 2 A. Just Riley? 3 Q. Yes, that's fine. 4 A. I started at Riley in 1973 as a boiler 5 design engineer. I was in that position 6 approximately two years. Then I became a 7 project engineer, also for Riley, for a year 8 and a half to two years, and then progressed to 9 project manager, industrial boiler division for 10 about two years. 11 Then I became project manager, utility 12 boiler division for a couple of years. And 13 then I became manager of the industrial 14 construction division for about two, two and a 15 half years, and then became a senior project 16 manager in the aftermarket division for a 17 couple of years. 18 And then I became vice president of 19 Pace Power Constructors in 1985 for about three 20 years. And then I returned to Riley as a 21 director of the pressure parts group. In 1992 22 or '3 I became director of the parts group. In 23 1996 I was reassigned to the Erie facility as 24 director of the parts group that was moved out	21 1 A. For Riley, yes, in the Riley building. 2 Q. In-house guy? 3 A. Yes. 4 Q. And I just want to do a little 5 background on Riley Stoker. If I misstate 6 anything, just let me know. The company itself 7 was started in 1913; is that right? 8 A. Yes. 9 Q. Okay. And it's true that from 1931 to 10 the present Riley Stoker has been in the 11 business of designing, fabricating, and selling 12 boilers, correct? 13 A. As one of its products. 14 Q. It sells other products, too, as well, 15 correct? 16 A. Yes. 17 Q. Give us an idea of some of those other 18 products. 19 A. It started off as a stoker, which is a 20 fuel-burning piece of equipment. 21 Q. Hence the name, right? 22 A. Yes, but then progressed into many 23 different types of stokers, the fuel-burning 24 equipment, burners and pulverizers. And that's

22 1 when it got into the boiler because that 2 allowed them to do the whole package. And 3 through the years, they continued to do burners 4 as far as their design manufacture. I'm not 5 talking about third-party products that they 6 may incorporate. 7 Q. Sure. 8 A. They got into environmental in the 9 '80s. That's a separate division, but still... 10 And then manufacturing, they purchased another 11 facility in the '60s, the Union Iron Works 12 facility in Erie. 13 And they opened up a couple more 14 facilities in Oklahoma and Shreveport, 15 Louisiana during the heydays in the '70s. And 16 eventually, they were down to just the Erie 17 facility in the '90s. 18 Q. Was it about 1931 when they first 19 started making boilers? 20 A. They purchased Baking House Corp. who 21 had already been making them for quite a while. 22 That's how they got into it. It was not their 23 original new design. They took over an 24 existing company and started adding to it.	24 1 scope of work was all it was about. 2 Q. And let's say from the 1950s through 3 the 1980s, would it be true that Riley Stoker 4 in addition to selling boilers, they would sell 5 auxiliary equipment by other third-party 6 companies to incorporate into their contract? 7 A. If it was required by contract, they 8 would obtain them from the experts because we 9 certainly weren't the expert, and they would 10 incorporate it into the package to the 11 customer. 12 Q. What do you mean by Riley wasn't an 13 expert? 14 A. We are not an expert at designing 15 valves, soot blowers, fans, auxiliary 16 equipment. That's a specialty onto itself. 17 Q. Would you consider Riley an expert in 18 designing boilers? 19 A. The ASME boiler code, yes. 20 Q. So just so the record is clear though, 21 you'd agree with me that Riley Stoker would be 22 an expert on the products that they designed 23 and manufactured and how they went together and 24 how they worked?
23 1 Q. Does Riley Stoker still make boilers 2 today? 3 A. Yes, if they could sell them, they 4 could. 5 Q. Okay. You mentioned, as you were 6 giving the description of the equipment, the 7 whole package. Are you referring to the 8 steam-generating unit where it's not just a 9 boiler, it's additional auxiliary equipment 10 that is supplied to, like, a powerhouse? 11 And I know you went into this before a 12 little bit, but can you explain to me what you 13 meant by whole package, how is that? 14 A. We were just selling the fuel-burning 15 stuff attached to the boiler. By adding the 16 boiler to it, we could then integrate the two 17 of them. It was still not the whole 18 steam-generating unit because there's a lot of 19 other stuff. 20 Q. Turbines? 21 A. That would be the whole powerhouse, 22 but there's the boiler island, turbine island, 23 auxiliaries to balance the plant, things like 24 that, but basically it was just expanding our	25 1 A. I'm struggling with it because we were 2 an expert on what we designed and manufactured. 3 Q. Okay. 4 A. And sent out there. A lot of 5 customers incorporate other components into 6 that to complete that work. We were not an 7 expert. We'd say this is what we need. We 8 want a black-and-white 4-inch square thing, and 9 they would design and give us state-of-the-art 10 4-inch thing that they wanted to give us, and 11 we would buy it on a competitive basis. 12 Q. Okay. But as you just said, the 13 products that Riley Stoker designed and 14 manufactured and put out there, they're an 15 expert in that, correct? 16 A. Yes, ASME boiler code, yes. 17 Q. Now, you and I know this already, but 18 just for the jury, can you just tell them what 19 a boiler is, what it does? 20 A. A boiler essentially is -- in the 21 simplest vernacular is a tea kettle where you 22 heat water and make steam. The steam is then 23 used for a variety of different purposes. 24 Q. All right. That's actually a good

26 1 description. Thank you. 2 How big, historically, were the 3 boilers that Riley Stoker manufactured? How 4 big were they? Can you give me a range? 5 MR. RADCLIFFE: I object to the 6 compound. 7 Q. Riley Stoker made boilers, yes? 8 A. Yes. 9 Q. Can you just give me a size range, 10 smallest to biggest? 11 A. They made small packaged boilers that 12 could be 12 feet wide -- you know, 12, 12, 12 13 might be one, a small packaged boiler. 14 Q. 12, 12, 12 is in feet? 15 A. Yes. The small boilers you would see 16 in a house is not something Riley made. They 17 did not do that. We also had very large 18 utility boilers that are in excess of 200 feet 19 high, and the dimensions are 80 feet deep, you 20 know, 40 or 50 feet wide, so very large. 21 Q. And I'm sorry, what kind of boiler did 22 you say that was? 23 A. Utility boilers. 24 Q. If you know, would that be the type of	28 1 there were several different sizes. 2 Q. You can give me the range, that's 3 fine. 4 A. There were -- the largest one was 5 something about 75 feet high, 37 feet deep and 6 31 feet wide. I think the smallest was 7 probably about 35 feet high, 32 deep, and 17 8 wide. 9 Q. All right. And those are industrial 10 boilers? 11 A. Yes. 12 Q. All right. Could you just walk the 13 jury through the basic components of a boiler. 14 I have a schematic of the one from Bethlehem 15 Steel if that would be helpful to you. It's up 16 to you. 17 A. Almost every boiler is different. 18 Q. Sure. 19 A. We can do a generic one. If you want 20 to use it, it would probably be helpful. 21 Q. Are there any components that are 22 consistent to all boilers? 23 A. Main steam drum. 24 Q. Okay.
27 1 boiler that Mr. Tredinnick would work on? 2 MR. RADCLIFFE: Objection. Calls for 3 speculation. 4 A. I don't know. 5 Q. Well, you read his testimony, correct? 6 A. Yes, I did. 7 Q. And you've looked through the 8 contracts? 9 A. Yes. 10 Q. Are those utility boilers? 11 A. No, they were not utility boilers. 12 Q. And maybe we're mincing words. A 13 utility boiler, is that something that would 14 be, like, at a power plant? 15 A. Like New England Power, Niagara 16 Mohawk, that would be power. 17 Q. The contracts that you reviewed 18 regarding the boilers Mr. Tredinnick worked on, 19 how would you categorize them? What would you 20 call them? 21 A. Industrial boilers. 22 Q. Okay. And can you give us an idea of 23 the size of those boilers? 24 A. They were in the range of -- well,	29 1 A. Headers. 2 Q. Okay. 3 A. You have to have water walls. Some 4 boilers have two drums. Some have three. Some 5 of the old ones had three drums. Some had 6 boiler banks, which is another compilation of 7 tubes. Some have economizers, reheaters, 8 superheaters. As far as the basic pressure 9 parts and components themselves. 10 Q. And you mentioned before a tea kettle 11 or tea pot. Boilers get hot, correct, when you 12 operate them? 13 A. Boilers have to be hot in order to 14 operate. 15 Q. Right. How else are you going to 16 create steam, correct? 17 A. They have to be hot. 18 Q. Riley Stoker incorporates insulation 19 in its boilers, true? 20 MR. RADCLIFFE: Objection to form. 21 A. Riley Stoker by design does not 22 incorporate -- we don't make the insulation. 23 Q. I'm not asking if you made it. I'm 24 just saying it's part of the boiler that they

30 1 manufacture and sell; is it not? 2 A. ASME code requires the boilers to do 3 two things: One, you have to have insulation 4 to keep the steam in the boiler to make the 5 boiler perform; and secondly, you have to have 6 it for personal protection on the outside. 7 Q. That's part of my next question. 8 Basically, it's a matter of efficiency and 9 safety, correct? 10 A. Always safety, yes. 11 Q. All right. Is safety something that 12 Riley Stoker is always concerned with, to your 13 knowledge? 14 A. Every day. 15 Q. Okay. 16 A. Boilers, by nature, are very 17 sophisticated pieces of equipment that operate 18 at high temp., high pressure and if you don't 19 design them to code, manufacture them, erect 20 them, and maintain them properly, they're 21 dangerous. 22 Q. You said they're highly technical, so 23 not just anybody can work on a boiler, correct? 24 A. I was talking about the design aspect,	32 1 Riley Stoker incorporated asbestos-containing 2 products in their boilers, do you? 3 MR. RADCLIFFE: Object to the form. 4 A. Riley Stoker in that period of time 5 sometime provided insulation from third parties 6 on their boiler that might have contained some 7 asbestos prior to OSHA. 8 Q. Okay. Did they sell that material to 9 the customers? 10 A. No. 11 Q. They did not? 12 A. No. They provided it as part of the 13 contract to a customer if required by the 14 customer. 15 Q. So it's only if the customer required 16 it? 17 A. Yes. 18 Q. Okay. And any other 19 asbestos-containing component parts to the 20 boilers, the Riley Stoker boilers? 21 MR. RADCLIFFE: Object to the form. 22 A. The boilers sometimes had gaskets that 23 might or might not have had asbestos in them. 24 Q. Okay.
31 1 but even working on the boiler, you would have 2 to be trained. 3 Q. Somebody like a boilermaker? 4 A. A boilermaker would have to be trained 5 in the different skills that are required. 6 Q. Now, that insulation that's 7 incorporated into the Riley boiler is 8 high-temperature insulation, isn't it? 9 A. Not necessarily. 10 Q. Okay. Is high-temperature insulation 11 used in Riley Stoker boilers? 12 MR. RADCLIFFE: Object to the form. 13 A. High-temperature insulation is used in 14 the appropriate places -- 15 Q. Okay. 16 A. -- on the boilers. 17 Q. Where would those places be? 18 A. The boiler would have to be a 19 higher-temperature boiler. 20 Q. Would an industrial boiler be a 21 high-temp. boiler? 22 A. Some might be. 23 Q. Okay. Let me ask you this: You don't 24 dispute that between 1931 and the 1980s that	33 1 A. There was, for expansion joints, in 2 the refractory that sometimes used asbestos 3 rope prior to it being eliminated. There has 4 been times they used asbestos millboard. 5 Q. All right. Where would the asbestos 6 gaskets be used -- 7 MR. RADCLIFFE: Object to the form. 8 Q. -- on the boiler? 9 A. Well, the asbestos-containing gaskets? 10 Q. Yes. 11 A. It depends on the temperature of the 12 boiler, and they might have used a stainless 13 steel gasket for handholes and manhole covers. 14 Q. Now, a stainless steel gasket, is that 15 the same as a Flexitallic gasket? 16 A. No, it's actually pure stainless. 17 Q. Okay. I'm sorry, I didn't mean to 18 interrupt you. 19 A. If it was low temperature, low 20 pressure, it might have been a woven braided 21 gasket, so there was a variety of gaskets that 22 were used depending on the temperature, 23 pressure, and location on the boiler. 24 Q. *Okay. And it's true that between

34 1 1931 and 1972 that Riley Stoker did incorporate 2 high-temperature asbestos-containing insulation 3 on some of its boilers? 4 MR. RADCLIFFE: Objection to the form. 5 A. Can you say that again, please? 6 MR. VONA: Can you read it back, 7 please? 8 (*Testimony read back by 9 reporter.) 10 MR. RADCLIFFE: Same objection. 11 A. On some of the boilers prior to OSHA, 12 some of the insulation on the boilers might 13 have contained asbestos. 14 Q. Okay. And specifically, though, you 15 know what I mean when I say high-temp. 16 insulation; do you not? 17 A. Yes. 18 Q. Okay. Did Riley Stoker between 1931 19 and 1972 at times incorporate 20 asbestos-containing high-temperature block 21 insulation in their boilers? 22 MR. RADCLIFFE: Same objection. 23 A. I don't know what ones had asbestos in 24 them or not. There was high-temp. block	36 1 asbestos was used in any of the insulation that 2 was incorporated in their boilers? 3 A. The Riley Stoker employees did not 4 generally know what was in the insulation. 5 Q. Okay. You said they did not generally 6 know. Did they know something? 7 A. I don't know. I did not talk to every 8 one of them. 9 Q. It has been your testimony, correct, 10 repeatedly, based on your knowledge and people 11 you've talked to, that prior to 1972 and OSHA, 12 Riley Stoker had no idea that asbestos was used 13 in any of the insulation materials incorporated 14 in their boilers; is that true? 15 MR. RADCLIFFE: Objection to the form. 16 Q. You can answer. 17 A. I don't think I stated it exactly that 18 way because I don't know what they knew about 19 different materials. 20 Q. Well, I'm not asking you about 21 everybody that was at Riley Stoker. You're 22 appearing today on behalf of Riley Stoker. 23 You're the person that Riley Stoker has 24 designated to appear on their behalf to answer
35 1 insulation that didn't have asbestos. 2 Q. You're probably not hearing my 3 question. I'm just asking you if they did in 4 some of the boilers? 5 A. We incorporated high-temp. block 6 insulation. We didn't know what was in the 7 insulation. That wasn't our shtick. 8 Q. So are you telling this jury Riley 9 Stoker had no idea what materials were in the 10 insulation they were using? 11 MR. RADCLIFFE: Object to the form. 12 Q. Well, did they know? 13 A. The people I've talked to over the 14 years, they did not know what was in the 15 insulation during that period of time. 16 Q. All right. And when did they find 17 out -- when did Riley Stoker find out, to the 18 best of your knowledge, that there was asbestos 19 in some of the high-temp. insulation? 20 A. The information came out to Riley with 21 the advent of OSHA in 1972. 22 Q. Okay. So it's your testimony to this 23 jury that prior to 1972, based on your 24 knowledge, Riley Stoker did not know that	37 1 these questions. 2 I just want to know what you know, 3 your personal knowledge, based on people you've 4 talked to, documents you've looked at, what do 5 you know about it? 6 A. I don't know what -- we were not aware 7 of potential hazards of the insulation we were 8 using. 9 Q. I'm not asking about the hazards. I 10 don't mean to cut you off. I'm asking about 11 the knowledge -- let me just show you your 12 prior testimony. That might clear it up. 13 This is from your deposition back in 14 May of 2009, a couple months ago. In fact, we 15 might as well have it marked as Smith 2. 16 (Exhibit 2, Deposition dated May 17 13, 2009, so marked.) 18 Q. Sir, I'd like to turn your attention 19 to page 98 of that deposition. 20 MR. RADCLIFFE: Can I have a 21 continuing objection to this procedure? I 22 don't think it's a proper -- 23 MR. VONA: To use his prior 24 deposition?

38 1 MR. RADCLIFFE: Yes. 2 MR. VONA: Sure, you can have an 3 objection to that. 4 MR. RADCLIFFE: Thanks. 5 Q. Are you looking at page 98, sir? 6 A. Yes. 7 Q. Actually, first of all, why don't we 8 go back to the cover. Okay? 9 A. Okay. 10 Q. And the case is titled Susan K. Lenz 11 versus Allis-Chalmers Corporation Products 12 Liability, et al. Do you see that, sir? 13 A. Yes. 14 Q. Do you recall giving this deposition 15 in May 2009? 16 A. Yes. 17 Q. Okay. And when you answered the 18 questions in that deposition, did you tell the 19 truth to the best of your ability? 20 A. Yes. 21 Q. You were under oath, correct? 22 A. Yes, I was. 23 Q. All right. If you could turn back to 24 page 98.	40 1 MR. VONA: Next time I prefer we 2 probably should go off the record. You know 3 speaking objections are not allowed in New 4 York. Also, I'd like to know who exactly I'm 5 dealing with here. Am I dealing with 6 Mr. Radcliffe or am I dealing with you? 7 MR. WHITCOMB: You're dealing with 8 Mr. Radcliffe, but I am counsel of record and I 9 am the one who set the parameters of the 10 deposition. I have the knowledge relating to 11 the case management order. And I'm -- believe 12 me, if you want to get the judge on the line to 13 decide whether Mr. Radcliffe is defending or 14 I'm defending, that's fine, Keith, and you can 15 certainly edit the tape at any time, but I'm 16 certainly going to object if I think we're 17 going to sit here and regurgitate his testimony 18 from Lenz because that's just not going to 19 happen. 20 MR. VONA: I'm not here to regurgitate 21 his testimony, Jim. I'm here -- if he's not 22 going to concede to a point that he's made in 23 the past which is completely relevant to this 24 case --
39 1 A. Yes. 2 Q. And smack in the middle of 98 the 3 question says, "Okay. Now, it's your testimony 4 in 2006 was that prior to OSHA, Riley Stoker 5 did not have awareness there was asbestos 6 insulation?" And you answered "Yes." Is that 7 true? 8 A. Yes, that's what I said. 9 Q. You're not here to change that 10 testimony, are you? 11 A. No. 12 MR. WHITCOMB: I don't mean to step 13 out of line, but to some extent, we are not 14 here to go over his prior testimony and I 15 haven't jumped in because I'm allowing a little 16 leeway because I know you want to get some 17 background, but if we're going to start going 18 over the corporate knowledge, Keith, we're 19 going to stop and we're going to call the 20 judge, okay, because the Eighth Judicial 21 District case management order, as well as the 22 letter I sent you in this case, we're here to 23 talk about the specific sites, so let's get to 24 the specific sites.	41 1 MR. WHITCOMB: It is -- 2 MR. VONA: Let me finish. It allows 3 us to put the case in context for the jury. I 4 think it's perfectly okay to do that, and I'm 5 impeaching him on his testimony, that's all. 6 MR. RADCLIFFE: I don't think you 7 impeached him, but go ahead, let's continue. 8 MR. VONA: That's fine. Are we all 9 set? 10 MR. RADCLIFFE: Let's keep going. 11 Q. So after all that, sir, it is your 12 testimony that prior to 1972, based on your 13 knowledge, Riley Stoker did not know there was 14 asbestos in the insulation they incorporated in 15 their boilers, true? 16 MR. RADCLIFFE: Object to the form. 17 A. This question was OSHA -- Riley Stoker 18 did not have any awareness there was asbestos 19 insulation. That was the question I was 20 answering, not the one you just asked. 21 Q. What was the difference? 22 A. You stated insulation containing 23 asbestos. This was asbestos insulation. We 24 never used the term asbestos insulation

42 1 anywhere. 2 Q. I'm just asking you did Riley Stoker, 3 prior to 1972, did they know there was asbestos 4 in the insulation they used? 5 A. That's a different question than this. 6 Q. Did they know there was asbestos 7 insulation? 8 A. I don't think so. 9 Q. Did they know that there was asbestos 10 in the insulation that they used? I'm asking 11 you that question today then. 12 A. I don't think so, no. 13 Q. You don't think they did; you're not 14 sure? 15 MR. RADCLIFFE: It's asked and 16 answered. Now you're arguing. 17 A. The follow-up is exactly where I'm 18 going. If you go to three lines down. 19 Q. That's fine, sir. I'm asking the 20 questions, and I would like an answer to that 21 question. 22 Sitting here today, putting this 23 aside, did Riley Stoker prior to 1972 know that 24 there was asbestos in the insulation they	44 1 You don't have the time, first of all. 2 When you're doing boilers, you're 3 buying a whole bunch of different components 4 from third parties. You're not going to be an 5 expert in every one. You depend on them to be 6 the experts and give you the proper product. 7 Q. Okay. You refer to going down and 8 buying a tire, and that's something that you or 9 I might go do. We're not experts in cars, are 10 we? 11 A. I'm not. 12 Q. I'm not either. But Riley Stoker is 13 an expert in boilers, correct? 14 A. In the components they design and 15 manufacture. 16 Q. Okay. Don't you agree that they 17 should possibly research what materials they're 18 using in their boilers that they're selling to 19 customers? 20 MR. RADCLIFFE: Object to the form. 21 Q. You don't agree with that? 22 A. The materials were specified with the 23 ASTM standards and this is what we said, we 24 want material to these standards. That was our
43 1 incorporated in their boilers? 2 A. Not to my knowledge. 3 MR. RADCLIFFE: Objection. Asked and 4 answered. 5 Q. That's all I'm looking for. Thank 6 you. 7 Mr. Smith, wouldn't you agree that a 8 responsible company, they should know what 9 component parts they incorporate in their 10 products? 11 MR. RADCLIFFE: Object to the form. 12 A. We -- 13 Q. Yes or no? 14 MR. RADCLIFFE: Answer it the best 15 that you can, Mr. Smith. 16 A. We would have knowledge of what we 17 made what was in the components. If we bought 18 something from outside, we relied on those 19 experts to give us the product that would do 20 the job. We didn't go into them and analyze 21 what they had in the products. 22 It's like me going down and buying a 23 new tire and wanting to know from Michelin what 24 did you put in this tire. You don't do that.	45 1 responsibility. That's what we did. 2 Q. Okay. And you testified earlier that 3 safety was always a priority with Riley; is 4 that right? 5 A. Absolutely. 6 Q. Wouldn't a responsible company who's 7 trying to be safe test their products? 8 MR. RADCLIFFE: Object to the form. 9 A. Our products were tested. The boilers 10 were tested. 11 Q. Okay. Did you ever test any of the 12 component parts in the boilers? 13 A. Not to my knowledge. 14 Q. Now, you mentioned contracts earlier. 15 And you'd agree with me, sir, that Riley 16 Stoker, under certain contracts, were 17 responsible to provide and install 18 high-temperature insulation on their boilers, 19 true? 20 A. On certain contracts, entirely 21 possible, yes. 22 Q. So it's yes? 23 A. Yes. 24 Q. Okay. And this occurred prior to

46 1 1972? 2 A. Installing high-temp. insulation? 3 Q. Yes. 4 A. Yes. 5 Q. Okay. Now, in the case where Riley 6 Stoker is responsible under the contract for 7 this insulation, there would be one or two ways 8 how they'd go about providing it, correct? The 9 first would be to either hire an insulation 10 contractor to install it, or they would go to 11 the union hall directly and hire union 12 insulators to do that, correct? 13 A. That is two of the installation 14 possibilities, yes. 15 Q. That's what I'm asking you. Now, in 16 either case Riley Stoker is using insulators 17 from the Asbestos Workers Union, correct? 18 A. I don't know if it's called the 19 asbestos -- we used the insulators. That's 20 what we call the insulators. 21 Q. Sir, you do recall back in May that 22 you did refer to them as the Asbestos Workers 23 Union, correct? 24 A. Yes, I did.	48 1 block or mineral wool or whatever the 2 configuration was. It's called a generic 3 example of what we wanted. And they would then 4 go out for competitive bids for the material. 5 That was one way. 6 The other way was if we had the 7 material and labor and there was never -- every 8 contract was different for the scope, every 9 single one. If labor was included, another way 10 we might do it is to go out and solicit 11 insulation companies to supply and erect the 12 insulation. 13 Q. All right. If it's under the contract 14 that Riley is providing the insulation, they're 15 obtaining that and having the asbestos workers 16 install it, correct? 17 A. That was one version. 18 Q. Yes. 19 A. The other one was where they provide 20 it themselves. 21 Q. Sure. I understand that. That's 22 fine. 23 A. Okay. 24 Q. Now, I want to get into some of the
47 1 Q. As far as you know, they were always 2 called the Asbestos Workers Union, correct? 3 A. There was a context there where the 4 asbestos workers came out. I always knew they 5 were called the asbestos workers. They were 6 the insulators. 7 Q. Right. And I mean, do you think that 8 maybe Riley Stoker might have suspected that 9 asbestos insulation was being used by these 10 contractors? 11 MR. RADCLIFFE: Object to the form. 12 A. I don't know. 13 Q. Well, Riley Stoker provided that 14 material for them, didn't they? 15 A. No, the third parties -- well, once 16 again, there's two different ways of doing 17 that. 18 Q. Yes. 19 A. If it was required in our contract -- 20 Q. That's what I'm speaking to. I'm 21 sorry. 22 A. There was two ways of doing it. One, 23 we could go out to -- we could define what we 24 wanted by the generic. We want high-temp.	49 1 documents specific to this case. And you 2 reviewed those documents, you already testified 3 to that; is that correct? Do you know that 4 they were Bates Tredinnick, basically, 1 5 through 1542? Do you know that? 6 A. I don't know the range. 7 Q. It's about 1500 pages or so? 8 A. They're sitting right there. 9 Q. Did you look through all of them? 10 A. Yes, I did. 11 Q. Okay. Me, too. 12 MR. VONA: Mr. Radcliffe, can I have a 13 stipulation that those documents are authentic 14 business records that were provided to my 15 office, or Mr. Whitcomb? 16 MR. RADCLIFFE: Well, they're 17 certainly authentic. 18 MR. VONA: Are they business records? 19 MR. RADCLIFFE: They were created by 20 Riley Stoker in the ordinary course of its 21 business. 22 MR. VONA: So they're business 23 records? 24 MR. RADCLIFFE: They were factually

50 1 created by Riley Stoker in the ordinary course 2 of its business. If you're asking me to 3 stipulate that they're -- in exception to the 4 rule against hearsay, that's a legal 5 determination. 6 MR. VONA: You'd stipulate that 7 they're admissible at the time of trial, 8 wouldn't you? 9 MR. RADCLIFFE: No, I'll stipulate 10 that factually they were created by Riley 11 Stoker in its ordinary course of business and 12 maintained by Riley Stoker. 13 Q. Okay. The first document I want you 14 to take a look at is -- 15 MR. VONA: We'll mark this as Smith 16 No. 3. 17 (Exhibit 3, Document dated 18 6/23/59, so marked.) 19 Q. Okay. Do you have Smith No. 3? 20 A. Yes. 21 Q. Do you recognize that document? 22 A. Yes. 23 Q. That's something you looked at? 24 A. Yes.	52 1 Q. Does the B stand for boiler, do you 2 know? 3 A. I believe the designation was 4 Badenhause. <i>[sic]</i> 5 Q. Okay. And the name of the job and 6 location is Bethlehem Steel Corp., Buffalo, New 7 York, correct? 8 A. Yes, Lackawanna plant. 9 Q. And under equipment furnished, I see 10 boiler -- well, basically, let me back up. 11 There's some letter designations, C and P, 12 correct? 13 A. Yes. 14 Q. C means contractor, true? 15 A. Yes. 16 Q. And contractor in this case would be 17 Riley Stoker? 18 A. Yes. 19 Q. And P would be purchaser, meaning Beth 20 Steel? 21 A. Or their designee contractor. 22 Q. Okay. Now, I won't go through the 23 whole list of everything that's provided here 24 by Riley Stoker, but I do want to point out
51 1 Q. You looked at that? 2 A. Yes. 3 Q. And basically, is that like the cover 4 page to the contract for Bethlehem Steel from 5 1959? 6 A. It's the first page of the contract 7 summary, which is basically the summary of all 8 the interchanges between Bethlehem Steel and 9 Riley Stoker. 10 Q. Okay. And just preliminarily, I want 11 to try to keep this simple, but you've 12 testified about this before, Riley Stoker has a 13 number of documents that they maintain with 14 regard to their boilers, true? 15 A. Yes. 16 Q. Okay. But those documents don't 17 encompass all the documents that were created 18 for each of those boilers as well, correct? 19 Sometimes there's stuff that's not in there 20 that's discarded later on, correct? 21 A. Yes. 22 Q. All right. Now, this is dated June 23 23, 1959, Contract No. B-2430, correct? 24 A. Yes.	53 1 they did supply the insulation on this 2 contract, correct? 3 A. Yes. 4 Q. All right. And they supplied the 5 superheater, the gas ducts and air ducts, too; 6 is that true? 7 A. Yes. 8 Q. Okay. Are the superheater, gas ducts 9 and air ducts, are those insulated? 10 A. The superheater, no. 11 Q. Any part of the superheater insulated? 12 A. The superheater header extended 13 outside the boiler. You might have -- the end 14 of a superheater header might have to be 15 insulated, but the superheater by definition is 16 a pressure part that needs to be right inside 17 the boiler to pick up the steam. 18 Q. So a certain part of the superheater 19 would be insulated though, true? 20 MR. RADCLIFFE: Object to the form. 21 A. If the header was outside, like I 22 said. 23 Q. Gas ducts and air ducts, would they be 24 insulated?

54 1 A. Gas ducts, yes, air ducts, maybe. 2 Q. Okay. What would determine whether 3 they were or weren't? 4 A. Temperature. 5 Q. And when they are insulated, are they 6 insulated with high-temperature block? 7 A. It depends on the temperature. 8 Q. Okay. With regard to this contract, 9 you've looked through it, correct? 10 A. Oh, yes. 11 Q. All right. These gas ducts and air 12 ducts, were they insulated with high-temp. 13 block? 14 A. That, I don't know. 15 Q. Okay. Even after looking through it, 16 you don't know? 17 A. No. 18 Q. You don't have to look. We'll get to 19 it. Also just real quick on the bottom -- it's 20 still in the middle on that equipment furnished 21 on the far right-hand column at the bottom, it 22 says labor and S-U-P-T. Riley obviously 23 provided the labor on this? 24 A. Yes.	56 1 MR. VONA: Okay. And I apologize, a 2 lot of these were cut off, and I noticed that 3 ahead of time, but it was like a day before. 4 MR. RADCLIFFE: That's fine. I just 5 want to make sure we know what we're talking 6 about. 7 MR. VONA: Feel free to let us know. 8 Q. Let me show you -- or mark 4. 9 (Exhibit 4, Document dated 10 12/11/59, so marked.) 11 Q. Mr. Smith, I direct your attention to 12 Exhibit No. 4, and this is also a document from 13 that contract from Beth Steel, correct? Well, 14 it says up at the top "Beth Steel Corporation." 15 Do you see that? 16 A. The contract number is on there, 2430. 17 Q. Right. I just want to direct your 18 attention real quick to the first -- well, 19 first of all, what is this document? 20 A. This is a contract requisition form. 21 Q. Okay. And on the first line I see 22 "Elliptical manhole gasket Flexitallic, 23 quantity 20." Is that right? 24 A. Yes.
55 1 Q. And is that superintendent? 2 A. Yes. 3 Q. So somebody is supervising the 4 erection of this boiler? 5 A. Yes. 6 Q. And that's a person who works for 7 Riley Stoker? 8 A. Yes. 9 Q. Okay. 10 A. Well, there can be times -- it's not 11 quite that simple because it may be that in 12 certain areas we subbed out. We're responsible 13 for it, but we subbed out. 14 Q. So the superintendent is still being 15 paid by Riley Stoker, right? He isn't doing it 16 for free? 17 A. That's the point. 18 Q. But if it says C for contractor, 19 meaning Riley Stoker, that means Riley Stoker 20 provided that person, correct? 21 A. One way or the other. 22 Q. Okay. 23 MR. RADCLIFFE: I believe that 24 document is Bates labeled 693.	57 1 Q. All right. And you've testified 2 before Flexitallic gaskets were 3 asbestos-containing, true? 4 A. I believe they were at that time. 5 Q. My question is this number 20, would 6 those be all used on the original installation, 7 or were some of those used for replacement? Do 8 you understand? 9 A. They would be used on the original 10 installation. 11 Q. And if we look at the top, it says 12 lower side WW. Is that water wall? Does that 13 stand for water wall? 14 A. Lower side water wall header. 15 Q. So just on the lower side water wall 16 header, 20 Flexitallic asbestos-containing 17 gaskets would be used in the initial 18 installation? 19 A. Yes. 20 Q. Now, let me ask you this: Did Riley 21 Stoker ever provide or sell or supply 22 additional asbestos-containing gaskets for 23 replacement use? 24 A. Very rarely. Usually the customers

58 1 would get them cheaper somewhere else because 2 they came to us. I ran the parts group. We 3 had to go out and get them from somewhere else 4 because we didn't make them. 5 Q. All right. 6 A. So often the customers would go get 7 their own. 8 Q. But at times would they do that, 9 supply replacement asbestos gaskets? 10 MR. RADCLIFFE: Object to the form. 11 A. (Nodding.) 12 Q. Let me strike that question. I'll 13 strike the question. 14 What I'm asking you, sir, you've 15 established these gaskets were from the initial 16 installation, correct? 17 A. Yes. 18 Q. What I'm asking is would Riley Stoker 19 ever provide additional asbestos-containing 20 gaskets for repair work or replacement work for 21 later on? Did they ever do that? 22 MR. RADCLIFFE: Objection to form. 23 A. I don't know. 24 Q. You don't know if they did?	60 1 Q. So now you know that at some point in 2 time Riley Stoker did, in fact, sell 3 replacement asbestos gaskets? 4 A. No. 5 Q. No? 6 MR. RADCLIFFE: Sorry, I want to 7 object to that prior question. That was 8 argumentative. Now go ahead. 9 A. This is part of the initial 10 installation. 11 Q. You'd agree with me, though, sir, that 12 duplicate gaskets would be something that's 13 used for repair and replacement? 14 A. No. 15 Q. What would they be used for? 16 A. After you erect the boiler, it has to 17 be tested, and certain areas have to be opened. 18 Q. Okay. 19 A. And this is after you bring it up to 20 full pressure, so you cannot reuse the gaskets. 21 Q. Understood. 22 A. So after you clean the boiler down, 23 test it, you've got to put the boiler back 24 together before it can be started up, and this
59 1 A. No. Running the parts group, that was 2 something we never sold to customers. 3 Q. Okay. Now, if I asked you -- let me 4 skip that one. 5 (Exhibit 5, Document dated 3/60, 6 so marked.) 7 Q. Again, this is for the Beth Steel 8 contract, correct? 9 A. Yes. 10 Q. And it's titled duplicate gaskets, 11 true? 12 A. Yes. 13 Q. And one number is a little difficult 14 to read, but the one below it says 16, and 15 these are Flexitallic gaskets, correct? 16 A. Yes. 17 Q. And we've already agreed they're 18 asbestos-containing? 19 A. At this point in time, this period of 20 time, they should contain it. 21 Q. You can't dispute, it says duplicate 22 gaskets. Those are replacement gaskets, 23 correct? 24 A. Yes.	61 1 is what these gaskets are used for. 2 Q. So they're used to replace another 3 gasket, true? 4 A. During the initial erection phase. 5 Q. Okay. Did Riley do that on all its 6 boiler contracts? 7 A. Do what? 8 Q. Provide duplicate gaskets for 9 replacement after the initial fire-up? 10 MR. RADCLIFFE: Object to the form. 11 A. Well, if they were required. Some of 12 the boilers, all we ever had to replace was the 13 drum gaskets. Some boilers later on didn't 14 have handholes in the headers. You'd have 15 blowdown valves or something. I'm not sure. 16 (Exhibit 6, Document titled 17 Contract Material Requisition, so 18 marked.) 19 Q. Let me know when you're ready. 20 A. I'm ready. 21 Q. This is, again, from the Beth Steel 22 contract, true? 23 A. Yes. 24 Q. And you mentioned this before that

62 1 Riley sometimes incorporated asbestos millboard 2 in their boilers, correct? 3 A. Yes. 4 Q. And this, in fact, indicates that this 5 boiler had asbestos millboard, true? 6 A. Yes. 7 Q. Can you tell me what that would be 8 used for? 9 A. Normally, this is used in someplace 10 where they have wide spacing on the tubes and 11 they need to create a basis for the refractory 12 or insulation coming out. This is a gas and 13 oil-fired unit, so somewhere in the 14 installation it's used against boiler tubes 15 normally. 16 Q. Okay. Would that be interior to the 17 boiler? 18 A. Normally exterior. 19 Q. So where the tubes are coming out of 20 the boiler? I don't really know, that's why 21 I'm asking. 22 A. It would be external to the tubes of 23 the boiler. 24 Q. But it's on the outside of the boiler?	64 1 material, true? 2 A. Yes. 3 Q. All right. 4 (Exhibit 7, Document titled 5 Contract Material Requisition, so 6 marked.) 7 (Exhibit 8, Document titled 8 Contract Material Requisition, so 9 marked.) 10 Q. Let me know when you're all set. 11 A. I'm all set. 12 Q. You've had a chance to look at Smith 7 13 and 8, true? 14 A. Yes. 15 Q. They're both documents from the Beth 16 Steel contract; you'd agree with that? 17 A. Yes. 18 Q. All right. And they're titled -- 7 is 19 titled "Applied & Setting Insulation," and 8 is 20 titled "Applied Insulation," true? 21 A. Yes. 22 Q. And both of these documents indicate 23 certain quantities of Thermotex-B emulsion 24 weatherproofing; do you see that?
63 1 A. Yes. 2 Q. All right. I'm not done with that one 3 yet. If you could take a look at the bottom on 4 the left-hand corner there, I see Philip Carey. 5 Do you see that? 6 A. Yes. 7 Q. Okay. First of all, what is that area 8 used for on these documents, if you know? 9 A. That area, I've seen it used to 10 designate where the material was purchased. 11 It's not always filled in. Sometimes it is. 12 Q. Okay. So would it be reasonable to 13 assume that in this instance with regard to 14 this document that this asbestos millboard came 15 from Philip Carey? 16 A. That's a reasonable consensus. 17 Q. Do you know who Philip Carey was? 18 A. I've heard the name. I don't know 19 them. 20 Q. Other than -- well, you'd agree with 21 me they're a supplier of material at least, 22 right, obviously? 23 A. They have to be, yes. 24 Q. In this case they supplied asbestos	65 1 A. Yes. 2 Q. In fact, Smith 7, the quantity is 3 32,000 pounds, true? 4 A. Yes. 5 Q. And I'll take a stab at No. 8 looks to 6 me to be 2,000 pounds; does that look about 7 right? 8 A. It's pretty weak, but it's around 9 that. 10 Q. Well, we'll just go with the 32,000. 11 First of all, where would this material be used 12 on this boiler? 13 A. Actually, this material was not used 14 on this boiler. 15 Q. How do you know that? 16 A. There's another one of these for this 17 project. The owner changed their mind after 18 this was done and shipped to this jobsite, and 19 this was to be on the external of all the 20 insulation on the boiler and the ductwork, and 21 they said they wanted the entire boiler covered 22 in 24-gauge steel lagging actually made from 23 Bethlehem Steel. And this material was then 24 disposed of at the jobsite.

66 1 Q. What do you mean "disposed of"? 2 A. They got rid of it. It was already at 3 the jobsite when they changed their mind. 4 Q. Did they throw it out? 5 A. Yes. 6 Q. Who ate the cost on that, if you know, 7 from looking at the documents? 8 A. Bethlehem Steel. 9 Q. Do you have any of those documents 10 handy that I could take a look at that you're 11 basing this opinion on? 12 A. Yes. Are you in Bates stamps? 13 Q. I could look them up. 14 MR. WHITCOMB: Do you want to go off 15 the record? 16 THE VIDEOGRAPHER: The time is 11:05. 17 We're off the record. 18 (Off the record, 11:05 a.m.) 19 (Back on the record, 11:12 a.m.) 20 THE VIDEOGRAPHER: Back on the record. 21 The time is 11:12. 22 Q. Mr. Smith, are you ready to continue? 23 A. Yes. 24 Q. We took a little short break. Before	68 1 2-inch gate valves, correct? 2 A. Yes. 3 Q. And if we look down at the bottom on 4 the left where you said -- where it indicates 5 supplier, it says Crane Co., true? 6 A. It says Crane Co. 7 Q. Okay. Did Riley Stoker in its 8 history, say, from 1931 to 1980, did they 9 supply Crane valves on some of their jobs? 10 A. Well, we have a requisition here they 11 did. 12 Q. You'd agree with that then? 13 A. We bought them here. 14 Q. Do you know if any asbestos-containing 15 components were used in those valves? 16 A. I do not, no. 17 Q. Now, just generally, I want to ask you 18 a question, I guess, as an engineer. Are you 19 familiar with the 432 quick opening 2-inch gate 20 valve? Do you know what that would be used for 21 on a boiler? 22 A. I don't know. 23 Q. You don't know if it would be 24 insulated or not?
67 1 we went off, I was asking you some questions 2 about Thermotex-B. Do you know what that 3 material is? 4 A. It's a coating that's put on the 5 outside of the insulation in some applications. 6 Q. Okay. Did Riley Stoker use 7 Thermotex-B at any point to your knowledge? 8 A. Normally, no. It was a casing or 9 lagging outside. In this case it was part of 10 the original contract. 11 Q. Did they ever use it, do you know? If 12 you know? 13 A. I don't know for sure. 14 Q. Do you know if it was 15 asbestos-containing? 16 A. I do not know. 17 (Exhibit 9, Document titled 18 Contract Material Requisition, so 19 marked.) 20 Q. Let me know when you're set. 21 A. Okay. 22 Q. And again, this is the Beth Steel 23 contract document, and this requisition 24 indicates six Crane No. 432 quick opening	69 1 A. I do not know. 2 Q. Could it be insulated possibly? 3 A. A valve could be insulated. 4 Q. Some are, some aren't, right? 5 A. Yes. 6 (Exhibit 10, Document dated 7 6/23/59, so marked.) 8 Q. Now, this is also from the contract. 9 We see the contract number at the top. It's 10 dated 1959, true? 11 A. Yes. 12 Q. It's the B-2430, that's the Bethlehem 13 Steel contract? 14 A. That's correct. 15 Q. Basically, just tell us what this 16 document is. 17 A. This was part of the contract summary 18 pages. 19 Q. Okay. Go ahead. 20 A. Which listed some components for the 21 insulation materials for certain specific 22 services. 23 Q. This is telling us what areas are to 24 be insulated; would you agree with that? Or

18 (Pages 66 to 69)

70 1 maybe not all of them. Let me strike that 2 question. 3 This document is telling us, though, 4 certain areas that are to be insulated; is that 5 true, right? 6 A. Yes. 7 Q. Okay. And if we look, it says, 8 "Contractor shall furnish for the unit 9 insulation materials for the following surfaces 10 described below," and I won't go through all of 11 them, but I'd like to point out, it does say 12 "exposed superheater ends and crossover," 13 correct? 14 A. Yes. 15 Q. And "water wall feed pipes"? 16 A. Yes. 17 Q. And it also indicates hot air duct and 18 gas ducts, correct? 19 A. Yes. 20 Q. All right. And if you skip down -- 21 just skip that next paragraph, the next one 22 says, "Insulation for superheater header shall 23 consist of 3 1/2-inch insulation block, a coat 24 of insulating cement, and two coats of mastic	72 1 A. Yes. 2 Q. And then it has an A next to it? 3 A. Right. 4 Q. And then B is 4,060 of 2-inch thick 5 high-temp. block? 6 A. Yes. 7 Q. And then C is 2,496 square feet with 8 3-inch high-temp. block with a C next to it; I 9 read that right? 10 A. Yes. 11 Q. This is the insulation that's being 12 supplied for applied insulation? 13 A. For certain specific components. 14 Q. This is something that Riley Stoker 15 would have supplied for this job? 16 A. Yes. 17 Q. Now, could this have possibly 18 contained asbestos, do you know? 19 MR. RADCLIFFE: Objection. Calls for 20 speculation. 21 MR. VONA: That's a fair objection. 22 I'm sorry. 23 Q. Do you know if this insulation 24 contained asbestos?
71 1 covering"; is that true? I read that right? 2 A. That's what it says. 3 Q. And do you know one way or another 4 whether that material would be 5 asbestos-containing on this job? 6 A. Not based on this, no. 7 Q. Okay. 8 (Exhibit 11, Document titled 9 Contract Material Requisition, so 10 marked.) 11 Q. And we're marking Smith No. 11. I'd 12 ask you to take a look at that. Let me know 13 when you're all set. 14 A. Okay. 15 Q. And again, this is for the Bethlehem 16 Steel job, and at the top it says applied 17 insulation, correct? 18 A. Yes. 19 Q. And then it reads, "The following 20 insulation material," and it gives quantities 21 and sizes of high-temp. block insulation; you'd 22 agree with me, true? I'll go through it. The 23 first line says 3,384 square feet, 1 1/2-inch 24 thick high-temp. block; do you see that?	73 1 A. I reviewed this one. It looks like 2 the supply was BEH, which is a Keene company, 3 and I reviewed their documents from prior 4 interrogatories, and they did not list 5 high-temp. block as asbestos-containing. So 6 based on that, I'm saying no, I don't think it 7 did contain asbestos. 8 Q. Okay. And you're referring to your 9 interrogatories from your binder? 10 A. Yes, I am. 11 Q. Could I possibly see that? If you 12 could slide it over and I'll have Mr. Comerford 13 take a look. 14 A. I think it's Tab 25. 15 Q. So you said it's BEH, correct? What 16 does BEH stand for? 17 A. Baldwin. 18 Q. Ehret Hill? 19 A. Yes. 20 Q. And they supplied insulation 21 materials? 22 A. That's what this says that's where we 23 bought it. 24 Q. And you realize that you did testify

74 1 before back in May that BEH did make 2 asbestos-containing high-temp. insulation 3 block; isn't that right? 4 A. They make a mono block that does 5 contain asbestos, not straight high-temp. 6 block. 7 Q. Bear with me one sec. If you know, 8 and we're going to take a look, do those 9 interrogatories indicate that Baldwin Hill even 10 made a high-temp. block? Does it say 11 high-temp. block in there at all? 12 A. At the back of the interrogatory, 13 there's a list of the components that contained 14 asbestos, and that's where I looked to see if 15 they listed high-temp. block as one that 16 contained asbestos, specifically as it related 17 to this requisition. 18 Q. Okay. 19 A. And I couldn't find anything there. 20 Q. It didn't say that they made a 21 high-temp. block insulation that did not 22 contain asbestos, did it? 23 A. It didn't say they made one that did. 24 Q. It didn't say they made one at all,	76 1 A. Yes. 2 Q. Okay. This thing has probably been 3 marked a bunch of times, but we'll go ahead and 4 mark this one. 5 MR. RADCLIFFE: Can we supply you with 6 a copy to be marked? 7 MR. VONA: Can we designate a number 8 to it then? We'll designate your binder as 9 No. 12. 10 (Exhibit 12, Binder, so marked.) 11 Q. And you've been referring to this 12 product list that's located on page 10 of the 13 Keene interrogatories, and it shows that they 14 made 85 magnesia pipe and block covering that 15 contained asbestos. That's true, right? 16 A. 85 percent mag, yes. 17 Q. And as far as -- you've testified to 18 this prior, 85 mag did contain asbestos up 19 until at least 1972, correct? 20 A. I'm not sure of the exact date. You'd 21 have to look at that. 22 Q. But, generally, 85 magnesia 23 insulation, you've testified that contains 24 asbestos, true?
75 1 correct? It's not listed there at all as a 2 product, is it? 3 A. They only listed the products with 4 asbestos in them. 5 Q. Okay. And you'd agree with me, 6 though, that high-temp. block is basically a 7 term of art used for insulation; would you 8 agree with that? 9 MR. RADCLIFFE: Objection to form. 10 Q. Or is that a specific product name? 11 Do you understand? 12 A. No. 13 Q. You don't. What do you understand 14 high-temp. block to be? 15 A. In the context of insulation, it's one 16 of the insulating products that we would use. 17 It has a shape and a size. 18 Q. Right. You don't associate high-temp. 19 block with a specific product name is what I'm 20 asking, do you? 21 A. No. 22 Q. And you did already state that BEH did 23 make a block insulation called mono block that 24 was asbestos-containing, true?	77 1 A. Yes. 2 Q. And we see No. 1 Plus Cement, that 3 contained asbestos between 1938 and 1971, 4 right? 5 A. You're reading from the document. I 6 don't have it memorized. 7 Q. Would you agree with me though -- 8 A. There's a list of products there that 9 contain asbestos. 10 Q. And you said mono block, 11 high-temperature insulation, you agreed that 12 contained asbestos. Okay. All right. 13 Now, do you still have 11? 14 A. 11. That's 12. 15 Q. Do you have 11 still in front of you 16 there? 17 A. Yes. 18 Q. Going down to the next column where it 19 says A, all right? Slide over, HA duct. What 20 is that? 21 A. Hot air duct. 22 Q. And is that 2,800 square feet, 2,500? 23 A. Between that range. The second number 24 is not clear.

78 1 Q. And A indicates it's 1 1/2-inch 2 high-temp. block, correct? 3 A. Yes. 4 Q. So that was insulated with at least 5 over 2,000 square feet of insulation, true? 6 A. Yes. 7 Q. Okay. And would you agree with me 8 that if it was supplied by BEH that it could 9 have contained asbestos? 10 MR. RADCLIFFE: Objection to form. 11 A. It might not have. 12 Q. But it could have, correct? 13 MR. RADCLIFFE: Objection to form. 14 A. It could be either way. 15 Q. Okay. And under B, SH headers. Do 16 you see that? 17 A. Yes. 18 Q. What does that stand for? 19 A. Superheater headers. 20 Q. And that's 120 square feet of 2-inch 21 high-temp. block, right? 22 A. Yes. 23 Q. And the hot air duct, again, we have 24 an additional 2,750 square feet of 2-inch	80 1 you personally, you do not know of any BEH 2 block insulation material that you can name for 3 us that did not contain asbestos; is that true? 4 A. I cannot name a specific name as we 5 sit here. 6 Q. Thank you. That's all I'm asking. 7 (Exhibit 13, Document dated 8 6/23/59, so marked.) 9 Q. Let me know when you're set. 10 A. I'm ready. 11 Q. And this is, again, from the Beth 12 Steel contract, and it's entitled setting for 13 roof, right? 14 A. It's the setting page for several 15 different areas. 16 Q. I want to focus on the roof. The last 17 paragraph reads, "Roof and upper front casing 18 shall be No. 10 gauge steel casing, the 19 exterior surface of which is insulated with 20 5-inch insulation and covered with mastic 21 finish per Eng. Std. CA-17-9." Do you see 22 that? 23 A. Yes, I do. 24 Q. Do you know one way or another if that
79 1 high-temp. block? 2 A. Yes. 3 Q. Now, as you sit here today, are you 4 aware at all of any high-temp. block insulation 5 made by BEH that did not contain asbestos? 6 A. I don't know. I don't know if -- all 7 I know is it says high-temp. block here. They 8 have a specific name in their list there. We 9 know if we were getting 85 percent mag, that's 10 always spelled out just like that, 85 percent 11 mag. 12 Q. Always is? 13 A. Every time I've seen it. 14 Q. Is 85 mag a high-temp. block? 15 A. I don't know. Certain customers spec 16 it, and that's the level of my knowledge. 17 Q. It's a form of block insulation, isn't 18 it? Can be? 19 A. Yes. 20 Q. And the mono block, you'd agree that's 21 also a block insulation made by BEH? 22 A. Well, the list is right there. I've 23 never personally used it. 24 Q. I just want so the record is clear,	81 1 insulation would have been asbestos-containing 2 on this Beth Steel job? 3 A. I don't know what was purchased, so I 4 can't answer that. 5 Q. All right. 6 (Exhibit 14, Document titled 7 Contract Material Requisition, so 8 marked.) 9 Q. And we're looking at 14, Smith 14. 10 A. Yes. 11 Q. You're all set? 12 A. Yes. 13 Q. Okay. And again, for Beth Steel 14 "Setting Insulation" is at the top of the 15 document, right? 16 A. Yes. 17 Q. All right. And again, we go through 18 some quantities, 4,680, 8,280, 3,744 square 19 feet of block insulation for this application, 20 true? 21 A. That's right. 22 Q. And it's high-temp. block? 23 A. Yes. 24 Q. Okay. And would you agree with me

82 1 that there's a possibility that this could have 2 contained asbestos at that time? 3 A. It might. It might not have. 4 Q. That's all I'm asking. If you look 5 under B on there, I want to direct your 6 attention to where it says "Penthouse Casing." 7 A. Yes. 8 Q. It says 1,350 square feet. I want to 9 ask you: Is that the roof? Would that be part 10 of the roof that we were looking at in the last 11 page? 12 A. Yes. It's part of it, yes. 13 Q. Is there an additional area of the 14 roof that's not part of the penthouse? 15 A. It's called a front casing. 16 Q. Okay. It's not on here though, right? 17 A. It's -- there's terminology you'd have 18 to go to the actual drawing and pull it off. 19 There's in front of the drum and behind the 20 drum. 21 Q. Okay. And then under C, the 22 penthouse, there's another 1,350 square feet, 23 which would be 3-inch block, right? 24 A. Yes.	84 1 have, could it have contained asbestos? 2 MR. RADCLIFFE: Object to the form. 3 A. Yes. 4 Q. Okay. 5 MR. VONA: Why don't we take a quick 6 break just to change the tape. We only have a 7 couple minutes left. 8 THE VIDEOGRAPHER: This is the end of 9 Tape No. 1. The time is 11:32. Off the 10 record. 11 (Off the record, 11:32 a.m.) 12 (Back on the record, 11:34 a.m.) 13 THE VIDEOGRAPHER: This is the 14 beginning of Tape No. 2. 15 Q. Mr. Smith, we're going to keep going. 16 All right? 17 A. Yes. 18 Q. We're making good progress, I think. 19 Now, I want to ask you, sir, would you 20 agree with me that Riley Stoker knew that its 21 boilers could possibly need repairs after their 22 initial installation? 23 A. Yes. 24 Q. Not a trick question. And you'd agree
83 1 Q. All right. And we already established 2 that that would be 5 inches thick and that 3 makes sense then, 2 inches and 3 inches, true, 4 so that is 5 inches? 5 A. Yes, you always do multiple layers. 6 Q. Why is that? 7 A. To prevent leaks. You offset the 8 joints. 9 Q. Okay. Now, at the bottom there, it 10 says "Final and Complete." Do you see that? 11 A. Yes. 12 Q. All right. And then also underneath 13 it we see BEH again. And you'd agree with me 14 that BEH was the supplier of this insulation 15 material? 16 A. That's what it looks like based on 17 this document. 18 Q. And it could have contained asbestos; 19 is that right? 20 A. It might not have. 21 Q. That wasn't my question. 22 A. It could have. It might not have. 23 Q. It will be a little easier if you just 24 answer my question. If I ask you it could	85 1 with me also that work would be done by 2 boilermakers, true? 3 A. Normally. 4 Q. Again, not a trick question. So 5 here's another one, then you would agree with 6 me that it would be foreseeable that 7 boilermakers like Mr. Tredinnick in this case 8 could be exposed to insulation materials while 9 performing work on Riley Stoker boilers, true? 10 A. They might if they had to get into an 11 area that was under insulation. 12 Q. Okay. Do you know how much insulation 13 was on that Beth Steel boiler total? 14 A. No. 15 Q. Do you have an estimate? 16 A. No. 17 Q. Okay. Would you agree it would be 18 well over 10,000 square feet based on just the 19 documents we've looked at? 20 A. I don't know. Many of these numbers 21 as we've already found are multiple layers, so 22 as far as the actual physical area, I don't 23 know. 24 Q. All right. Would you also agree with

86 1 me then if a boilermaker like Mr. Tredinnick 2 were exposed to that insulation and it did 3 contain asbestos, he'd be exposed to asbestos, 4 true? 5 MR. RADCLIFFE: Object to the form. 6 A. If, if, if, the answer is yes. 7 Q. So if that insulation on that boiler 8 had asbestos in it and Mr. Tredinnick worked 9 with it, he'd be exposed to asbestos? 10 MR. RADCLIFFE: Object to the form. 11 A. If he removed it, and if it had 12 asbestos, he could have been exposed to 13 asbestos. 14 Q. But you don't know one way or another 15 if he was? 16 A. I don't know if it had -- what the 17 material had in it. 18 MR. VONA: We can mark that at the 19 next break. 20 Q. We're going to look at what's going to 21 be marked as Exhibit 15, and I know 22 Mr. Radcliffe pointed out that is not the way 23 the boiler is actually situated, okay, but I 24 want to ask you some questions first about this	88 1 had on every drawing. 2 Q. Would Riley Stoker make this document? 3 Did they make that document? 4 A. Did we draw this drawing? 5 Q. Yes. 6 A. Yes. 7 Q. And you provided that -- would that be 8 provided to the customer? 9 A. Not normally. 10 Q. Okay. But Riley Stoker obviously 11 would retain these documents? 12 A. They retained them. 13 Q. If they didn't, we wouldn't have them, 14 right? 15 A. Right. 16 Q. I want you to take a look at sticker 17 No. 3. You can pull that right off of there, 18 that's fine. And what area of the boiler does 19 that discuss? Does it discuss the water wall 20 tube area? 21 A. This is the side walls and rear wall. 22 Q. And right in the middle to the left 23 there, is that WW, is that, again, the water 24 walls?
87 1 document. Have you seen documents like this 2 before? 3 A. Yes. 4 Q. Okay. And could you just tell the 5 jury basically what is that? 6 A. This is a drawing for Bethlehem Steel 7 Corp., and it's the tile setting and baffling 8 arrangement -- insulation arrangement. 9 Q. Applied insulation arrangement, right? 10 A. Yes. 11 Q. And you see that sticker No. 1 at the 12 top? 13 A. Yes. 14 Q. Can you go up there and take a look 15 and see what that says, and I'm referring to 16 the box directly to the left of it. 17 A. "This print is the property of Riley 18 Stoker Corporation. It is not to be used in 19 any way injurious to its interest and is to be 20 returned upon request." 21 Q. You'd agree with me that this 22 document -- Riley Stoker is asserting some sort 23 of right to it, correct, it's their property? 24 A. That's a legal term. That was what we	89 1 A. Up here. 2 Q. To the left with your finger, up a 3 little bit more. There you go. 4 A. Water wall, center line of rear water 5 wall. 6 Q. Does that diagram specify the use of 7 high-temp. block for insulation in that area? 8 A. This note does here. 9 Q. And what does it say? 10 A. It says 2-inch ship lap tile, 10-gauge 11 casing, 5-inch high-temp. block insulation, 12 expanded metal and 24-gauge lagging. 13 Q. Are water wall tube areas insulated on 14 Riley Stoker boilers? Are they always 15 insulated? 16 A. On every boiler, no matter who makes 17 them. 18 Q. So that's standard? 19 A. Yes. 20 Q. And you did mention it was 5-inch 21 high-temp. block used? 22 A. At that section. 23 Q. And we don't know if that was 24 asbestos-containing or not, do we?

90 1 A. No. 2 Q. Okay. If it was supplied by BEH, 3 there's a chance it could have been, right? 4 A. We've been through that. 5 MR. RADCLIFFE: Objection to form. 6 A. It might have, might not have, same 7 thing. 8 Q. All right. How about No. 4, what's 9 that specification? Just to the left of that, 10 what's that for? 11 A. It's the 16-inch downcomers. 12 Q. Okay. And what are downcomers just 13 briefly? 14 A. They bring water fluid from one 15 section of the boiler to another, usually from 16 the drums to the headers. 17 Q. Are they interior or exterior to the 18 boiler? 19 A. Combination. They can be inside the 20 casing and lagging, depending on the 21 configuration of the boiler. 22 Q. They're insulated, right? 23 A. These are, yes. 24 Q. Can you tell us what they're insulated	92 1 MR. RADCLIFFE: Object to the form. 2 A. It might have. It might not. 3 Q. Okay. What's your basis for saying 4 that it might not have contained asbestos? 5 MR. RADCLIFFE: Asked and answered. 6 A. We've already looked at the documents 7 there provided by BEH or Keene for BEH, and 8 also we had used -- as we go through the 9 others, there's a high-temp. mineral wool block 10 that was used, which I know does not contain 11 asbestos. 12 Q. So high-temp. mineral wool block does 13 not contain asbestos, true? 14 A. Yes. 15 Q. And you just mentioned that we can see 16 that in some of the other contracts. That's 17 written out, is it not? 18 A. This is a requisition. 19 Q. How do you know if it's high-temp. 20 block or high-temp. mineral block? 21 A. You would have to -- well -- 22 Q. It would say, wouldn't it? 23 A. If the customer specs it, then we 24 carry it as that. When they go out to buy on
91 1 with on this contract? 2 A. This is insulated with pipe 3 insulation, tie wire, coated lagtone gray, 4 layer of asbestos cloth, lagtone gray coat. 5 Q. Okay. 6 A. That's pretty much it. 7 Q. You said asbestos cloth, right? 8 A. Yes. 9 Q. How about that pipe insulation, could 10 that have been asbestos-containing? 11 A. It might have been. 12 Q. All right. Now, if we could take a 13 look at also No. 4, does that talk about the 14 insulation for hot air duct below it? 15 A. 3 1/2-inch high-temp. block 16 insulation, layer of expanded metal, and 17 24-gauge lagging. 18 Q. Okay. And we've already established 19 that was supplied by BEH on this contract, 20 true, from the other exhibits? 21 A. Yes. 22 Q. Okay. And you'd agree with me, then, 23 that if it was supplied by BEH, that it could 24 have contained asbestos; is that right?	93 1 the open market, I'm not sure for high-temp. 2 block, I don't know what they're buying unless 3 it's spelled out. 4 Q. But you've looked at a lot of other 5 contracts aside from this case, true? 6 A. Yes. 7 Q. And you've seen in those contracts it 8 says high-temp. mineral block oftentimes, 9 doesn't it? 10 A. I've seen the terminology, yes. 11 Q. These ones say high-temp. block, do 12 they not? 13 A. Yes, they do. 14 Q. Okay. You don't have any reason or 15 any personal knowledge to say that high-temp. 16 block insulation, not mineral wool, high-temp. 17 block insulation did not contain asbestos prior 18 to 1972; is that right? 19 MR. RADCLIFFE: Object to the form. 20 A. Mineral wool is high-temp. block. You 21 do have a high-temp. mineral wool block, so 22 high-temp. block does not, by definition, 23 contain asbestos. That's where I've been going 24 with this.

94 1 Q. That's your opinion? 2 A. Yes, it is. 3 Q. Okay. We'll move on then. 4 Now, with regard to the hot air ducts, 5 that insulation, is that exposed -- first of 6 all, the hot air ducts, are those on the 7 outside of the boiler, part of them? 8 A. Yes. 9 Q. Okay. That insulation, whatever -- 10 was it 3 inch? It doesn't matter. That 11 insulation, is that exposed to the atmosphere? 12 Do you understand my question? The insulation 13 on the outside of the hot air duct, can you see 14 it when you're outside the boiler? 15 A. No. 16 Q. Okay. Why not? 17 A. There's a steel lagging over it. 18 Q. Okay. And why do they put that over 19 the insulation? 20 A. To protect it. 21 Q. Okay. From being damaged? 22 A. Combinations, weather, damage. I'm 23 not sure where this one was. 24 Q. So weather meaning if the boiler was	96 1 people walk on it sometimes, and that breaks it 2 down and you have hot spots and you don't want 3 that. That's one reason. 4 Q. That's fair. 5 A. That's not the only reason. 6 Q. Now, let me ask you this: If 7 Mr. Tredinnick, if he had removed that metal 8 covering, okay, and also removed the insulation 9 to access this hot air duct for repair or 10 replacement or whatever, he'd be exposed to 11 that insulation material, true? 12 A. If he did it. 13 Q. That's what I'm asking you. If he did 14 it, is that true, he'd be exposed to it? 15 A. He'd be exposed to the insulation 16 material. 17 Q. All right. Now, let's look at -- now 18 we can flip it. Actually, real quick, No. 5 on 19 the bottom there, Mr. Smith, do you see it? 20 What's that specification for? 21 A. That's the roof casing at rear of 22 drum. It's 10 gauge. 23 Q. And does it use 5-inch high-temp. 24 block?
95 1 outside, obviously, not the weather inside, 2 correct? 3 A. Weather is one thing but just it's 4 easier to put on and maintain. 5 Q. So basically, you indicated that the 6 steel is put on to protect the insulation? 7 A. Right. 8 Q. You'd agree with me it's a friable 9 material, right? 10 MR. RADCLIFFE: Object to the form. 11 Q. It could be damaged if it's bumped 12 into? 13 MR. RADCLIFFE: Object to the form. 14 Q. Why do you need to protect it outside 15 of the weather? 16 MR. RADCLIFFE: Same objection. 17 A. It's physical. If you don't put that 18 on, you have to put another kind of covering on 19 to hold it all together. I don't know. That's 20 what we do with insulation. We've always done 21 it that way. 22 Q. You don't know why you're protecting 23 the insulation? 24 A. Well, for one thing, our ductwork,	97 1 A. Yes. 2 Q. Okay. And Riley Stoker is specifying 3 that right there, are they not; it's their 4 drawing, correct? 5 A. It's our drawing, yes, it is. 6 Q. Right. Now we can flip it to the way 7 it's supposed to look. 8 MR. VONA: Thank you, Tom. 9 MR. RADCLIFFE: And just for the 10 record, this is 001129. 11 Q. Now, also, you see the other No. 5 on 12 the right. If you can't read it from here, I'm 13 sorry I have to ask you to stand up, but that 14 says penthouse, right? 15 A. Yes. 16 Q. We discussed that, that's 5 inches of 17 high-temp. block as well? 18 A. Right. 19 Q. Is that true? I'm sorry, I didn't 20 hear you. 21 A. Yes. 22 Q. Now, the penthouse, we already agreed, 23 is part of the roof? 24 A. Yes.

25 (Pages 94 to 97)

98 1 Q. Okay. So correct me if I'm wrong, 2 would you agree with me that the roof of this 3 boiler is insulated with 5 inches of high-temp. 4 block across the roof from the penthouse to 5 whatever the roof area there in the back? 6 A. Yes. 7 Q. Okay. Could you do me a favor. I'm 8 going to ask you if you could highlight where 9 the insulation would be on the roof. I'd 10 appreciate that. 11 A. (Witness complies.) 12 Q. Thank you, Mr. Smith. And we've 13 already established the penthouse insulation 14 was supplied by BEH, true? 15 A. Yes. 16 Q. All right. Now, that's also encased 17 in metal, right? 18 A. Yes. 19 Q. Okay. And if Mr. Tredinnick, if he 20 had to cut through that metal on the roof and 21 he had to remove that insulation to gain access 22 into the boiler, if he did that, he'd be 23 exposed to that insulation, true? 24 A. Yes.	100 1 A. On the outside portion of them. 2 Q. I'm sorry. On the outside portion of 3 the headers? 4 A. Yes. 5 Q. I understand that in the inside 6 they're not. 7 A. They're bare. 8 Q. Is that one piece -- inside the 9 superheader, is that one piece inside the 10 boiler that protrudes outside the boiler? 11 A. Unless it's a split header, I believe 12 these are one-piece headers. 13 Q. So insulated on the outside, not on 14 the inside, I agree with you on that. Now, if 15 those superheaters had to be removed and 16 Mr. Tredinnick was doing that work, would it be 17 fair that he would be exposed to those 18 insulation materials? 19 A. Through the penthouse roof? 20 Q. No, through the superheater, the 21 headers. You said it's one piece. 22 A. No, it wouldn't be because the 23 insulation was outside the penthouse roof. And 24 if you're working on the elements like he
99 1 Q. Okay. And if it was 2 asbestos-containing, he'd be exposed to 3 asbestos as well, true? 4 MR. RADCLIFFE: Object to the form. 5 A. It is what it is. 6 Q. That's all I'm asking you. Now, last 7 one on there, No. 6, that's for the superheater 8 headers that we talked about before, correct? 9 A. Yes. 10 Q. All right. And those are 4-inch 11 block? 12 A. On the external portions of them. 13 Q. Right. You've established that. I'm 14 sorry, but it's also covered with asbestos 15 cloth, true? 16 A. Outside the boiler it is. 17 Q. All right. And again, from looking at 18 these documents, we've established that the 19 high-temp. block was supplied by BEH in this 20 case, correct? 21 A. Yes. 22 Q. And you also see that there's asbestos 23 cloth on those headers, true, that was used on 24 it?	101 1 testified, that's totally inside and inside the 2 boiler. 3 Q. But if he removed the entire 4 superheaders -- 5 A. You don't. 6 Q. If they were removed and replaced? 7 A. You don't. He testified about 8 elements. You worked on elements. You don't 9 touch these headers. They're welded into the 10 whole piping system of the whole plant. You 11 don't touch the header. 12 Q. It's your testimony that you have no 13 reason to touch the header? 14 A. You better not. 15 Q. Why not? 16 A. Because you can't move those and 17 re-set them. You'd have to do a stress 18 analysis of all this. It's very complicated. 19 Bottom line is when you replace elements, you 20 cut them loose from the headers and then you 21 take them out and put them back in and weld 22 them back to the header, leaving the header in 23 place. 24 Q. Okay. But you would agree with me,

26 (Pages 98 to 101)

102 1 obviously, like we already said, if he went 2 through the penthouse and removed that 3 insulation, he's exposed to that anyway? 4 A. To whatever spot he took it off of. I 5 don't think he testified he took it off the 6 whole thing. He made an opening. 7 Q. Right, I agree with that. Let's move 8 on to another contract. 9 (Exhibit 16, Document dated 10 2/7/46, so marked.) 11 Q. And Smith No. 16, do you see that? Go 12 ahead if you've got to get your notes. Can I 13 take a look at what you're looking at there? 14 A. These are the ones for Hooker. 15 Q. Okay. What do you mean they're the 16 ones for Hooker? Are these documents you 17 prepared for this deposition? 18 A. These are my review. When I do a 19 review, I try and follow a very rigid 20 discipline. So things that you attorneys 21 always ask, I try and get in here so at least I 22 have some idea and I'm not fumbling during the 23 deposition. 24 Q. I appreciate that. So you prepared	104 1 agreed on that? 2 A. Water walls are insulated. 3 Q. Always, right? 4 A. Yes. 5 Q. All right. And again, superintendent 6 we see, again, provided by Riley Stoker? 7 A. Yes. 8 Q. Okay. As well as labor? 9 A. (Nodding.) Yes. 10 Q. Okay. 11 (Exhibit 17, Document titled 12 Contract material Requisition, so 13 marked.) 14 Q. Now, let's move to 17. Let me know 15 when you're -- 16 A. I'm ready. 17 Q. You're quick and I'm glad. We're 18 going to move this along. You'd agree with me 19 this is for Contract 1705 for Hooker Chemical, 20 correct? 21 A. Yes. 22 Q. And it's "Setting Insulation." This 23 is just like we looked at for Beth Steel, 24 right?
103 1 this for this deposition though, right? 2 A. Yes. 3 Q. Okay. And let me just take a look at 4 it for a sec. 5 Now, if we can go back to 16, which is 6 the one I gave you, and you'd agree with me 7 this is, again, a cover page for this contract 8 and it's Contract B-1705, true? 9 A. Yes. 10 Q. Dated February 7, 1946? 11 A. Yes. 12 Q. And for Hooker Electrochemical 13 Company, Niagara Falls, New York? 14 A. Yes. 15 Q. Same process, we look at the equipment 16 furnished, once again, Riley Stoker is 17 furnishing -- supplying the insulation for this 18 contract, true? 19 A. Yes. 20 Q. Okay. And also, I'd like you to just 21 look at -- they also supplied the water walls 22 for this contract as well? 23 A. Yes. 24 Q. And those are insulated, we've already	105 1 A. Yes. 2 Q. Now, you'd agree with me here it says, 3 "The following Eagle or equal insulations," and 4 it gives, again, a number of quantities, true? 5 A. Yes. 6 Q. All right. Now, next to the 7 dimensions, it says "Supertemp Block"; does it 8 not? 9 A. Yes, it does. 10 Q. In fact, it's capitalized, isn't it? 11 A. Yes. 12 Q. Would you agree with me that that 13 there is a product name, isn't it? 14 A. Yes. 15 Q. Are you familiar with Eagle Supertemp 16 block? 17 A. I've heard of it. 18 Q. Do you know that it contains asbestos? 19 A. No. 20 Q. You don't? 21 A. I do not. 22 (Exhibit 18, Reply to Plaintiff's 23 Request for Production and 24 Answers to Interrogatories

106 1 Directed to Asbestos Defendants, 2 so marked.) 3 Q. I'm going to show you what's been 4 marked as Smith Exhibit 18. Just take a look 5 at the cover page for a minute. All set? 6 A. Yes. 7 Q. Okay. You'd agree with me that these 8 are portions of Answers to Interrogatories 9 filed by Eagle-Picher Industries? Do you see 10 that on the right in a lawsuit? 11 A. I don't know how to read these, but it 12 says Court of Common Pleas. 13 Q. Okay. 14 MR. RADCLIFFE: If I can help you, 15 that's the caption of the document right there. 16 THE WITNESS: Okay. Thank you. 17 A. It is interrogatories. 18 Q. You've never seen this before, true? 19 A. No, I haven't seen this. 20 Q. And you mentioned you have some 21 interrogatories in your binder; is that right? 22 A. Yes. 23 Q. Do you know which companies you have 24 interrogatories for?	108 1 I'll save us some time. Do you see the first 2 entry, Super 66 insulating cement? 3 A. Yes. 4 Q. Okay. And would you agree with me 5 that that contained asbestos between 1930 and 6 1971? 7 A. Based on what it says here, it did. 8 Q. Okay. And this will come to light in 9 a minute about the cement. I'm just trying to 10 save us some time. If you look at No. 99 11 finishing cement, it's about halfway down; do 12 you see that? 13 A. Yes. 14 Q. And would you agree with me that that 15 product contained between 72 and 82 percent 16 asbestos between 1935 and 1962? 17 A. Yes. 18 Q. All right. And turn the page to 16B 19 and let me know when you're there. 20 A. Okay. 21 Q. Last one listed, what is that? 22 A. Supertemp block. 23 Q. Okay. And would you agree with me 24 that that contained asbestos between -- strike
107 1 A. I know Keene, Harbison Walker. I 2 think there's another one there, too, but this 3 is not there. 4 Q. Right. How did you select which 5 interrogatories to put into your binder? 6 A. It was something I worked with the 7 lawyers. As we went through certain contracts, 8 the questions came up. 9 Q. Okay. And you don't have any for 10 Eagle in there; is that right? 11 A. Not to my knowledge. I looked for 12 them and couldn't find them. 13 Q. All right. If you could, could you 14 turn to page 16A and let me know when you're 15 there. 16 A. I'm here. 17 Q. Okay. Good. And I'll submit to you 18 that this is a list of asbestos-containing 19 products that was provided by Eagle-Picher in 20 these interrogatories, okay, to shortcut this. 21 All right? 22 A. Okay. 23 Q. If you want to read it, you can. But 24 if you could turn to -- well, first of all,	109 1 that. 2 Would you agree with me that that 3 contained asbestos at some time? 4 A. From 1938 to 1945. 5 Q. Perfect. So it did contain asbestos? 6 A. In that period of time. 7 Q. All right. Now, going back to -- 8 A. 17. 9 Q. Thank you, Mr. Smith. 10 -- 17, you'd agree with me here that 11 we have over 4,000 square feet of Supertemp 12 block for this portion of the contract, true? 13 A. Of varying thicknesses, yes. 14 Q. Okay. Good. And also, if you go 15 down, we have 450 pounds of No. 66 insulating 16 cement, true? 17 A. Yes. 18 Q. And we've established that both 19 Supertemp block and 66 contain asbestos, true? 20 A. Based on this document, yes. 21 Q. That's all I'm asking you. All right. 22 (Exhibit 19, Document titled 23 Contract Material Requisition, so 24 marked.)

28 (Pages 106 to 109)

110 1 Q. Looking at Smith 19, again, this is a 2 contract document for the Hooker Chemical 3 Contract B-1705, true? 4 A. Yes. 5 Q. All right. And again, we have, it 6 looks like, another 3,600 square feet of 7 Supertemp block, true? 8 A. Yes. 9 Q. Okay. And this is for a different 10 part of the boiler, is that not true, than what 11 we already looked at? 12 A. Yes. 13 Q. All right. And I'd like to direct 14 your attention if you can scroll down a little 15 bit to where the number says 72. Okay? 16 A. Yes. 17 Q. And linear feet 3-inch pipe insulation 18 2 inches thick. And what's that used for? 19 A. Feeder tubes. 20 Q. Okay. And then going next one down, 21 we have 5,700 additional pounds of 66 22 insulating cement, Eagle 66, right? 23 A. Yes. 24 Q. That's asbestos-containing?	112 1 Q. Based on the documents? 2 MR. RADCLIFFE: Same objection. 3 A. You're only talking about the water 4 wall headers here. He could have worked on the 5 water wall without being near the headers. 6 Q. But if he testified that he disturbed 7 insulation that was associated with the water 8 walls -- 9 A. Water wall, not the headers. There's 10 a difference. The header is only one small 11 portion of it. And normally, they would not be 12 into the headers. If they're going after a 13 tube leak, they'd be going into some part in 14 the wall. 15 Q. Have you ever been a boilermaker? 16 A. I've been in the field for seven 17 years. 18 Q. Were you ever a boilermaker, I'm 19 asking you? 20 A. No, I'm not a union boilermaker. 21 Q. I'd appreciate if you try not to tell 22 me what my client did or didn't do out in the 23 field. Okay. 24 MR. RADCLIFFE: That's not a question.
111 1 A. 66 is, based on this document, yes. 2 Q. Right. And then another 3,500 pounds 3 of 99 finish cement which we also saw was 4 asbestos-containing, right? 5 A. Yes, to '62, yes. 6 Q. Okay. Now, going under the title 7 where it says where used; do you see that? 8 A. Yes. 9 Q. If we look at WW headers, that's water 10 wall headers, right? 11 A. Yes. 12 Q. 96 square feet of 2-inch Supertemp 13 block, true? 14 A. Yes. 15 Q. And also, we have next to that feeder 16 tubes, 172 square feet of the high-temp. block, 17 again, the 2 inch, right? 18 A. Yes. 19 Q. All right. Now, you'd agree with me 20 if Mr. Tredinnick had worked on the water walls 21 or the feeder tubes on this boiler, he'd be 22 exposed to asbestos if he disturbed that 23 insulation; would he not? 24 MR. RADCLIFFE: Object to the form.	113 1 It's not appropriate for you to instruct the 2 witness. If you have a question, you can 3 answer. 4 Q. Okay. How about feeder tubes, they're 5 insulated; are they not? 6 A. Yes. 7 Q. And as we see, they're insulated with 8 asbestos-containing material; are they not? 9 A. Yes. 10 Q. Okay. If Mr. Tredinnick testified 11 that he removed insulation associated with the 12 feeder tubes, he would have been exposed to 13 asbestos, wouldn't he? 14 A. It's possible. 15 Q. What do you mean it's possible? 16 A. What else did he do with the feeder 17 tubes? 18 Q. All I'm asking you about -- let me 19 rephrase the question for you or re-ask it. 20 It's not a trick question. 21 All I'm asking you is if he testified 22 that he worked on insulation that was on the 23 feeder tubes, okay, and he removed it, he would 24 be exposed to asbestos; isn't that true?

114 1 MR. RADCLIFFE: Object to the form. 2 A. Based on this document, yes. 3 Q. That's all I'm asking. Thank you. 4 (Exhibit 20, Document Dated 5 7/23/46, so marked.) 6 Q. We're looking at Smith No. 20. Let me 7 know when you're ready to go. 8 A. I'm ready. 9 Q. Have you seen these before, documents 10 like this? 11 A. Yes. 12 Q. Can you tell the jury what this is? I 13 think the title says "Boiler Estimate," but 14 it's a little fuzzy. That's just my take on 15 it. 16 MR. RADCLIFFE: One of the things that 17 you do is you ask a question and then you start 18 to talk after it. 19 MR. VONA: I'm just trying to help him 20 out. 21 A. It looks like a boiler estimate. 22 There's dollars and cents at the bottom. 23 Q. Is this something that Riley Stoker 24 would make in the regular course of their	116 1 That's what I was getting at. There's three 2 Riley Stoker boilers that were at Hooker 3 Chemical, correct? 4 A. That's what we believe, yes. 5 Q. And Riley Stoker has documents that 6 show the location of every boiler they've ever 7 installed; isn't that true? 8 A. We have every boiler listed by 9 customer name and location in our card system. 10 Q. So you know where they are in case you 11 have to work on them, right? 12 A. Yes. 13 Q. Now, let's go back to this document 14 and there's an abbreviation that says SP. Does 15 that stand for sale price? 16 A. I'd be guessing. I think it does. I 17 don't know. 18 Q. And next to it, S-U-P-T, we're talking 19 about superintendent again, I assume, right? 20 A. My estimate, yes. 21 Q. And labor is pretty self-explanatory, 22 true? 23 A. Yes. 24 Q. I want to direct your attention to
115 1 business? 2 A. This is how we bid the job. 3 Q. Okay. Let me ask you -- and again, 4 this is for Hooker Electrochemical, right? 5 A. B-1705. 6 Q. Same one we've been talking about? 7 A. Yes. 8 Q. I'm just trying to be specific because 9 there's three Riley contracts for Hooker, as 10 you're aware, that we're going to look at, 11 right? 12 A. There's four. 13 Q. Well, I was only provided three, so we 14 may have an issue. 15 MR. RADCLIFFE: I'm not sure you were 16 only provided three. 17 MR. VONA: I am. We'll take a look. 18 MR. RADCLIFFE: You may have been 19 provided three contracts. 20 Q. Three contracts for three boilers, 21 correct? 22 A. There are three boilers there. You 23 have four contracts for Hooker. 24 Q. We're just not on the same page.	117 1 Item No. 20 which is "Insulation." All right. 2 Do you see under sale price it says \$3,289? 3 A. Yes. 4 Q. And under superintendent it says \$248? 5 A. Yes. 6 Q. And under labor it says \$8,218, right? 7 A. Yes. 8 Q. So would you agree with me then that 9 Riley Stoker, at least on this contract, is 10 making money off of the sale, supervision, and 11 installation of insulation material? 12 MR. RADCLIFFE: Object to the form. 13 MR. VONA: Compound, Tom? 14 MR. RADCLIFFE: It's argumentative. 15 It's compound. 16 Q. Let me rephrase it. I'm sorry, 17 Mr. Smith. 18 Would you agree with me, based on 19 looking at this document, that Riley Stoker 20 made \$3,289 off the sale of insulation on this 21 boiler contract? 22 MR. RADCLIFFE: Object to the form. 23 A. This is an estimate of cost. This 24 isn't what they made off it. This is what they

118 1 have in there for cost. 2 Q. Well, at the end of the day, if Riley 3 Stoker did, in fact, supply the insulation, 4 which we know they did, and supplied the 5 superintendent and the labor, they would have 6 charged for it, true? 7 A. Yes. 8 Q. And if you know, what would the 9 superintendent on the jobsite, the Riley 10 superintendent, what would he be doing with 11 regard to the insulation? 12 A. This doesn't even say that we're going 13 to do it ourselves. We don't know. This is an 14 allocation in the estimate, and however that's 15 handled, I'd be guessing because I don't know 16 how it was handled on this project. 17 Q. But you'd agree with me that Riley 18 Stoker was estimating a cost of \$248 for a 19 superintendent with regard to insulation? 20 A. For a portion of someone's time to 21 oversee the installation. 22 Q. So this superintendent, that's what 23 I'm asking you, is would this superintendent 24 oversee the installation of the insulation?	120 1 A. We certainly would try to make some 2 money on anything we sold, yes. 3 (Exhibit 21, Document dated 4 3/31/47, so marked.) 5 Q. And we're looking at Smith No. 21, 6 again, another cover page to a contract for 7 Hooker Chemical, right? 8 A. Yes. 9 Q. This one is B-1808, true? 10 A. Yes. 11 Q. And this was dated 1947? 12 A. Right. 13 Q. And we'll go through it real quick. 14 A. It's exactly the same. 15 Q. It's exactly the same as 1705? 16 A. Yes. 17 Q. Because you went through these, right? 18 A. Yes. In fact, it says it right here, 19 too. 20 Q. Let me ask you this, then: So the 21 specifications for this contract are exactly 22 the same as in 1705? 23 A. The specification in this contract was 24 1705.
119 1 A. Not necessarily. What used to happen 2 very often, if we decided to do direct-hire 3 labor, we would have a general foreman from the 4 union supervise because our guy wasn't 5 qualified to supervise insulators. 6 Q. But you charged for it? 7 A. Well, you have to pay the general 8 foreman. 9 Q. Okay. But you're not saying that 10 Riley Stoker, you know, they didn't know that 11 this insulation was going into the boiler; 12 you're not saying that, right? 13 A. No. I'm saying that we didn't have 14 the expertise to supervise insulators. 15 Q. Do you know if these numbers, let's 16 say if they used these numbers, are they making 17 a profit on that over and above what they had 18 to pay the insulators? 19 A. I don't see the breakdown here. I 20 don't know how this number was made up. 21 Q. Well, aside from that, do you know 22 from your personal knowledge if that's 23 something that Riley Stoker would make a profit 24 on?	121 1 Q. So they just replicated it? 2 A. Except for an arrangement of the fans 3 and aerator. 4 Q. Okay. Do you know if they used the 5 same materials on this contract? 6 A. As my notes say, it was specced out as 7 Eagle-Picher Supertemp block or Eagle. We 8 don't know what was actually bought. And 66 9 and 99, I would suggest to you that it's 10 essentially the exact duplicate. 11 Q. So for Contract 1808, you think it's 12 exactly the same? 13 A. That's what all the documents said, 14 yes. 15 Q. Bear with me. I think you saved us 16 some time. 17 (Exhibit 22, Document dated 18 4/3/47, so marked.) 19 Q. Looking at Smith 22, same type of 20 document we were just looking at in 21, true, 21 except that this one is for 1808? 22 A. Yes. 23 Q. All right. And again, you'd agree 24 with me if we look down to No. 44, insulation

122 1 is listed as well again, yes? 2 A. Yes. 3 Q. All right. And we have some numbers 4 here, 3,773 for sale price, 200 for 5 superintendent, and 7,990 dollars for the labor 6 on this contract, true? 7 A. Yes. 8 Q. And this is, again, Riley Stoker 9 estimating costs that are associated with the 10 insulation on these boilers, right? 11 A. With the sale of the boiler, yes. 12 Q. This whole thing is the estimate for 13 the boiler, true? 14 A. Yes. 15 Q. But I'm referring to No. 44, in 16 particular, that's with regard to the 17 insulation portion? 18 A. Yes. 19 Q. All right. Thank you, Mr. Smith. 20 Now, do you know -- I think you've 21 been through this before, but let me ask you, 22 did Riley Stoker -- were asbestos-containing 23 gaskets used on all of their boilers? 24 MR. RADCLIFFE: Object to the form.	124 1 boiler? 2 A. Yes. 3 Q. Okay. Were they? 4 A. Yes. 5 Q. Do you know about how many? 6 A. No. 7 Q. Okay. Would that include duplicate 8 gaskets again? 9 A. Duplicate gaskets during the erection 10 phase, most likely. 11 Q. Can you give me a ballpark on how many 12 gaskets would be used on this boiler, just how 13 many applications would there be? 14 A. I don't know because you have to go -- 15 if it's a rolled joint in a header, that's a 16 boilermaker term and, in fact, Mr. Tredinnick 17 used that term. 18 Q. Okay. 19 A. You then have to get access to it. 20 And to do that, you've got to be able to get 21 your hands into the header and hold the tool up 22 while it rolls it, and then you have to close 23 up that opening with what we call a handhole. 24 And that handhole also has a gasket to keep it
123 1 A. No. 2 Q. They weren't? 3 A. No. You had some boilers, like I 4 said, that used stainless steel gaskets. After 5 a certain period of time, we finally got rid of 6 all the asbestos. 7 Q. When was that? 8 A. Somewhere in the early '80s is the 9 best we can come up with. They finally had a 10 material that would do the same job safely so 11 we replaced it. 12 Q. The question really wasn't a good 13 question. I'm not asking you did Riley Stoker 14 use only asbestos-containing gaskets on their 15 boilers we'll say up to the '80s. 16 I'm asking you did they use 17 asbestos-containing gaskets in some fashion on 18 all their boilers until the 1980s? 19 MR. RADCLIFFE: Object to the form. 20 A. I don't know about all the boilers. 21 Some of them they used it. 22 Q. All right. Do you know from looking 23 at the contracts whether or not 24 asbestos-containing gaskets were used on this	125 1 from leaking. So it depends on how many 2 headers have roll joints, how long are the 3 headers, so I really don't have an idea. 4 Q. Do you know if handhole gaskets that 5 Riley Stoker sold with their boilers contained 6 asbestos? 7 A. On this job they did. 8 Q. They did not? 9 A. They did. 10 Q. Okay. 11 (Exhibit 23, Document titled 12 Contract Material Requisition, so 13 marked.) 14 (Exhibit 24, Document titled 15 Contract Material Requisition, so 16 marked.) 17 (Exhibit 25, Document titled 18 Contract Material Requisition, so 19 marked.) 20 (Exhibit 26, Document titled 21 Contract Material Requisition, so 22 marked.) 23 Q. Mr. Smith, take a look at Smith 23, 24 24, 25, and 26, and I just have some brief

126 1 questions. 2 A. Okay. 3 Q. You're fast. I appreciate that. 4 Would you agree with me that those 5 exhibits that you just looked at, those all are 6 supplying asbestos-containing gaskets? 7 MR. RADCLIFFE: Object to the form. 8 Q. Well, you can answer. 9 A. All four of these requisition asbestos 10 gaskets. 11 Q. Okay. Would you agree with me that 12 Riley Stoker is specifying the use of 13 asbestos-containing gaskets for this boiler? 14 A. I don't think we specified. That was 15 a product that was supplied to us by a third 16 party that would do the job that had to be done 17 for that job. 18 Q. How did Riley Stoker know that they 19 were asbestos-containing? 20 A. Vendors. When you go out -- there's 21 various stages to this process. When you go 22 out, you say we need a gasket to do this. It's 23 a handhole. These are the configurations, this 24 is the temperature, this is the pressure,	128 1 gaskets would have to be replaced after the 2 boiler was tested? 3 MR. RADCLIFFE: Object to the form. 4 A. That's what they're buying them for at 5 this point in time. This isn't a separate 6 order. 7 Q. There's no chance that any of these 8 gaskets could be used as replacements later on? 9 MR. RADCLIFFE: Object to the form. 10 A. We didn't do that. I mean -- 11 Q. Okay. 12 A. You have manhole gaskets which are 13 drums and then the handholes. And the 14 handholes, the headers have to be opened and 15 cleaned out after you go through the hydro 16 process and all that, and they get closed back 17 up and you've got to use a new gasket. 18 Q. If you go back to 27 -- go back to 26. 19 You see at the bottom it says "round manhole 20 gasket asbestos," right? Are we on the same 21 document, last line? 22 MR. RADCLIFFE: 26? You want 25. 23 Q. Yes, that one. 24 MR. VONA: Thank you, Tom.
127 1 what's going to work. And they go out, and 2 repeatedly this would happen. I mean, we had 3 to do this on almost every job back in the 4 '40s; there was a lot of rolled joints. 5 And eventually, they just started 6 putting the same vendor information on the 7 drawings just to expedite things. 8 Q. Okay. So you'd agree with me, though, 9 that Riley Stoker knew that there were 10 asbestos-containing gaskets being used on the 11 boiler, though, right? 12 A. Yes. 13 Q. Okay. 14 (Exhibit 27, Document titled 15 Contract Material Requisition, so 16 marked.) 17 Q. And again, we've seen this before. 18 This is duplicate gaskets, right? 19 A. Yes. 20 Q. And by my count, there's 134 21 asbestos-containing duplicate gaskets; isn't 22 that correct? 23 A. Yes. 24 Q. Are you telling this jury that 134	129 1 Q. 25. At the bottom it says "round 2 manhole gasket asbestos," true? 3 MR. RADCLIFFE: Where are you reading 4 from? It says round two initials gasket, 5 right? 6 Q. Do you know what those initials stand 7 for? 8 A. I believe it's handhole. Mine is very 9 blacked out. HH is what I think it's supposed 10 to say. 11 Q. So -- 12 A. That is handhole, but the one above 13 it -- well, anyway. 14 Q. Okay. And if we go to the next 15 exhibit, 26 -- first of all, I'm sorry to jump 16 around on you, going back to 25, there's 34 of 17 those gaskets supplied, right? 18 A. Yes. 19 Q. All right. Now, if we go back to 26 20 at the top, this one you can read, it says, 21 "oval handhole asbestos gasket," right? 22 A. Yes. 23 Q. 34 of them, right? 24 A. (Nodding.)

130 1 Q. Now, you indicated to me before that 2 some of these gaskets would be used, okay, 3 after they did the test for replacement, and 4 that's why the number was so high; is that 5 right? 6 A. Yeah, there's a certain number you 7 have to open up and replace them. 8 Q. Okay. Now, if we go back to the one 9 we were just looking at, which I think is 27, I 10 hope. 11 A. Go ahead. 12 Q. You got it, 27? 13 A. Yes. 14 Q. And if we look, it says "96 oval 15 handhole gaskets asbestos." Are you telling me 16 that there's no way that these are additional 17 gaskets that could be used for repair and 18 replacement later on? 19 MR. RADCLIFFE: Object to the form. 20 A. That's not the intent of it when you 21 do it at this point in time. This is for the 22 testing. You start with replacing the manhole 23 gaskets to the drums, and that's a total count 24 for the manhole gaskets, four.	132 1 A. Yes. 2 Q. And you looked at this contract 3 already, too, right? 4 A. Yes. 5 Q. Is this one different than the first 6 two? 7 A. A little bit. 8 Q. All right. I'll just go through it 9 briefly then. 10 You'd agree with me on this contract 11 that Riley Stoker, once again, supplied and 12 installed the insulation on this boiler? 13 A. Yes. 14 Q. All right. And they also had a 15 superintendent present? 16 A. Yes. 17 Q. And they also provided the water 18 walls? 19 A. Yes. 20 Q. And you already -- I'm not going to 21 belabor it, so we'll skip that with the water 22 walls. 23 (Exhibit 29, Document dated 24 11/28/52, so marked.)
131 1 Q. I see that, but what about the 96? 2 A. Well, I don't know what the 96 is for 3 because they don't give us a breakdown. 4 Q. And then 34 round handhole gaskets 5 additional? 6 A. Yeah. 7 Q. All right. Let's move on. 8 (Exhibit 28, Document dated 9 3/15/51, so marked.) 10 Q. Let's look at Hooker Contract 11 No. 2017. Incidentally, before I get to 12 No. 28, those asbestos-containing gaskets that 13 we were just talking about, do you have any 14 personal knowledge whether any of those would 15 be used on valves that were associated with the 16 boiler? 17 A. Not through a handhole, no. It's a 18 different shape. 19 Q. It's a different application? 20 A. Totally. 21 Q. Okay. All right. We're on 28, right. 22 Can you take a look at that. Is that for 23 Hooker Chemical, Niagara Falls, Contract 24 B-2017?	133 1 Q. Let me know when you're ready, 2 Mr. Smith. 3 A. I'm ready. 4 Q. Okay. If we look at the top, this is 5 dated November 28, 1952. Do you see that? Job 6 location, Hooker Electrochemical, Niagara 7 Falls, right? 8 A. Yes. 9 Q. Okay. And the order number at the 10 top, I'm sorry, is B-2017, that's the contract 11 we're talking about; is that right? 12 A. Yes. 13 Q. Now, have you seen documents similar 14 to this before? 15 A. Yes. 16 Q. Can you just tell us briefly what this 17 is? 18 A. This is an internal document. It's 19 called a work correction order. 20 Q. Okay. 21 A. It's when something is not correct 22 with the drawings or with the product we've 23 given to the field up until the time when the 24 boiler is actually started.

134 1 Q. So is it basically like a correction, 2 they're just trying to fix something, in 3 layman's terms? 4 A. Well, in this case it looks like 5 purchasing did not order enough material. The 6 erector said, Hey, I've got a problem, and so 7 they come back and buy the required amount to 8 complete the project. 9 Q. Okay. When you said "purchasing," 10 that's Riley Stoker's purchasing department, 11 right? 12 A. Right. 13 Q. And the erector is Riley Stoker on the 14 site, right? 15 MR. RADCLIFFE: Object to the form. 16 Q. Well, who is the erector on this 17 contract? 18 A. It should be a Riley erector. 19 Q. So, basically, they were short 20 material, it looks like? 21 A. It was short material and the field 22 bought the material. 23 Q. Okay. Is that something that commonly 24 occurred, do you know?	136 1 A. This is No. 1 Plus Cement. I don't 2 know. 3 Q. Did the No. 1 Plus Cement, did that 4 have asbestos in it? 5 A. Yes. 6 Q. And you don't have any reason -- well, 7 let me ask you this: Do you believe that this 8 Baldwin No. 1 insulating cement is different 9 from No. 1 Plus? 10 A. I really have no idea. 11 Q. You don't know? 12 A. No. 13 (Exhibit 30, Document dated 14 February 13, 1990 from the 15 Environmental Protection Agency, 16 so marked.) 17 Q. I'm showing you Smith No. 30, and I'll 18 submit to you that this is a document created 19 by the Environmental Protection Agency, and 20 it's entitled Asbestos; Publication of 21 Identifying Information. Do you see that? 22 It's right up on the top on the left. 23 A. Yes. 24 Q. And the summary says, "This notice
135 1 A. What? 2 Q. Where they were short material, you 3 know. 4 A. Short material, I don't know about 5 that, but there were things that were shipped 6 to the field, someone bent the tube the wrong 7 way. 8 Q. Sure. 9 A. And they had to do a work correction. 10 That's the term. 11 Q. And in this particular instance, what 12 are they ordering here? What's the erector 13 ordering? 14 A. Baldwin Hill No. 1 insulating cement. 15 Q. 35 bags, right? 16 A. 35 bags. 17 Q. You know that's asbestos-containing, 18 true? 19 A. I don't remember the list we looked at 20 today. 21 Q. Do you want to take a look at it? 22 A. Yes. 23 Q. Here you go, Mr. Smith. I thought I 24 saw it right at the top, but take a look.	137 1 provides summaries of the information submitted 2 to EPA by manufacturers and processors of 3 certain asbestos products in accordance with 4 the Asbestos Information Act of 1988." Right? 5 A. Yes. 6 Q. If you could turn to 5151. The page 7 number is in the right-hand top corner to help 8 you out there. Are you on the right page? 9 A. 5151? 10 Q. Yes. Go in the middle column all the 11 way down to the bottom. The paragraph starts 12 No. 1 Plus Cement/No. 1 Cement (produced 1938 13 to 1971 by B-H, BEH)." Do you see that? 14 A. Yes. 15 Q. "Was a dry mixture of spun mineral 16 wool granules, bentonite clay binder, 17 chrysotile asbestos fiber (7.5 percent)." Did 18 I read that right? 19 A. Yes. 20 Q. All right. Now, based on looking at 21 that, you don't have any reason to disagree 22 with the EPA that Baldwin Hill No. 1 Cement 23 contained asbestos? 24 MR. RADCLIFFE: Object to the form.

35 (Pages 134 to 137)

138 1 A. The product they have here clearly 2 contained asbestos. 3 Q. That's all I'm asking you. So you'd 4 agree with me then that if we look at the last 5 exhibit, we're talking about 35 bags of Baldwin 6 Hill No. 1 insulating cement, this is in 1952, 7 you'd agree with me that that contained 8 asbestos, true? 9 MR. RADCLIFFE: Object to the form. 10 A. Based on this, it says it does. 11 Q. Okay. And do you know how that was 12 packaged at all? 13 A. No. 14 Q. Okay. If you look real quick, I think 15 it says 40- or 50-pound bags, if you read on. 16 Right on the top, "The product was packaged in 17 paper bags in 40 or 50 pound weights." I read 18 that right? 19 A. Yes. 20 Q. So by my math, that would be well over 21 a thousand pounds, correct, actually 750 pounds 22 if it were 50-pound bags, true? 23 A. Yes. 24 (Exhibit 31, Document titled	140 (Exhibit 32, Document titled Contract Material Requisition, so marked.) Q. We've got the Hooker Contract 2017, right? A. (Nodding.) Q. And it says at the top, is it K or X6 asbestos rope, and you'd agree with me that this specifies the supply of 490 linear feet of soft twisted asbestos rope, right? A. Yes. Q. Okay. Let's take a look -- MR. RADCLIFFE: How are we progressing on time? MR. VONA: We're looking good actually, believe it or not. MR. COMERFORD: We were three full days with Mr. Tredinnick, so I'm just putting that on the record. MR. RADCLIFFE: I don't think you're required -- actually, three full days, that has to be split among all of the defense witnesses, not just per defendant. Q. We are on what we're going to mark as
139 Contract Material Requisition, so marked.) Q. You're all set, right, Mr. Smith? A. Yes. Q. Okay. Again, we're looking at Contract 2017 for Hooker, and we're looking at "1750 pounds of B & H #1 insulating cement," again, right? A. It's the same amount. Q. Do you think it's the same purchase? A. Yes. This is just the -- Q. Oh, yeah, you're right, purchased in the field. A. Do not duplicate. Q. All right. We can skip that one then. Did Riley Stoker supply asbestos-containing rope on its boilers? MR. RADCLIFFE: Objection. Asked and answered. A. We already talked about that. Q. Well, let me ask you on this one, do you know if they supplied asbestos rope on this one? A. I don't have it noted.	141 Smith 33. MR. RADCLIFFE: Which is Bates labeled 578. Q. Take a look again at sticker No. 1, and below that it says "Riley Stoker Corporation applied insulation," right? A. Yes. Q. "Hooker Electrochemical, Niagara Falls, New York." A. Yes. Q. All right. Now, can you just tell the jury what this document is? It's not a document, but you know what I mean. A. This was a drawing, and basically the summary of all the surfaces and what type -- generic type of material had to be put on them to satisfy the boiler codes. Q. And you said "generic type." What do you mean "generic"? A. Well, 3 1/2-inch thick block insulation, that's generic. I'm not telling you, Go with Eagle-Picher. I'm saying that's what we need. That's what does the job based on experience, based on input, so it's a

142 1 generic product. 2 Q. Okay. So high-temp. block is a 3 generic term? 4 A. We still use the same term today. 5 Q. And at the top, again, we see the 6 print is Riley Stoker, so you'd agree with me 7 they created this document, true? 8 A. Yes. 9 Q. And if you can, and let me know if you 10 can read next to that one. Do you see the box 11 next to it on the left, if you can read that, I 12 know it's a little tough. 13 A. "We are not responsible for any injury 14 or damage due to the use" -- wow. 15 Q. I know, some of it is tough. How 16 about towards the bottom of that, do the best 17 you can. 18 A. "Of any" -- 19 Q. Never mind. 20 A. I can't do that. 21 Q. That's fine. I had some trouble 22 reading it myself. 23 A. I've got new glasses. 24 Q. Let's look at No. 3, Tab No. 3 on	144 1 A. If it was Eagle Supertemp block, based 2 on what we just read, it would have asbestos. 3 Q. Okay. And let's look at -- do you see 4 the title on there, it says "Insulating 5 Cement." It's in that chart; do you see it? 6 A. Yes. 7 Q. What's the number at the bottom there, 8 sir? 9 A. Roughly 6,300. 10 Q. It says square feet, but do you think 11 that would be pounds or square feet, if you 12 know? 13 A. Square feet would be appropriate. It 14 would have to go quarter inch usually over so 15 many square feet works out to some number. 16 Q. Because you put that over the 17 high-temp. block, right? 18 A. That's usually the case. 19 Q. Okay. And you'd also, again, you'd 20 agree with me if that was Eagle 66 that it 21 would be asbestos-containing, right? 22 A. It would be asbestos-containing based 23 on what we read. 24 Q. Or if it was Eagle 99, same thing?
143 1 there. Do you see that? 2 A. Yes. 3 Q. Okay. Now, we have various 4 thicknesses of insulation block, you'd agree, 5 right? 6 A. Yes. 7 Q. All right. Now, I did the math on it, 8 and it's 9,933 square feet of block. You 9 wouldn't have any reason to dispute that, 10 right? 11 MR. RADCLIFFE: Objection to form. 12 Q. Well, if you want to add it up, you 13 can. 14 A. Where? 15 Q. The bottom numbers right above the 3 16 sticker, the totals. 17 A. It's around 9,000, you said? 18 Q. Yes, close to 10, just under 10,000. 19 A. Yes. 20 Q. You'd agree with me if that's Eagle 21 high-temp. block or Eagle Supertemp block, 22 that's asbestos-containing, isn't it? 23 MR. RADCLIFFE: Object to the form. 24 Q. You'd agree with that?	145 1 MR. RADCLIFFE: I'm going to object to 2 both those questions, form. 3 Q. You'd agree with that? 4 A. Eagle 99 at that time frame did have 5 asbestos. 6 MR. RADCLIFFE: What's the date on 7 this document, do we know? 8 MR. VONA: Should be on there. Is it 9 '51? 10 THE WITNESS: 11/17/51. 11 Q. Okay. Now, we already discussed that 12 the water walls and the feeder tubes have 13 insulation associated with them, right? And we 14 also saw that water wall insulation was 15 provided by Eagle in this case, true, on the 16 documents? 17 A. I believe it says Eagle-Picher or 18 equal. 19 Q. Right. And we went through that, and 20 the document also said -- it specifically said 21 Supertemp block, didn't it? 22 A. Or equal, yeah. 23 Q. I think we'll look back at the 24 document. I know -- let me just try to ask a

37 (Pages 142 to 145)

146 1 question to clear this up. 2 At the top it says Eagle-Picher or 3 equal insulation, but then underneath were the 4 dimensions and the size and the amount, it said 5 Supertemp block, true? 6 A. Yes. 7 Q. Okay. Now, if Mr. Tredinnick had 8 performed work on this Hooker boiler -- I'm 9 sorry, this Riley boiler at Hooker and 10 disturbed insulation that was associated on the 11 feeder tubes, he would be exposed to asbestos, 12 right? 13 A. I want to clarify this. The 14 requisitions, which is what these are, are 15 always saying or equal. We don't know what was 16 actually purchased and used on this project. 17 Q. Riley Stoker has no idea what was 18 used? 19 A. I don't have the purchase orders. I 20 don't have a name at the bottom of these 21 sheets. 22 Q. Do you know where the purchase orders 23 would be for these contracts? 24 A. They disappear. I've never seen one	148 1 (Exhibit 33, Blown-up diagram, so 2 marked.) 3 (Back on the record, 1:37 p.m.) 4 THE VIDEOGRAPHER: This is the 5 beginning of Tape No. 3 in the deposition of 6 Michael Smith. We're back on the record. The 7 time is 1:37. 8 Q. Good afternoon, Mr. Smith. 9 A. Good afternoon. 10 Q. I hope to be not too much longer with 11 you. Okay? 12 A. Please. 13 Q. Now, we left off, we just finished 14 talking about Hooker. I'd like to shift to a 15 different contract, DuPont Contract B-2216. 16 You've had a chance to look at those documents, 17 right? 18 (Exhibit 34, Document dated 19 3/22/55, so marked.) 20 Q. I'm going to have you look at Smith 21 Exhibit 34, and we've been looking at these all 22 day. This is a summary of the contract for the 23 DuPont job, correct? 24 A. Yes.
147 1 unless it was a major piece of equipment that 2 was purchased. 3 Q. Okay. Well, I just want to ask you 4 though, okay, we'll probably get an objection, 5 but if Mr. Tredinnick testified to removing 6 insulation associated with the water wall and 7 that insulation was provided by Eagle, the 8 Supertemp block, he would have been exposed to 9 asbestos, right? 10 A. If it was provided by Eagle, but we 11 don't know that. 12 MR. RADCLIFFE: Object to the form. 13 Q. So is that a yes? 14 MR. RADCLIFFE: Object to the form. 15 A. If it was provided -- if it was Eagle 16 Supertemp block that was put on there, it would 17 have had asbestos. 18 Q. That's all I'm asking, okay. 19 THE VIDEOGRAPHER: The time is 12:47. 20 We're off the record. 21 (Off the record, 12:47 p.m.) 22 (Lunch recess taken.) 23 (Exhibit 15, Blown-up diagram, so 24 marked.)	149 1 Q. All right. And it says 2216 dated 2 March 22, 1955, and it does say DuPont, Niagara 3 Falls, yes? 4 A. Yes. 5 Q. Now, again, when we go down to 6 equipment furnished, in addition to the boiler, 7 we see that Riley Stoker also provided the gas 8 ducts and air ducts, true? 9 A. Yes. 10 Q. Do you know if on this particular 11 contract the gas ducts and air ducts were 12 insulated? 13 A. I believe they were. 14 Q. Okay. And also, again, we see in the 15 middle column that Riley Stoker did, in fact, 16 supply and arrange for the installation of the 17 insulation on this job, true? 18 A. We provided the insulation on this 19 job. This sheet doesn't tell me whether we did 20 it or didn't, installed it or did not install 21 it. 22 Q. Okay. Do you have any reason to 23 believe after looking through the documents on 24 this contract that Riley Stoker did not install

150 1 the insulation? 2 A. No. 3 Q. You have no reason to believe that? 4 A. No. 5 Q. Okay. And again, you have a 6 superintendent present, true? 7 A. Yes. 8 Q. All right. 9 (Exhibit 35, Document dated 10 3/22/55, so marked.) 11 Q. Take a look at Smith No. 35, and at 12 the top of the document we have the contract 13 number next to the words "Insulation Contract 14 No. B-2216," right? 15 A. Yes. 16 Q. So this is the part of the insulation 17 specification for this contract, right? 18 A. It's not the spec. It's a listing of 19 what we're going to provide. 20 Q. Okay. And Riley Stoker made this 21 document, right? 22 A. Yes. 23 Q. All right. And what I'd like to just 24 briefly look at is hot air ducts and gas ducts.	152 1 conditions. 2 Q. Would that include just the thickness 3 and materials to be used? 4 A. The configuration material, whether it 5 was going to be a hard block, whether it be a 6 blanket or something like that, the generic 7 terminology. 8 Q. Okay. And you'd agree with me they 9 have that because that's an internal part of 10 their boiler that they're supplying, right? 11 A. Rephrase that, please. 12 Q. It was probably poor. 13 The reason they have these standards 14 is because they supply these materials for the 15 hot air ducts and gas ducts to be put on and 16 it's their boiler, it's their equipment they're 17 supplying, so they need to know how thick the 18 insulation needs to be, right? 19 A. If they do it, yes, they do. 20 (Exhibit 36, Document dated 21 1/12/56, so marked.) 22 Q. Are you all set, Mr. Smith? 23 A. Okay. We don't have the numbers here. 24 Q. Yes, I know. I apologize for that.
151 1 Do you see that? 2 A. Yes. 3 Q. And under hot air ducts, it says, "To 4 burner windbox, Riley" -- I'm assuming that is 5 standard? 6 A. Yes. 7 Q. And gas duct says, "To air heater," 8 and in quotations means the same thing, you'd 9 agree with that, right, per Riley standard? 10 A. Yes. 11 Q. Okay. Do you know what Riley's 12 standards, what does that signify? What is 13 that? 14 A. It's an engineering standard that 15 isn't here. 16 Q. Do you know what it is? 17 A. No. It applies to different 18 applications. They list different ways of 19 insulating them, different thicknesses, 20 different types of insulation. 21 Q. So Riley Stoker had standards on how 22 to insulate parts of their boiler? 23 A. The generic way of dealing with a 24 particular part of the boiler under different	153 1 They got cut off, but basically what we're 2 looking at here is a contract change, it says, 3 correct? 4 A. I believe this is Bates 627. 5 Q. Do you have an additional copy of it? 6 A. We can get one. 7 Q. Okay. 8 A. But I have the notation for the same 9 thing, and I referenced 627. 10 Q. We'll go through it then. And if we 11 have to, we'll look at it, but maybe we won't, 12 okay. 13 A. Okay. 14 Q. And this is for DuPont, Niagara Falls, 15 Contract 2216, and it says "Change: Applied 16 insulation as follows." Skip the first 17 paragraph. The second paragraph says, "On 18 surfaces outside building apply chicken wire 19 over power house cement and supply Thermotex of 20 sufficient thickness wet to give 1/4" coat 21 dry." Do you see that? I read that right, 22 right? 23 A. Yes. 24 Q. And it says, continues, "On surfaces

154 1 not insulated as yet, apply block insulation, 2 chicken wire and Thermotex 1/4" thick dry." 3 Now, we know that Thermotex contains asbestos; 4 we went through that earlier, didn't we? 5 A. Did we do that one? 6 Q. Let me ask you, do you know that 7 Thermotex contains asbestos? 8 A. No, I don't. 9 Q. Can we take a look at -- I'm not going 10 to remember what the number is, but the EPA 11 document. 12 MR. WHITCOMB: 30. 13 Q. Got it? 14 A. Yes. 15 Q. Start at 5145 and let me know when 16 you're there. 17 A. I'm there. 18 Q. Center column No. 4 says, "The Celotex 19 Corporation," and if you skim through that 20 paragraph, it says predecessors, Philip Carey 21 Corporation. We talked about Philip Carey, 22 correct? 23 A. Yes. 24 Q. And then if you turn to the next page,	156 1 look through these products that were given -- 2 specific products that were listed for the EPA 3 by the Celotex Corporation and Philip Carey and 4 see if you find a product that's just Thermotex 5 without a B. 6 A. I don't find one. 7 Q. Okay. So you don't see one, right? 8 A. No. 9 Q. Now, at the bottom it says, "Price 10 change later. Keep record of cost of 11 scaffolding and applying finish coat power 12 house cement on inside work, and record of time 13 for applying Thermotex." Do you see that? 14 A. Yes. 15 Q. Would you agree with me that this 16 indicates that a Riley employee was supervising 17 or keeping track of this work? 18 MR. RADCLIFFE: Object to the form. 19 Q. Well, what does that mean to you? 20 A. It means that whoever was doing it was 21 saying keep track of it and submit the costs to 22 Riley so we can bill the customer. 23 Q. Okay. Well, this is a Riley document, 24 isn't it?
155 1 in the first column you'll see Thermotex-B. It 2 says, "Produced 1906 to 1984, contained 14 3 percent asbestos, asphalt and mineral 4 stabilizer." Did I read that right? 5 A. For Thermotex-B, yes. 6 Q. Would you agree with me that 7 Thermotex-B contains asbestos, based on those 8 years anyway? 9 A. Based on this, Thermotex-B contains 10 asbestos. 11 Q. And so would you agree with me the 12 Thermotex that's being used in this contract 13 with DuPont was asbestos-containing? 14 MR. RADCLIFFE: Object to the form. 15 A. It might, based on this. It's just, 16 once again, we don't have exactly the same 17 designation. 18 Q. What do you mean by that? 19 A. Well, this doesn't say Thermotex-B on 20 the contract change. 21 Q. Because there's no B, that's your 22 basis? 23 A. It's a question, yes. 24 Q. Well, if you could, could you take a	157 1 A. Yes. 2 Q. And you already mentioned that most of 3 these Riley documents don't go to the customer, 4 true? 5 A. True. 6 Q. Let's take a look at -- 7 MR. VONA: Tom, if I could beg you one 8 more time, this is the last blowup. 9 Q. And if you can look again by the No. 1 10 sticker, we have Riley Stoker applied 11 insulation for DuPont, correct? 12 A. Yes. 13 Q. And up at the top by the No. 2 we have 14 that same language, it says it's a Riley Stoker 15 document, their property, true? 16 A. Yes. 17 Q. Can you take a look at that one on the 18 left of it. Does it read any better? Probably 19 not, but just take a quick look, if you could. 20 A. No. 21 Q. All right. No worries. 22 Now, I'd like you to take a look in 23 the No. 3, okay, and I want you to specifically 24 look at where it says -- if I'm pronouncing

158 1 this wrong, let me know. It says, "Recirc HA 2 duct"? 3 A. Recirc hot air duct, right there? 4 Q. Yes. Do you see that? 5 A. Yes. 6 Q. What is that? 7 A. It's part of the hot air duct system. 8 Q. Okay. And does it indicate -- was 9 block insulation used for that? 10 A. Block insulation was used for that. 11 Q. Okay. And same question for the HA 12 duct. That's hot air duct, right? 13 A. Yes. 14 Q. Was block insulation used for that? 15 A. Yes. 16 Q. All right. And primary air duct as 17 well, they used block insulation on that? 18 A. Yes. 19 Q. Now, how about cement, was insulating 20 cement used on any of those three items? 21 A. Yes. 22 Q. Okay. Now, I want you to take a look 23 at No. 4. If you have to move the sticker, you 24 can. Could you read that?	160 1 Q. Now, if you could remove -- can you 2 remove that sticker for me? 3 A. (Witness complies.) 4 Q. Thanks. Just to the left of that 5 paragraph, do you see the diamond with a 1 in 6 it? Well, I don't know if it's a 1, but you 7 see that little diamond there, right? 8 A. Yes. 9 Q. If you look on the left-hand column, 10 do you see the two little diamonds there? 11 A. Yes. 12 Q. All right. It's next to the primary 13 air duct. Would you agree with me that that 14 statement on how to use that block insulation, 15 how to insulate, applies to the primary air 16 duct? 17 MR. RADCLIFFE: Object to the form. 18 A. No. 19 Q. Why not? 20 A. Those diamonds refer to a drawing 21 revision. Something was revised under that 22 column. 23 Q. Okay. 24 A. If you could read this, this is the
159 1 A. "All pipe insulation attached with 2 No. 14 gauge tie wire." 3 Q. Keep going. 4 A. "All exposed reinforcing angles and 5 flats to be covered with 1 1/2-inch block 6 insulation and" -- 7 Q. Does it say finished or furnished? 8 A. It's something like that -- "with 9 insulation cement, glass fab and insulmastic." 10 Q. Okay. Well, first of all, this is a 11 Riley document, correct; they created it? 12 A. Yes. 13 Q. Would you agree with me that Riley 14 Stoker is basically stating how this pipe 15 insulation is supposed to be applied? 16 MR. RADCLIFFE: Object to the form. 17 A. Pipe insulation? 18 Q. I'm sorry, the block insulation. 19 MR. RADCLIFFE: Object to the form. 20 A. Yes, that's how you fasten it. 21 Q. Well, Riley Stoker actually printed 22 that as to how to do that, correct? 23 MR. RADCLIFFE: Object to the form. 24 A. Yes.	161 1 drawing revision here, and that's what that -- 2 that ties to that. 3 Q. Okay. So then you'd agree with me, 4 then, the way that that's stated there as to 5 the block insulation would apply to all block 6 insulation on this boiler or at least on this 7 schematic? 8 MR. RADCLIFFE: Object to the form. 9 A. You're talking about -- 10 Q. Well, if it's not specific to the 11 primary air duct, which you correctly pointed 12 out, I assume, then what does it apply to? 13 A. Just this one particular area. 14 Q. Which area is that? 15 A. Where they're covering the angles and 16 flats, that's how you're going to hold it on. 17 Q. Where would there be angles and flats 18 on a boiler? 19 A. It's in the ductwork. 20 Q. How big is the ductwork on this 21 boiler, do you know? 22 A. You have to go to the drawings. I 23 don't think I even saw a dimension on the 24 drawings.

162 1 Q. Can you give us a general estimate? 2 A. No. 3 Q. So, basically, they're stating how to 4 apply the insulation on the ductwork? 5 MR. RADCLIFFE: Object to the form. 6 A. On the angles and flats of the 7 ductwork. There's a difference. 8 Q. Okay. The angles and flats. 9 A. Ductwork is made with reinforcing 10 angles, then you have to join it together and 11 there may be a flat there. And they're saying 12 independent of the ductwork itself, these 13 angles and flats have to be covered with at 14 least an inch and a half. 15 Q. And that's high-temp. block, right? 16 MR. RADCLIFFE: Object to the form. 17 A. It does not say high-temp. block here. 18 Q. I'm sorry. It says block insulation, 19 true? 20 A. Yes. 21 Q. And insulating cement, right? 22 A. Yes. And that doesn't say high-temp. 23 block either there. 24 Q. You're right. But you'd agree with	164 1 contained asbestos, right? 2 MR. RADCLIFFE: Object to the form. 3 A. We just reviewed Thermotex, right? 4 Q. And it contained asbestos, right? 5 MR. RADCLIFFE: Object to the form. 6 A. (Nodding.) 7 Q. Now, we've already established that 8 the ductwork on this boiler was insulated, 9 true, based on this? 10 A. The air and gas duct, yes. 11 Q. Now, if Mr. Tredinnick had removed 12 insulation off of that ductwork, the hot air 13 duct or the recirc hot air duct or what was the 14 other one, gas duct? 15 A. Primary air duct. 16 Q. Primary air duct. If Mr. Tredinnick 17 had removed insulation from those areas, those 18 ductwork areas, while performing his work, he'd 19 be exposed to that material, wouldn't he? 20 MR. RADCLIFFE: Object to the form. 21 A. If he removed the insulation, he'd 22 obviously be exposed to the material he was 23 removing. 24 Q. Okay. And if he had removed Thermotex
163 1 me -- would you agree with me that this 2 insulation for the hot air ducts, would that be 3 asbestos-containing? 4 A. Don't know. 5 Q. Could it be? 6 MR. RADCLIFFE: Object to the form. 7 A. Could be, could not be, same thing. 8 Q. You just don't know, right? 9 A. Don't know. Don't know what's on 10 there. 11 Q. You would at least agree with me that 12 some of the insulating cement that would have 13 been used could be asbestos-containing, right? 14 MR. RADCLIFFE: Object to the form. 15 A. It might have some. 16 Q. Because we looked at the Thermotex, 17 right? 18 A. That's one. Others we don't know 19 about. I haven't looked. 20 Q. If it was Thermotex, it would be 21 asbestos-containing? 22 MR. RADCLIFFE: Object to the form. 23 A. It could have. 24 Q. Well, you don't dispute that Thermotex	165 1 insulating cement, he would have been exposed 2 to asbestos, wouldn't he? 3 MR. RADCLIFFE: Object to the form. 4 A. If it was Thermotex, he could have 5 been exposed. 6 Q. Okay. One more on DuPont. 7 (Exhibit 37, Blown-up diagram, so 8 marked.) 9 (Exhibit 38, Letter dated 10 February 2, 1967, so marked.) 11 MR. RADCLIFFE: And just for the 12 record, this blowup is -- 13 MR. VONA: Smith 37. 14 MR. RADCLIFFE: It's also Bates 15 No. 691. 16 Q. Could you tell us what Smith No. 38 17 is? 18 A. It's a letter from Fred Kightlinger of 19 the service department to Corp. Officer of 20 DuPont. 21 Q. Okay. And this is on Riley Stoker 22 letterhead, true? 23 A. Yes. 24 Q. And it was written by a Riley Stoker

166 1 employee? 2 A. Yes. 3 Q. And what's the date on that? 4 A. It looks like February 2, 19, blank, 5 7. It's not '07. 6 Q. I'll submit to you that it's 1967. 7 Would you be able to agree to that? 8 A. Well, it's after '64, so yes. 9 Q. All right. And you'd also agree 10 that's 12 years after the initial date of the 11 contract, isn't it? 12 A. After the sale date of the contract, 13 yes. 14 Q. Okay. So they were probably talking 15 to DuPont prior to the sale date, correct, 16 Riley Stoker, I mean? 17 MR. RADCLIFFE: Object to the form. 18 A. The proposal is dated 1954. 19 Q. Right. So my question I want to ask 20 you, sir, is: Riley Stoker, was it their 21 practice to keep in contact with their customer 22 after the initial installation of the boiler? 23 MR. RADCLIFFE: Object to the form. 24 A. Usually it worked both ways.	168 1 it's the only response, but it's a response. 2 Q. That's fair. We already established 3 before that Riley also kept track or keeps 4 track of locations of all its boilers and its 5 customers, right? 6 A. We have a card database of where the 7 boilers were that we sold. 8 Q. All right. Now, I don't know that I 9 asked you this yet, but did Riley Stoker, have 10 they ever warned about the hazards of asbestos 11 to any of their customers? 12 A. Not to my knowledge. 13 Q. Okay. Sir, if Riley Stoker had chosen 14 to warn about the hazards of asbestos, could 15 they have easily contacted their customers? 16 MR. RADCLIFFE: Object to the form. 17 A. We were all warned about the hazards 18 of asbestos at the same time, the premises 19 owner, the manufacturers and everyone else, so 20 there was no need to warn customers because 21 they had already been warned by the experts. 22 MR. VONA: I'm going to strike as 23 nonresponsive. 24 Q. But I'm just asking you, if Riley
167 1 Customers kept in contact with us, and we kept 2 in contact with them. 3 Q. Right. So Riley Stoker didn't just 4 come and install the boiler and then just walk 5 away and never have contact with the customer 6 again; is that true? 7 MR. RADCLIFFE: Object to the form. 8 A. Riley clearly had contact with this 9 customer after the boiler was installed. 10 Q. Obviously, we can see that from the 11 document, but my question is: Did they do that 12 with other customers, to your knowledge? 13 A. Yes. 14 Q. Okay. What exactly are they 15 contacting DuPont for in this letter, if you 16 can just take a quick look at it? 17 A. It sounds to me DuPont had contacted 18 Riley because they had an issue with the 19 boiler, and they wanted Riley to look at the 20 issue. And it looks like it was a boiler 21 baffle. 22 Q. And this is Riley's response then to 23 that? 24 A. This is a response. I don't know if	169 1 Stoker, prior to OSHA in 1972, had they known 2 about the hazards of asbestos, if they wanted 3 to, could they track their customers and let 4 them know? 5 A. Could they have? 6 Q. Yes. 7 A. It's possible. 8 Q. Well, I don't mean to beat around the 9 bush, but what do you mean it's possible? 10 A. Because when we learned -- 11 Q. Let me back up. I'll just phrase the 12 question differently. 13 I'm not trying to trick you in any 14 way. I'm just saying prior to OSHA in 1972, if 15 Riley Stoker had known about the hazards of 16 asbestos, would they have a means through their 17 database to be able to contact these customers 18 and pass this information on, yes or no, could 19 they? 20 MR. RADCLIFFE: Object to the form. 21 A. It's possible. 22 Q. Okay. Do you know if they ever did 23 that? 24 A. I think we already answered that.

170 1 Q. They didn't, right? 2 A. No, not to my knowledge. 3 (Exhibit 39, Document dated July 4 31, 1951, so marked.) 5 Q. Now, sir, before I ask you about Smith 6 No. 39, I'm going to ask you, you're aware that 7 Riley Stoker bid on and installed at least 8 three boilers at the GM Chevy plant in 9 Tonawanda, New York, correct? 10 A. No. 11 Q. You're not? 12 A. Union Iron Works bid on providing 13 materials for three boilers for the Chevy 14 plants. 15 Q. Union Iron Works? 16 A. Yes. 17 Q. Okay. We didn't cover that earlier in 18 the history, but you'd agree that's part of 19 Riley Stoker? 20 MR. RADCLIFFE: Object to the form. 21 A. Not at the time this happened. 22 Q. Okay. Why don't you tell us who Union 23 Iron Works is? 24 A. Union Iron Works was a separate	172 1 Q. All right. So these documents that 2 we're talking about with regard to Chevy, there 3 are three boilers that were installed there, 4 correct, whether it be by Union Iron Works or 5 Riley Stoker? 6 MR. RADCLIFFE: Object to the form. 7 A. There were three boilers furnished for 8 there. They weren't installed by Union Iron 9 Works. 10 Q. Do you know who they were installed 11 by? 12 A. W. Holly & Company. 13 Q. Okay. So Union Iron Works, they 14 supplied the boilers, right? 15 A. Yes. 16 Q. Did they supply additional material 17 outside of the boilers? 18 A. They supplied some supporting 19 structural steel, some hoppers, some ducts, 20 some breeching, and some pipe valve and fitting 21 trim around the drums and the casing, the steel 22 casing for the project. 23 Q. Okay. Did you say stokers? 24 A. No.
171 1 company located in Erie, Pennsylvania, that was 2 making boilers and had their own manufacturing 3 facilities from around the turn of the century. 4 Q. Right. 5 A. Around 1960 Riley Stoker purchased 6 them and started using them as one of the 7 manufacturing spots. And at the end of the 8 '60s, '69, '70, they actually merged and became 9 a subsidiary so they became part of Riley 10 Stoker. 11 Q. Okay. But prior to them becoming a 12 subsidiary, Riley Stoker owned them, true? You 13 just said in 1960 they purchased them? 14 A. In 1960 they did purchase them, yes. 15 Q. So for purposes of these contracts or 16 these documents that we're looking at regarding 17 the Chevy plant, first of all, these are all 18 Riley Stoker documents that were provided, 19 correct? 20 MR. RADCLIFFE: Object to the form. 21 Q. You know, you're right. That's a poor 22 question. You just stated 1960 Riley Stoker 23 purchased Union Iron Works? 24 A. Yes.	173 1 Q. Okay. Do you know who would have 2 supplied the stokers on this contract? 3 A. No. 4 Q. I just want to ask you what documents 5 did you look at, if you could show me, that you 6 base that statement as to what they provided? 7 Do you follow me? Where did you come up with 8 that? 9 A. In the contract documents that you 10 looked at, too. 11 MR. VONA: Let's go off the record. 12 THE VIDEOGRAPHER: The time is 2:06. 13 We're off the record. 14 (Off the record, 2:06 p.m.) 15 (Back on the record, 2:09 p.m.) 16 THE VIDEOGRAPHER: Back on the record. 17 The time is 2:09. 18 Q. All right. Mr. Smith, we just went 19 off for a quick minute. I just want to get 20 some dates straight from you real quick. 1960 21 is when Riley Stoker purchased Union Iron 22 Works, right, in that ballpark? 23 A. Yes. 24 Q. And you mentioned what year was it

174 1 that they became a subsidiary? 2 A. Like, 1969. 3 Q. You'd agree with me that -- well, 4 strike that. 5 (Exhibit 40, Document titled 6 Section C, Boilers and Equipment, 7 so marked.) 8 Q. Don't let all these pages scare you. 9 I just have a couple questions on it. 10 The title of that is "Section C, 11 Boilers and Equipment," correct? 12 A. Yes. 13 Q. And this is something -- well, the 14 boilers in some of the equipment were supplied 15 by Union Iron Works for these boilers, true? 16 A. Yes. 17 Q. If we could go to No. 32. It's going 18 to be the last page, actually, all the way at 19 the bottom it says "Setting." Do you see where 20 it says "Setting"? 21 A. Yes. 22 Q. Okay. And it says, "The Boiler 23 Contractor" -- in this case which was Union 24 Iron Works, right?	176 1 Corporation, right? 2 A. Yes. 3 Q. What, if any, role did Riley Stoker 4 itself have with this contract with Chevy 5 regarding these boilers, if you know? 6 A. This is another contract, one boiler. 7 Q. Okay. So this is an additional 8 boiler? 9 A. Yes. 10 Q. Okay. Let's get on the same page. 11 How many boilers -- whether it be Union Iron 12 Works or Riley Stoker, how many boilers were at 13 Chevy? 14 MR. RADCLIFFE: Object to the form. 15 A. Four. 16 Q. So there were three Union Iron Works 17 and one Riley Stoker; am I correct? 18 A. One Riley Stoker. 19 Q. So this is for an additional boiler in 20 1971? 21 A. It was completed and started up about 22 April of 1971. 23 Q. Okay. And it says next to -- do you 24 see the job contract name and location, Chevy
175 1 A. I don't think so. 2 Q. You don't? 3 A. No. I think it was Holly in this 4 case. Holly bought pieces of the boiler from 5 Riley, and then they put the rest of the boiler 6 together. 7 Q. All right. You said that's what you 8 think. You don't have any personal knowledge 9 or documents that would establish that, do you? 10 MR. RADCLIFFE: Object to the form. 11 A. The boiler couldn't be built without 12 the rest of the equipment specified in here 13 that we didn't supply. We quoted the boiler to 14 Holly. We did not quote to GM or Chevy or 15 anyone else. We quoted to Holly, and he's a 16 boiler contractor is my understanding. 17 Q. Okay. 18 (Exhibit 41, Document dated 19 10/1/71, so marked.) 20 Q. I'm going to show you what's marked 21 Smith Exhibit 41, and take a look at that, sir. 22 You're all set? 23 A. Yes. 24 Q. The top of it says Riley Stoker	177 1 Motor, Tonawanda, New York? 2 A. Yes. 3 Q. There's an account number 886. Do you 4 know what that indicates? Did Chevy have an 5 account with Riley Stoker? 6 A. I don't know. 7 Q. All right. If we go down to the 8 bottom where it says "Special Instructions," do 9 you see that? 10 A. Yes. 11 Q. All right. And it states, "Purchasing 12 will issue purchase order to Oldman Boiler 13 Works, Inc. in Buffalo, New York. Order will 14 be based on cost-plus with a 'not to exceed' 15 price of \$1755." Did I read that right? I'm 16 sorry, "for material and labor." 17 A. Yes. 18 Q. My first question: Do you know who 19 Oldman Boiler Works was? 20 A. The only thing is I know that's who 21 Mr. Tredinnick worked for from '69 to '71. 22 MR. RADCLIFFE: Is it Old Man or 23 Oldman? 24 MR. VONA: It's pronounced both ways.

178 1 I've heard it many, many times both ways. 2 MR. RADCLIFFE: Just curious. 3 Q. And what kind of company is that, if 4 you know? 5 A. It's the boiler works that he worked 6 for. 7 Q. They employed boilermakers? 8 A. They employed Mr. Tredinnick, so yes. 9 Q. They do work on boilers, right? 10 A. Yes. 11 Q. All right. Do you know did Riley 12 Stoker regularly contract with boilermakers? 13 A. Boilermakers? 14 Q. Yes. 15 A. Or a company to supply them for us? 16 Q. Well, I see your point, but okay. 17 Let's rephrase the question to say, did Riley 18 Stoker regularly contract with companies who 19 employed boilermakers? 20 A. It would be a case-by-case basis. For 21 instance, we have no superintendent, no 22 equipment, no material in an area, and we need 23 a small job done on a boiler, on our boiler, 24 it's better to get someone local who's working	180 1 Q. Are you all set? 2 A. Yes. 3 Q. All right. Basically, why don't you 4 tell the jury what this is. 5 A. This is a purchase order from Riley 6 Stoker to Oldman Boiler Works. 7 Q. And is this for the same repair or is 8 this a different repair, do you know, that we 9 just discussed? 10 A. I can't -- 11 Q. Let me ask you this: The last one we 12 looked at was from October of 1971, right? 13 A. Yes. 14 Q. And this one says May 28, 1971, and 15 then below it says start May 26 and then finish 16 sometime in June it looks like, so this would 17 be different, right? 18 A. Yes. 19 Q. Now, at the top right-hand corner it 20 says "Purchase Requisition No." and it says 21 "Account Number" again. 22 Do you know did Riley Stoker have 23 account numbers for the boiler repair companies 24 like Oldman iron works -- or I'm sorry, Oldman
179 1 in that area all the time to go in and do the 2 job rather than trying to move in all the 3 equipment, all the supervision and everything 4 else. 5 Q. So would that be in the context of an 6 initial installation of a boiler or repair of a 7 boiler? 8 A. This is repair. 9 Q. This is repair work? 10 A. This is repair. Correction order is 11 shown up in the right-hand corner. 12 Q. Do you know when this boiler was 13 installed? 14 A. It was completed in 1971. 15 Q. So they were already doing a repair 16 job on it in October of '71? 17 A. Yes. 18 Q. Okay. Do you know if Riley Stoker 19 ever provided a warning to any of the companies 20 that employed boilermakers with regard to 21 asbestos hazards? 22 A. I don't believe so. 23 (Exhibit 42, Document dated May 24 28, 1971, so marked.)	181 1 Boiler Works? 2 A. I don't know. 3 Q. Do you know what that signifies then? 4 A. That's an accounting issue within 5 Riley. I have no idea what it means. 6 Q. So it could be? You don't know one 7 way or another? 8 A. I believe that's an internal 9 accounting number. 10 Q. All right. It says vendor, and that's 11 Oldman Boiler Works in Buffalo, New York, 12 right? 13 A. Yes. 14 Q. Okay. And obviously, the top of the 15 purchase order is Riley Stoker. Mr. Smith, 16 would you agree with me that in this instance 17 Riley Stoker is paying Oldman Boiler Works to 18 repair its boiler? 19 A. It's paying him to do a repair on the 20 site on something we furnished, gas-sealing 21 baffle, that's not really on the boiler. It's 22 ductwork. 23 Q. But it's still something that Riley 24 Stoker provided; they're paying Oldman to do a

182 1 repair on equipment that was supplied by Riley 2 Stoker? 3 A. Yes. 4 Q. Okay. And this isn't an isolated 5 incident, is it? I mean, Riley Stoker would 6 contract with boiler -- or companies that 7 employed boilermakers to repair their boilers, 8 true? 9 A. Under certain conditions. 10 Q. Okay. Had Riley Stoker known about 11 the hazards of asbestos, wouldn't you agree 12 that they should have warned these companies 13 like Oldman Boiler Works? 14 MR. RADCLIFFE: Object to the form. 15 A. I can't answer that. This is in 1971. 16 Both of these are '71. Riley, to my knowledge, 17 was unaware of the potential hazards of 18 insulation. 19 Q. Sure. Well, all I'm asking is if they 20 had known, do you think it would be reasonable 21 for them to warn these individuals? 22 MR. RADCLIFFE: Object to the form. 23 A. If you know something is wrong, you 24 normally tell people. You just don't do it.	184 1 Q. And it's dated July 22, 1971? 2 A. Yes. 3 Q. All right. And Chevy is the customer, 4 right? 5 A. The one we're writing to. There isn't 6 a reference number on here. 7 Q. Regarding what, the contract, you mean? 8 A. Yes. 9 Q. How about in the middle where it says 10 69035, isn't that the contract number we were 11 looking at on the last page as well? 12 A. I'm saying it's not typed into the 13 letter. 14 Q. Nonetheless, they're writing Chevy? 15 A. Yes. 16 Q. All right. And it says -- if you want 17 to take a minute, did you read the letter? Do 18 you want to read it? 19 A. Yes. 20 Q. Okay. Let me know when you're ready. 21 A. I'm ready. 22 Q. All right. Now, the first paragraph 23 does say, "Attached you will find six copies of 24 service manuals from Copes-Vulcan covering the
183 1 It's not a warning. You just don't do it. 2 Q. That's all I'm asking, Mr. Smith. 3 Now, would you also agree though that a 4 reasonable company would make sure that their 5 product is safe before allowing other people to 6 work on it? 7 MR. RADCLIFFE: Object to the form. 8 A. Obviously, we believed our product was 9 safe if we were working on it. 10 Q. And you felt it was safe for the 11 boilermakers to work on it, too? 12 A. There was no reason not to believe 13 that at that time. 14 Q. All right. Let me move ahead. 15 (Exhibit 43, Letter dated July 16 22, 1971, so marked.) 17 Q. Are you all set, Mr. Smith? 18 A. Yes. 19 Q. Okay. And again, this is a Riley 20 Stoker document, true? 21 A. It's a letter from Riley Stoker, yes. 22 Q. And it's to Chevy Motor Division, 23 right? 24 A. Yes.	185 1 Model 1 Pneu-Blast System. I ask that you 2 insert one set of these instructions in each of 3 your Riley service manuals at the back of 4 Section 3." 5 I want to ask you, Riley Stoker, did 6 they provide service manuals with all their 7 boilers? 8 A. Operating manuals, yes. 9 Q. And I have to ask, but did they ever 10 place a warning about any asbestos-containing 11 materials in any of those manuals? 12 A. Not to my knowledge. 13 Q. "These are complete instructions 14 covering the Pneu-Blast System and are intended 15 to replace those in your service manual, since 16 the existing instructions are not complete. 17 You will recall we noted this earlier this week 18 when I was at your plant." 19 Did Riley Stoker -- employees of Riley 20 Stoker make regular visits to their customers 21 where the boilers were installed? 22 A. I don't know what regular is. Joe 23 Mignacca was the district service manager. 24 This boiler was in the start-up mode with

186 1 issues, and he was sure going there to resolve 2 the outstanding issues that were incomplete. 3 Q. So there was a problem and he went out 4 there to investigate it? 5 A. I guarantee the issue was the contract 6 couldn't be closed because the customer wasn't 7 satisfied, so we did everything we could 8 because until it's closed, we don't get paid. 9 Q. And again, sir, you'd agree with me 10 that if Riley Stoker was aware of the hazards 11 of asbestos, this gentleman, he could have 12 warned the Chevy plant in 1971; isn't that 13 right? 14 A. We didn't know in '71. When we knew, 15 everyone knew. 16 Q. I'm just asking you -- just listen to 17 my question, and we'll get through it faster. 18 I'm just asking you had Riley Stoker 19 known. I know your position, but I'm asking 20 you had they known prior to OSHA, would it have 21 been possible for that individual, Mr. -- I 22 forget, you mentioned his name. 23 A. Joe Mignacca. 24 Q. -- for him to tell the people at Chevy	188 1 labor, accelerated schedule, too many things. 2 Q. True. But you did look at this 3 contract though, right? 4 A. Yes. 5 Q. But still based on that, you're just 6 not sure? 7 A. No. I didn't price up boilers. 8 Q. Okay. Now, if we look at the bottom 9 where it says "Field Labor," do you see that, 10 "Field Labor Boiler"? 11 A. Yes. 12 Q. There was an entry there that says 13 257,864, and next to that in parentheses it 14 says "including settings and insulation." Did 15 I read that right? 16 MR. RADCLIFFE: Hold on a second. I 17 think you read the wrong line. 18 MR. VONA: How so? 19 MR. RADCLIFFE: Well, you said Field 20 Labor and then you said 257 when the number 21 left -- 22 MR. VONA: I see what you're getting 23 at. I'm sorry, I didn't mean to confuse the 24 record.
187 1 and say, Hey, there's asbestos in these 2 boilers, be careful? 3 MR. RADCLIFFE: Object to the form. 4 Q. He could have warned them, right? 5 A. Anything is possible, yeah. 6 Q. That's all I'm asking. 7 (Exhibit 44, Document titled 8 Contract Price dated 7/18/69, so 9 marked.) 10 Q. Now, this document is titled "Contract 11 Price," right? 12 A. Yes. 13 Q. Okay. Do you know if this would be -- 14 is this preliminary, or would this be a final, 15 or do you not know? 16 A. Based on the date, I would suggest it 17 would probably be pretty close to the final 18 number. 19 Q. Okay. Does it sound -- I mean, from 20 your review of the documents and contracts, I 21 mean, does this sound about accurate that the 22 price would be \$417,000? 23 A. I can't comment on that. The size of 24 the boiler, the constituents, the labor, no	189 1 Q. I'll step back. You saw where it says 2 "Field Labor." Actually, let's just move down 3 to the number, 257,864, we'll clear that up. 4 Do you see that? And right next to it, it says 5 "settings and insulation"? 6 A. Union Iron Works supply. 7 Q. And as we've already established, that 8 was owned by Riley Stoker, right? 9 MR. RADCLIFFE: Object to the form. 10 A. Union Iron Works in '69 -- yes, it was 11 part of Riley Stoker. 12 Q. It was part of Riley Stoker? 13 A. Yes. 14 Q. Does it sound accurate to you, 15 \$257,000 for settings and insulation? And if 16 not, that's fine, but I'm just asking. 17 A. No, it's also Union Iron Works supply. 18 Q. What do you mean by that? 19 A. They would often split up the scope of 20 the work in the contract between Riley -- even 21 though it's a Riley contract, Riley would 22 supply part of it and Union Iron Works would 23 supply part of it, so they'd split it up that 24 way.

190 1 Q. All right. I got you. Okay. 2 A. So Riley supplied the labor and some 3 other material, and Union Iron Works supplied 4 more. That's how it breaks out. 5 Q. Okay. Thank you. 6 (Exhibit 45, Letter dated May 7, 7 1969, so marked.) 8 Q. Let me know when you're ready, sir. 9 A. Ready. 10 Q. This is Riley Stoker letterhead, yes? 11 A. Yes. 12 Q. Okay. May 7, 1969 is the date, true? 13 A. Yes. 14 Q. All right. I've got to wait for a 15 response, I'm sorry. 16 In its subject matter, Chevy Motor 17 Division, Tonawanda, New York, right? 18 A. Yes. 19 Q. Mr. Riel, did we see him anywhere 20 before? Is he a Chevy employee, if you know? 21 A. Don't know. 22 Q. Why don't you take a minute to read 23 the letter. 24 A. Okay.	192 1 Q. I think you mentioned them as -- if we 2 didn't, let me know. I thought we did. 3 A. They were the engineer of record on 4 this contract for Chevrolet. 5 Q. All right. Now, the date of this 6 letter is March 23, 1970, right? 7 A. Yes. 8 Q. And it is addressed to Riley Stoker 9 Corporation? 10 A. Yes. 11 Q. Regarding the Chevy Tonawanda facility 12 and your job number 398-4? 13 A. Yes. 14 Q. All right. And the letter does read, 15 "This letter will be your authority to use 16 Niagara Asbestos Company as your insulating 17 contractor on this project." I read that 18 right? 19 A. Yes. 20 Q. Okay. Would you agree with me now 21 that Niagara Asbestos Company is an insulation 22 contractor? 23 A. Yes, but I need to back up on one 24 thing. That job number you referenced up
191 1 Q. All right. And if you look at 2 paragraph 4, it says, "Will you also forward to 3 this office copies of P.A. Knowe and Niagara 4 Asbestos quotation letters. Is the settings 5 and insulation, as described in Mr. Baumann's 6 letter of April 30, 1969 to Mr. George Hart, to 7 be subcontracted to these two companies?" 8 Right? I read that right? 9 A. Yes. 10 Q. Do you know who Niagara Asbestos is? 11 A. No. 12 Q. Would you agree with me that they're 13 an insulation contractor? 14 MR. RADCLIFFE: Object to the form. 15 A. Might be. 16 (Exhibit 46, Letter dated March 17 23, 1970, so marked.) 18 Q. Why don't you take a quick minute to 19 read that. 20 A. Okay. 21 Q. Now, Benjamin, Woodhouse and Guenther, 22 it says architects/engineers, right; we talked 23 about them earlier, right? 24 A. We did?	193 1 above, 398-4, I believe is Benjamin, Woodhouse 2 and Guenther's job number. 3 Q. That's fair, but getting back to the 4 point. You would agree with me though that 5 Niagara Asbestos Company is an insulation 6 contractor? 7 A. That's what this says. 8 Q. And you'd also agree with me that 9 Riley is getting permission to use them as a 10 contractor for this job, right? 11 A. For repair or modernization, not for 12 the original job. 13 Q. But for this job, they're getting 14 authority to use Niagara Asbestos, correct? I 15 mean, that's what the letter says, doesn't it? 16 A. Are you talking about the erection? 17 Q. I'm talking about this document right 18 here, whether it be the erection, you're saying 19 it's a repair job, it doesn't matter to me. 20 A. We had to get permission, absolutely. 21 Q. And you got permission, your company, 22 Riley Stoker got permission to use Niagara 23 Asbestos as the insulation contractor, true? 24 A. Yes.

194 1 Q. Now, do you think a reasonable company 2 might have suspected that an insulation company 3 by the name of Niagara Asbestos might be using 4 asbestos-containing products? 5 MR. RADCLIFFE: Object to the form. 6 A. I never made the connection when I was 7 in the field during that period of time. 8 Q. So you dealt with other companies when 9 you were in the field that had asbestos in 10 their company name? 11 A. Yes, I heard it a lot. It didn't 12 register. 13 Q. Just so we're clear, when did you get 14 in the field? 15 A. 1966. 16 Q. Okay. And it never registered to you 17 that companies that had the name asbestos in 18 their corporation or company name could be 19 using asbestos products? 20 MR. RADCLIFFE: Object to the form. 21 A. It didn't make any difference to us. 22 We weren't aware of what the heck -- that there 23 was an issue. I mean, I was supervising 24 insulation companies.	196 1 Q. All right. Now, to your knowledge, 2 has Riley Stoker ever specified the use of an 3 asbestos-containing product in any of its 4 boilers? 5 MR. RADCLIFFE: Objection to the form. 6 Asked and answered. Go ahead. 7 A. I think we've been over that a lot 8 today. Specified, we put down that this 9 gasket, asbestos or Eagle, we did that. We put 10 down gaskets for this for handholes, for 11 manholes. We listed asbestos millboard. I 12 think we've been through all this. As far as 13 specifically stating asbestos insulation, I 14 don't get it. 15 Q. I'm not trying to isolate it just to 16 insulation. I'm just asking you, the Riley 17 Stoker -- I'm asking you point blank, has Riley 18 Stoker ever specified -- have they ever said 19 this is what we should use? Have they ever 20 specified the use of asbestos-containing 21 material in any of their boilers? 22 A. We have listed asbestos products as 23 being the preferred product in certain 24 circumstances.
195 1 Q. You testified to that. In fact, you 2 testified before that Riley Stoker had no idea 3 about the hazards of asbestos until 1972, 4 right? 5 MR. RADCLIFFE: Object to the form. 6 A. They had no idea about the potential 7 hazards of thermal insulation on our boilers 8 with asbestos. 9 Q. But what I want to ask you and I don't 10 want to -- those are two different things. 11 Would it be apparent to Riley Stoker if they're 12 hiring a company called Niagara Asbestos that 13 they may be using asbestos-containing 14 materials? That's what I'm asking you, not 15 whether they're harmful. 16 MR. RADCLIFFE: Object to the form. 17 A. It wouldn't even register with me. 18 Q. But I'm asking you as a corporate 19 representative of Riley Stoker, I'm asking you 20 that question. 21 MR. RADCLIFFE: Well, objection. 22 Calls for speculation. Go ahead. 23 A. It wouldn't register with me, and I 24 can only speak to what I know.	197 1 Q. What circumstances? 2 A. Gaskets, millboard, rope. Those are 3 the three that I can think of because usually 4 we usually catch them in specs. The specs 5 would say this is what you're going to use, so 6 we'd say this is what we're going to use. 7 Q. When did Riley Stoker start specifying 8 the use of those materials? 9 A. I don't think Riley started 10 specifying. We said we need something to do 11 this job, and the vendors came back and told us 12 what they could provide that would do the job 13 safely and let us meet the boiler code and all 14 the safety codes. 15 (Exhibit 47, Drawing dated 16 October 15, 1931, so marked.) 17 Q. All right. Take a quick look at it, 18 and let me know when you're all set. 19 MR. RADCLIFFE: Let me just note an 20 objection. 21 MR. VONA: Based on? 22 MR. RADCLIFFE: To what I believe to 23 be writing on the first page here that's not 24 part of the original.

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198 1 MR. VONA: Let's see. Yes, you can 2 have an objection to the writing. That's fine. 3 That's it though. You don't have any objection 4 to the document itself, do you? 5 MR. RADCLIFFE: I've never seen the 6 document before. I don't know anything about 7 it. 8 MR. VONA: I'll submit to you that 9 this patent was sent to Mr. Whitcomb under 10 notice to admit, and I'd also submit that they 11 are admitted at this time as authentic. 12 MR. RADCLIFFE: I don't know anything 13 about that. 14 Q. Are you all set, Mr. Smith? 15 A. I don't know. I've got a document 16 here. 17 MR. RADCLIFFE: Wait for a question. 18 Why don't you ask a question. 19 MR. VONA: I did. I asked if he's 20 ready. 21 MR. RADCLIFFE: Ready for what? 22 MR. VONA: Ready to continue. 23 MR. RADCLIFFE: He's ready to 24 continue.	200 1 Riley Stoker Corporation." Right? 2 A. That's what it says. I have no idea 3 what it means. 4 Q. And it's dated application October 15, 5 1931? 6 A. Yes. 7 Q. All right. Now, I'd like you to turn 8 to the next page. Are you there? 9 A. Yes. 10 Q. If you go down on the left-hand column 11 there's a number 35. I'm going to read that 12 paragraph for you. It says, "In order to 13 prevent any air leakage through the slight 14 clearance space between the ring 21" -- which 15 corresponds to the diagram -- "and the drum 12, 16 I preferably provide suitable flexible packing 17 material such as asbestos rope surrounding the 18 drum outside the ring. This rope is held in 19 place by a cylindrical projecting shelf or 20 sleeve formed integral with the ring. The 21 cylindrical portion is larger in diameter than 22 the drum, and the space between these parts is 23 occupied by the asbestos packing." Did I read 24 that correctly?
199 1 MR. VONA: I appreciate you answering 2 for him. I was just asking him. 3 Q. Are you all set? 4 A. Yes. 5 Q. All right. You can skip over the 6 cover page -- well, actually, don't. Let's go 7 back. I'm going to change my mind. Let's go 8 to the second page. It says United States 9 Patent Office, right? 10 A. Yes. 11 Q. Have you ever seen any patents before 12 in your career? 13 A. No. 14 Q. You're an engineer, right? 15 A. Yes. 16 Q. Now, the title of the patent says "Air 17 Seal For Boiler Drums." Do you see that? 18 A. Yes. 19 Q. All right. And it's by a Max Kuhner 20 to Riley Stoker Corporation; do you see that? 21 I skipped over some words. 22 A. Right. 23 Q. But you'd agree that it says, "By Max 24 Kuhner, assignor, by mesne assignments, to	201 1 A. That's what it says. 2 Q. All right. Now, it continues to say, 3 "A layer 35 of a suitable heat insulating 4 material, such as 85 percent magnesia, is 5 preferably placed against the outer surface of 6 the drum head." Did I read that right? 7 A. That's what it says. 8 Q. All right. Now, this Max Kuhner, was 9 he an employee of Riley Stoker, do you know? 10 A. He was around a long time. I don't 11 know whether he came from Badenhausen or where. 12 Q. But he was employed by Riley Stoker, 13 wasn't he? 14 A. It looks like he was employed by 15 Badenhausen, which became part of Riley Stoker. 16 Q. Okay. Nonetheless, he's authoring a 17 patent for Riley Stoker, true? 18 A. He's applying for a patent. I don't 19 understand the legal mumbo-jumbo. 20 Q. Sure. I'm just asking you what the 21 document says. It's true he's specifying 22 asbestos to be used in this application, isn't 23 he? 24 A. No, I don't agree with you.

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202 1 Q. Why not? 2 A. He's doing exactly what I've been 3 talking about all day. He's saying provide a 4 suitable flexible packing material, such as 5 asbestos rope. Down below he says a suitable 6 heat-insulating material such as 85 percent 7 magnesia. He's using a generic example. He's 8 not saying that's what you've got to use. He 9 was giving an example of something that had 10 been used and that's what he's doing. 11 MR. VONA: Move to strike as 12 nonresponsive. 13 Q. It does say, "I preferably provide a 14 suitable flexible packing material such as 15 asbestos rope"; does it not? 16 A. Such as asbestos, yes. 17 Q. Do you have any reason to dispute that 18 Max Kuhner wrote this patent? 19 A. Request for patent, no. 20 Q. So those are his words? 21 A. Yes. 22 Q. He chose to write asbestos rope and 23 asbestos packing, right? 24 A. Such as.	204 1 MR. RADCLIFFE: Asked and answered. 2 Q. You're right. I'll withdraw the 3 question. 4 (Exhibit 48, Document titled 5 Power, so marked.) 6 Q. Mr. Smith, you've seen the Power 7 magazine before, haven't you? 8 A. Yes. 9 Q. Numerous times in depositions? 10 A. (Nodding.) 11 Q. Can you just turn to the next page and 12 there's an article titled "Furnace Design of 13 Large Steam Generators," right? 14 A. Yes. 15 Q. And who wrote that article? 16 A. Max Kuhner. 17 Q. And what's his title? 18 A. He was the vice president of 19 engineering, Riley Stoker. 20 Q. Did you know that, that he was vice 21 president of engineering at any time at Riley 22 Stoker? 23 A. I was not aware of that. 24 Q. Okay. And if you look on the cover
203 1 Q. He chose to put 85 percent magnesia? 2 A. Such as 85. 3 Q. We've already talked about 85 mag, 4 that's asbestos-containing, isn't it? 5 A. And his reference was he was using 6 that as an example. 7 Q. Okay. And basically, he's filing a 8 patent in 1931 that shows how to insulate a 9 boiler drum with asbestos-containing materials, 10 true? 11 A. No. He's not insulating a boiler 12 drum. He's sealing. This is a seal. 13 Q. Okay. Is he using insulation to seal 14 it, 85 mag? 15 A. There is a seal -- he's not insulating 16 the drum. That's what you said. 17 Q. Fine. But is he using 85 percent mag 18 to help seal the air? 19 MR. RADCLIFFE: Object to the form. 20 A. He made a suggestion that that would 21 be the type of thing he would use. 22 Q. Okay. Now, you said that Max Kuhner 23 worked for -- who was it? Did he ever work for 24 Riley Stoker?	205 1 page, it says August 1952; is that right? 2 A. Yes. 3 Q. Okay. So in 1931, the future vice 4 president of Riley Stoker was specifying the 5 use of asbestos-containing products in one of 6 his patents, right? 7 MR. RADCLIFFE: Object to the form. 8 Q. Is that not true? 9 A. He gave an example of the type of 10 product he would use in a specific application. 11 Q. I'll break it down simpler, okay. In 12 1931, the future vice president of engineering 13 for Riley Stoker, he wrote a patent, and in 14 that patent, he did use the words asbestos 15 packing and asbestos rope and 85 percent 16 magnesia, did he not? 17 A. He did use them. 18 Q. Thank you. We're still to believe to 19 this day that Riley Stoker had no idea up until 20 1972 that any of these thermal insulation 21 materials had asbestos? 22 MR. RADCLIFFE: Object to the form. 23 Q. Yes or no? 24 A. I've said repeatedly I don't know if

206 1 someone knew there was asbestos in something, 2 but as far as being aware that the application 3 of thermal insulation to Riley boilers was 4 hazardous was not found out until '72 when OSHA 5 came out and said these have this in it and 6 it's bad. And our answer is we stopped using 7 it, period. 8 Q. *And despite the fact that Riley 9 Stoker was a party to several workers' 10 compensation claims with regard to asbestos 11 disease prior to 1972 -- 12 A. We've been all through that. 13 MR. RADCLIFFE: Wait for a question. 14 MR. VONA: That's my question. 15 MR. RADCLIFFE: Well, it's not a 16 complete question. Can you read it back? 17 (*Testimony read back by 18 reporter.) 19 MR. RADCLIFFE: I object. That's not 20 a complete question. 21 Q. Okay. Fine. So it's still Riley 22 Stoker's position, you just testified, they 23 didn't know asbestos was a hazard until 1972? 24 And that's in contrary or in despite there are	208 1 Michael Smith. We're back on the record. The 2 time is 2:58. 3 * * * * * 4 EXAMINATION CONDUCTED 5 BY MR. RADCLIFFE: 6 Q. Mr. Smith, I'm going to ask you some 7 questions. I know I'm sitting next to you, but 8 feel free to look at the camera, if you can. 9 All right? 10 A. Yes. 11 Q. I want to back up just a little bit 12 and talk to you about your experience. You 13 mentioned that you actually worked in the field 14 in the erection of boilers. Do you recall that 15 testimony? 16 A. Yes. 17 Q. Can you tell the jury when did you 18 first start working in the field in connection 19 with boilers? 20 A. I started working in the field in June 21 of 1966 with Ebasco Services on a jobsite in 22 Dallas, Texas. 23 Q. And how long did you work in the field 24 in connection with the erection of boilers?
207 1 several workers' compensation claims filed with 2 regard to asbestos disease prior to 1972? 3 MR. RADCLIFFE: Object to the form. 4 A. I've already testified to all of that. 5 Q. So the answer is yes? I'm just asking 6 you what Riley Stoker's position is on the 7 health hazards of asbestos, that's all, when 8 they thought it was hazardous; you said 1972, 9 right? 10 A. We became aware of the potential 11 hazard of the thermal insulation on our boiler 12 with the advent of OSHA in 1972. 13 MR. VONA: All right. I don't have 14 any further questions at this time. 15 MR. RADCLIFFE: Anybody else in the 16 room with questions? Anybody on the phone with 17 questions? 18 (No response.) 19 THE VIDEOGRAPHER: The time is 2:49. 20 We're off the record. 21 (Off the record, 2:49 p.m.) 22 (Back on the record, 2:58 p.m.) 23 THE VIDEOGRAPHER: This is the 24 beginning of Tape No. 4 in the deposition of	209 1 A. I worked in the field in connection 2 with the erection of boilers until February 3 1973. 4 Q. And what was your job from '66 to '73? 5 A. In '66 I was in Dallas, Texas. I was 6 a field engineer. I was supervising 7 insulators, carpenters until the following 8 summer, and then I went over to Lake Ray 9 Hubbard in Texas, and we installed a complete 10 base for a power plant. 11 In December of 1967 I was assigned to 12 Bridgeport Harbor Station where I supervised 13 various crafts, including ironworkers, 14 boilermakers, painters in the erection of coal 15 barge unloading, berths, and fuel oil unloading 16 berths, and various modifications to the 17 boilers. 18 Q. And during this time that you were 19 working in the field, if I can refer to it that 20 way, did you ever work near boilermakers? 21 A. Every day. 22 Q. Did you ever work near insulators? 23 A. Yes. 24 Q. When you worked near insulators, how

210 1 far would you be from them? 2 A. In Dallas, Texas, I was actually 3 supervising the installation of the insulation 4 on the power plant, not just the boiler, the 5 entire power plant. And I was with them daily, 6 all up and down the structure, so I was with 7 them probably from June through March or April 8 the following year. 9 Q. And when you were working with them, 10 how close? Were you a foot away, 100 feet 11 away? 12 A. Normally, we were a couple of feet, 13 and the only time I was a little bit distant, 14 we were working trying to create something in 15 their shop and they started to cut some pipe 16 insulation, and they told me that I had to put 17 a mask on because the dust could irritate me. 18 And so I put the mask on and stayed there, and 19 we finished the project. 20 Q. All right. Did anyone at that time 21 tell you about any of the hazards associated or 22 alleged to be associated with exposure to 23 asbestos? 24 A. No.	212 1 Stoker products versus Riley Stoker equipment. 2 What did Riley Stoker sell? 3 A. Riley Stoker's primary product was 4 boilers and fuel-burning equipment. 5 Q. You already mentioned that these 6 boilers are not the size of a water heater or a 7 boiler furnace in somebody's house. Would you 8 refer to a Riley Stoker boiler as a product? 9 A. No. 10 Q. What would you describe it as? 11 A. It's a very sophisticated piece of 12 equipment that only a very sophisticated buyer 13 would purchase. 14 Q. Explain that process for us a little 15 bit. Did a potential purchaser come to Riley 16 and say give us a boiler, or how did it happen? 17 A. Normally, the owners, either 18 themselves or through an engineer, would define 19 a need that they had and prepare a 20 specification, and that would include things 21 like where the boiler was going, what the site 22 looked like, what the fuel would be, what the 23 steam requirements had to be as far as 24 temperature, pressure, quantity, the schedule
211 1 Q. What about at any time when you were 2 working in the field, did anyone tell you that 3 there were hazards associated with exposure to 4 asbestos? 5 A. No. 6 Q. When you left -- did you work for 7 Ebasco Services the entire time that you were 8 in the field? 9 A. Yes, at various sites, but for Ebasco. 10 Q. And when you left Ebasco, is that when 11 you started to work for Riley? 12 A. Yes. 13 Q. Now, back when you were working for 14 Ebasco, did any of the insulators tell you that 15 working with insulation materials was 16 hazardous? 17 A. No. 18 Q. Do you know when OSHA started to 19 regulate exposure to asbestos in the workplace? 20 A. It was late in 1971. 21 Q. I'm going to jump around a little bit 22 to try to cover some of the information that 23 was covered earlier today. 24 There were questions about Riley	213 1 for the project, and what the scope of the work 2 for each of the vendors might be. 3 Q. All right. So how was that 4 information -- now, was this information 5 provided by the buyer or somebody else, or who 6 gave it to you? 7 MR. VONA: Form. 8 A. It was usually either the buyer or 9 their architect/engineer. 10 Q. And on whose behalf was the 11 architect/engineer working? 12 A. For the owner. 13 Q. All right. So when you got this 14 information from the owner, are we talking 15 about a half a paragraph or something more 16 significant than that? 17 MR. VONA: Form. 18 A. There was quite a wide variety of ways 19 they could request it. If they already had a 20 boiler there from us, they might just have a 21 one-page requirement, duplicate this boiler 22 plus do this, this, and this, and we would then 23 give them a price for doing it based on that 24 requirement.

214 1 And we'd range from there to the large 2 utility boiler where they have specifications 3 that are literally feet thick. 4 Q. Well, let's talk about the customers 5 in this specific case. You talked about some 6 boilers that were at DuPont today, right? 7 A. Yes, a boiler at DuPont. 8 Q. Was DuPont a sophisticated purchaser 9 of boiler equipment? 10 MR. VONA: Form. 11 A. Yes. DuPont actually was a very 12 significant customer of Riley and there was a 13 lot of different boilers at a lot of different 14 sites that had been specified, sold, erected 15 and operated over the years. 16 Q. Did DuPont know how to specify a 17 boiler? 18 MR. VONA: Objection. Form. 19 A. Yes, they did. 20 Q. Did DuPont know how to run a boiler? 21 A. Yes. 22 Q. And once a boiler was delivered to 23 DuPont, who was in charge of the operations and 24 maintenance of that boiler?	216 1 delivered to Hooker Chemical, right? 2 A. Yes. 3 Q. Was Hooker Chemical a sophisticated 4 purchaser of boilers? 5 MR. VONA: Form. 6 A. Yes. 7 Q. Who had control over the boilers at 8 Hooker Chemical once they were delivered to 9 Hooker Chemical? 10 A. Hooker Chemical. 11 Q. While we're talking about Hooker, let 12 me just ask you some questions. Do you 13 remember being shown Exhibits 17, 19, and 20? 14 A. Yes. 15 Q. Can I see No. 17 and I'll 16 specifically -- 17 MR. VONA: Tom, which contract is 18 that? 19 MR. RADCLIFFE: This is Hooker 20 Chemical Contract 1705. 21 MR. VONA: Okay. Thanks. 22 MR. RADCLIFFE: Actually, we don't 23 need this one. 24 Q. On Exhibit 17, I want to direct your
215 1 A. E.I. DuPont. 2 Q. Once a boiler was delivered to DuPont, 3 who had control over that boiler? 4 A. DuPont. 5 Q. Did Riley Stoker ever have the ability 6 after a boiler was delivered to go back onto 7 the premises of a customer and say we want to 8 do work on a boiler, we want you to give us 9 access to our boiler? 10 MR. VONA: Form. 11 A. Not without the customer requesting 12 us. 13 Q. Now, we were talking specifically 14 about DuPont. What about GM? You talked about 15 a GM boiler earlier today, right? 16 A. Several boilers at GM. 17 Q. Was GM a sophisticated purchaser of 18 boilers? 19 A. Very. They bought a lot of boilers 20 for their plants all over the country. 21 Q. Who had control over the GM boilers 22 after they were delivered to GM? 23 A. GM did. 24 Q. You also talked about boilers	217 1 attention specifically to the -- is this a 2 requisition document? 3 A. This is a contract material 4 requisition document. 5 Q. Okay. Does this mean that these 6 materials were actually purchased? 7 A. No. 8 Q. What does it mean? 9 A. It means -- it states it, the 10 following or equal insulation. This is a 11 generic type of the product that you need to 12 provide us with a certain benefit, and this is 13 a standard method of doing it. 14 Q. Do you remember being asked a number 15 of questions or a series of questions about the 16 Supertemp block? 17 A. Yes. 18 Q. And you see that Supertemp block is 19 listed here? 20 A. Yes, it is. 21 Q. Of your own personal knowledge, do you 22 know whether Supertemp block contains asbestos? 23 A. I did not know. 24 Q. Do you know now on your own personal

218 1 knowledge? 2 A. No. 3 Q. All right. So assuming that you were 4 provided Answers to Interrogatories from the 5 company who made the product, they might say 6 whether or not it contained asbestos, right? 7 A. Yes. 8 Q. All right. I'm going to show you 9 Exhibit 18 which you were shown earlier and ask 10 you to look at the Supertemp block and tell me 11 the years that the company who made it said 12 that it contained asbestos? 13 A. Supertemp block contained asbestos of 14 varying degrees from 1938 through 1945. 15 Q. '45. What are the dates on the 16 requisition forms where Riley lists Supertemp 17 block? 18 A. June 3, 1946. 19 Q. 1946. So if Riley actually did 20 purchase or had someone purchase Supertemp 21 block in 1946, did it still contain asbestos 22 according to the manufacturer? 23 MR. VONA: Objection. 24 A. No.	220 1 This is Exhibit 30 that was shown to 2 you earlier, and I'd like you to just read the 3 paragraph. You can read it to yourself right 4 at the beginning under summary. 5 A. Okay. 6 Q. Based on your review of that 7 paragraph, is the EPA publishing this document 8 to say that the EPA knows all this information 9 is true, or is the EPA publishing what other 10 people said was true? 11 A. They're publishing what other people 12 said was true. 13 Q. And does the EPA indicate the source 14 of this information? 15 A. It indicates by manufacturers and 16 process of certain asbestos products. 17 Q. And did the manufacturers of products 18 as far as you know -- well, strike that. 19 Was it pointed out to you that anybody 20 submitted information for Thermotex, not 21 Thermotex-B but Thermotex? 22 A. No. 23 Q. Do you have any information about 24 whether or not Thermotex-B contained asbestos
219 1 Q. So earlier if you were asked questions 2 about whether or not Supertemp block contained 3 asbestos, were you relying on your own personal 4 knowledge or were you relying on statements 5 from counsel or what you understood was in an 6 interrogatory response? 7 A. Statements from today. 8 Q. Statements from counsel? 9 A. Yes. 10 Q. Is that true -- well, let me just say, 11 you were also asked questions about Thermotex, 12 do you remember that? 13 A. Yes. 14 Q. And there was a question about 15 Thermotex, and then you were shown a document 16 that referred to Thermotex-B. Do you remember 17 that? 18 A. Yes. 19 Q. Of your own personal knowledge, are 20 Thermotex and Thermotex-B the same products? 21 A. I don't know. 22 Q. Thermotex-B, according to what the EPA 23 says someone else said -- actually, let me back 24 up. I'll show you the document.	221 1 other than what's in Exhibit 30? 2 A. No. 3 Q. Did Riley Stoker ever manufacture 4 block insulation? 5 A. No. 6 Q. Any type of block insulation, high 7 temp. or low temp.? 8 A. No. 9 Q. Did Riley Stoker ever manufacture 10 insulating cement? 11 A. No. 12 Q. Did Riley Stoker ever manufacture 13 pipecovering? 14 A. No. 15 Q. Are these all types of pipecovering 16 that have been used to varying degrees on 17 boilers in the past? 18 A. Yes. 19 Q. Did Riley Stoker manufacture 20 insulation of any type? 21 A. No. 22 Q. Was insulation required in order to 23 make a boiler operate efficiently and safely? 24 A. Yes.

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222 1 Q. Where did Riley Stoker get the 2 insulation if it didn't manufacture it? 3 A. It went out to third-party suppliers 4 on an open-bid basis. 5 Q. Did Riley Stoker tell those 6 third-party suppliers how to manufacture the 7 insulation? 8 A. No. 9 Q. Did Riley Stoker require that the 10 insulation contain any sort of raw ingredient 11 or material? 12 A. No. 13 Q. If Riley Stoker was looking for 14 insulation, what would they tell third-party 15 suppliers? What kind of information would they 16 give them? 17 A. They would give them the generic 18 consideration that we had such as it had to be 19 2 1/2 inches thick, it had to be a soft form, a 20 hard form. For pipe it might have been a 21 curved form, half-rounds. They would give them 22 the generic description, and the different 23 vendors would then quote to that generic with 24 their specific products.	224 1 application. They had a combination of 2 material on them. 3 Q. Let me ask you about the plaintiff in 4 this case. Did you read his deposition? 5 A. I read all four of them. 6 Q. All right. And so do you have an 7 understanding of what plaintiff says he did as 8 a boilermaker? 9 A. Yes. 10 Q. When did Mr. -- I'm going to pronounce 11 it incorrectly. 12 MR. VONA: Tredinnick. 13 A. Tredinnick. 14 Q. When did Mr. Tredinnick say he started 15 as a boilermaker? 16 A. I believe he started in 1967 as a 17 helper. 18 Q. And how long did Mr. Tredinnick say he 19 worked as a boilermaker? 20 A. He had approximately a two-year break 21 in service to serve in the Army. I believe it 22 was '67 to '69, and then from '69 to 2002 he 23 basically was a boilermaker. 24 Q. Did Mr. Tredinnick belong to a union?
223 1 Q. On some of the documents that we've 2 seen, there's been references to casing and 3 lagging. What does casing and lagging mean in 4 connection with a boiler manufactured by Riley 5 Stoker? 6 A. Casing actually has two meanings, and 7 one type of project, the casing, such as 8 10-gauge casing, is put right against the 9 boiler tubes to provide a smooth base for the 10 installation of the insulation. 11 And other boilers, the casing is 12 supplied outside of the insulation to basically 13 provide an airtight, weathertight seal for it. 14 Lagging is used outside insulation 15 normally when the inside is already sealed. 16 Q. Are you done? 17 A. Yes. 18 Q. The lagging that was put on -- well, 19 strike that. 20 For the boilers that you've testified 21 about today, did they have lagging on the 22 outside? 23 A. One boiler had lagging. Some had just 24 the insulmastic or the Thermotex-type	225 1 A. Yes, I believe he belonged to Local 7, 2 boilermaker union. 3 Q. Have you ever in the past reviewed any 4 boilermaker union documents? 5 A. Yes. 6 Q. Do any of those documents discuss the 7 hazards of exposure to asbestos? 8 MR. VONA: Objection. 9 A. Yes. 10 Q. Are those documents copied and set 11 forth in your notebook here? 12 A. Yes. 13 Q. In general, when do those documents 14 start to discuss the hazards -- when do those 15 boilermaker union documents start to discuss 16 the hazards of exposure to asbestos? 17 MR. VONA: Objection. 18 MR. COMERFORD: I don't want to go off 19 the record, but we agreed not to ask your 20 client about the hazards of asbestos that were 21 memorialized. 22 MR. RADCLIFFE: That's fine. If 23 you'll agree to strike from this deposition 24 every question about knowledge of the hazards

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226 1 of exposure to asbestos, including the 2 questions about workers' comp., including about 3 when it was first known, I'll stop and move on. 4 MR. COMERFORD: Give me a second to 5 talk with Keith. 6 THE VIDEOGRAPHER: The time is 3:17. 7 We're off the record. 8 (Off the record, 3:17 p.m.) 9 (Back on the record, 3:43 p.m.) 10 MR. RADCLIFFE: We've had some 11 off-the-record discussions, and it's agreeable 12 to all the parties in this case that we're 13 going to strike questions that have to do with 14 Riley Stoker's knowledge of the hazards of 15 exposure to asbestos, which would include 16 workers' compensation-type questions as well as 17 when did you first know about the hazards, 18 things of that nature, right? 19 MR. VONA: I will just add to that, if 20 it's amenable to you, we'd also be striking 21 Mr. Smith's specific knowledge of the questions 22 you asked him regarding the hazards of 23 asbestos. 24 MR. RADCLIFFE: Absolutely. That	228 1 review for us, for which jobsites did Riley 2 Stoker have contract documents? 3 A. Riley and Union Iron Works had 4 contract documents for Bethlehem Steel Corp. in 5 Lackawanna. We had contract documents for 6 three contracts at Hooker Chemical, and we also 7 had contract documents for the start of a 8 fourth, but that wasn't talked about. 9 MR. VONA: Okay. 10 A. Chevrolet Motor Division, we had Union 11 Iron Works documents for three boilers. We had 12 one Riley contract for a boiler starting up in 13 1971, and we had E.I. DuPont in Niagara Falls, 14 New York, for one boiler. 15 Q. All right. And did Mr. Tredinnick 16 describe working at all of these places? 17 A. Yes. 18 Q. Specifically, with respect to -- well, 19 let me ask you first: When a boiler is erected 20 in the field, is insulation used on the boiler 21 the first day the erection starts? 22 A. No. 23 Q. How do you know when insulation is 24 being used or is supposed to be used or was
227 1 includes my questions as well. And in fact, 2 for the record, I had not finished those 3 questions. And had we not agreed to all of 4 this, I would have had more questions to ask 5 Mr. Smith. 6 MR. VONA: I assume that. So we can 7 go back on the video. 8 THE VIDEOGRAPHER: Back on the record. 9 The time is 3:44. 10 Q. Okay. Mr. Smith, we're back on the 11 record. I think I was asking you earlier if 12 you had read Mr. Tredinnick's depositions. Do 13 you remember that? 14 A. Yes. 15 Q. All right. And from reading his 16 depositions, do you have an understanding of 17 what he said he did at the various jobsites and 18 when he was there? 19 A. Yes. 20 Q. And have you looked through the 21 contract documents for each of the jobsites at 22 issue today? 23 A. Yes. 24 Q. And specifically, if you could just	229 1 used in the erection of a boiler? 2 A. The insulation cannot be applied to a 3 boiler until after the boiler ASME code 4 pressure parts are erected and hydrostatically 5 tested. And after that you can start -- and 6 tested successfully. After that you can start 7 applying insulation and refractory materials. 8 Q. So for the boilers at issue here, were 9 you able to determine when that took place 10 time-wise? 11 A. I came up with a completion date on 12 all the boilers except the Union Iron Works 13 boilers. And for those boilers, all I have is 14 the ship date because that was the extent of 15 the Union Iron Works contract was to ship 16 components to W. Holly, who bought the boilers 17 from them. 18 Q. All right. Let me go jobsite by 19 jobsite. At DuPont, was Mr. Tredinnick present 20 during the erection of any of the boilers? 21 A. No. 22 Q. Did Mr. Tredinnick describe doing work 23 on any of the boilers at DuPont? 24 A. He described working on one Riley

230 1 boiler at DuPont approximately one to two weeks 2 in 1967, and later on during his tenure with 3 the Oldman company, which was from 1969 to 4 1971. 5 Q. All right. When you say "two weeks," 6 is that two weeks total for both of those 7 times? 8 A. No, the first one was one to two weeks 9 in one case. Another case they said it was two 10 to three, so one to three weeks the first time 11 in '67, and the second one was about one to two 12 weeks. 13 Q. All right. So for the first one in 14 1967, did that involve working with or around 15 any insulation materials on the boiler? 16 A. At that job he was a helper and he 17 basically said that he was supporting two 18 crews, one crew that worked inside the boiler 19 and that handed him out primarily metal parts 20 that would not have contained asbestos. And 21 half the time was with them and half the time 22 was with a crew over his head that were handing 23 him down stuff in buckets that was described as 24 round, white, chalky that he stated was	232 1 miscellaneous valves and stuff. 2 Q. Did the side walls, would that have 3 involved any product that contained asbestos? 4 A. On the DuPont side walls, construction 5 was tile, high-temp. mineral wool block and 6 mineral wool felt, and those materials I do not 7 believe contained asbestos. 8 Q. Let's move on to Bethlehem Steel. 9 What do you have next? 10 A. Bethlehem would be easier. 11 Q. Okay. What kind of work did 12 Mr. Tredinnick describe at Bethlehem Steel? 13 A. He described a project in the '69 to 14 '70 time frame on the Riley boiler where they 15 did superheat repair work. 16 Q. How long did that work take? 17 A. Approximately a month. 18 Q. And did he say that he did any work 19 that would have involved work with or around 20 any product that contained asbestos? 21 A. He said that he helped to put an 22 opening in the roof of the boiler so that they 23 could get to the superheater elements and 24 remove them, and that was the boiler we talked
231 1 asbestos material, but he also said he didn't 2 really know if it was asbestos. 3 Q. Did he describe that product? Are you 4 able to tell what that product was? 5 A. Based on his description, I'm not even 6 sure it came off the Riley boiler. It could 7 have came off piping up there. He mentioned 8 the air duct, but I don't know if they were 9 actually taking it off the air duct. 10 Q. Well, that raises a good point. If 11 Riley erects a boiler at a jobsite like DuPont, 12 does Riley put up all the piping that's 13 connected to that boiler? 14 A. No. 15 Q. Who's responsible for that? 16 A. The owner's other contractors were 17 responsible for that. 18 Q. All right. What about the second time 19 that Mr. Tredinnick was at DuPont from the '69 20 to '71 time frame, did he describe working with 21 any materials -- with or around any materials 22 that contained asbestos? 23 A. I believe there he stated he worked on 24 some side wall repairs and some other	233 1 about before that had high-temp. block from 2 BEH. 3 Q. All right. And you testified before 4 whether or not you thought it contained 5 asbestos. How long would it have taken to 6 remove that block based on the work that 7 Mr. Tredinnick described? 8 MR. VONA: Objection. 9 A. He described it taking approximately 10 two days to make the hole in the boiler. 11 Q. Did he do any other work at Bethlehem 12 Steel according to his testimony? 13 A. There was, later on, I believe it was 14 after '74 he was working for the Bethlehem 15 Steel company itself, one of their groups, and 16 he did some work on the ductwork beside the 17 boiler. 18 Q. How long did that work take? 19 A. I think that was approximately one 20 week. 21 Q. Which one do you have next, Hooker or 22 GM? 23 A. Hooker. 24 Q. What kind of work did Mr. Tredinnick

234 1 describe at Hooker Chemical? 2 A. It was pretty much he did a one- to 3 two-week stint when he was with Oldman, and 4 they took stuff -- he said they took asbestos 5 off the boiler, worked on valves, packings, 6 things like that and without any real 7 specifics. 8 Q. What does that mean, took asbestos off 9 the boilers? 10 A. He was assuming that the material on 11 the boiler was made out of asbestos, going 12 through leaks apparently. 13 Q. Did he describe what that material 14 was? Were you able to figure out what he was 15 talking about? 16 A. He talked about white, chalky 17 material. 18 Q. Based on that description, are you 19 able to tell whether or not it contained 20 asbestos? 21 A. No. On this project, this is where we 22 have the Eagle-Picher Supertemp block or Eagle 23 for the boiler. 24 Q. Okay. And you talked about the	236 1 Q. Are you able to tell -- flat-type 2 insulation, are you able to tell whether that 3 is a material that contained asbestos? 4 A. No, because on this project, we did 5 not supply any insulation or refractory 6 material. Union Iron Works did not. And the 7 second -- those were three boilers provided by 8 Union Iron Works. 9 The Riley Stoker boiler that was 10 provided to Chevy started up in '71, and he 11 testified that he was there before his father 12 retired, which was December of '70. So this 13 boiler was not there when he was on the site. 14 Q. Okay. Mr. Smith, at least at, I 15 think, it was Hooker, those boilers were 16 erected in the 1940s; is that right? 17 A. Hooker had one in '47, one in '49, and 18 one in '53 were the in-op dates. 19 Q. So even if we took the '53 boiler, if 20 Mr. Tredinnick was there six or nine years 21 later, that was 15-plus years after the boiler 22 was erected? 23 A. Yes. 24 Q. How do we know, if we can know, if the
235 1 Supertemp. This was the 1946 Supertemp? 2 A. Yes. 3 Q. After they stopped making it in '45? 4 A. Correct. 5 Q. And what year did he say he was at 6 Hooker? 7 A. They were there in the '69 to '71 8 range. 9 Q. All right. Let's go to GM. Did 10 Mr. Tredinnick describe doing any work at GM on 11 the boilers? 12 A. He described work at GM on boilers 13 removing insulation. 14 Q. And when did that work take place? 15 A. In the same time frame, '69 to '71. 16 Q. And how long was he there? 17 A. I believe that was approximately one 18 to two weeks also. 19 Q. And what kind of work did he describe 20 for this one to two weeks? 21 A. It was one to two weeks he removed 22 some flat-type insulation from the boiler 23 sides. It took him about one to two days to 24 remove it.	237 1 original insulation on those boilers was still 2 present 15 years later? 3 A. We don't know. 4 MR. RADCLIFFE: Those are all the 5 questions I have. 6 MR. VONA: Can we go off for one 7 second? 8 MR. RADCLIFFE: Sure. 9 THE VIDEOGRAPHER: The time is 3:56. 10 We're off the record. 11 (Off the record, 3:56 p.m.) 12 (Back on the record, 3:58 p.m.) 13 THE VIDEOGRAPHER: Back on the record. 14 The time is 3:58. 15 MR. VONA: The plaintiffs have no 16 further questions. 17 MR. RADCLIFFE: I think we're done. 18 THE VIDEOGRAPHER: This is the end of 19 Tape No. 4 in the deposition. The time is 20 3:58. Going off the record. 21 (Whereupon, the deposition was 22 concluded at 3:58 p.m.) 23 24

238 1 COMMONWEALTH OF MASSACHUSETTS 2 Worcester, ss. 3 4 I, DEANNA L. VEINOTTE, a Registered 5 Professional Reporter and Notary Public in and 6 for the Commonwealth of Massachusetts, do 7 hereby certify that the foregoing deposition 8 was taken before me on September 11, 2009; 9 That the witness named in the deposition 10 provided satisfactory evidence of 11 identification as prescribed by Executive Order 12 455 (03-13) issued by the Governor of the 13 Commonwealth of Massachusetts before being 14 sworn by me; 15 That said deposition was taken before me at 16 the time and place therein set forth, and was 17 taken down by me in shorthand and thereafter 18 transcribed into typewriting under my direction 19 and supervision; 20 That said deposition is a true record of 21 the testimony given by the witness and of all 22 objections made at the time of the examination. 23 I further certify that I am neither counsel 24 for nor related to any party to said action, nor in any way interested in the outcome thereof. IN WITNESS WHEREOF, I have subscribed my name and affixed my seal this 25th day of September, 2009. DEANNA L. VEINOTTE, RPR, CRR, CCP Notary Public My Commission expires: February 7, 2014 PLEASE NOTE: THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING REPORTER.	240 1 SIGNATURE - ERRATA SHEET 2 PAGE LINE CORRECTIONS, ADDITION OR DELETION 3 _____ 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 I, MICHAEL SMITH, have read the foregoing 14 transcript of my deposition taken on September 15 11. Except for any corrections or changes 16 noted above, I hereby subscribe to the 17 transcript as an accurate record of the 18 statements made by me. 19 20 Signed under the penalties of perjury, 21 _____ DATE _____. 22 Deponent, MICHAEL SMITH 23 24 On this, the ____ day of ____ 2009, before me, the undersigned notary public, personally appeared, _____ Deponent, proved to me through satisfactory evidence of identification, which was, _____ to be the person whose name is signed on the preceding document in my presence. _____ (Signature and seal of notary) My Commission expires: _____
239 1 September 25, 2009 2 3 4 Jason M. Saul, Esq. 5 CETRULO & CAPONE 6 2 Seaport Lane, 10th Floor 7 Boston, MA 02210 8 9 Re: EARL AND KIMBERLY TREDINNICK 10 Vs: A.W. CHESTERTON, et al. 11 C.A. No.: 12008-10509 12 13 Dear Attorney Saul: 14 15 Enclosed herewith is a copy of the 16 deposition transcript of MICHAEL SMITH taken on 17 September 11, 2009, in the above-captioned 18 case. 19 According to the Massachusetts Rules of 20 Civil Procedure, the witness has 30 days to 21 read and sign the deposition transcript. 22 Please have the witness read and sign the 23 signature page/errata sheet. If the witness 24 has not read and signed the original signature page within 30 days from the above date, it will be deemed signed. Please have the witness forward the signed signature page/errata sheet to Attorney Vona so that he may attach same to the original deposition transcript. Thank you in advance for your cooperation in this matter. Sincerely, Deanna L. Veinotte cc: All Counsel of Record	241 1 ***** 2 INSTRUCTIONS TO DEPONENT 3 ***** 4 After reading this volume of your deposition, 5 indicate any corrections or changes to your 6 testimony and the reasons therefor on the 7 Errata Sheet supplied to you, and sign it. 8 9 DO NOT MAKE MARKS OR NOTATIONS ON THE 10 TRANSCRIPT VOLUME ITSELF! 11 ***** 12 ERRATA SHEET HANDLING/DISTRIBUTION 13 ***** 14 The original of the Errata Sheet has been 15 delivered to Jason Saul, Esq. When the Errata 16 Sheet has been completed by the deponent and 17 signed, a copy thereof should be delivered to 18 each party of record and the ORIGINAL thereof 19 delivered to Keith Vona, Esq., to whom the 20 original deposition transcript was delivered. 21 ***** 22 PLEASE REPLACE THIS PAGE OF THE TRANSCRIPT WITH 23 THE COMPLETED AND SIGNED ERRATA SHEET WHEN YOU 24 RECEIVE IT. *****

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