

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROLAND L. STEVENS and SHIRLEY J.
STEVENS,

Plaintiffs,

-vs-

Case No. 3:11-CV-06073

CBS CORPORATION, et al.,

Defendants.

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

1 A P P E A R A N C E S

2 BERGMAN DRAPER LADENBURG, PLLC, by
 3 MR. MATTHEW BERGMAN,
 4 MS. ANNA KNUDSON,
 5 614 1st Avenue, 4th Floor,
 6 Seattle, Washington 98104,
 7 appeared via videoconference on behalf of the
 8 Plaintiffs.

9 CARNEY BADLEY SPELLMAN, P.S., by
 10 MR. TIMOTHY K. THORSON,
 11 701 Fifth Avenue, Suite 3600,
 12 Seattle, Washington 98104-7010,
 13 appeared via videoconference on behalf of the Defendant
 14 Cleaver-Brooks.

15 GORDON THOMAS HONEYWELL, LLP, by
 16 MR. JAMES HORNE,
 17 One Union Square,
 18 600 University, Suite 2100,
 19 Seattle, Washington 98101,
 20 appeared via videoconference on behalf of the Defendant
 21 IMO Industries, Incorporated.

22 RIZZO MATTINGLY BOSWORTH, P.C., by
 23 MR. MATTHEW MATTINGLY,
 24 411 SW 2nd Avenue, Suite 200,
 25 Portland, Oregon 97204,
 appeared via telephone on behalf of the Defendant
 Warren Palms, LLC

17 A L S O P R E S E N T

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

21 * * * * *

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1 INDEX CONT'D 4 2 Exhibit Identified: Page 3 No. 19 - Heating Ventilating Air Conditioning Guide, Dated 1960..... 172 4 5 No. 20 - General Service Report, Dated January 29, 1968..... 173 6 7 No. 21 - Drawings and Specifications Relating To Cleaver-Brooks' boilers shipped to U.S. Navy Air Station, Whidbey Island..... 175 8 9 No. 22 - Letter From Cole Industrial, Inc., to Cleaver-Brooks Company, Dated September 2, 1964..... 183 10 11 No. 23 - Letter From Harold Probandt to Frank Erickson, Dated September 8, 1959..... 187 12 13 No. 24 - Supplemental Field Report, Dated March 25, 1959..... 187 14 15 No. 25 - Credit Memo, Dated February 16, 1959, and Proposal, Dated November 4, 1958..... 190 16 17 No. 26 - Various Drawings and Specifications..... 193 18 19 No. 27 - Cleaver-Brooks Sale Order to Naval Air Station, Hanger I, Whidbey Island, Washington..... 202 20 21 No. 28 - Letter from Judy James to Vic Cerbins, Dated August 28, 1978; Cole Industrial, Inc. Purchase Order, Dated August 28, 1978; Letter from Judy James to Otto Polzin, Dated August 3, 1978; Purchase Order Documents..... 202 22 23 No. 29 - Field Report Information Sheet, Field Report General, Field Report Oil Fuel, Field Report Gas Fuel..... 204 24 25 No. 30 - Letter Regarding Warning or Recall..... 206 26 27 No. 31 - Cleaver-Brooks Boiler Operating Manual, Progress and Monitor, Fuel: Light Oil, Gas or Combination..... 210 28 29 No. 31A - Copy of Exhibit No. 31..... -- 30 31 No. 32 - Cleaver-Brooks Model 4 Watertube Boiler, Steam and Hot Water, Operation, Service, and Parts Manual 1500 Thru 6000, Fuel: Light Oil, Gas or Combination..... 212 32 33 No. 32A - Copy of Exhibit No. 32..... -- 34 35 No. 33 - Cleaver-Brooks Model CB Packaged Boilers, Operation, Service, and Parts Manual 50 Thru 100 HP, Fuel: Light Oil, Heavy Oil, Gas or Combination..... 215 36 37 No. 33A - Copy of Exhibit No. 33..... 38	1 TRANSCRIPT OF PROCEEDINGS 6 2 THE VIDEOGRAPHER: We are officially on 3 the record at 11:08 a.m. The date today is 4 September 14th, 2012. This is Disk No. 1 in the 5 deposition of John Tornetta. 6 This is being taken in the matter of 7 Roland Stevens, et al. versus CBS Corporation, et 8 al. This is pending in the United States District 9 Court, Western District of Washington at Racoma, 10 Case No. 11-CV-6073. 11 The deposition is taking place at the 12 Offices of Whyte Hirschboeck Dudek, located at 555 13 East Wells Street, Milwaukee, Wisconsin. My name 14 is Dean van Hoogen, videographer with Brown & 15 Jones Reporting, and the court reporter is Andrea 16 Reichle. 17 Will counsel please state their 18 appearances and whom they represent, beginning 19 with plaintiffs' counsel, and then the reporter 20 will swear in the witness. 21 MR. BERGMAN: Matthew Bergman for the 22 Plaintiff. 23 MS. KNUDSON: Anna Knudson for the 24 Plaintiff. 25 MR. THORSON: Tim Thorson for Defendant

7 1 Cleaver-Brooks. 2 MR. HORNE: Jim Horne for IMO 3 Industries, Incorporated. 4 MR. MATTINGLY: Michael Mattingly for 5 Warren Palms, LLC. 6 JOHN F. TORNETTA, called as a witness 7 herein, having been first duly sworn on oath, was 8 examined and testified as follows: 9 EXAMINATION 10 BY MR. BERGMAN: 11 Q Good morning, sir. 12 A Good morning. 13 Q Could you please state your full name? 14 A John F. Tornetta. 15 Q And Mr. Tornetta, how are you employed? 16 A I'm employed by Cleaver-Brooks, Inc. 17 Q And how long have you worked for Cleaver-Brooks? 18 A I started with them in 1985. 19 Q And what position do you hold with the company, 20 sir? 21 A Manager of technical services. 22 Q And what do those duties entail? 23 A A large portion of my duties is working with our 24 attorneys around the country and product liability 25 cases, lawsuits or any other issues, related to	9 1 A Yes, I do. 2 Q And I want to go through these subject areas, if I 3 could with you, sir. First, if you could look to 4 the second page of Exhibit 1. 5 A Okay. 6 Q And the first subject matter that we would like to 7 address is, "Cleaver-Brooks' historic knowledge of 8 human health hazards associated with asbestos." 9 Are you the witness who is going to be 10 testifying on behalf of Cleaver-Brooks on that 11 subject? 12 A Yes. 13 MR. THORSON: And let me just, at this 14 point, make a statement for the record. 15 Yesterday, Mr. Bergman and I had a conference to 16 discuss the scope of today's deposition and the 17 very subject -- the very subject matters and 18 topics that are going to appear in the notice of 19 deposition. And I think we had a constructive and 20 productive discussion about Cleaver-Brooks' 21 position. 22 Most of the topics, if not all of the 23 topics, parallel -- closely parallel specific 24 interrogatories that have previously been 25 propounded to Cleaver-Brooks in this -- in this
8 1 product liability. 2 Q And can you briefly describe your educational 3 background since high school? 4 A I went to -- after high school, I went to a 5 three-year trade school called Williamson Trade 6 School in Media, Pennsylvania. That's the formal 7 training or education after high school. 8 Q And can you describe the training and experience 9 that you have in the subject matter of boilers? 10 A I worked with the company for 27 years in service, 11 training, and different management positions 12 within the company. 13 MR. BERGMAN: Okay. Madam Court 14 Reporter, will you please open up Exhibit 1 and 15 hand it -- and mark it and hand it to the witness. 16 (Exhibit No. 1 was marked.) 17 BY MR. BERGMAN: 18 Q Mr. Tornetta, do you understand that you have been 19 designated by Cleaver-Brooks to testify on behalf 20 of the company on certain specific subject matters 21 in connection with this lawsuit? 22 A Yes. 23 Q And you understand the testimony that you're 24 giving is going to be on behalf of and by 25 Cleaver-Brooks?	10 1 litigation, and Cleaver-Brooks has stated a 2 variety of objections to those requests, and those 3 interrogatories. 4 Mr. Bergman and I spoke briefly, but I 5 think constructively, about the nature of those 6 objections, and, in fact, while Cleaver-Brooks 7 takes the position that Mr. Tornetta is certainly 8 the most appropriate person to address those 9 various topics, nonetheless those topics are -- a 10 number of those topics are -- for a practical 11 matter, are impractical for anyone to answer for 12 the reasons that we have set forth in our answers 13 to interrogatories. 14 Mr. Bergman and I agreed that it was not 15 necessary in the circumstances for Cleaver-Brooks 16 to proceed with a motion to squash or for any kind 17 of productive order. We are producing 18 Mr. Tornetta today in the spirit of good faith, 19 and we do believe that he is the most appropriate 20 person to set forth Cleaver's responses to these 21 various topics. 22 Have I at least accurately summarized 23 what -- Mr. Bergman, what you and I discussed 24 yesterday? 25 MR. BERGMAN: Yes.

11 1 MR. THORSON: Okay. All right. Thank 2 you. 3 BY MR. BERGMAN: 4 Q Mr. Tornetta, the second subject matter is, 5 "Cleaver-Brooks' membership in trade 6 organizations." 7 And every question that I ask you 8 regarding Exhibit 1 will be subject to your 9 Counsel's comments -- or I won't say objections. 10 But are you the witness who will be testifying on 11 behalf of Cleaver-Brooks on that subject? 12 A Yes. 13 Q The third subject -- and I should clarify that 14 Mr. Thorson and I communicated, and the third 15 subject pertains to, "Cleaver-Brooks' answers to 16 interrogatories and requests for production in 17 asbestos litigation, including the above-captioned 18 case," and we have clarified that we are only 19 referring to interrogatories and requests for 20 productions propounded in this case, as well as 21 the ACR 26 cases filed by my firm in 1980 and 22 2004. 23 So with that clarification, sir, are you 24 the witness who is going to testify on that 25 subject?	13 1 Q The fifth subject is, "Cleaver-Brooks' sale, 2 distribution, and specification of 3 asbestos-containing replacement parts, including 4 gaskets, packing, and insulation, to the United 5 States Navy." 6 Are you the witness who is going to 7 testify on that subject? 8 A Yes. 9 Q And the sixth subject is, "Cleaver-Brooks' sale, 10 distribution, and specification of 11 asbestos-containing replacement parts, including 12 gaskets, packing, and insulation, to Puget Sound 13 Naval Shipyard." 14 Once again, subject to your Counsel's 15 comments, are you the witness designated by 16 Cleaver-Brooks to testify on that subject? 17 A Yes, I am. 18 Q The seventh subject is, "Cleaver-Brooks' revenues 19 from sales of asbestos-containing replacement 20 parts, including gaskets, packing, and insulation, 21 to the United States Navy from 1954 to 1988." 22 Are you the witness testifying on that 23 subject matter? 24 A Yes. 25 Q No. 8 is, "Cleaver-Brooks' revenues from sales of
12 1 A Yes. 2 MR. THORSON: And let me just qualify 3 that matter. You were kind enough to provide me 4 with that qualification last evening. 5 Mr. Tornetta and I have not had an 6 opportunity to review, nor has he reviewed, the 7 2004 interrogatories that you referenced. And if 8 we get to that point of that deposition where you 9 want to use those interrogatory answers with him, 10 I would ask for the courtesy of an opportunity for 11 both of us to have the chance to look over the 12 interrogatories. And if we request the 13 opportunity, to confer about them. 14 MR. BERGMAN: If Mr. Tornetta needs to 15 request that, obviously. 16 MR. THORSON: Thank you. 17 BY MR. BERGMAN: 18 Q The fourth in the subject area is, 19 "Cleaver-Brooks' manufacture, sale, distribution, 20 supply, and/or specification of 21 asbestos-containing products." 22 Once again, subject to your Counsel's 23 comments, are you the witness designated by 24 Cleaver-Brooks to testify on that subject? 25 A Yes, I am.	14 1 asbestos-containing replacement parts, including 2 gaskets, packing, and insulation, to Puget Sound 3 Naval Shipyard from 1954 to 1988." 4 Again, sir, are you the witness 5 designated by Cleaver-Brooks to testify on that 6 subject matter? 7 A Yes, I am. 8 Q And finally, sir, it's topic 8 (verbatim), 9 "Cleaver-Brooks' actions, if any, taken in 10 response to its knowledge of asbestos hazards, 11 including but not limited to, warnings, 12 experimentation with non-asbestos-containing 13 products, medical screening of its employees, and 14 consultation with physicians and/or industrial 15 hygienists." 16 Once again, sir, subject to your 17 Counsel's comment, are you the witness to testify 18 on behalf of Cleaver-Brooks on that subject 19 matter? 20 A Yes, I am, and I think you said topic 8, but I 21 believe it's topic 9. 22 Q Thank you for that clarification, sir. You are 23 correct. Looking at topic 7 on Exhibit 1, is it 24 true that Cleaver-Brooks does not have any 25 documents that would provide information regarding

15 1 that subject? 2 A Any documents we would have would be related to a 3 specific boiler that we sold to the U.S. Navy, 4 which I think we've provided some commercial 5 records for all the boilers that I think we're 6 talking about, I think, so far. So it would be 7 within those. 8 We don't have a historical record of 9 everything we ever sold to the Navy. It's all 10 related to specific boilers. 11 Q Well, would it be fair to say, sir, that 12 Cleaver-Brooks is not able to calculate the 13 overall or total revenue from sales of 14 asbestos-containing replacement parts to the 15 United States Navy in the 1954-to-1988 time frame? 16 MR. THORSON: I will object to the form 17 of the question. Assumes facts not in evidence. 18 THE WITNESS: We couldn't do that in a 19 broad "this is everything that ever went to a 20 Navy" -- if we had a particular boiler we were 21 looking at, we could see if there were any sales 22 of that sort and look at the revenues from those 23 sales, if it was available, yes. But in a broad 24 sense, the overall to the Navy, no, we could not. 25 BY MR. BERGMAN:	17 1 supplied, there's some evidence of that as well, 2 where it shows a part sale to a customer after the 3 sale of the product, the boiler itself. 4 Q And so -- 5 MR. THORSON: Let me just move to strike 6 the non-responsive portion of the answer. I think 7 he may have misunderstood the scope of your 8 question. 9 BY MR. BERGMAN: 10 Q Does -- so are records of all aftermarket sales to 11 a boiler company contained in the particular file 12 pertaining to the particular boiler? 13 MR. THORSON: Object to the form of the 14 question. I think you said sales to a boiler 15 company. 16 MR. BERGMAN: Sales to a customer. 17 MR. THORSON: Object to form. 18 BY MR. BERGMAN: 19 Q Do you understand the question, sir? 20 A I think so. I think you're asking if we sold a 21 part to a customer after the boiler was sold, 22 would those records be contained within the 23 commercial -- or within the records for that 24 boiler. 25 Q Yes, sir.
16 1 Q Could the -- and does Cleaver-Brooks have records 2 documenting the overall sales of 3 asbestos-containing replacement parts outside the 4 context of the United States Navy? 5 MR. THORSON: Object to the form of the 6 question. Overly broad. 7 THE WITNESS: No. All of our -- 8 BY MR. BERGMAN: 9 Q Do you understand the question, sir? 10 A Yes, I think I do. 11 Q Okay. 12 A And the answer is no, we do not. Records we have 13 are related to specific boilers. So if we are 14 looking at a specific boiler, we could see if 15 there was an asbestos-containing replacement part 16 sold for that particular boiler, but we don't have 17 a, let's say, file or common record on every part 18 we ever sold, no. 19 BY MR. BERGMAN: 20 Q Okay. And to expand upon that, if I could, sir, 21 does Cleaver-Brooks maintain, then, records of 22 aftermarket sales to its boiler companies -- 23 excuse me, to its boiler customers in any one 24 location? 25 A Yes, I think you'll see in some of the records we	18 1 A And the answer to that is yes. 2 Q Okay. And does that pertain to all aftermarket 3 sales? 4 A All aftermarket sales for that particular boiler, 5 yes, I guess is the way I would put that. 6 Q Okay. Once again, sir, if you could look with me 7 to topic 8 on page 2 of Exhibit 1, pertaining to 8 Cleaver-Brooks' revenues from sales of 9 asbestos-containing replacement parts to Puget 10 Sound Naval Shipyard. 11 Would it also be your answer that 12 Cleaver-Brooks does not have sales organized by 13 locations such as Puget Sound Naval Shipyard? 14 A Well, I believe we do in relation to the boilers 15 that were shipped that we have records of shipping 16 to Puget Sound Naval Shipyard. So that one is a 17 little different, and it's talking about a 18 specific site, not a broad customer. 19 So within the records for the boilers we 20 shipped to Puget Sound Naval Shipyard, if there 21 was a part sold after the boiler, it would be 22 within those records. 23 Q And in -- for how long did that practice -- well, 24 does that practice continue to the present day? 25 And by "that practice," sir, I mean the practice

19 1 of documenting sales to Cleaver-Brooks' boilers in 2 the boiler -- in the particular boiler file. 3 MR. THORSON: I will object to the form 4 of the question. I believe it assumes facts not 5 in evidence, but you can answer. 6 THE WITNESS: Yes, it does continue to 7 today. If we're -- if a part is sold for a 8 specific unit boiler, the record for that specific 9 part sale or parts sale, whatever it may be, goes 10 within the records for that specific boiler. 11 BY MR. BERGMAN: 12 Q And is Cleaver-Brooks still furnishing parts -- 13 replacement parts to boilers that it originally 14 sold, say, in the 1960s? 15 A Boy, I'm not sure I know the answer to that. I 16 don't -- I don't see the sales -- everyday sales 17 of any aftermarket parts. So it would be a bit of 18 a guess for me to say, yeah, definitely we are. I 19 guess I wouldn't be surprised. 20 Q Okay. And that would be because a boiler, if 21 properly maintained, can last decades? 22 A Yeah, I don't know that I -- I would say multiple 23 decades, but perhaps, yes, it depends on how it's 24 maintained, you're right. 25 MR. THORSON: I will just belatedly	21 1 this may be a work copy. It has handwriting on 2 it. I believe I've got my own set, but I would 3 like to know -- I think you're referring to the 4 interrogatory -- the exhibit you handed 5 Mr. Tornetta is the first set of interrogatories 6 in Cleaver-Brooks' answers. Those answers were 7 supplemented. 8 MR. BERGMAN: I understand. 9 MR. THORSON: So I didn't bring a 10 supplemented -- the original set, which -- which 11 answer are you referring to? 12 MR. BERGMAN: These were the ones -- and 13 we're going to be talking about a number of them, 14 but these are the ones that were subpoenaed by 15 your firm on June 4th. 16 MR. THORSON: Okay. And which response 17 in particular are you referring to now? 18 MR. BERGMAN: I'm starting with 19 Interrogatory No. 1, which is on page 6. I 20 brought the supplemental responses but not the 21 original. Thanks, Anne. 22 MS. KNUDSON: You're welcome. 23 MR. THORSON: There's marginality on 24 these. I will agree you're not waiving any work 25 product or attorney-client privileges. I --
20 1 object to the form of the last question. I 2 believe it was an incomplete hypothetical. 3 MR. BERGMAN: If the court reporter 4 could open Envelope 2 -- I'm sorry, Envelope 3, 5 and mark it as Exhibit 2. 6 (Exhibit No. 2 was marked.) 7 THE WITNESS: Okay. 8 BY MR. BERGMAN: 9 Q Mr. Tornetta, if you could turn to the last page 10 of Exhibit 2. 11 A Yes. 12 Q And is that your signature, sir? 13 A Yes, it is. 14 Q And did you review the answers set forth in 15 Exhibit 2 prior to signing under the verification 16 section on the last page of the exhibit? 17 A Yes. 18 Q I want to ask you some questions regarding -- 19 regarding these answers, and I would like you, if 20 you could, sir, to please, on page 6 of Exhibit 2, 21 read the second full paragraph of Cleaver-Brooks' 22 verified answers. 23 MR. THORSON: I'm sorry. There were a 24 couple things there. One, I appreciate the 25 courtesy of the copy you handed me, but I think	22 1 THE WITNESS: Just so you know, that's 2 on my copy as well. There's things written in the 3 margins. 4 MR. BERGMAN: All right. Well, unless 5 you can interpret Sam's -- 6 MR. THORSON: All right. We're in 7 Interrogatory No. 1. Sorry, Counsel. 8 BY MR. BERGMAN: 9 Q Okay. Mr. Tornetta, would you please read the -- 10 and I'm directing your attention to page 6 of 11 Exhibit 2, if you would be so kind as to read the 12 second full paragraph of those answers. 13 A Beginning with "Since the 1930s's," is that the 14 paragraph? 15 Q Yeah. 16 A "Since the 1930's, Cleaver-Brooks has designed, 17 manufactured, sold, and distributed over 120,000 18 boilers of different styles, types, sizes, 19 horsepowers, pressures, fuel types, and 20 configurations. Various individual boilers 21 manufactured and sold by Cleaver-Brooks may have 22 contained one or more parts or components which 23 had some asbestos content. Each and every 24 asbestos-containing part or component was 25 manufactured by companies other than

23 1 Cleaver-Brooks and were purchased by 2 Cleaver-Brooks on the open market." 3 Q So by this answer, Cleaver-Brooks is indicating 4 that it did not itself manufacture 5 asbestos-containing products, but incorporated 6 those products in at least some of its boilers. 7 Would that be a fair statement, sir? 8 A Yeah. I -- 9 MR. THORSON: Object to the form of the 10 question. I think the answer speaks for itself. 11 THE WITNESS: I think it's more properly 12 we didn't make asbestos-containing components for 13 the boilers we made. 14 BY MR. BERGMAN: 15 Q Okay. You didn't make asbestos-containing 16 components, but incorporated asbestos-containing 17 components in at least some of the boilers that 18 Cleaver-Brooks made? 19 A Yes. 20 Q And does Cleaver-Brooks have any record of 21 purchases of asbestos-containing components on the 22 open market as referenced in -- in response to 23 Interrogatory 1 on page 6 of Exhibit 2? 24 A No, we don't have purchasing records going back to 25 those times.	25 1 referred to, Cleaver-Brooks has no sales records 2 identifying the manufacturers of the 3 asbestos-containing components that it 4 incorporated into its boilers; is that correct? 5 MR. THORSON: Object to the form. 6 THE WITNESS: That I believe would be 7 correct, yes. 8 BY MR. BERGMAN: 9 Q Okay. So the only basis of Cleaver-Brooks' 10 knowledge regarding the identity of the 11 manufacturers of asbestos-containing components 12 that it incorporated into its boilers would be in 13 specifications produced by the company? 14 A Yes, I would refer to them as the drawings and 15 parts descriptions, but yes. 16 Q Okay. And we'll talk about some of those later. 17 Are you able, sir, to provide us with an estimate 18 of the percentage of Cleaver-Brooks' boilers 19 constructed in the 1950s that incorporated 20 asbestos-containing components? 21 A No, I couldn't provide that estimate. 22 Q Okay. And how about for the 1960s? 23 A No. Again, I couldn't provide an estimate for 24 that. 25 Q Okay. And just for the record, how about 1970s?
24 1 Q Okay. How far back do Cleaver-Brooks' purchasing 2 records go? 3 A I believe, based on our document retention policy, 4 I believe it's seven years, but I -- it could be 5 10, but it certainly isn't much further -- any 6 than that. 7 Q Okay. So Cleaver-Brooks has no knowledge 8 regarding the identities of manufacturers of the 9 asbestos-containing components that it 10 incorporated into its boilers? 11 MR. THORSON: Object to the form of the 12 question. 13 THE WITNESS: No, I don't believe I 14 could say that. Our records call out, in certain 15 instances, manufacturers of those various 16 components. They may not be to a point where you 17 can determine the exact manufacturer because it 18 may list more than one or, in fact, in some 19 instances, say we're equal, which would leave it 20 pretty much open, but I think if you look through 21 some of the records we provided, you will see 22 names of some of those manufacturers. 23 Q Fair enough, sir. And let me refine my question, 24 then, and indicate that outside -- in outside -- 25 outside of specifications and records that you've	26 1 A I couldn't provide an estimate for that either. 2 Q Okay, sir. Can you provide us with a general 3 description of asbestos-containing components that 4 were incorporated in Cleaver-Brooks' boilers in 5 the 1950s and 1960s? 6 MR. THORSON: Object to the form of the 7 question. It's overly broad. Assume facts not in 8 evidence. 9 THE WITNESS: I guess I -- I would 10 hesitate to look at it generally since we made so 11 many different boilers and types of boilers, and 12 narrowing it, quite frankly, down to the '50s and 13 '60s, I'm not sure I could. 14 If we referred to some of the documents 15 that we produced in this case, I think that you'll 16 see where there was some gasket materials. There 17 was some insulation materials. Possibly might 18 differentiate between a rope and gasket material. 19 I think there may have been some board materials 20 in those boilers that we were -- that we had 21 produced the drawings for. 22 Q Okay. I want to respond to your concern, for want 23 of a better word, on narrowing it down to '50s and 24 '60s. I appreciate that, sir. 25 Are you able to -- and I want to ask you

27 1 about the insulation that -- the 2 asbestos-containing insulation that may have been 3 incorporated in Cleaver-Brooks' boilers. Can you 4 describe in any greater detail the type of 5 insulation that you were referring to? 6 MR. THORSON: Object to the form of the 7 question. It's overly broad. 8 THE WITNESS: The type of insulation 9 that was, quite frankly, on my mind when I said 10 that, was an insulating material that's -- that 11 you will see on the drawings for the boilers, I 12 believe, at Whidbey Island. It was a 13 castable-type insulation in the front door -- or 14 front inner door, I'll call it. 15 Q Is that called Vee Block? 16 A In that case, I believe it was referred to as Vee 17 Block, yes. 18 Q And, sir, are you personally familiar with Vee 19 Block? 20 MR. THORSON: Object to the form of the 21 question. Vague. 22 THE WITNESS: I guess I'm familiar with 23 what it is and -- work goes in that particular 24 boiler, yes. 25 BY MR. BERGMAN:	29 1 difference between fire side and combustion air 2 side in the context of boiler operation? 3 A The combustion air side is the air used -- 4 delivered to the burner for the combustion 5 process. So it's ambient air. That's whatever 6 ambient air temperature is. 7 The fire side of the boiler is the side 8 of the boiler that's after the combustion process 9 where the heat transfer is taking place through 10 the tubes. 11 Q Sir, how does Vee Block come packaged? 12 MR. THORSON: Object to the form of the 13 question. It's vague and ambiguous. Overly 14 broad. 15 THE WITNESS: In the times I've been 16 involved with it, it was in a bag. 17 BY MR. BERGMAN: 18 Q And we'll go into this in a little more detail 19 later, but how is Vee Block prepared for 20 application and then applied? 21 A In the times I've been involved with it, it was 22 mixed with water and then put in whatever space 23 with a trowel. 24 Q And when it's mixed with water, is that -- could 25 you -- is that done in a bucket or a mixer or a
28 1 Q Okay. Let me ask you in -- in a prior deposition, 2 you had indicated that you actually mixed Vee 3 Block or used Vee Block in the course of your 4 professional experience. Is that indeed the case, 5 sir? 6 A Is that -- I'm sorry. I lost your last word 7 there. 8 Q Have you actually used Vee Block yourself in the 9 course of your professional training and 10 experience? 11 A Yes, I have. 12 MR. THORSON: Let me just object to the 13 form of the question. 14 THE WITNESS: Sorry. 15 MR. THORSON: It's vague. 16 BY MR. BERGMAN: 17 Q And, sir, can you describe what Vee Block is used 18 for in a Cleaver-Brooks' boiler? What function it 19 serves? 20 A It's a -- the particular boilers we were looking 21 at in this case that we provided the drawings, it 22 was used as an insulation material between the 23 fire side in the front end of the boiler and the 24 combustion air side. 25 Q And can you describe for -- in layman's terms, the	30 1 trough or something else? 2 MR. THORSON: Object to the form. 3 THE WITNESS: I don't recall exactly 4 what I used to mix in it, but certainly, depending 5 on the amount of material you're mixing, it would 6 determine the vessel you will put in to mix it. 7 BY MR. BERGMAN: 8 Q So it could be any of the mixing receptacles that 9 I previously described based on the amount that 10 was required for a particular job? 11 A Yes. 12 Q If you would be so kind, sir, the -- to read the 13 next paragraph on your response to Interrogatory 14 No. 1 set forth in -- on page 6 of Exhibit 2. 15 A "Boiler design was a continuing process at 16 Cleaver-Brooks and the design of various parts, 17 components, sub-assemblies, and other elements of 18 boilers was constantly changing. Many of the 19 parts and components of the boilers were 20 manufactured by others and the identity of those 21 manufacturers frequently changed as did the design 22 and manufacture of their various products. 23 Further, each Cleaver-Brooks' boiler is configured 24 to the unique specifications and requirements of 25 each customer. For all of these reasons, each

31 1 Cleaver-Brooks' boiler is unique." 2 Q Sir, I want to address the statement that 3 Cleaver-Brooks made that the identify of the 4 manufacturers of asbestos-containing components 5 frequently changed. 6 What was the basis of Cleaver-Brooks' 7 knowledge in providing that information to us? 8 A If you look at some of the drawings we had 9 forwarded for the boilers, in particular, Whidbey 10 Island, and other ones I have come across in doing 11 this, you will see many of those drawings refer to 12 a manufacturer and then other potential 13 manufacturers of a particular product. So it was 14 a choice, not a design issue -- it was a 15 what-can-we-get type issue for a manufacturing 16 plant. So they could have used any of those 17 manufacturers, or as I pointed out earlier, in 18 some of those cases, or equal, which would have 19 left it out there for anybody else. 20 Q I want to follow up on that. "Or equal" would 21 mean that even a manufacturer that is not listed 22 on the documents that you provided -- and by this, 23 I mean the manufacturer of asbestos-containing 24 component, by -- could -- could be used by 25 Cleaver-Brooks if it met the technical	33 1 function. I wouldn't say that we necessarily 2 picked it to be an asbestos-containing product for 3 its function, which is what I was getting at when 4 I was saying whether it was asbestos-containing or 5 not. We would have chosen a gasket or whatever it 6 may be for a particular function. 7 If one supplier had asbestos in that 8 product, that gasket, for that function, then yes, 9 it would have been asbestos-containing component. 10 If another manufacturer had a gasket or whatever 11 it may be that formed -- performed the same 12 function and we used that, it may not have been an 13 asbestos-containing component. That's why I threw 14 that in there. 15 Q I appreciate that clarification, sir. And I 16 understand what you're saying. Let me try to 17 incorporate that into my next question, which is 18 that when a specification stated a particular 19 manufacturer and stated "or equal," that would 20 mean that any product that fulfilled the function 21 required could be substituted; is that correct? 22 A Yes. 23 Q Okay. And so, referring now specifically to 24 asbestos-containing components, because that's 25 what we're here to talk about, mostly, would it be
32 1 specifications required to fulfill the particular 2 role that the -- that the component was designed 3 for? 4 A Correct, for asbestos-containing component or any 5 component, actually, whether that was an 6 asbestos-containing component or not. 7 Q Okay. Can you provide a little bit more 8 illumination on that, sir? 9 A I'm not sure I can. I'm not sure what you're 10 looking for. 11 Q Okay. Let me -- let me try to expand on that a 12 little bit. The asbestos-containing components 13 that Cleaver-Brooks incorporated on its boilers 14 were utilized, fulfilled for a particular purpose 15 on the operation of a boiler; is that correct? 16 MR. THORSON: Object to the form of the 17 question. It mischaracterizes testimony and form. 18 Assumes facts not in evidence. 19 THE WITNESS: I would say. 20 BY MR. BERGMAN: 21 Q Did I -- did I accurately describe your testimony, 22 sir? 23 A Well, I would say I would -- I would correct it 24 slightly in that you're correct that we -- that we 25 picked a product for its form -- or for its	34 1 fair to say that there was no -- that the 2 manufacturers of the asbestos-containing 3 components that Cleaver-Brooks incorporated into 4 its boilers changed frequently? 5 A Yes, I believe so. 6 Q Okay. And when we used the word "component," sir, 7 with respect to asbestos that might have -- 8 asbestos that may have been incorporated into 9 Cleaver-Brooks' boilers, do you understand that to 10 include Vee Block? 11 A Yes, I believe so. 12 Q Okay. And other refractory -- in other words, 13 when we're talking about components, we're not 14 just talking about metal objects that can be 15 screwed onto a boiler. We're talking about, 16 essentially, materials that are mixed and applied 17 to the boiler? 18 MR. THORSON: Object to the form of the 19 question. 20 THE WITNESS: In addition to components 21 that could be just screwed on or attached to the 22 boiler, yes, I think that's what you meant. 23 BY MR. BERGMAN: 24 Q It is, sir. And I appreciate your clarification 25 on that. Sir, if you could turn with me, please,

35 1 to page 9 on Exhibit 2. 2 A Okay. 3 Q And I would ask you to simply read to yourself, 4 the Interrogatory No. 7, and your answer to that. 5 You don't need to read it out loud. If you could 6 read it to yourself. Take as much time as you 7 want, then I will ask you a few questions about 8 that. 9 A Okay. 10 Q So, sir, did -- did Cleaver-Brooks have a 11 technical staff that would assist in the erection 12 of its boilers at its customer location? 13 A We certainly didn't have anyone assisting an 14 erection of our boilers because our boilers 15 weren't erected on-site. They were packaged 16 boilers. 17 Q Well-stated. Thank you. Would it be fair to you 18 to say installation instead of erection? 19 A I guess that's what I was going to get at. We 20 wouldn't have been involved in installation 21 either. That's not what we got into. We did have 22 a, and do have a -- you referred to a technical 23 staff or a service group that would be involved 24 in, I guess I will refer to it, as warranty 25 issues, new products, that type of thing, where	37 1 A In connection with putting a Cleaver-Brooks' 2 boiler online, I guess I would more term it 3 start-up of the boiler. Installation is usually 4 done by, you know, others, not necessarily 5 somebody who's all that familiar with a boiler, 6 that's starting a boiler. 7 Q Okay. Would Cleaver-Brooks' technical personnel 8 be involved in the start-up of a new 9 Cleaver-Brooks' boiler? 10 MR. THORSON: Object to the form. 11 MR. BERGMAN: Typically in the 1950s and 12 60s, subject to your Counsel's objection. 13 MR. THORSON: Overly broad. 14 THE WITNESS: Not typically, as you 15 said, I guess I would say it. Certainly, did it 16 ever happen; it may have happened. But on a 17 typical basis, no, that wasn't the normal way for 18 it to be done. 19 BY MR. BERGMAN: 20 Q What was the normal way for a start-up of a 21 Cleaver-Brooks' boiler to take place? 22 MR. THORSON: Same objection. 23 THE WITNESS: There would have been a 24 local company that was familiar with boilers that 25 would have started up the boiler.
36 1 there's assistance needed in the field. But 2 certainly not anybody that was doing day-to-day 3 work, you know, on a boiler, maintenance-type 4 work, installing a boiler or anything like that, 5 but they -- we did have a technical staff of sorts 6 and do. 7 Q And would your -- yeah. And would your technical 8 staff make visits, if you would, to locations 9 where Cleaver-Brooks' boilers were operating to 10 address technical issues that may arise? 11 MR. THORSON: I will object to the form 12 of the question as being overly broad and vague as 13 to time period. 14 MR. BERGMAN: In the 1950s and '60s. 15 THE WITNESS: Yes. If required or 16 needed for a particular job, it would have been. 17 I don't think I found any in any of the boilers 18 we're talking about here where that happened. But 19 yes, if it was needed, we may have had somebody go 20 to a site. 21 BY MR. BERGMAN: 22 Q But the -- I want to be -- would "installation" be 23 the correct term as opposed to "erection" in 24 connection with putting a Cleaver-Brooks' boiler 25 online?	38 1 BY MR. BERGMAN: 2 Q Okay. And did Cleaver-Brooks have manufacturers' 3 reps around the country that were familiar in that 4 start-up procedure for Cleaver-Brooks' boilers? 5 MR. THORSON: Object to the form. 6 THE WITNESS: Yes, we did have 7 manufacturers and did have manufacturers 8 representatives. 9 BY MR. BERGMAN: 10 Q And do the manufacturers representatives assume 11 responsibility for start-up-related tasks of 12 Cleaver-Brooks' boilers? 13 MR. THORSON: Object to the form. 14 Overly broad. Vague. 15 THE WITNESS: Again, depending on the 16 product, yes, they may have. 17 BY MR. BERGMAN: 18 Q Okay. Are you familiar with a company called Cole 19 Industrial? 20 A Yes. 21 Q And what is the basis of your understanding of 22 that company? 23 A They are our representative -- manufacturers 24 representative in the Northwestern United States. 25 Q Okay. And have been since 1964; is that correct?

39 1 A I don't know the year off the top of my head, but 2 I'm familiar with them as long as I've been here. 3 Q Okay. Do manufacturers -- well, let me -- in the 4 1960s, did manufacturers' reps undergo training by 5 Cleaver-Brooks in the startup maintenance and 6 operation of Cleaver-Brooks' boilers? 7 A In the 1960s, I certainly couldn't tell you from a 8 personal experience. So I can't say for certain, 9 no. I -- since they were a representative, I 10 would have to say more than likely they went 11 through some type of training, whatever that was. 12 Q But Cleaver-Brooks would expect that its 13 manufacturers representatives -- well, strike 14 that. Cleaver-Brooks would expect that its 15 representative would be fully conversed in the 16 installation, operation, and maintenance of 17 Cleaver-Brooks' boilers, correct? 18 MR. THORSON: Object to the form of the 19 question. 20 THE WITNESS: I'm not sure I would 21 include installation in that part because I'm not 22 familiar with our reps, at least in those time 23 periods doing installation, but certainly the 24 operation and maintenance, yes. 25 BY MR. BERGMAN:	41 1 card, if there happens to be one, would be a unit 2 number and sometimes a model number. 3 So I would have searched through those 4 cards -- or did search through those cards. 5 There's several groups of them, depending on the 6 products. So it's more than one search in one 7 place. Then once -- if I -- in this particular 8 case, when I found the card for U.S. Naval Air 9 Station, Whidbey Island, I would have gone with 10 that unit number to the commercial records, wanted 11 to verify that that's -- there were other records 12 related to that index card and that would have 13 been the commercial records we were talking about 14 in this particular response. 15 Q And, sir, are the index cards that you testified 16 to organized by location or customer or some other 17 method? 18 A They're organized alphabetically by location, 19 which as you probably are aware of, may be 20 different than the customer. The boiler may have 21 been owned by a contractor who is technically the 22 customer but went to the U.S. Navy, Whidbey 23 Island. So it would be under U.S. Navy, Whidbey 24 Island. 25 Q Okay. I'm not sure I understood your answer, sir,
40 1 Q And the startup? 2 A And the startup, yes. 3 Q Sir, if you would kindly turn to page 11 of 4 Exhibit 2. 5 A Yes. 6 Q And once again -- actually, if we could, move 7 to -- look at page 10 and 11. Please read 8 Interrogatory No. 9 and your response, and take as 9 much time as you need. I'm going to ask you just 10 a few questions about that. 11 A Okay. 12 Q Can you describe -- well, were you the individual 13 that was tasked with locating records pertaining 14 to boilers at specific locations at issue in this 15 case? 16 A Yes, I was. 17 Q And can you describe the efforts that you 18 undertook to locate those records? 19 A To -- the first part of the process is to 20 determine whether there's a boiler at a specific 21 site. So I would have looked -- we have a series 22 of index cards, literally four-by-six index cards, 23 that have our -- are filed alphabetically by job 24 site, name -- job site name, I should say, and 25 location being city and state. And then on that	42 1 so I want to be -- so, for instance, for the four 2 boilers identified on page 11 of Exhibit 2, the 3 index card indicated, was it Whidbey Island, 4 Washington, or was it U.S. Navy or something else? 5 I'm just curious what you looked under to 6 successfully locate these four boilers. 7 A Anytime I would be looking under anything with the 8 Navy, to be honest, I would be looking under both 9 U.S. Navy, as well as Naval Air Station, in this 10 case, as well as Whidbey Island Naval Air Station, 11 and different iterations of that. 12 So I can't recall off the top of my head 13 how this particular one was filed, but I would 14 have looked through many different combinations, 15 since they're alphabetical, that I could have come 16 up with. 17 Q And in your -- this -- to be fair, sir, this isn't 18 the first time you have conducted a search like 19 this? 20 A No, it is not. 21 Q Okay. And in your experience, sir, is it 22 sometimes necessary to try a couple of different 23 headings before you're able to locate the 24 particular boiler at issue? 25 A Yes, I guess I never looked at it as trying

43 1 different headings. It was trying -- it was 2 looking under the reasonable ways you could 3 alphabetically list something. So I do as many 4 different ways as I think, you know, make sense. 5 So I certainly looked under U.S. Navy, looked 6 under Whidbey Island, looked under Naval Air 7 Station, and any other iteration that I can think 8 of. 9 Q And so, in your experience, sir, you don't always 10 find the card on the first -- first try? 11 A I guess I would call that whole thing my first 12 try. 13 Q Okay. 14 A I'm not sure what you mean. 15 Q You don't always find the -- for instance, you 16 don't always find the card on your first -- on the 17 first word you seek to find alphabetically in the 18 card pile? 19 A Correct. I wouldn't just take, if somebody wrote 20 it out as United States Navy, Naval Air Station, 21 Whidbey Island, and only search under "U." I 22 would search under other ones. 23 Q Okay. I understand, sir. And you typically do 24 search under several; is that correct? 25 A Yes.	45 1 sales of Cleaver-Brooks' boilers from 1932 2 forward? 3 A Yes. 4 MR. BERGMAN: If the court reporter 5 could kindly take exhibit -- or envelope 8. 6 (Exhibit No. 3 was marked.) 7 BY MR. BERGMAN: 8 Q Okay. Mr. Tornetta, can you, please -- can you 9 identify Exhibit 3 for us? 10 A It appears to be a picture of a Cleaver-Brooks' 11 nameplate. 12 Q Okay. And in the middle of Exhibit 3, there's a 13 schematic of a hand with fire coming out of it. 14 Do you see that, sir? 15 A Yes, I do. 16 Q And is that the Cleaver-Brooks' logo? 17 A It has changed on-and-off over the years, but yes, 18 it's, for as long as I can recall, the hand with 19 the flame coming out of it was part of our 20 nameplate in some way. 21 Q And during what period was Exhibit 3 a 22 representative of the nameplate that was used on 23 Cleaver-Brooks' boilers? 24 A Oh, I'm not sure I could say that for certain. 25 Our nameplates have changed many times over the
44 1 MR. THORSON: Object to the form of the 2 question. 3 THE WITNESS: Certainly where it makes 4 sense. 5 BY MR. BERGMAN: 6 Q Okay. And how many cards are there in this 7 alphabetical file, sir? 8 A Oh, I think we've estimated to be in the area of 9 80 or 90,000. 10 Q And does the card file pertain to boilers that are 11 presently operating or boilers that -- or all 12 boilers that Cleaver-Brooks sold in the last 50 13 years or more? 14 A All boilers and it would go back to 1932. And I 15 would add just -- beyond the cards, there is also 16 a printout from the 1990s of our order entry 17 system at that time once things became a little 18 more computerized where I would have looked 19 through that, too. Again, that's an alphabetical 20 list as well. But generally, that is boilers 21 shipped after the late '80s, actually, into the 22 early '90s. 23 Q Okay. And so Mr. Tornetta, just so I'm clear on 24 the record, you said there are at least 80,000 25 cards in the Cleaver-Brooks' files referencing	46 1 years, colors, looks. I'm not sure I could pick 2 out a particular time for this particular one. 3 Q Okay. Just respecting your answer, sir, is there 4 a general time you're able to associate with 5 Exhibit 3? 6 MR. THORSON: Object to form. 7 THE WITNESS: No, I don't believe I 8 could. It certainly isn't more recent because 9 we've changed the hand and flame a little bit 10 different. But no, I don't think I could nail 11 down a before then/after then, type time. 12 BY MR. BERGMAN: 13 Q And how have -- how has Cleaver-Brooks changed its 14 hand and flame insignia? 15 A Oh, I guess I'm thinking about more recently we've 16 changed it to -- I refer to it as more of a 17 cartoon figure of it, but I'm sure people won't 18 like hearing me say that, at least our marketing 19 people. 20 Q All right. And, sir, was every Cleaver-Brooks' 21 boiler marked with a labeling plate such as it 22 appears on Exhibit 3? 23 MR. THORSON: Object to the form of the 24 question. 25 THE WITNESS: I'm not sure I can say

47 1 every one had a plate, you know, similar to or 2 like this. Every one would have said 3 "Cleaver-Brooks" on it somewhere. And normally it 4 was prominently displayed, but whether it's, you 5 know, this particular one or one, you know, 6 similar to it, whatever that may be, I couldn't 7 say for certain every one did. 8 BY MR. BERGMAN: 9 Q And, typically, sir, was there any look -- 10 particular location on the boiler -- on the 11 Cleaver-Brooks' boiler where the Cleaver-Brooks' 12 nameplate was installed? 13 A No, I guess I couldn't say "typically." It would 14 depend a lot on the product, whether it was on the 15 front or on the side. Sometimes different sizes, 16 it would go on the side versus the front. But I'm 17 not sure I could give you a typical place for it. 18 Certainly it was visible. 19 Q Okay. And in addition to the nameplates, were 20 there other locations on a Cleaver-Brooks' boiler 21 where the Cleaver-Brooks' name and/or insignia was 22 emblazoned? 23 A There normally would have also been, what I refer 24 to, as a data plate on the boiler, which would be 25 the one -- usually that's a bit smaller. That's	49 1 question. Overly broad. 2 THE WITNESS: No, it was not. 3 BY MR. BERGMAN: 4 Q Okay. Was the Cleaver-Brooks' name, to your 5 knowledge, either in terms of a -- well, strike 6 that. Was there any other manner besides the 7 nameplates referenced in Exhibit 3 to this 8 deposition or the data plates that you described 9 in which the Cleaver-Brooks' name was attached to 10 or displayed on a Cleaver-Brooks' boiler? 11 MR. THORSON: Same objection. 12 THE WITNESS: I don't believe so, no. 13 BY MR. BERGMAN: 14 Q Was the Cleaver-Brooks' name ever affixed, in any 15 manner, to the rear door of a Cleaver-Brooks' 16 boiler? 17 A No, I don't believe so. 18 Q Okay. Why is that, sir? 19 MR. THORSON: Object to the form of the 20 question. It's vague. 21 THE WITNESS: I guess I have never seen 22 any evidence of that in our documents, and I have 23 never seen it in my experience of boilers either. 24 BY MR. BERGMAN: 25 Q Again, looking at page 11 to Interrogatory
48 1 the one that would list the model number, the unit 2 number, in some cases, electrical characteristics 3 of the burner, that type of thing. 4 Q And was there any location on a Cleaver-Brooks' 5 boiler where the nameplate, if you would, that you 6 described would be affixed? 7 MR. THORSON: Object to the form of the 8 question. You mean the data plate or the 9 nameplate? 10 MR. BERGMAN: The data plate. 11 MR. THORSON: I think it's overly broad. 12 THE WITNESS: You changed that to data 13 plate, I think? 14 MR. BERGMAN: Yes. 15 THE WITNESS: Now, again, you know, 16 it -- I couldn't say "typically," you know. With 17 both of them, the front or side are certainly a 18 location I've seen them on. But other than that, 19 I don't think I could narrow it down. 20 BY MR. BERGMAN: 21 Q Sir, in addition to nameplates or data plates, was 22 the Cleaver-Brooks' name ever cast in any of the 23 metal fixtures or components that comprise the 24 Cleaver-Brooks' boiler? 25 MR. THORSON: Object to the form of the	50 1 No. 10 -- I'm sorry. Page 11 to Exhibit 2. 2 A Okay. 3 Q I'm referring again -- what does "horsepower of a 4 boiler" mean? 5 A It's a unit of measuring the capacity of a boiler, 6 typically restricted to fire tube boilers in its 7 use. But it's a unit of measurement equal to one 8 horsepower is the production of 34.5 pounds of 9 steam per hour. 10 Q And how does the concept of horsepower pertain to 11 a boiler such Cleaver-Brooks that is not used for 12 propulsion purposes? 13 MR. THORSON: Object to the form of the 14 question. It's vague. 15 THE WITNESS: Our boilers weren't used 16 for propulsion purposes, deep water propulsion, I 17 guess I would say. But it was just a unit of 18 measurement that, in that particular market, is 19 used. Whether it's used to drive something or not 20 really doesn't matter. It's just a measurement of 21 capacity. And capacity in pounds of steam per 22 hour is the equivalent. 23 BY MR. BERGMAN: 24 Q So if -- looking at the four boilers referenced on 25 page 11 of Exhibit 2, where does it indicate what

51 1 the horsepower of those particular components was? 2 A In the model number, the number directly behind 3 the hyphen. So, for example, in the first listed 4 one where it says "CV500-50," pound symbol, "15," 5 the "dash 50" is the horsepower. So it's a 6 50-horsepower motor. 7 Q If you could turn with me, sir, to page 14 of 8 Exhibit 2. 9 A Okay. 10 Q If you could read, to yourself, Request For 11 Production No. 5 and your sworn response. 12 A Okay. 13 Q Does -- is it possible for Cleaver-Brooks to 14 determine the volume of replacement components 15 that it supplied to the United States government 16 in any particular year? 17 MR. THORSON: Object to the form of the 18 question. Assumes facts not in evidence and 19 overly broad. 20 THE WITNESS: No. Only if we were 21 looking at a specific boiler and a specific site 22 could we look at what we supplied, if anything. 23 BY MR. BERGMAN: 24 Q Okay. And so -- and so Cleaver-Brooks cannot 25 provide information regarding its sales of	53 1 MR. THORSON: Object to the form of the 2 question. It's overly broad and vague. You can 3 answer. 4 THE WITNESS: I'm not sure I can answer 5 that in relation to the 1960s other than to look 6 at some of the records that we've produced where 7 there were some supply of parts where an order 8 came in, we fulfilled the order, and then invoiced 9 it. 10 BY MR. BERGMAN: 11 Q Okay. So can -- does Cleaver-Brooks have any 12 knowledge regarding its policies, practices, and 13 procedures for furnishing replacement component 14 parts to its boilers in the 1960s? 15 MR. THORSON: Same objection. 16 THE WITNESS: Other than the knowledge 17 of looking through the records for a boiler and 18 seeing how that was done in a particular instance, 19 I would say no, we don't. 20 BY MR. BERGMAN: 21 Q And how about the 1970s, same answer? 22 A Yeah. Certainly the general knowledge as I 23 expressed before of having a person or several 24 people to answer those inquiries. Yeah, I 25 wouldn't have an answer beyond that.
52 1 replacement components to the United States 2 government in any series of years as well? 3 MR. THORSON: Same objection. 4 THE WITNESS: That is correct, yes. 5 BY MR. BERGMAN: 6 Q In the absence of a particular boiler that's 7 identified, there are no sales records maintained 8 by Cleaver-Brooks regarding some furnishment of 9 replacement components, correct? 10 A Correct. 11 Q Was there a -- and I guess let me reference the 12 time frame of 1960s. Was there a parts department 13 of Cleaver-Brooks? 14 A I'm not sure I can say for certain that was the 15 case. I wasn't here in the '60s. Essentially 16 when I arrived in '85, there was a very small 17 parts department of a couple people. And my 18 understanding is that had been there for some 19 time. So I'm not sure that gets us back to the 20 '60s with my personal knowledge, but I think there 21 was probably a person that handled inquiries like 22 that at least. 23 Q Okay. So how would the ordering of parts take 24 place -- the ordering and sale and supply of parts 25 take place?	54 1 Q Okay. And did the parts department maintain 2 records of sales of components in the 1960s? 3 A From everything I have seen, the records all 4 filtered back into the unit file or records. So 5 when a part was sold for a particular one, that's 6 where it went. So I'm not aware of any other 7 common records for just parts, no. 8 Q Okay. And how do you know, sir, that every sale 9 of replacement components generated a document in 10 a file of the particular boiler for which the 11 components were sought? 12 A I guess my only way of knowing that is by seeing 13 the evidence of it as we look through our records 14 and seeing that. But can I say that happened 15 every time? Certainly not. I haven't looked at 16 every record we have for every boiler. 17 Q Okay. Based on your previous testimony, you don't 18 know whether that was, in the '60s, the policy and 19 procedure of the parts department to record every 20 sale in the file of the particular boiler; is that 21 correct? 22 A I think that I know that our general practice in 23 those time periods, and before even, and after, 24 has always been that the unit commercial records 25 are where everything gets filtered to. So that's

55 1 the extent of my knowledge of that. 2 Q And, respectfully, sir, how do you know that -- 3 how do you know that took place in the '60s and 4 '70s? 5 MR. THORSON: Object to the form of the 6 question. I think it's been asked and answered. 7 You can answer again. 8 THE WITNESS: Because I see it in the 9 evidence of the records that I look at in doing 10 this. There's -- there -- you will see records of 11 sales of all different types of components for 12 specific boilers in those time periods. 13 BY MR. BERGMAN: 14 Q But you don't know whether every sale was 15 reflected in a record in the boiler file; is that 16 correct? 17 MR. THORSON: Object to the form of the 18 question. Asked and answered. 19 THE WITNESS: I certainly couldn't say 20 that every time, everywhere it happened, but I 21 don't have any reason to believe it didn't happen 22 that way. 23 BY MR. BERGMAN: 24 Q Okay. And I just want to -- and the basis of your 25 knowledge is your review of boiler files conducted	57 1 discussions like that, and he went back into the 2 '60s. 3 BY MR. BERGMAN: 4 Q And who was that gentleman? 5 A He's retired now. His name is George Provance. 6 Q And Mr. Provance was your predecessor, so to 7 speak? 8 A Yes. 9 Q And is Mr. Provance still living? 10 A I believe so, yes. 11 Q And do you know where he lives? 12 A He's in the Milwaukee area. At least the last I 13 knew, yes. 14 Q Okay. And his first name, sir? 15 A George. 16 Q George. And what role -- what job, if any, did 17 Mr. Provance have at Cleaver-Brooks? 18 A Oh, I'm not sure I remember his entire history. 19 But I know he took a -- I won't say similar track, 20 but a track through the company starting in 21 service as I did and different management 22 positions in the company, and eventually I think 23 when he retired, he was a vice president of 24 technical services. 25 Q And do you know how old a man Mr. Provance is,
56 1 in conjunction with litigation support for 2 Cleaver-Brooks; is that correct? 3 A That's part of it, as well as my review of records 4 over the years prior to being involved in the 5 litigation, as well as my experience with the way 6 we did things prior to that as well. 7 Q And that was an experience that commenced in 1985; 8 is that correct? 9 A Yes. 10 Q Okay. And just so -- just so we're clear -- and I 11 respect where you're coming from, sir. I don't 12 want to belabor it. I want to make sure I 13 understand. Are we still on? 14 A Yes. 15 Q Okay. We had a little -- did you -- have you 16 spoken to anybody regarding the practices, 17 procedures, and policies of the parts department 18 at Cleaver-Brooks in the 1960s and 1970s? 19 MR. THORSON: At any time, has he spoken 20 to someone at any time, specifically for this 21 deposition or -- 22 MR. BERGMAN: Any time. 23 THE WITNESS: Certainly when I started 24 doing this particular job in 2001, there was 25 someone who did it before me, and he and I had	58 1 approximately? 2 A I think he's at least in his mid-70s. 3 Q And did you have discussions with Mr. Provance 4 regarding an effort he and others were taking in 5 1989 to determine the presence or absence of 6 asbestos-containing components in Cleaver-Brooks' 7 boilers? 8 A I guess I'm not sure I classify it as discussions. 9 Certainly we -- he told me that was done, yes. 10 Q And can you -- can you describe what Mr. Provance 11 told you what he did in 1989 and what he 12 determined? 13 A Boy, I'm not sure of the exact words, certainly. 14 From my understanding, they looked at the product 15 we were building at that time and the supplier of 16 the components we were using of those products, 17 and asked those suppliers if they could determine 18 whether or not there was -- or any asbestos in the 19 components we were getting at that time, and there 20 was not. So I think there was a -- go ahead. 21 Q And by "that time," you mean 1989? 22 A Yes. 23 Q And that was the first time that Cleaver-Brooks 24 had undertaken an effort to determine whether or 25 not asbestos components were present in its

59 1 boilers? 2 MR. THORSON: Object to the form of the 3 question. 4 THE WITNESS: I guess I would say it was 5 the first time we took the broad look to see what 6 we were being supplied with and if there was still 7 any asbestos in it, yes. 8 MR. BERGMAN: Mr. Tornetta, I want to be 9 respectful of your time and also your stamina and 10 the calls of nature. And so if you would like to 11 take a break at this juncture, I'm completed with 12 the exhibit. But if you and your counsel would 13 like to take a break now, that's fine, or we can 14 go on. I want to be respectful of you, sir. 15 MR. THORSON: Why don't we take a break. 16 Take five or ten minutes and come back. For my 17 benefit, if no one else's. 18 MR. BERGMAN: And I will be segueing 19 into that -- the 2004 interrogatory response on 20 the next sweep. I'm happy to set up a situation 21 where you have a -- you can have a discussion 22 about -- ask the court reporter to leave and have 23 a discussion with Mr. Tornetta at that point. 24 MR. THORSON: So you're planning to go 25 into the interrogatories in 2004 at this point?	61 1 Q Under the certification, is that -- is that your 2 signature, sir? 3 A Yes, it is. 4 Q Okay. And did you review the interrogatory 5 answers and requests for production requests set 6 forth in Exhibit 5 prior to executing your 7 signature on page 13 of Exhibit 5? 8 A Yes, I did. 9 Q And if you could turn to page 4 of Exhibit 5. 10 A Okay. 11 Q What is your understanding of what Vee Block is? 12 MR. THORSON: Object to the form. Asked 13 and answered. 14 THE WITNESS: A castable installation, I 15 guess, is the way I would characterize it. 16 BY MR. BERGMAN: 17 Q Okay. Now, in your understanding, is Vee Block a 18 trade name, or is Vee Block more of a general 19 description of a particular refractory product? 20 MR. THORSON: Objection. Foundation. 21 Vague as to time. 22 MR. BERGMAN: In the 1960s and '70s. 23 THE WITNESS: I only understand it as 24 a -- I guess I would classify it as a trade name. 25 I think that's what we referred to, you know, Vee
60 1 MR. BERGMAN: I am. Well, in the next 2 kind of swoop of questioning. 3 MR. THORSON: Okay. Yeah. And are 4 those in front of him at this time? Do you want 5 to open up the next exhibit so he has a chance to 6 look it over over the break? 7 MR. BERGMAN: Sure. Is that No. 6? 8 Yes. Madam Court Reporter, could you open 9 envelope 6 and provide it to the witness? And 10 then if you would -- and I say this with all 11 respect, be so kind as to vacate yourself from the 12 environment so that Mr. Thorson and Mr. Tornetta 13 could have a discussion. 14 THE VIDEOGRAPHER: We are off the record 15 at 12:24 p.m. 16 (Exhibit Nos. 4 and 5 were marked.) 17 (Recess taken.) 18 THE VIDEOGRAPHER: We are back on the 19 record at 12:46 p.m. 20 BY MR. BERGMAN: 21 Q Mr. Tornetta, if you would be so kind as to look 22 at Exhibit 5. 23 A Okay. 24 Q And in particular, look at page 13. 25 A Okay.	62 1 Block Mix in some of our drawings and some of the 2 drawings we've seen. I think that was a name of 3 Kaiser who was the supplier of that, that 4 I've -- I believe is in some of the information we 5 sent. 6 BY MR. BERGMAN: 7 Q Do you understand -- when Cleaver-Brooks' 8 documents refer to Vee Block, are they referring 9 specifically to Kaiser Vee Block or to the type 10 of -- or a particular type of refractory product? 11 MR. THORSON: Object to the form of the 12 question. Overly broad. Vague. 13 THE WITNESS: I think if you look at the 14 drawings we supplied in this case, it's referring 15 to a specific part number, and when you look at 16 that part number description we supplied, it calls 17 out, I believe, Kaiser as the manufacturer of it. 18 And I would just -- it's probably me 19 being more fussy than anything. I'm not sure I 20 would classify it as a refractory material versus 21 a castable installation. 22 BY MR. BERGMAN: 23 Q And can you enlighten me in the difference, then, 24 between refractory material and castable 25 installation material?

63 1 A In my mind, a refractory material is a harder -- 2 "harder" is probably not the right word, but a 3 higher strength material that, in essence, doesn't 4 do much insulation and, in fact, transfers heat. 5 An insulation material insulates. 6 Q And so the proper term of the Vee Block would be a 7 castable? 8 A I would prefer -- I would call it a castable 9 insulation. I'm sure you will see it referred to 10 as refractory. But as I say, it might just be my 11 insidiousness. 12 Q Does -- well, it's very helpful, sir, for those of 13 us who don't have your experience to benefit from. 14 So thank you for that. 15 Is a -- does the term "castable" simply 16 mean that it is cast in -- as -- you know, mixed 17 with water and cast in some form as opposed to a 18 block that's put together in the solvent form? 19 MR. THORSON: Object to form. 20 THE WITNESS: That's the way I would use 21 that term, yes. 22 BY MR. BERGMAN: 23 Q Okay. Now, do these specifications for Vee Block 24 in Cleaver-Brooks' documents require Kaiser Vee 25 Block or would an equal designation apply as well?	65 1 specifically refers to the Vee Block manufactured 2 by Kaiser or would refer to as, in the case of 3 Kleenex, something that fulfilled the same role? 4 MR. THORSON: Object to the form of the 5 question. Are we referring to the references in 6 Cleaver-Brooks' documents that have been produced 7 in this case with respect to the boilers in this 8 case or something broader than that? 9 MR. BERGMAN: There are a lot of 10 references to Vee Block in Kaiser -- in 11 Cleaver-Brooks' documents produced in this case, 12 as well as in other sources. 13 MR. THORSON: I will object to the form 14 of the question as being overly broad and vague. 15 You can answer, if you're able to, Mr. Tornetta. 16 THE WITNESS: I think it may be helpful 17 once we start looking at it to work through this, 18 but if you look at the references that I believe 19 you're thinking of, the multiple references of Vee 20 Block in our documents, in all cases, those will 21 refer to a part number. 22 And, then, in addition to that, we also 23 provided a description of that part number. The 24 description of that part number that we used, I 25 believe, references Kaiser, which means at any
64 1 MR. THORSON: Object to the form. 2 Overly broad. Vague. 3 THE WITNESS: I think I would have to 4 look to be certain, but I -- because I don't 5 remember off the top of my head, but if you look 6 at the documents we supplied, I think you will see 7 that it -- that is one instance where it doesn't 8 say they're equal. It just says Kaiser. 9 BY MR. BERGMAN: 10 Q Okay. And we'll go through these, sir, in more 11 detail, but in some instances there's a reference 12 to Kaiser, and some instances there is not. And I 13 guess the -- let me -- to kind of explain what I'm 14 talking about. Can you see me, sir? 15 A Yes, I can. 16 Q Okay. So here is a box of Kleenex, but it's 17 actually, if I look at the bottom, it's from 18 Kirkland, which is the CostCo brand. But if I 19 should choke up at the -- at the solemnity of our 20 experience and have to dry my eyes, I would say, 21 "Pass me a Kleenex," even though it is not a 22 Kleenex manufactured by Kimberly-Clark Company. 23 And so when I'm trying to elicit you 24 analyzing that example is whether or not the Vee 25 Block referenced in Cleaver-Brooks' documents	66 1 time, that part number is referenced regardless of 2 the extent of the text in the bill of material 3 where it may just say, "Vee Block," or it may just 4 say, "Insulation," whatever it may say, regardless 5 of what it says in that field, what drives what 6 was used was the part number description, which is 7 the one that I believe references Kaiser. 8 BY MR. BERGMAN: 9 Q And does Cleaver-Brooks have any sales records 10 documenting purchases of Vee Block from Kaiser? 11 MR. THORSON: Object to the form of the 12 question. Overly broad. 13 THE WITNESS: I think as I said before, 14 no, we don't go back to those years with sales or 15 purchase records. 16 BY MR. BERGMAN: 17 Q And do you have a vendor file in your parts 18 department referencing Kaiser? 19 A I certainly can't say for certain, but I know it 20 wouldn't go back to the years we're talking about. 21 Q And the basis for your testimony, so I understand 22 it, for concluding that the Vee Block makes 23 reference to the Kaiser product is a document 24 spelling out Vee Block in particular, is that -- 25 spelling out the name Kaiser in particular; is

67 1 that correct? 2 A Yes, for that particular part number that's 3 identified on the drawings. 4 MR. THORSON: I will belatedly object to 5 the last question as being vague. Sorry, Counsel. 6 BY MR. BERGMAN: 7 Q And, Mr. Tornetta, is there any other information 8 that you are relying upon, other than the 9 documents that you referred to, for the conclusion 10 that the Vee Block product is -- was originally 11 manufactured by Kaiser? 12 MR. THORSON: Object to the form of the 13 question. 14 THE WITNESS: I don't believe so. And, 15 again, I'm pretty certain that is one -- I would 16 have to look at the document. That is one that 17 didn't say "or equal." We may open up the rest of 18 these packets and find otherwise, but I'm going 19 with that assumption right now. 20 Q I understand, sir. I appreciate that. I'm not 21 going to hold you to that until we've gone through 22 the documents. 23 A Sure. 24 Q So I think we're clear. You have not had any 25 conversations with anybody at Cleaver-Brooks	69 1 BY MR. BERGMAN: 2 Q If you could, sir, please turn to page 7 of 3 Exhibit 5. 4 A Okay. 5 Q If you could read Interrogatories No. 6 and 7 and 6 your responses. I will ask you some questions 7 about that, but please take as much time as you 8 need to review those answers. 9 A Okay. 10 Q So Interrogatory No. 6 asks how much Vee Block 11 Cleaver-Brooks purchased on an annual basis, and 12 am I correct that Cleaver-Brooks cannot -- has no 13 records indicating how much it purchased? 14 A Correct, historically. I don't even think I could 15 figure it out today, but -- for this year, but 16 historically, no, we have no way to do that. 17 Q Okay. So in the '60s and '70s, Cleaver-Brooks 18 cannot provide any testimony regarding how much, 19 if any, Vee Block it purchased? 20 A Correct. 21 MR. THORSON: I will object to the form 22 of the question as being vague. And not to be 23 picky, the question also refers to -- the 24 interrogatories that Mr. Bergman is referencing 25 appears to be referencing two -- two labels or
68 1 regarding the identity of Vee Block and Kaiser. 2 You were relying upon the documents exclusively? 3 MR. THORSON: Hold on. Before you 4 answer that question. That question I'm sure was 5 not intended to elicit privileged communications 6 with counsel for Cleaver-Brooks, and knowing 7 Mr. Bergman as I do, he would not be trying to get 8 that information. Nonetheless, Mr. Tornetta, you 9 are not to disclose the facts or content of any 10 communications with any legal counsel for 11 Cleaver-Brooks in any context. With that 12 qualification, you can answer, if you understand 13 the question. 14 MR. BERGMAN: I just want to know what 15 Cleaver-Brooks' position is, sir. 16 THE WITNESS: My understanding of where 17 that material comes from comes from the documents 18 I looked at, yes. 19 BY MR. BERGMAN: 20 Q How was the Vee Block packaged? 21 MR. THORSON: Object to the form of the 22 question. It is overly broad. Vague as to time. 23 It's also been asked and answered. 24 THE WITNESS: I believe I mentioned 25 before that I am familiar with it coming in bags.	70 1 possibly two products. One, which is called 2 V-Block, "V," the letter "V," dash, "Block Mix." 3 And the other, in quotes, being "Vee," V-E-E, 4 dash, "Block Mix," and it's unclear whether the 5 question is referring to one product, two 6 products, a product whose name changed over the 7 years. So I think the question is vague and 8 ambiguous. I think he answered, though. 9 BY MR. BERGMAN: 10 Q So just so we're clear, Cleaver-Brooks cannot say 11 how much Vee Block it purchased in a given year 12 throughout the 1960s and '70s? 13 MR. THORSON: Same objection. 14 THE WITNESS: No, I don't believe there 15 is any way we can do that. 16 BY MR. BERGMAN: 17 Q All right. Interrogatory No. 7 indicates that 18 Cleaver-Brooks did not re-label Vee Block. First 19 of all, when you answered that question, what did 20 you understand re-labeling to mean, so that we're 21 on the same page? 22 A I believe it means to take, in this particular 23 case, a bag of material and put our name on it in 24 some way in lieu of the manufacturer's name. 25 Q Okay. And how do you know that that did not

71 1 occur? 2 A I'm not aware of that being our practice, in 3 general, let alone being our practice specifically 4 for that, of re-labeling product, unless someone 5 stretches it and says by putting it in our boiler 6 and labeling our boiler, it's re-labeling it, but 7 I don't think that's what you mean. 8 Q Okay. When Cleaver-Brooks -- and we will get into 9 this in a minute. When Cleaver-Brooks -- 10 Cleaver-Brooks would sell Vee Block as a 11 replacement component to its customer, correct? 12 MR. THORSON: Object to the form of the 13 question. It's overly broad. Vague. 14 THE WITNESS: If someone had asked for 15 it, we would have sold that to them. I didn't see 16 any evidence of that in the commercial records we 17 looked at. And quite frankly, for a 18 commodity-type of material like that, to purchase 19 it from the manufacturer of the boiler would be a 20 little unusual, but I can't say it never happened, 21 no. 22 BY MR. BERGMAN: 23 Q And you indicated it was not Cleaver-Brooks' 24 practice to re-label component parts that it sold. 25 What was the basis for that testimony, sir?	73 1 without waiving these objections, Cleaver-Brooks 2 is not aware of any asbestos-related health or 3 safety hazard in connection with normal 4 manufacture, installation, or use of its products, 5 and therefore employed no such warnings with 6 regard to asbestos." 7 BY MR. BERGMAN: 8 Q And so does Cleaver-Brooks mean by that answer 9 that no warnings were ever provided in connection 10 with the use and application of Vee Block in 11 connection with Cleaver-Brooks' boilers? 12 MR. THORSON: Object to the form of the 13 question. It's overly broad. 14 THE WITNESS: I think that would apply 15 to Vee Block as well as other components, yes. I 16 think that's what the answer says. 17 BY MR. BERGMAN: 18 Q And look at Interrogatory No. 9 set forth on page 19 8 to Exhibit 5, just go ahead and read that -- 20 read that Interrogatory and the Answer. I will 21 ask you a question. 22 MR. THORSON: Read it out loud? 23 MR. BERGMAN: No, sir. Read it to 24 yourself. 25 THE WITNESS: Okay.
72 1 A Certainly my experience with the company, my 2 experience looking at records for the company, the 3 records we've talked about, as well as I'm sure 4 it's a discussion that I had with Mr. Provance at 5 one time when I first started doing this with him. 6 Q And Mr. Provance indicated to you that 7 Cleaver-Brooks had not re-labeled products? 8 A Correct. 9 Q Okay. If you could -- I would like to direct your 10 attention to page 8 on Exhibit 5. 11 A Okay. 12 Q And if you could, please, read for me the question 13 and the answer. 14 MR. THORSON: Which Interrogatory, 15 Counsel? 16 MR. BERGMAN: Interrogatory No. 8, set 17 forth on page 8 to Exhibit 5. 18 THE WITNESS: Okay. "Question, did 19 Cleaver-Brooks ever place asbestos-related 20 warnings on the "Vee Block Mix" or "Vee-Block Mix" 21 refractory cement that it sold prior to 1975? 22 "Answer, See Answer and objections to 23 Interrogatory No. 1. Cleaver-Brooks further 24 objects on the grounds that the Interrogatory 25 assumes facts not in evidence. Subject to and	74 1 BY MR. BERGMAN: 2 Q So you previously testified that Cleaver-Brooks 3 has no records regarding the volume of purchases 4 of Vee Block that it made in the 1960s and '70s. 5 Is it also true that Cleaver-Brooks has no records 6 of the volume of sales of Vee Block in the 1960s 7 and 1970s? 8 A Correct. With -- again, the exception of looking 9 at an individual product or boiler that was 10 shipped and whether there was Vee Block as part of 11 that boiler, but certainly not on an overall 12 basis, no. 13 Q Okay. So Cleaver-Brooks cannot provide 14 information regarding how much Vee Block it sold 15 to customers in the 1960s and 1970s? 16 MR. THORSON: Object to the form of the 17 question. Vague. 18 THE WITNESS: No. I'm not aware of a 19 way we could do -- provide that, no. 20 BY MR. BERGMAN: 21 Q Okay. So the answer to my question is "yes"? 22 A Correct, correct. 23 Q Okay. Thank you. If you could, sir, please turn 24 to page 9 of Exhibit 5. 25 A Okay.

75 1 Q And look at Request Production No. 2 and your 2 response. I will ask you a question or two about 3 that. 4 A Okay. 5 Q What did you do in response to Request For 6 Production No. 2 to determine whether or not 7 responsive documents were in Cleaver-Brooks' 8 possession? 9 A Well, I think at this particular time, we had 10 already provided the Whidbey Island boilers' 11 commercial records and drawings, possibly. And we 12 were in the process of providing the -- at this 13 particular time, the commercial records or copying 14 the commercial records for PSNS. Other than that, 15 I don't have a historical record of catalogs or 16 product lists or whatever that might be. So it 17 would be related to the particular products we're 18 talking about. 19 Q So Cleaver-Brooks -- so, first of all, sir, in 20 response to Requests For Production No. 2, you 21 made an inquiry and determined whether or not 22 there were catalogs, products list, part lists, 23 manuals, or similar documents furnished to 24 potential customers which mentioned V-Block Mix or 25 Vee-Block Mix.	77 1 don't have them in a place where I can go grab, 2 "here's all the catalogs," or things of that sort. 3 There's no historical record of such materials. 4 BY MR. BERGMAN: 5 Q So outside of documents that are contained in 6 particular boiler files, Cleaver-Brooks does not 7 have in its possession documents responsive to 8 Request Production No. 2 set forth on page 9 of 9 Exhibit 5? 10 A Correct, in a historical sense. Certainly we 11 would have a manual for a product today. 12 Q Today? 13 A Yes, but certainly not a historical sense and 14 going back to the time periods we're talking 15 about. 16 Q And by those time periods, we're talking about the 17 '60s and '70s? 18 A I think that's what you limited it to for most of 19 what we've been talking about, yes. 20 Q Okay. Request for Production No. 4 on page 10 of 21 Exhibit 5, that simply reiterates what was set 22 forth in the -- in -- in response -- or 23 Interrogatory No. 9 regarding the absence of any 24 records on sales of Vee Block? 25 A Yes.
76 1 A I did that in relation to the sites we were 2 talking about. I don't have a way to do that in 3 relation to everything. We don't have a 4 historical record of those types of things. I 5 can't say for this particular request for 6 production I did any inquiries on that because 7 those are inquiries I've done many times in the 8 past to realize there are no historical records of 9 things of that sort. 10 Q So Cleaver-Brooks, in its possession, has no 11 catalogs, product lists, part lists, manuals, or 12 similar documents that it had furnished to 13 potential customers mentioning V-Block Mix or 14 Vee-Block Mix? 15 MR. THORSON: Object to the form of the 16 question. I think it mischaracterizes his 17 testimony. You can answer again. 18 THE WITNESS: In a general form, no. In 19 a form related to what does this particular boiler 20 have, certainly I guess that would fit under the 21 title product lists. And I think you would have 22 seen in some of the commercial records we 23 supplied, there were some, for lack of a better 24 term, catalogs as part of those records. So I 25 certainly couldn't say we don't have them. I	78 1 MR. BERGMAN: Okay. Madam Court 2 Reporter, if you would be so kind as to open up 3 envelope 5, and label it as Exhibit 6 and provide 4 it to Mr. Tornetta. 5 (Exhibit No. 6 was marked.) 6 BY MR. BERGMAN: 7 Q Okay. All right. Mr. Tornetta, if you would be 8 so kind as to look at Exhibit 6 and direct your 9 attention to the very last page. 10 A Okay. 11 Q Verification. Is that your signature, sir? 12 A Yes, it is. 13 Q And prior to executing your signature on page 17 14 of Exhibit 6, did you review the responses 15 provided therein? 16 A Yes, I did. 17 Q If you would be so kind, sir, as to read to 18 yourself Interrogatory No. 1 in the 19 Cleaver-Brooks' response. I have a few questions 20 to ask you on that. 21 A Okay. 22 Q I want to say this with the -- with the greatest 23 respect and not in an argumentative fashion, can 24 you explain for us why it was not possible for 25 Cleaver-Brooks to furnish an answer to

79 1 Interrogatory No. 1? 2 MR. THORSON: Object to the form of the 3 question. The interrogatory answer specifies in 4 great length the reasons why the interrogatory's 5 objectionable. Mr. Tornetta, you are advised not 6 to disclose any communications with counsel and so 7 forth, but I don't understand Mr. Bergman to be 8 wanting that information. So if you can answer 9 the question without disclosing communications 10 from counsel, by all means, do so. 11 THE WITNESS: As I read it, the 12 interrogatory requests an untold number of records 13 basically for every product between '54 and '84 14 that contain asbestos. And in that general sense, 15 I don't have a way to answer that other than to 16 explain to you why I don't have an answer to that, 17 which I believe the interrogatory does. 18 And as you'll see later, we answered it 19 with respect to the sites that were at issue in 20 this particular instance and provided documents 21 for those and information on those. 22 BY MR. BERGMAN: 23 Q We're just talking about too many boilers over too 24 many years to be able to provide an answer to 25 Interrogatory No. 1 --	81 1 BY MR. BERGMAN: 2 Q Let me ask you it this way. Of the boilers that 3 you have reviewed, either in the course of your 4 work in litigation-related issues or in your 5 technical work prior to then, have you ever run 6 across a Cleaver-Brooks' boiler manufactured prior 7 to 1972 that did not have any asbestos-containing 8 components within it? 9 MR. THORSON: Object to the form of the 10 question as being overly broad and vague. 11 THE WITNESS: I think what I just said 12 earlier was I know I've come across one in the 13 '70s. Whether I can narrow that down prior to 14 1972, I can't. And I think the videographer has a 15 comment. 16 THE VIDEOGRAPHER: We have five minutes 17 of recording time left. 18 MR. BERGMAN: We can go ahead and change 19 the tape. 20 THE VIDEOGRAPHER: We are off the record 21 at 1:19 p.m. 22 (Discussion off the record.) 23 THE VIDEOGRAPHER: We are back on the 24 record at 1:22 p.m. 25 BY MR. BERGMAN:
80 1 MR. THORSON: Object to the form of the 2 question. There is an answer to Interrogatory 3 No. 1. Assumes facts not in evidence. Overly 4 broad. You can answer. 5 THE WITNESS: I would say too many 6 different boilers over too many different years 7 and different requirements and requests as its 8 outlined in our response and answer to 9 Interrogatory No. 1. 10 BY MR. BERGMAN: 11 Q Were there any boilers manufactured by 12 Cleaver-Brooks between 1954 and, say, 1974 that 13 did not contain any asbestos-containing products, 14 if you can answer? 15 A I don't think I have an accurate way to answer 16 that because I haven't looked at every boiler 17 between '54 and '74, whatever it was. I have 18 certainly run into boilers in the '70s, I can't 19 say exactly where, that did not have 20 asbestos-containing components, but I can't give 21 you an exact year that was. So I don't think I 22 can answer that without looking at literally every 23 file in those time frames. 24 THE VIDEOGRAPHER: Excuse me. This is 25 the videographer.	82 1 Q Mr. Tornetta, I want to refine -- or ask you, if 2 you could, to refine your previous answer 3 somewhat. You had indicated, as I understood your 4 testimony, sir, that you came across boilers in 5 the '70s that did not have asbestos components. 6 Are you aware of any Cleaver-Brooks' 7 boiler manufactured prior to 1970 that did not 8 have asbestos components within it? 9 MR. THORSON: Object to the form. Asked 10 and answered. You can answer. 11 THE WITNESS: I can't say I could come 12 up with one in my mind. But, again, I haven't 13 looked at every boiler in the '60s or '50s or 14 '40s. So without doing that, I wouldn't be able 15 to really answer that. 16 BY MR. BERGMAN: 17 Q Of course you haven't, sir. So I guess I will ask 18 my question -- of the boilers that you have 19 reviewed that were manufactured prior to 1970, did 20 you find any that did not have any asbestos 21 components within it? 22 MR. THORSON: Object to the form. Asked 23 and answered. 24 THE WITNESS: I can't say I recall any 25 off the top of my head, no.

83 1 BY MR. BERGMAN: 2 Q Sir, if you would be so kind as to turn to page 11 3 of Exhibit 6. 4 A Okay. 5 Q And, actually, the question starts on page 10, if 6 you could briefly -- or not briefly, take as much 7 time, look at the interrogatory and your response. 8 I will have a few questions about that. 9 A Okay. 10 Q Sir, how is it that in the supplemental 11 interrogatory response, you were able to come up 12 with additional boilers manufactured by 13 Cleaver-Brooks at Puget Sound Naval Shipyard that 14 had not been previously identified in your 15 responses? 16 MR. THORSON: I'll object to that 17 question. I believe that it calls for privileged 18 communications. Counsel, I think I can address 19 that and explain the -- explain that by virtue of 20 the flow of information between counsel. If you 21 would like me to address that on the record, I 22 would be happy to do so. 23 MR. BERGMAN: We don't need to do that 24 at this point. 25 MR. THORSON: Well, I -- Mr. Tornetta, I	85 1 something, the commercial records to verify that 2 information, and I've since copied those 3 commercial records and sent them along. 4 Q Okay. And what did you ultimately find the 5 boilers under? And by that, I mean, sir, was it 6 location, Navy, something else, as the -- as the 7 word that gave rise to the alphabetical indexes? 8 A You know, I can't tell you that off the top of my 9 head. I don't recall exactly what it was. Again, 10 I would have looked under -- or I did look under 11 exactly the way I described it for Whidbey Island. 12 The U.S. Navy, Puget Sound, Naval Shipyard, that 13 type of, you know, detail in looking at the 14 alphabetical listing of it. 15 What I found it under, I don't recall. 16 I'm sure as we look at those documents, I believe 17 it will give a name on the cover page of each 18 commercial record, and that it usually coincides 19 with what's on the inside of the index card. 20 Q Where are the -- can you describe the manner in 21 which these index cards are stored? 22 A In drawers. Almost as in a card catalog-type file 23 in a library, if anyone remembers what that was. 24 Q I confess that I do and give my age. I know my 25 kids have no idea what that is. They don't know
84 1 would advise you not to answer that question if 2 you're -- if you would be divulging any 3 communications with counsel. And, frankly, I'm 4 not -- I'm not confident how you could answer that 5 question without doing so. So unless we can have 6 a different question or -- I instruct you not to 7 answer. 8 BY MR. BERGMAN: 9 Q Let me rephrase the question. Look at Responses 10 to Interrogatory 10 -- excuse me, Interrogatory 9. 11 Mr. Tornetta, did you subsequently, to your search 12 for Whidbey Island boilers, conduct a search for 13 boilers at Puget Sound Naval Shipyard? 14 MR. THORSON: You can answer that 15 question. 16 THE WITNESS: Yes, I did. 17 BY MR. BERGMAN: 18 Q Okay. And what steps did you go through to 19 conduct that search and to identify the boilers 20 set forth in Response to Interrogatory No. 9 of 21 Exhibit 6? 22 A The same steps that I described for the U.S. Navy, 23 Naval Air Station, Whidbey Island. It would have 24 gone through the index cards, and again, that 25 printout I discussed, as well as once I found	86 1 what a rotary phone is. 2 Sir, are those files, are they -- do 3 they have a -- like in -- I mean, harkening back 4 to sixth grade, do these card piles have, like, a 5 metal tube down the bottom that holds them into 6 place, or are they loosely held within each 7 drawer? 8 A They're loosely held within each drawer. There's 9 no -- nothing keeping it in the drawer other than 10 gravity, I guess, is the way I would put it. 11 Q Okay. And those cards have been in the file 12 since -- well, those files started about 80 years 13 ago, in the '30s? 14 A I'm not sure when they actually started typing 15 them and putting them on cards. They include 16 information going back 80 years, but it may have 17 been 10, 20 years before someone said, "Oh, we 18 should, you know, write down every one." I really 19 don't know if it goes back that far. But yes, 20 they have been in the company for a long, long 21 time. 22 Q And there have been a lot of people prior to you 23 that have utilized those cards over the years? 24 MR. THORSON: Object to the form of the 25 question. You can answer.

87 1 THE WITNESS: I'm not sure how to 2 characterize "a lot." Certainly people within the 3 company have had access to look at those cards. 4 BY MR. BERGMAN: 5 Q Have you ever found a card that was misfiled? 6 A I'm not sure I have. Other than, you know, not -- 7 as I said, in the way I would search for names 8 like these, someone might classify, if I found it 9 under Puget Sound, it being misfiled because it 10 wasn't first under U.S. Navy. I wouldn't consider 11 that misfiled, but I don't recall coming across a 12 card as I've thumbed through others and said, "Oh, 13 this one doesn't belong here," no. 14 Q Has there ever been an instance where you have not 15 been able to find a card referencing a 16 Cleaver-Brooks' boiler in a particular location 17 where you have subsequently discovered that a 18 boiler does indeed exist there? 19 MR. THORSON: Object to the form of the 20 question. Overly broad. Vague. 21 THE WITNESS: The only instances like 22 that I can recall were instances where the name of 23 the facility was different, either what I was 24 being asked was different than what we had 25 classified it as, or the name of the facility had	89 1 methodology that you previously testified you 2 employ? 3 A I believe all except Eastern Electric. 4 Q And was that because Eastern Electric was just too 5 vague to -- 6 MR. THORSON: I will object. I believe 7 that would call for him to disclose communications 8 with counsel. Counsel, there was no allegation of 9 exposure to a Cleaver-Brooks' boiler at Eastern 10 Electric, and that was the basis for our -- 11 MR. BERGMAN: I understand. 12 MR. THORSON: We did not perform a 13 search test at that site, as we stated in our 14 objections. 15 MR. BERGMAN: Okay. Mr. Tornetta, I 16 have -- we can either -- how are you feeling, sir? 17 Do you want to take a break now? Let's ask the 18 court reporter to chime in now. Do you want to 19 take a lunch break now? We have about another 20 half-hour. It's completely up to you guys. 21 MR. THORSON: You think you have another 22 half-hour of questioning? 23 MR. BERGMAN: 20 minutes or so. 24 MR. THORSON: It sounds like Mr. Bergman 25 anticipates finishing somewhere in the half-hour
88 1 since changed and no one passed along that 2 information. But I don't recall anywhere there 3 was a certainty a boiler was there and that place 4 was always ABC company and whatever Michigan, and 5 we didn't find a card, no. 6 Q What did you do to determine whether or not a 7 Cleaver-Brooks' boiler was present at the facility 8 in Flint, Michigan, identified in our discovery 9 requests? 10 A In Flint, Michigan? 11 Q Yes, sir. 12 A I looked under similar type things with the names. 13 I would have looked under the U.S. Navy. I can't 14 recall. Was it -- training center, I believe. 15 There was some other names for it as well. I 16 don't recall what they were. But I looked under 17 every iteration and name I was aware of to see if 18 I could find any information on a boiler we may 19 have shipped there. 20 Q And to be more fair, sir, let me direct your 21 attention to page 15 of Exhibit 6. 22 A Okay. Okay. 23 Q And, then, in response to this request for 24 production, did you look for Cleaver-Brooks' 25 boilers at all in those locations utilizing the	90 1 range or thereabouts. Is there a preference on 2 your end in Milwaukee about taking a break for 3 some lunch and coming back or pressing through? 4 Either one is fine. 5 THE WITNESS: I think we're all good 6 here for pressing through. 7 MR. THORSON: Good. 8 BY MR. BERGMAN: 9 Q All right. Let me direct your attention to 10 Exhibit 4. 11 A Okay. 12 Q Sir, if you could look at page 20 of Exhibit 4, 13 and I will ask you whether that is your signature? 14 A Yes, it is. 15 Q In 2004, did you review these answers prior to 16 affixing your signature on page 20 to Exhibit 4? 17 A I must say, I don't recall that, but my practice 18 is yes, I don't sign anything I don't review. So 19 I will say yes, I did. 20 Q Okay. And did you also review Exhibit 4 with your 21 counsel today? 22 MR. THORSON: I will stipulate that 23 we -- during the earlier break, we briefly went 24 through it; is that correct, Mr. Tornetta? 25 THE WITNESS: Yes, it is. I would

91 1 characterize it as scanned over. 2 BY MR. BERGMAN: 3 Q Okay. All right. If you could, please, sir, look 4 at page 8 to Exhibit 4. 5 A Okay. 6 Q And if you could look to Interrogatory No. 2 and 7 your response. You don't need to read it. I will 8 ask you a question about that. 9 A Okay. I have read it or scanned it. 10 Q Okay. So my understanding is, based on this, is 11 in 1967, Cleaver-Brooks became a subsidiary of 12 Aqua-Chem? 13 A Correct. 14 Q And that prior to that time, Cleaver-Brooks was 15 not a division of Aqua Chem? 16 A Correct. 17 Q Would it be accurate to say, then, sir that any 18 document referring to Cleaver-Brooks as a division 19 of Aqua Chem would have taken -- would have been 20 generated after the merger in 1967? 21 A Any document roughly after '67. I can't say for 22 certain as of that exact date, it was a dead 23 cut-off, but yes, I've dated things in a similar 24 way. 25 MR. THORSON: Let me just belatedly	93 1 A To myself or out loud? 2 Q Out loud, if you would, please. 3 A For any product? 4 MR. THORSON: The question and answer? 5 MR. BERGMAN: If you would, please. 6 MR. THORSON: Okay. 7 MR. BERGMAN: Yeah, the question and 8 answer, sir. 9 THE WITNESS: "Question, for any 10 product, item, or piece of equipment identified in 11 response to Interrogatories 6 or 7, identify all 12 warnings you employed to protect the purchasers 13 and users of said products, items, or pieces of 14 equipment from asbestos-related harm, including in 15 your answer the text of said warning and the date 16 on which it commenced. 17 "Response, Cleaver-Brooks is not aware 18 of any asbestos-related health or safety hazards 19 in connection with normal manufacture, 20 installation, or use of its products, and 21 therefore employed no such warnings with regard to 22 asbestos." 23 BY MR. BERGMAN: 24 Q Now, when Cleaver-Brooks indicated that it was not 25 aware of any safety hazards in connection with the
92 1 object to the last question as I believe it was 2 overly broad and vague. 3 BY MR. BERGMAN: 4 Q So recognizing that there might have been some 5 holdover for -- after the transaction in 1970, it 6 would be fair to say that any document that 7 says -- any Cleaver-Brooks document that says 8 Cleaver-Brooks, a division of Aqua-Chem, would 9 have been generated after the 1968 merger? 10 MR. THORSON: Same objection. 11 THE WITNESS: Yes. And, essentially, 12 I'm not sure you're interested in more current 13 stuff, but we've since changed back to 14 Cleaver-Brooks, Inc. since 19 -- 15 BY MR. BERGMAN: 16 Q When did that take place, sir? 17 A Since 2006. 18 Q So any document prior to 1990, would a -- would 19 have been -- okay. I think we're clear. 20 A Yes, I think we are. 21 Q Could you please -- I'm going to direct your 22 attention to Exhibit 4 on page 15. 23 A Okay. 24 Q If you would, please, sir, read Interrogatory 11 25 and Cleaver-Brooks' sworn response.	94 1 normal manufacture, installation, or use of its 2 products, did that answer include component parts 3 that were sold after sale? 4 MR. THORSON: Object to the form of the 5 question. You mean the use of the component parts 6 or the use of the Cleaver-Brooks' products? 7 BY MR. BERGMAN: 8 Q When Cleaver-Brooks makes reference to its 9 products, what are you referring to? 10 A Products by -- 11 Q For the record, I'm referring to the reference of 12 its products set forth in response to 13 Interrogatory No. 11 on page 14 of Exhibit 4. 14 A Products we sell, whether they were boilers or 15 potentially, I suppose, the component parts we may 16 have sold. 17 Q Okay. So this Answer to Interrogatory 11 refers 18 to any product that Cleaver-Brooks may have sold? 19 A Yes. 20 MR. THORSON: I will object to the form 21 of the question as being overly broad. Vague. 22 Calls for speculation. 23 BY MR. BERGMAN: 24 Q Looking to page 51 in Exhibit 4. 25 A Okay.

95 1 Q Could you please read the question and 2 Cleaver-Brooks' response? 3 MR. THORSON: Which question? 4 MR. BERGMAN: Interrogatory No. 15 set 5 forth on page 15 of Exhibit 4. 6 THE WITNESS: "Question, identify all 7 measures you employed to protect your employees 8 from asbestos-related disease. 9 "Response, Cleaver-Brooks is not aware 10 of any asbestos-related health or safety hazards 11 in connection with the normal manufacture, 12 installation, or use of its products, and 13 therefore employed no such measures. See also 14 response to Interrogatory No. 22." 15 BY MR. BERGMAN: 16 Q Mr. Tornetta, it's been eight years since you 17 furnished this response to Exhibit 15. And in 18 that intervening time period, has Cleaver-Brooks 19 acquired any additional information that would 20 cause it to change its sworn response to 21 Interrogatory No. 15, set forth on page 15 of 22 Exhibit 4? 23 MR. THORSON: And, again, just by way of 24 objection, I believe, in fairness and in the 25 interest of completeness, since the answer to that	97 1 disease? 2 MR. THORSON: Object to form of the 3 question. 4 THE WITNESS: Yes, because we are not 5 aware of asbestos-related health or safety hazards 6 with the normal manufacturing installation or use 7 of our products, correct. 8 BY MR. BERGMAN: 9 Q So just so we're clear, on the record, 10 Cleaver-Brooks never utilized any measures to 11 protect its employees from asbestos-related harm? 12 MR. THORSON: Object to the form of the 13 question. Assumes facts not in evidence. It's 14 been asked now three times. 15 THE WITNESS: Correct. Again, as I 16 said, and as this response says, and several 17 others do, we're not aware of that 18 asbestos-related hazard from those actions. 19 BY MR. BERGMAN: 20 Q And if we could turn back, sir, to page 14 of 21 Exhibit 4. 22 A Okay. 23 Q And directing your attention, once again, to 24 Interrogatory No. 11, in the eight years that has 25 elapsed since Cleaver-Brooks provided its sworn
96 1 interrogatory references a response to 2 Interrogatory No. 22. I believe that the response 3 to Interrogatory No. 2 should be reflected in the 4 record at this time. 5 BY MR. BERGMAN: 6 Q Okay. Let me revise my question in deference to 7 Counsel's comment. I won't call that objection. 8 So, Mr. Tornetta, in the eight years 9 that have elapsed since Cleaver-Brooks provided a 10 sworn response to Interrogatory 15, page 15 of 11 Exhibit 4, has Cleaver-Brooks acquired any 12 additional information that would cause it to 13 change its response set forth on page 15 and 17 of 14 Exhibit 4? 15 A No, we haven't received any additional information 16 that would change that response, which includes 17 that Cleaver-Brooks has never received from an 18 employee a worker compensation claim related to 19 asbestos exposure or related asbestos injury. 20 Q Okay. So it remains Cleaver-Brooks' testimony 21 today that it is not aware of any asbestos-related 22 health or safety hazards -- I'm sorry. 23 It remains Cleaver-Brooks' testimony 24 today that it did not employ any measures to 25 protect its employees from asbestos-related	98 1 response, has Cleaver-Brooks acquired any 2 additional information that would cause it to 3 change its sworn answer to Interrogatory No. 11? 4 MR. THORSON: I will object to the form 5 of the question as vague. Ambiguous. 6 THE WITNESS: No, we haven't. It would 7 be the same response today as it was eight years 8 ago. 9 MR. BERGMAN: Sir, this would probably 10 be an opportune time for us to take a break. I 11 know you have been at it for a while and the court 12 reporter has been at it for awhile. 13 MR. THORSON: So five minutes? 14 MR. BERGMAN: No. Didn't we want to 15 take a lunch break? 16 MR. THORSON: Oh, I'm sorry. I thought 17 you said you had 20 minutes to half-hour of 18 questioning to go. 19 MR. BERGMAN: We can go off the record. 20 THE VIDEOGRAPHER: We are off the record 21 at 1:47 p.m. 22 (Lunch recess, 1:47 p.m. to 2:45 p.m.) 23 THE VIDEOGRAPHER: We are back on the 24 record at 2:44 p.m. 25 BY MR. BERGMAN:

99 1 Q Sir, prior to the break, we were looking at 2 Exhibit 4. I would ask you to turn, if you would, 3 sir, to page 8 of Exhibit 4. 4 A Okay. 5 Q If you could, please, read Interrogatory No. 5 in 6 Cleaver-Brooks' response. 7 MR. THORSON: Wait. Exhibit 4? 8 THE WITNESS: Yeah. You must be mixed 9 up. 10 MR. THORSON: There's no Interrogatory 5 11 on page 8. 12 MR. BERGMAN: Page 9. 13 MR. THORSON: 9, okay. 14 THE WITNESS: Okay. Did you want me to 15 read that out loud or to myself? I don't recall. 16 MR. BERGMAN: If you could read it out 17 loud, please, sir. 18 THE WITNESS: "Question, state the date 19 on which you learned that asbestos poses a hazard 20 to human health. 21 "Response, any information that this 22 defendant may have with regard to this subject 23 would be information acquired by individual 24 employees through the general media. Defendant 25 has no record of the acquisition of any such	101 1 MR. THORSON: Almost assumes facts. 2 Excuse me. 3 BY MR. BERGMAN: 4 Q And is it also -- are you familiar, sir, with the 5 term "MSDS"? 6 A Yes, I believe so. 7 Q And what do you understand that term to be? 8 A Material safety data sheet. 9 Q And at any time, did Cleaver-Brooks furnish a 10 material safety data sheet to customers that made 11 any reference to asbestos or asbestos-containing 12 products? 13 MR. THORSON: Object to the form of the 14 question. Overly broad. Vague. You can answer. 15 THE WITNESS: I'm not aware of any 16 MSDS's we had with relation to asbestos products. 17 BY MR. BERGMAN: 18 Q So just so I'm clear, Cleaver-Brooks never 19 supplied a customer with an MSDS relating to 20 asbestos and asbestos hazards? 21 MR. THORSON: Same objection. 22 THE WITNESS: I've never found any 23 record of that, and I'm not aware of it, no. 24 BY MR. BERGMAN: 25 MR. BERGMAN: If the court reporter
100 1 information." 2 Q So first question, sir, in the eight years since 3 you signed the interrogatories set forth in 4 Exhibit 4, has Cleaver-Brooks acquired any 5 additional information enlightening it on when it 6 learned that asbestos posed a potential danger to 7 human health? 8 MR. THORSON: I'm assuming Counsel 9 intentionally means to exclude any information 10 conveyed through Cleaver-Brooks' counsel. 11 Mr. Tornetta, you are not to disclose or refer to 12 any communications from Counsel. With that 13 qualification, you can answer. 14 THE WITNESS: No, I would say we haven't 15 received any other information that would make 16 that answer change. 17 BY MR. BERGMAN: 18 Q So as of -- in 2012, Cleaver-Brooks cannot provide 19 a date when it learned that asbestos was hazardous 20 to human health? 21 MR. THORSON: Object to the form of the 22 question. It's vague. 23 THE WITNESS: That would be correct, 24 yes. 25 MR. BERGMAN: Okay.	102 1 would, open package 16. This can be off the 2 record. Madam Court Reporter, there should be an 3 original and copy; is that correct? 4 THE VIDEOGRAPHER: We are off the record 5 at 2:49 p.m. 6 (Exhibit Nos. 7 and 7A were marked.) 7 THE VIDEOGRAPHER: We are back on the 8 record at 2:51 p.m. 9 BY MR. BERGMAN: 10 Q Mr. Tornetta, I'm handing you Exhibits 7 and 11 Exhibit 7A. Can you tell us what Exhibit 7 is? 12 MR. THORSON: Object to the form of the 13 question. I think it's vague. 14 BY MR. BERGMAN: 15 Q Can you identify Exhibit 7 for us, please? 16 A It says on the title of this several-page booklet, 17 I guess I will call it, stapled booklet, "Rear 18 Door Refractory Repair Or Replacement, Boiler 19 Diameters, 36, 48, 60, 78, 96," all inches. 20 Q And have you seen Exhibit 7 prior to today, sir? 21 A I believe I've come across it in the past. I'm 22 not sure I can weed out whether I came across it 23 in the past in depositions where it's been given 24 to me to look at or whether I've run into it in my 25 work at Cleaver-Brooks. I can't determine which

103 1 one is which. 2 Q Okay. And if you could then look at 7A as well, 3 and just indicate for the record whether 7A 4 appears to be a true and accurate copy of 5 Exhibit 7. 6 A Okay. Certainly, without reading every word, it 7 looks to be a copy of it, yes. 8 Q Okay. If you could refer to Exhibit 7 for us, 9 sir, and I guess my overall question is, are you 10 able to date that document? Please take -- I'm 11 going to be asking plenty of questions about that 12 document, so please take as much time as you would 13 like to look over it? 14 MR. THORSON: I will object to the form 15 of the question. There's no foundation whatsoever 16 supplied as to this document. Lack of foundation. 17 Also, calls the witness to speculate on a document 18 whose authenticity has not been established. With 19 that, you can answer -- 20 BY MR. BERGMAN: 21 Q Let me ask a few questions in light of Counsel's 22 objection. Sir, if you could look at the front 23 page of Exhibit 7. 24 A Yes. 25 Q And you see there's a reference to Cleaver-Brooks?	105 1 far as authentic. I don't have any reason to 2 believe otherwise, I guess, is the way I would put 3 it. 4 BY MR. BERGMAN: 5 Q Okay. And in the course of your work for 6 Cleaver-Brooks, both as a technical employee and 7 in litigation support, have you run across 8 technical manuals such that's set forth in 9 Exhibit 7 prior to today? 10 MR. THORSON: Object to the form of the 11 question. It's vague. 12 THE WITNESS: Certainly I've run across 13 manuals of varying types, so I'm not sure I'd say 14 exactly like this, but certainly I have come 15 across their manuals. 16 BY MR. BERGMAN: 17 Q Okay. What would be the purpose of a -- well, 18 strike that. Would it be fair to say that -- to 19 describe Exhibit 7 as a manual? 20 MR. THORSON: Object to the form of the 21 question. Calls for speculation. Assumes facts 22 not in evidence. And lack of foundation. You can 23 answer. 24 THE WITNESS: I'm not certain I would 25 call it a manual -- I guess I -- I don't know how
104 1 A Yes. 2 Q And what is the logo between the words "Cleaver" 3 and "Brooks" on the first page of Exhibit 7? 4 A That is the hand and flame logo we were discussing 5 earlier. 6 Q Is that the Cleaver-Brooks logo? 7 A It has been, yes. 8 Q Okay. And is the font and typeface of the 9 Cleaver-Brooks' writing on page 1 of the Exhibit 7 10 similar to the font and typeface on Exhibit 3? 11 A When you say "page 1," you mean not page 1 as in 12 the numbered page, but the cover page? 13 Q The cover page. 14 A Okay. I just want to make sure we're talking 15 about the same thing. It looks similar to it, 16 yes. 17 Q Okay. And does Exhibit 7 appear to you to be an 18 authentic Cleaver-Brooks' document? 19 MR. THORSON: Object to the form of the 20 question. Vague. Ambiguous. Calls for 21 speculation. Lack of foundation. 22 THE WITNESS: I'm not sure what I could 23 qualify as authentic Cleaver-Brooks' document. 24 Certainly, I've run into this before in at least 25 this setting. I'm not sure I can answer that as	106 1 any particular person would define "manual." 2 There are certainly instructions within it. 3 BY MR. BERGMAN: 4 Q Okay. What would you -- in your words, sir, how 5 would you describe Exhibit 7? 6 MR. THORSON: Same objections. 7 THE WITNESS: I guess I would call it a 8 guide for repair or replacement of rear door 9 refractory. 10 BY MR. BERGMAN: 11 Q Okay. And to whom was this guide directed? 12 MR. THORSON: Objection. Lack of 13 foundation. Assumes facts not in evidence. Calls 14 for speculation. Lack of foundation. 15 THE WITNESS: I don't see anything on 16 here that would indicate one way or the other who 17 it would be directed to. Essentially this type of 18 work, refractory type of work, isn't your, you 19 know, everyday maintenance person in a facility. 20 So it may have been more directed towards people 21 who did refractory-type work. But there's nothing 22 on here that would indicate to me one way or the 23 other. 24 BY MR. BERGMAN: 25 Q Would it be directed toward individuals outside

107 1 the Cleaver-Brooks' factory? 2 MR. THORSON: Same objections. 3 MR. BERGMAN: I will give you a standing 4 objection on that, Counsel. I understand your 5 position. 6 MR. THORSON: You can answer. 7 THE WITNESS: Again, nothing on here 8 tells me that one way or the other. You said 9 outside of the Cleaver-Brooks' factory, did you 10 say? 11 MR. BERGMAN: Yes, sir. Do you 12 understand the question? 13 THE WITNESS: Yes. I just want to make 14 sure I heard it correctly. 15 MR. BERGMAN: Okay. 16 THE WITNESS: I can't imagine why it 17 would be needed in the Cleaver-Brooks factory. So 18 I guess my answer to that would be yes. 19 BY MR. BERGMAN: 20 Q So it would be directed toward either users of 21 Cleaver-Brooks' boilers or individuals who are 22 tasked with repairing and renewing and maintaining 23 Cleaver-Brooks' boilers, correct? 24 MR. THORSON: Same objection. It also 25 calls for speculation.	109 1 felt was the right way, whether they followed 2 those procedures or not. I'm not sure we had any 3 expectations one way or the other. 4 BY MR. BERGMAN: 5 Q But in providing this document -- well, I guess 6 the -- in that case, why did Cleaver-Brooks 7 provide the documents set forth in Exhibit 7? 8 MR. THORSON: I will object to the form 9 of the question. That's not what he said. He did 10 not say this was provided to anybody. Same 11 objections as previously stated. 12 BY MR. BERGMAN: 13 Q Let's try -- did Cleaver-Brooks provide this 14 document to individuals outside of Cleaver-Brooks' 15 factory? 16 A I don't have any records to show that one way or 17 the other. So I don't know. It's certainly 18 outside of our factory right now. So I would say 19 it eventually ended up outside of our factory. 20 Q Okay. And do you have any reason to dispute, sir, 21 that the documents set forth in Exhibit 7 was 22 provided to individuals charged with maintaining 23 Cleaver-Brooks' boilers outside of the company 24 back then? 25 A I'm not sure I can even answer that. I think you
108 1 THE WITNESS: I would probably correct 2 the user part. Again, that goes back to the -- 3 what I originally said about it. I think we're 4 dealing with something that's a little more 5 sophisticated in how it's done than somebody that 6 simply would turn on the switch of a boiler and 7 make sure it had pressure in it. 8 BY MR. BERGMAN: 9 Q Okay. So it would be directed toward individuals 10 who were tasked with maintaining Cleaver-Brooks' 11 boilers as opposed to simply using them in the 12 course of daily life? 13 MR. THORSON: That's also an incomplete 14 hypothetical. Same objections. 15 THE WITNESS: Yeah, that's probably -- 16 you know, the only way I can think to describe it, 17 yes. 18 BY MR. BERGMAN: 19 Q Okay. Would Cleaver-Brooks expect individuals who 20 are repairing its boilers to follow the procedures 21 set forth in Exhibit 7? 22 MR. THORSON: Same objections. Assumes 23 facts. 24 THE WITNESS: I would say our 25 expectations would be that they would do what they	110 1 would have to ask the individuals you're talking 2 about whether it was provided to them. I don't 3 know how I could answer that question. 4 Q Cleaver-Brooks printed a document that was 5 professionally typeset with extensive drawings, 6 figures, charts, and instructions? 7 MR. THORSON: Object to -- if that's a 8 question, I will object to the form of it. 9 There's no foundation and it assumes facts not in 10 evidence. 11 BY MR. BERGMAN: 12 Q Are you suggesting that this document was not 13 provided to customers and other users of 14 Cleaver-Brooks' products? 15 MR. THORSON: Same objections. 16 THE WITNESS: No. I think what I said 17 was I didn't know how to answer your question, 18 which seemed to me, at least, to broadly ask 19 whether or not we provided this to individuals of 20 this, that, or the other type. I don't know. You 21 have to ask those individuals whether they 22 received it. 23 Again, it obviously went outside of our 24 factory because it is currently outside of our 25 factory. We didn't make it up for nothing, I

111 1 suppose. But I certainly can't sit here and 2 testify that someone received this that I don't 3 know who they are and I haven't asked them if they 4 received it. 5 BY MR. BERGMAN: 6 Q I understand. But would it be fair to say, sir, 7 that the purpose of Exhibit 7 was to instruct 8 individuals on the proper maintenance and repair 9 of rear door refractory of Cleaver-Brooks' 10 boilers? 11 MR. THORSON: Object to the form of the 12 question. Assumes authenticity. Lack of 13 foundation. Calls for speculation. Assumes 14 facts. 15 THE WITNESS: I would -- I'm not sure I 16 would say that is completely what this is. It's 17 talking about replacement. I'm not sure it talks 18 too much about maintenance. And I would refer to 19 it as a guide for that. Whether that's an 20 instruction or not, you would have to tell me. 21 But certainly there are instructions within it. 22 BY MR. BERGMAN: 23 Q And in providing guidance to customers on the 24 repair or replacement of rear door refractories, 25 Cleaver-Brooks certainly expected that customers	113 1 yourself with page 2 of Exhibit 7. I'm going to 2 ask you some questions about it once you've had a 3 chance to review it. 4 A Okay. Okay. I'm ready. 5 Q Are we still on? 6 A Can you hear me okay? 7 MR. THORSON: You just suddenly got 8 quiet again. 9 THE WITNESS: One second. Can you hear 10 me any better? How about that? Can you hear me? 11 MR. THORSON: That's better. 12 THE WITNESS: Are you all right with 13 that? We're working on microphones again. Sorry. 14 MR. BERGMAN: Okay. 15 THE WITNESS: Okay. I'm ready when you 16 are. 17 BY MR. BERGMAN: 18 Q You've had a chance to familiarize yourself with 19 the second unnumbered page of Exhibit 7? 20 A Yes. 21 Q Okay. I want to ask you some questions regarding 22 the particular parts set forth on that page. And 23 in general, can you describe how the parts 24 numbering system at Cleaver-Brooks worked in the 25 '60s and '70s?
112 1 would heed its guidance, correct? 2 MR. THORSON: Object to the form. 3 THE WITNESS: I'm not sure I could 4 answer what we expected a customer to do with this 5 document. Certainly we made it for a reason. I'm 6 not sure how to answer your question, to be quite 7 honest with you. 8 BY MR. BERGMAN: 9 Q Okay. And what was the reason that you understood 10 Exhibit 7 to have been made for? 11 MR. THORSON: Objection. Assumes facts. 12 Lack of foundation. Calls for speculation. 13 THE WITNESS: It says, "Rear door 14 refractory repair or replacement." It is guidance 15 on rear door refractory repair or replacement. 16 BY MR. BERGMAN: 17 Q If you could turn to the second page of Exhibit 7. 18 A The second unnumbered page or page No. 2? 19 Q It is unnumbered, sir. So yes, it is unnumbered. 20 MR. THORSON: Material list, is that it? 21 MR. BERGMAN: Yes. 22 THE WITNESS: Okay. I'm there. 23 BY MR. BERGMAN: 24 Q And I would like you, first of all, just to take 25 as much time as you need just to familiarize	114 1 MR. THORSON: Let me just -- do I have a 2 continuing objection as to all questions related 3 to this exhibit? 4 MR. BERGMAN: Yes, you certainly do. 5 MR. THORSON: Okay. 6 THE WITNESS: I guess I'm not sure what 7 you're looking for with that. We had part numbers 8 and those part numbers would have had descriptions 9 for those part numbers, similar to what you've 10 seen in the documents we've produced. 11 BY MR. BERGMAN: 12 Q So looking in the upper left corner of the second 13 page of Exhibit 7 and recognizing Counsel has a 14 standing objection to the utilization of this 15 document, it indicates part No. 872-162 Vee Block 16 Mix. And I guess my question to you is, what 17 system did Cleaver-Brooks utilize to characterize 18 part numbers in the construction and maintenance 19 and repair of its boilers? 20 MR. THORSON: Objection. Vague. 21 THE WITNESS: I'm not sure I understand 22 that. 872-162 is the part number for Vee Block 23 Mix. I think if you look at our drawings we 24 produced, you will see that as well. I'm not sure 25 what you're looking for.

115 1 BY MR. BERGMAN: 2 Q Okay. So did the part number -- was that the same 3 for the construction of the boiler and the supply 4 of replacement components for the boiler? 5 A The part number would be the part number, yes. 6 Whether it was a component in the boiler or 7 something after the fact, the part number would 8 have been the same number. 9 Q Okay. And does Cleaver-Brooks today have any 10 master list of part numbers that was in use in the 11 1960s and 1970s? 12 A I have part numbers on reels of microfilm, which 13 is what we've provided -- the appropriate ones 14 with the drawings we provided. So is that what 15 you're talking about? 16 Q No, sir. I'm talking about whether there was a 17 master list, a parts list, maintained by 18 Cleaver-Brooks in the 1960s and '70s identifying 19 all of the parts that were available for 20 post-market sale and, you know, by type and 21 number. 22 A No. 23 Q Okay. And is your testimony that no document ever 24 existed or that there is no document available 25 today?	117 1 parts and components that are used to building a 2 boiler today. 3 MR. BERGMAN: Of course not. 4 THE WITNESS: I'm talking historically. 5 The only list of parts in documents we would have 6 would be the reels of microfilm I talked about. 7 BY MR. BERGMAN: 8 Q Okay. And are you aware of any significance to 9 the prefix in a Cleaver-Brooks' part number? And 10 by that I mean, the number 872, prior to the 11 actual parts number? And please take your time to 12 review page 2 of Exhibit 7 if that helps. 13 A I'm not aware necessarily of what it actually 14 means, but you will see, as you go across there, 15 that many of the ones on that list start with 872. 16 Some are 853s. I'm not quite sure it tells me 17 anything in relation to, you know, what is that 18 part, other than it's just numbered under 872 and 19 then whatever the next numbers are. 20 Q So we know that -- from looking at page 2 of 21 Exhibit 7, we know that 87 -- that part number 22 872-162 is Vee Block Mix; is that correct? 23 A That's what it says there, yes. 24 Q And looking down from that column on page -- the 25 second column on page 2 of Exhibit 7, it indicates
116 1 MR. THORSON: And just for 2 clarification, Counsel, are you referring to a 3 list outside the contents of a particular 4 commercial file for Cleaver-Brooks' boilers? 5 MR. BERGMAN: Yes, I am, yes. 6 THE WITNESS: The documents we would 7 have are the parts descriptions I described on the 8 reels of microfilm, which we produced various ones 9 that are related to the boilers we produced 10 documents on. A list of those, other than 11 appearing in various manuals, possibly, as parts, 12 I'm not aware that we have anything like that, no. 13 BY MR. BERGMAN: 14 Q You've never seen a master parts list? 15 MR. THORSON: Same objections. It's 16 vague. 17 THE WITNESS: No, I guess, if I 18 understand what you're talking about as a master 19 parts list, no. And, again, I'm not including -- 20 MR. BERGMAN: Well, I -- 21 THE WITNESS: I'm sorry. 22 MR. BERGMAN: I interrupted you, sir. I 23 apologize. 24 THE WITNESS: I'm certainly not 25 including 2012, what's in our computer system for	118 1 various pounds of Vee Block Mix corresponding with 2 various diameters of Cleaver-Brooks' boilers, do 3 you see that, sir? 4 A That's what it says there, yes. 5 Q And what does that mean? 6 MR. THORSON: Objection. Calls for 7 speculation. You can answer. 8 THE WITNESS: I believe it's the weight 9 of material needed for that particular boiler 10 size. 11 BY MR. BERGMAN: 12 Q Okay. So the bigger the boiler, the more, for 13 instance, Vee Block would be required to replace 14 a -- repair or replace a rear door refractory; is 15 that correct? 16 MR. THORSON: Object to the form. 17 Assumes facts. You can answer. 18 THE WITNESS: If that particular boiler 19 required Vee Block Mix, yes, that would be true. 20 BY MR. BERGMAN: 21 Q Okay. And just so we're clear, these parts 22 numbers that we've been referring to set forth on 23 page 2 of Exhibit 7 are Cleaver-Brooks' numbers, 24 correct? 25 MR. THORSON: Objection. Calls for

119 1 speculation. 2 THE WITNESS: Yes, they are, unless, as 3 in the next column, it calls out, as well, some 4 other manufacturer's number. 5 BY MR. BERGMAN: 6 Q Okay. The numbering system is a Cleaver-Brooks' 7 numbering system, correct? 8 MR. THORSON: Same objections. 9 THE WITNESS: Correct. 10 BY MR. BERGMAN: 11 Q So part No. 872-61, and I'm making reference to 12 the third column on page 2 of Exhibit 7, refers to 13 asbestos board and -- is that correct? 14 A Yes. It says, "Quarter-inch asbestos board J.M. 15 106 or equal." 16 Q Okay. Did Cleaver-Brooks provide J.M. 106 to 17 customers? 18 MR. THORSON: Object to the form of the 19 question. It's vague. Ambiguous. Overly broad. 20 THE WITNESS: I believe if you look in 21 the documents we provided on these boilers, you 22 will see incidents where that was part of the 23 boiler we provided, yes. 24 BY MR. BERGMAN: 25 Q Okay. And part No. 872-22, I'm referring to the	121 1 in this particular case, is used on the lower 2 half -- outside of the lower half of the rear 3 door. 4 Q Okay. 5 A And you will also see that on the materials we 6 provided on the specific boilers in this case. 7 Q Okay. And, then, moving back to the fourth and 8 fifth columns on the second page of Exhibit 7, 9 there are various amounts of square feet listed as 10 the columns go down. Can you explain why that is? 11 A The diameter of the door is changing. 12 Q Okay. So is more material -- more insulating 13 block required when the diameter of the door 14 increases? 15 MR. THORSON: Object to the form of the 16 question. It's overly broad. 17 THE WITNESS: Yes. I think the equation 18 for area of a circle is "2 Pi r". So as the 19 diameter goes up, so does the area. 20 BY MR. BERGMAN: 21 Q Okay. And then the seventh column is part No. 22 853-348. What is that product? 23 MR. THORSON: I think that may be the 24 eighth column, just for the record. 25 MR. BERGMAN: Yes, it is.
120 1 fourth column on the second page of Exhibit 7, 2 what product is that? 3 A That says, "One-and-a-half-inch Hi-Temp insulating 4 block." 5 Q Is that an asbestos product, sir? 6 MR. THORSON: Objection. Foundation. 7 Vague. Overly broad. 8 THE WITNESS: I don't know. I would 9 have to look at the manufacturer of it and see if 10 they were able to tell me. 11 BY MR. BERGMAN: 12 Q Looking at part 872-167, the fifth column on page 13 2 of Exhibit 7, what is that product? 14 A It says, "One-Inch Hi-Temp insulating block." It 15 appears to be the same as the fourth column, 16 except a different dimension, thickness dimension. 17 Q Okay. And, then, the sixth column on the second 18 page of Exhibit 7, part No. 872-86. Are you 19 familiar with a product called Furnas-Crete? 20 A Yes, and I think it says "Furnas-Crete" there, "or 21 equal," and I think it's 872-96. Since I have the 22 original, it might be a little easier for me to 23 see. 24 Q Okay. In any event, what is "Furnas-Crete"? 25 A That is a high-strength castable refractory that,	122 1 BY MR. BERGMAN: 2 Q Counsel is correct. It's the 8th column on page 2 3 of Exhibit 7. What is that product, sir? 4 A That says, "3-Ply quarter-inch Asbestos Rope J.M. 5 No. 4202 or equal." 6 Q Okay. And what is that rope used for, sir, if you 7 know? 8 A I would have to look at the drawings to determine 9 what they're saying it's used for in this. If we 10 looked at the drawings for the products that we 11 supplied the documents for, we could probably 12 determine that a little easier. 13 Q Okay. We will get there in short order, sir. The 14 ninth column, sir, part No. 853-249, what is that 15 product, sir? 16 A It says, "Five-Eighths-inch by five-eighths-inch 17 Asbestos Rope." 18 Q Okay. Now, looking -- we're still on page 2 of 19 Exhibit 7. Now we're on the lower box. And 20 there's reference to part No. 872-26. Do you see 21 that, sir? 22 A Yes, I do. 23 Q And what does that refer to? 24 A It says, "Asbestos Cement J.M. No. 450 or equal." 25 Q Can you remind us what the "or equal" means?

123 1 MR. THORSON: Object to form. 2 THE WITNESS: It would be -- or 3 something that fits the same application. 4 BY MR. BERGMAN: 5 Q Okay. And, finally, if you could work to the 6 third column from the right on the lower box on 7 page 2 of Exhibit 7, it makes reference to part 8 853-249. What product is that? 9 A That, again, says, "Five-Eighths-inch Asbestos 10 Rope." 11 Q Okay. And could you please read the note to us on 12 the lower right-hand side of page 2 of Exhibit 7? 13 A "Note: If possible, make certain that all 14 necessary parts and materials are on hand before 15 commencing major repairs, involving extended 16 interruption of service." 17 Q And now, could you look and read on the lower left 18 corner on the second page of Exhibit 7? 19 A The asterisk? 20 Q The double asterisk? 21 A The double? 22 Q Yes, sir. 23 A "Order by part number and amount required." 24 Q Does the second page of Exhibit 7 represent 25 products that Cleaver-Brooks offered for sale?	125 1 dozen columns. 2 THE WITNESS: I am not sure I would 3 characterize it as encouraging anyway. But 4 certainly if somebody called us up and asked for 5 part No. 872-196, we would ask them how much and 6 what their purchase order number was. 7 BY MR. BERGMAN: 8 Q And would those products be sold at a profit? 9 MR. THORSON: Object to the form. Calls 10 for speculation. Assumes facts. 11 THE WITNESS: I don't believe we're a 12 nonprofit organization. 13 BY MR. BERGMAN: 14 Q Okay. And so Cleaver-Brooks -- whatever -- for 15 instance, part No. 872-26, whatever it cost 16 Cleaver-Brooks to acquire from the manufacturer, 17 Cleaver-Brooks would mark up that product 18 appropriately? 19 MR. THORSON: Objection. Incomplete 20 hypothetical. Assumes facts. Vague. 21 THE WITNESS: Yes, it would be marked up 22 appropriately from us and whoever else might be in 23 that chain before or after us, which, quite 24 frankly, is the reason -- it would be unusual for 25 someone to abide -- buy commodities like this from
124 1 MR. THORSON: Object to the form of the 2 question. Overly broad. Compound. Vague. 3 THE WITNESS: I think as I responded 4 before, if someone asked us for it, we would sell 5 it to them. 6 BY MR. BERGMAN: 7 Q Okay. And in these -- on the second page of 8 Exhibit 7, indeed, wouldn't it be fair to say that 9 Cleaver-Brooks is offering its products for sale? 10 MR. THORSON: Object to the form of the 11 question. Argumentative. 12 THE WITNESS: I guess one could 13 interpret it that way. 14 BY MR. BERGMAN: 15 Q Okay. Well, how do you interpret it, sir? 16 A That here is a guide of the products, guideline 17 for the products. 18 Q Okay. And by indicating "order by part number," 19 it would be fair to say that Cleaver-Brooks is 20 encouraging customers to purchase those products, 21 would it not? 22 MR. THORSON: I will object to the form 23 of the question. That mischaracterizes the 24 document. The double asterisk "order by part 25 number" refers to one item in front of several	126 1 us, but that's not what you asked. 2 BY MR. BERGMAN: 3 Q Okay. Why do you think it would be unusual to buy 4 commodities from -- from Cleaver-Brooks? 5 A For the reason you just stated and that 6 Cleaver-Brooks would have marked up that product. 7 Where someone -- for some of these products here, 8 the more commodity-type products, I guess I would 9 call them, could go down the street to a local 10 supply house and purchase similar products without 11 paying shipping on 60 to 350 pounds of a mix, dry 12 mix that's going to be shipped, as well as our 13 mark up. 14 Q Looking at the second -- the lower box on page 2 15 of Exhibit 7, part 872-26. 16 A Yes. 17 Q Can you explain why the volumes of cement 18 increased as the cost -- rose -- 19 A Again, not knowing exactly where on these drawings 20 they show that product being used, as I thumb 21 through here quickly, I would have to look at the 22 drawings that -- for a particular boiler to see 23 exactly where it's used, but I will say that it's 24 more than likely due to the fact that the diameter 25 of the door is increasing.

127 1 Q If you can turn to the fourth page of Exhibit 7. 2 A Page 3 or page 1? 3 Q Sir, it's the third page -- well -- 4 A There's page numbers on the bottom after the 5 drawing. Well, maybe your page numbers are cut 6 off. 7 Q I see, yes. Page -- it must be page 1, 8 "Indications." 9 A Yes, okay. 10 Q Can you describe for us the function of the rear 11 door on a Cleaver-Brooks' boiler? 12 A Well, I think if you read the first paragraph and 13 the four bullets under there, it will do that for 14 you: It retains heat, it directs combustion 15 gases, prevents leakage of combustion gases, and 16 provides access for inspecting, cleaning, etc. 17 Q So it would be fair to say it's a fairly important 18 part in the effective operation of a 19 Cleaver-Brooks' boiler? 20 A Just as important as all the other parts, yes. 21 Q Going back if we would, sir, to the first page of 22 Exhibit 7. 23 A Okay. 24 Q Are you able to provide a date for when this 25 document was prepared?	129 1 MR. THORSON: Objection. It's overly 2 broad. Vague. 3 THE WITNESS: I think in the particular 4 cases we're looking at here and in the documents 5 we provided, it was used for a -- the -- what we 6 would call the door or head gasket in the front 7 and rear of the boiler, as well as a gasket along 8 the baffle and some of the boilers we looked at. 9 There may be another gasket around where the 10 burner opening in the front is. 11 BY MR. BERGMAN: 12 Q Sir, No. 3, and I'm referring to the first 13 numbered page of Exhibit 7, states, "Check 14 condition of asbestos pulp protecting tadpole 15 gasket." First of all, do you know what asbestos 16 pulp is? 17 A I believe they're referring to the part No. 872-26 18 we saw on the last page, which was the J.M. 450 or 19 equal cement. 20 Q Could you please read to yourself the second 21 paragraph on the right column of numbered page 1 22 of Exhibit 7? 23 MR. THORSON: Paragraph beginning, "It 24 is normal"? 25 MR. BERGMAN: Yes.
128 1 MR. THORSON: Objection. Assumes facts. 2 THE WITNESS: No. Other than as we've 3 talked about earlier today, it does refer to 4 division of Aqua-Chem, Inc., which means it would 5 be post 1967, roughly. 6 BY MR. BERGMAN: 7 Q And do you know how long Exhibit 7 was provided by 8 Cleaver-Brooks to individuals outside the factory? 9 MR. THORSON: Objection. Assumes facts. 10 THE WITNESS: No, I wouldn't have any 11 idea. 12 BY MR. BERGMAN: 13 Q Okay. If you could look with me, then, on page 1, 14 toward the lower left portion. It says, "Check 15 condition of tadpole gasket on rear flange of 16 boiler door." Do you know what a tadpole gasket 17 is? 18 A Yes, I do, and I think this actually says, "Check 19 condition of tadpole gasket on rear flange of 20 boiler body." 21 Q Thank you. What is a tadpole gasket? 22 A It's a gasket that when you cut a cross section of 23 it, it looks like a tadpole. It has a head and a 24 tail. 25 Q And what is it used for?	130 1 THE WITNESS: Okay. 2 BY MR. BERGMAN: 3 Q Was it anticipated by Cleaver-Brooks that, over 4 time, the refractory on the rear doors would break 5 down and need to be replaced? 6 A Again, I think we talked a little bit about that 7 earlier. It certainly would depend on how the 8 boiler was operated and treated over the years. 9 I've certainly seen boilers of many years with the 10 original refractory and ones that didn't go that 11 long. So I guess it would depend on which boiler 12 we're talking about. 13 Q But at least in over enough period of time, it 14 would be -- it was at least anticipated that some 15 boilers would have the refractory rear door break 16 down and require replacement? 17 MR. THORSON: Object to form. Overly 18 broad. 19 THE WITNESS: That's probably a decent 20 characterization of it, yes, characterization. 21 BY MR. BERGMAN: 22 Q If you could look with me to page 2 of Exhibit -- 23 the numbered page 2 of Exhibit 7. 24 A Okay. 25 Q And can you, in general terms, describe the

131 1 diagram set forth on that page? 2 A It's a cross section of a rear door. 3 Q Okay. Do you have a pen with you, sir? 4 A No, I don't. 5 Q Would the court reporter provide you with a pen? 6 A Okay. 7 Q If you could take Exhibit 7A. 8 A Okay. 9 Q Which is the copy? 10 A Yes. 11 Q And if on 7A -- first of all, was the block mix an 12 asbestos product? 13 MR. THORSON: Object to the form of the 14 question. Vague. Vague as to time. 15 BY MR. BERGMAN: 16 Q In 1967 or afterward? 17 A I don't know if we're in that time period. I have 18 no idea. It says that -- it refers to it -- no, 19 it doesn't on this one. I think you will find in 20 some of our drawings that we provided it calls it 21 asbestos. Whether or not it was at that time, I 22 would have to go to the manufacturer and see 23 whether it was. 24 Q And that manufacturer would be Kaiser 25 Refractories?	133 1 MR. THORSON: You can answer. 2 THE WITNESS: If you're telling me it 3 was asbestos-containing and I am to assume that 4 you are correct, then yes, I suppose it was, if 5 you're testifying to that, yes. 6 BY MR. BERGMAN: 7 Q Okay. Could you -- and then with respect to the 8 insulating block identified on page 2 to 9 Exhibit 7, was that an asbestos-containing 10 product? 11 MR. THORSON: Object to form. 12 THE WITNESS: I don't know. I would 13 have to look at the part numbers for it and the 14 part description to see if there's a manufacturer 15 listed and whether or not that manufacturer could 16 be contacted to see if it was. 17 BY MR. BERGMAN: 18 Q Okay. Clearly looking, once again, down at page 2 19 of the diagram, the quarter-inch asbestos board 20 was clearly an asbestos product, correct? 21 A Well, that's what it says there. Whether or not 22 it was asbestos the entire time this document was 23 used, or even when this document was produced, I 24 certainly couldn't say. I would have to check 25 with -- I think they refer to it as J.M. 106 or
132 1 MR. THORSON: Object to the form. Calls 2 for speculation. 3 THE WITNESS: I believe that was what we 4 discussed before. Again, I would have to look at 5 those drawings to see if they said "Kaiser or 6 equal" or not. I don't recall. 7 BY MR. BERGMAN: 8 Q Okay. I will represent to you, sir, that in 1967, 9 at least through 1974, Kaiser Vee Block was an 10 asbestos-containing product. Assume that to be 11 true -- assuming that to be true, was the Vee 12 Block Mix identified on page 2 of Exhibit 7 an 13 asbestos product? 14 MR. THORSON: I will object to the form 15 of the question. Also assumes facts. Incomplete 16 hypothetical. Calls for speculation. 17 THE WITNESS: I think that's what you 18 just testified to. 19 BY MR. BERGMAN: 20 Q So insofar as it was a Kaiser Vee Block product, 21 it would have been asbestos-containing? 22 MR. THORSON: Based on your 23 representation, Counsel, that it was 24 asbestos-containing? 25 MR. BERGMAN: Yes.	134 1 equal to see if it was. 2 Q Could you please -- looking at page 4 of 3 Exhibit 7, if you could read from -- to yourself, 4 from where it indicates a note all the way to the 5 end of section 1 before we start on section 2. 6 A And you're talking about page No. 4? 7 Q Yes, sir. 8 A And reading again -- I'm sorry. I was looking to 9 make sure I had the right thing. 10 Q Starting from "Note." 11 MR. THORSON: The left-hand column on 12 the upper right-hand -- upper left-hand corner? 13 MR. BERGMAN: Yes, please. 14 THE WITNESS: Through what again? 15 MR. BERGMAN: The left-hand column 16 starting on "Note" through the bottom of the 17 right-hand column before you get to section 2. 18 THE WITNESS: Okay. Okay. 19 BY MR. BERGMAN: 20 Q What is the purpose of the caution label on page 4 21 of Exhibit 7? 22 MR. THORSON: Excuse me. Excuse me. 23 Just an objection to the form. I think the 24 document speaks for itself. It calls for the 25 witness to speculate. You can answer.

135 1 THE WITNESS: I think it's bringing up 2 the fact that, depending on the specific boiler, 3 things may be different than what it shows, and 4 it's just bringing that to light. 5 BY MR. BERGMAN: 6 Q Is it -- and why is it -- why is the caution label 7 circled in bold face? 8 MR. THORSON: Same objections. 9 THE WITNESS: I think I would have to 10 ask the person who drafted the document. I have 11 no idea. 12 BY MR. BERGMAN: 13 Q Would you agree that the purpose is to draw the 14 reader's attention to a potential hazard arising 15 out of the replacement of refractory materials on 16 Cleaver-Brooks' boiler doors? 17 MR. THORSON: I will object to the 18 characterization of this -- this paragraph or this 19 section. There's no reference to refractory here. 20 Misleading. Mischaracterizes the document. You 21 can answer. 22 THE WITNESS: I don't believe it's 23 talking about a hazard at all. It's just bringing 24 light to the fact that if you're doing this type 25 of work, be aware that things are not always	137 1 that as hazardous. It just wouldn't work 2 properly. 3 BY MR. BERGMAN: 4 Q Okay. All right. If you could turn with me to 5 page 5 of Exhibit 7. 6 A Okay. 7 Q Could you please read the note on page 5 of 8 Exhibit 7? 9 MR. THORSON: Out loud or to himself? 10 MR. BERGMAN: Out loud. 11 THE WITNESS: "Note, when insulation or 12 refractory must be removed from all or most of the 13 rear door prior to repair, it should be removed in 14 this order: Upper half, baffle tiles, lower half. 15 In replacing the insulation in the refractory is 16 replaced in this order: Baffle tiles, lower half, 17 upper half." 18 Q Okay. And if you could they be read the bottom 19 paragraph on the left-hand side of page 5 of 20 Exhibit 7 going into the right-hand column? 21 MR. THORSON: Paragraph beginning 22 "removal of"? 23 MR. BERGMAN: Yes. 24 THE WITNESS: "Removal of Vee Block Mix 25 and refractory. This material can best be removed
136 1 exactly the way they show in here, which is -- I 2 agree with you completely, I would look at the 3 specific drawings, which ultimately is what's 4 being said in the very last paragraph of that 5 section, where it says, "Be prepared to include 6 the model and serial number of the boiler." So 7 those specific drawings could be looked at to see 8 just how that particular boiler was put together, 9 which goes back to this being a guide to give 10 someone an idea. 11 BY MR. BERGMAN: 12 Q Because using the wrong parts in rear door 13 refractory repair or replacement could be 14 dangerous? 15 MR. THORSON: Object to the form of the 16 question. It's vague as to "the wrong parts." 17 THE WITNESS: I'm not sure I'd 18 characterize it as being dangerous. Using the 19 wrong parts may not work. They're talking 20 specifically in that -- in this section about the 21 length of the baffle. If the baffle that someone 22 puts in is too long or too short, then when you 23 close it back up, the baffle is going to break 24 against the tube sheet or it's not going to meet 25 the tube sheet. I'm not sure I would refer to	138 1 with the aid of electric or air hammer, if 2 available. Caution should be used to avoid 3 damaging or dislodging cup head insulation pins 4 and/or refractory anchors, both of which are 5 normally concealed by refractory or Vee Block Mix. 6 If any of these are knocked loose or damaged, they 7 should either be reaffixed or replaced with new 8 ones, welded to the steel shell of the rear door 9 in the same manner and location. If any of the 10 old refractory or Vee Block is to be left, it 11 should be undercut as to anchor the new material 12 firmly in place. All dust, dirt, and foreign 13 materials should be carefully cleaned from the 14 door after removal of the refractory or Vee Block 15 Mix before commencing to replace it." 16 BY MR. BERGMAN: 17 Q Sir, is this work described on page 5 of Exhibit 7 18 the work that you had personally performed in your 19 prior employment history with Cleaver-Brooks? 20 A I'm trying to see, you know. I've done a lot of 21 different work on boilers. I'm not certain I have 22 torn out the refractory on a rear door. So I 23 can't say for certain. But I certainly wouldn't 24 say I definitely didn't. I don't remember every 25 place I ever went to.

139 1 Q Okay. Have you ever seen others tearing out the 2 refractory on the rear door on the Cleaver-Brooks' 3 boiler? 4 MR. THORSON: Not to be picky here. But 5 that note says Vee Block Mix and/or refractory. 6 Your question is just about refractory, or are you 7 broader than that? 8 BY MR. BERGMAN: 9 Q Have you ever seen anybody -- have either yourself 10 or somebody else -- strike that. Have you or 11 somebody you have observed undertaken the work 12 process described on page 5 that you just read to 13 us? 14 A Not that I can come up with in my mind at this 15 moment. I don't recall that being something I 16 stood there and watched someone do or did myself. 17 But, again, I've seen lots of different boilers in 18 25-plus years. 19 Q Sir, you read a work process to us regarding 20 removal of Vee Block and refractory with the aide 21 of an electric or air handler. Is it possible to 22 perform that work as described from page 5 of 23 Exhibit 7 without creating dust? 24 MR. THORSON: Objection. Calls for 25 speculation.	141 1 used an electric air hammer -- an electric or a 2 pneumatic hammer or chisel? 3 MR. THORSON: In connection with Vee 4 Block? 5 MR. BERGMAN: No. Just in general. 6 THE WITNESS: In the course of my 7 career, no, I don't believe so -- well, I -- I've 8 used a hammer drill, I'm sure, drilling through 9 concrete. 10 BY MR. BERGMAN: 11 Q Okay. So is it possible to remove Vee Block with 12 a pneumatic chisel or hammer without creating 13 dust? 14 MR. THORSON: Objection. Calls for 15 speculation. Also asked and answered. Lack of 16 foundation. 17 THE WITNESS: Again, without being the 18 person to do that, I can't say. I think that 19 would be a question for someone who is more 20 qualified to answer that. 21 BY MR. BERGMAN: 22 Q Okay. And just so -- I respect where you're 23 coming from, sir. So what type of person would be 24 more qualified than you to answer that question? 25 I'm not saying -- I don't mean any disrespect in
140 1 THE WITNESS: Not recalling a time when 2 I did it, I don't necessarily know the answer to 3 that. I'm not quite sure, to be honest with you, 4 why the material on a door that I'm replacing the 5 material in would be affixed so tightly that it 6 would require that type of equipment to get it 7 out. Certainly the reason for replacing it is 8 that it has deteriorated, which would indicate to 9 me that it's in a position where it's literally 10 falling out. So I guess I have no way to really 11 answer your question. 12 BY MR. BERGMAN: 13 Q Okay. Your -- based on your prior testimony, sir, 14 you are familiar with Vee Block and have used Vee 15 Block; is that correct? 16 A Yes. 17 MR. THORSON: Object to the form of the 18 question. 19 BY MR. BERGMAN: 20 Q And you're familiar with the consistency of Vee 21 Block; is that also correct? 22 MR. THORSON: Same objection. 23 THE WITNESS: Yes. 24 BY MR. BERGMAN: 25 Q And have you, in the course of your career, ever	142 1 that question, sir. I'm just trying to ascertain 2 who would be better qualified to opine on that 3 issue? 4 A I would think if you're looking at dust, it would 5 be people like industrial hygienists and things of 6 that sort. 7 Q Okay. Would an individual whose job it is to 8 replace Vee Block and insulation and refractory on 9 the rear doors of Cleaver-Brooks' boilers be in a 10 better position than you to opine on whether or 11 not dust is created when a pneumatic hammer is 12 utilized to remove the material? 13 MR. THORSON: Object to the form of the 14 question. It's overly broad. It's an incomplete 15 hypothetical. And it calls for speculation. Also 16 assumes facts not in evidence. 17 THE WITNESS: I'm not quite sure how to 18 answer that other than to say if somebody was 19 there and saw the dust versus me not being there, 20 not seeing the dust, if there is any, or lack of 21 dust, I think they would be in a better position, 22 yes. 23 BY MR. BERGMAN: 24 Q And you're certainly not saying, sir, that dust is 25 not created when Vee Block is removed from a rear

143 1 door of a Cleaver-Brooks' boiler with a pneumatic 2 chisel or hammer? 3 A I think you're throwing a hypothetical out there 4 that I have no idea of the condition, so I have no 5 way to answer that question. 6 Q Okay. I'm going to sum up in a minute, and let me 7 just -- I make clear that we -- make sure we 8 understand each other. And I just want to find 9 out what Cleaver-Brooks' answer is on this. So I 10 want to be as clear as I possibly can. The work 11 practice described on page 5 of Exhibit 7 12 pertaining to removal of Vee Block Mix and 13 refractory, is it Cleaver-Brooks' testimony that 14 it is possible to perform that work without 15 creating dust? 16 MR. THORSON: Object to the form of the 17 question. Asked and answered. If you have 18 anything to add to your previous answer or if you 19 want to clarify, Mr. Tornetta, go ahead. 20 THE WITNESS: I don't have anything to 21 add. I said before I don't have an answer to that 22 question. I do not know. I didn't do it. 23 BY MR. BERGMAN: 24 Q So just so we're clear, Cleaver-Brooks can't say 25 one way or the other?	145 1 talking about, I don't see any type of glue or 2 anything around that, or I'm not aware if there's 3 any glue or anything around that, so I can't 4 imagine it would need anything more than reaching 5 in and pulling it out, as I said. 6 BY MR. BERGMAN: 7 Q If you could, please, sir, on page 6 of Exhibit 7, 8 read for us, please, the paragraph entitled, 9 "Insulating block installation." 10 A "Insulating block installation: Cut a circular 11 hold in the center of twelve-inch by twelve-inch 12 by quarter-inch asbestos board. (See Bill of 13 Materials) large enough to clear the inner 14 projection of the sight tube nipple (figure 1). 15 Press this board tightly to the metal inner 16 surface of the door. Then install the insulating 17 block as shown on figure 4, leaving clearance 18 around the sight tube nipple for installation of 19 the sight tube. When positioning the second layer 20 of insulating block, stagger the seams and joints. 21 Fill all cracks and voids with asbestos cement 22 (Johns-Manville No. 450 mixed with water). Note 23 that the space between the door metal and the 24 baffle support channel (figure 4) must be 25 completely filled in with insulating block."
144 1 MR. THORSON: Same objections. 2 THE WITNESS: I believe if -- yes, that 3 is true. 4 BY MR. BERGMAN: 5 Q Okay. Looking to the bottom right-hand paragraph 6 on page 5 of Exhibit 7. 7 A Yes. 8 Q Could you read that paragraph? 9 A "Before proceeding with baffle tile replacement, 10 clean out the tile channel, removing the old 11 strips of quarter-inch asbestos board. Inspect 12 the cap-screws used to clamp the tiles in place; 13 replace these if they are seriously rusted or 14 damaged." 15 Q Okay. Do you know what method was used to remove 16 old strips of quarter-inch asbestos board? 17 MR. THORSON: Object to the form of the 18 question. It's overly broad. Vague. 19 THE WITNESS: Other than reaching in and 20 pulling it out, no. 21 BY MR. BERGMAN: 22 Q You don't know whether or not any manual or power 23 tools would be required to perform that function? 24 MR. THORSON: Same objections. 25 THE WITNESS: Looking at what they're	146 1 Q Okay. And do you see figure 4 on page 7? 2 A Yes, I do. 3 Q Okay. And based upon your knowledge and 4 experience and expertise in the field of boilers, 5 are you able to attribute the various components 6 referenced in the paragraph you just read to the 7 drawing set forth in figure 4 on page 7 of 8 Exhibit 7? 9 A I believe if you look at the labels, it will 10 correspond to what was said in that paragraph. 11 Q Okay. So looking at the paragraph that you just 12 read, I want to try to break that down, if I 13 could. And I guess the first question that I 14 wanted to ask is, would cutting a circular hole in 15 the center of the twelve-inch by twelve-inch by 16 quarter-inch asbestos board result in dust 17 emissions? 18 MR. THORSON: Object to the form of the 19 question. It's an incomplete hypothetical. It's 20 overly broad. Calls for speculation. 21 THE WITNESS: I wouldn't have any idea. 22 BY MR. BERGMAN: 23 Q Okay. You don't know -- and Cleaver-Brooks 24 doesn't know one way or the other whether that 25 work would generate dust?

147 1 MR. THORSON: Counsel, I just want to 2 state an objection here. That question asking for 3 Cleaver-Brooks' position, I believe, is outside 4 the scope of the notice of deposition here. It 5 doesn't follow from the topics. I'm allowing you 6 some leeway in questioning about work procedures 7 and so forth, asking the witness to speculate 8 about dust emissions from hypothetical procedures, 9 but I would ask that we respect the scope of the 10 notice and we respect Mr. Tornetta's time. 11 I'm not going to instruct him not to 12 answer that question, but I do believe that's 13 outside the scope of the deposition notice. Go 14 ahead, Mr. Tornetta, if you can answer the 15 question. 16 THE WITNESS: I don't believe I'm 17 qualified to answer a question like that. 18 BY MR. BERGMAN: 19 Q Okay. The insulating block referred to on page 6 20 in the paragraph that you just read of Exhibit 7, 21 does that confirm to the insulation block on the 22 second -- on number -- page of Exhibit 7, 23 designated part No. 872-22 or 872-167? 24 MR. THORSON: Same objection. 25 THE WITNESS: I believe so.	149 1 MR. THORSON: Same objections. 2 THE WITNESS: And the same answer. I 3 think that's what I was answering to. The part 4 description doesn't call out a dimension other 5 than thickness, so I'm not sure what boiler we're 6 talking about, what size we're talking about. If 7 we looked at a particular boiler, we might be able 8 to determine that. But based on this, I can't say 9 for certain one way or the other. 10 BY MR. BERGMAN: 11 Q It would depend on the type of boiler that was 12 undergoing the rear door refractory repair or 13 replacement? 14 A It would depend on the boiler. 15 Q Okay. And, finally, looking at the paragraph you 16 just read on page 6 of Exhibit 7, it indicates, 17 "Fill all cracks and voids with asbestos cement 18 mixed with water." 19 MR. THORSON: Well, that's not exactly 20 what it says, Counsel. Would you please read it 21 as it is? 22 MR. BERGMAN: Yes, of course. "Fill all 23 cracks with -- cracks and voids with asbestos 24 cement (Johns-Manville No. 50" -- 25 MR. THORSON: 450.
148 1 BY MR. BERGMAN: 2 Q Okay. Looking at figure 4, set forth on page 7 of 3 Exhibit 7, you see the insulation block depicted 4 therein? 5 A Yes. 6 Q Was it necessary to cut the insulation block in 7 order to install it on the rear door of the 8 Cleaver-Brooks' boiler as represented in figure 4 9 on page 7 of Exhibit 7? 10 MR. THORSON: Same objection. Overly 11 broad. Calls for speculation. And it's an 12 incomplete hypothetical. 13 THE WITNESS: I guess I would have to 14 see the specifics on that boiler and the shape 15 that the insulation box came in to determine that 16 for sure. So I couldn't say broadly one way or 17 the other. 18 BY MR. BERGMAN: 19 Q Looking at -- looking simply at the diagram -- or 20 looking simply at figure 4 on page 7 of 6 and 7 -- 21 on page 7 of Exhibit 7, can you state one way or 22 the other whether the insulation block depicted in 23 the manner installed -- in the manner set forth in 24 figure 4 would have to be cut to conform to that 25 integration?	150 1 MR. BERGMAN: -- "450 mixed with 2 water)." 3 MR. THORSON: Thank you. 4 BY MR. BERGMAN: 5 Q Do you see that? 6 A Yes, I do. 7 Q Have you ever seen asbestos cement mixed with 8 water? 9 A I don't believe I have, not that I could say for 10 certain, no. 11 Q So Cleaver-Brooks doesn't know what, if anything, 12 would occur when that mixing process took place? 13 MR. THORSON: Object to the form of the 14 question. That calls for speculation. It's an 15 incomplete hypothetical. And to the extent you're 16 asking Cleaver-Brooks' position, that is not -- 17 that is outside the scope of the notice of this 18 deposition. You can answer, if you are able to, 19 as to your own personal knowledge. 20 THE WITNESS: I don't know of any other 21 knowledge beyond that, no. 22 MR. BERGMAN: 23 MR. THORSON: Counsel, when you get to 24 an appropriate break -- it doesn't need to be 25 here, but an appropriate time, would you -- I

151 1 would like to stand up and stretch. 2 MR. BERGMAN: Absolutely, sure, sure. 3 We'll work our way through. 4 BY MR. BERGMAN: 5 Q Could you look at page 8, sir? 6 A Okay. 7 Q And we're talking about page 8 -- numbered page 8 8 of Exhibit 7. Could you please read the 9 cautionary instruction words? 10 A The line under the "Caution"? Is that what you're 11 talking about? 12 Q Read the whole thing, if you would, please. 13 A "Do not force the rod into the insulating block at 14 the rear door of castable material when forming 15 the moisture vent holes." 16 Q And why would it be necessary to issue a 17 cautionary instruction with respect to forcing the 18 rod into the insulating block? 19 MR. THORSON: Objection. Calls for 20 speculation. Lack of foundation. Assumes facts. 21 THE WITNESS: I don't know. 22 BY MR. BERGMAN: 23 Q If you could look to Exhibit 9 -- I'm sorry, I 24 misspoke, Mr. Tornetta, page 9 of Exhibit 7. 25 Could you please read the two paragraphs on the	153 1 water) around entire door circumference, placing 2 asbestos pulp just within the inside diameter of 3 the tadpole gasket, as shown in figure 8. The lip 4 of the baffle tile should be filled with the same 5 mixture. On closing the door, this pulp will 6 squeeze out and protect the tadpole gasket and the 7 asbestos rope along the horizontal center line of 8 the tube sheet, forming a seal between the 9 refractory surface and tube sheet (figure 8)." 10 BY MR. BERGMAN: 11 Q Okay. Then if you could look with me to the upper 12 right-hand corner on page 10 of Exhibit 7, it 13 states, "Caution: Avoid freezing of uncured 14 mixtures during cold weather." Do you know why 15 Cleaver-Brooks would deliver that cautionary 16 instruction? 17 A No, other than if something is wet and it freezes, 18 it may change its properties. 19 Q And wouldn't work the way it was supposed to work? 20 A I don't know that. I'm not sure what they're 21 talking about. 22 MR. BERGMAN: Did you want to take a 23 break? 24 MR. THORSON: If this is a convenient 25 time, let's take a break now.
152 1 left side to yourself? 2 A Okay. 3 Q You testified earlier today that in the course of 4 your professional experience, you have applied Vee 5 Block on boilers; is that correct? 6 A Yes. 7 Q Do the instructions set forth on page 9 of 8 Exhibit 7 appear to you to be consistent with the 9 application method that you employed? 10 A I wasn't applying it on a rear door. However, 11 it's consistent with the way you would apply Vee 12 Block Mix in a vertical situation. 13 Q Okay. Turning to page 7 -- I'm sorry, page 10 in 14 Exhibit 7. 15 A Okay. 16 Q Could you please read the paragraph on the lower 17 right-hand corner of page 10 of Exhibit 7? 18 MR. THORSON: Out loud or to himself, 19 Counsel? 20 MR. BERGMAN: Out loud, please. 21 THE WITNESS: Starting with "apply an 22 asbestos pulp?" 23 MR. BERGMAN: If you would, please. 24 THE WITNESS: "Apply an asbestos pulp 25 seal (Johns-Manville No. 450 cement mixed with	154 1 MR. BERGMAN: Ten minutes? 2 MR. THORSON: Ten minutes is just fine. 3 THE VIDEOGRAPHER: This is the end of 4 Disk No. 2. We are off the record at 4:09 p.m. 5 (Recess taken.) 6 (Exhibit No. 8 was marked.) 7 THE VIDEOGRAPHER: We are back on the 8 record at 4:27 p.m. 9 BY MR. BERGMAN: 10 Q Mr. Tornetta, you've been handed Exhibit 8. I 11 would ask you to please take your time and review 12 it. First question would be, can you identify it? 13 MR. THORSON: I would note, Counsel, it 14 bears Bates stamp numbers in the lower right-hand 15 corner on the first page. Are those Bates numbers 16 from production in this case? It says CV00220, 17 and I know in this case there's at least a similar 18 prefix and document numbering system. If you 19 could say for the record whether that comes from 20 this case, I'd appreciate it. 21 MR. THORSON: I will rely on my 22 distinguished colleague. 23 MR. THORSON: So that's a production 24 from -- if it's a production at all, it's from a 25 different case?

155 1 MS. KNUDSON: Yes. 2 MR. THORSON: Do you know what case it's 3 from? 4 MS. KNUDSON: No. 5 THE WITNESS: Okay. I have looked 6 through this. 7 BY MR. BERGMAN: 8 Q Do you know what it is? 9 A Well, it starts out the first page is a service 10 parts bulletin that's labeled, then the next four 11 pages appear to be an undated, incomplete, 12 unnumbered specification of some type. 13 Q Okay. What is a -- directing your attention to 14 the first page of Exhibit 8, what is a service 15 parts bulletin? 16 A A bulletin that may have gone out to our service 17 people or possibly our representatives. 18 Q Okay. And those would be factory representatives 19 like Cole Industrial and other such entities? 20 A Possibly, yes. 21 Q Okay. So it was at least we know that page -- the 22 first page of Exhibit 8 was something that would 23 be sent outside of Cleaver-Brooks' factory? 24 MR. THORSON: Object to the the form of 25 the question. Assumes facts. Lack of foundation.	157 1 doesn't appear to be, part of the document which 2 starts out with page No. 1. 3 Q Okay. And on what basis, sir, do you draw the 4 conclusion -- 5 THE WITNESS: Tim, your papers are on 6 the speaker. Sorry. I didn't mean to cut you 7 off. 8 MR. THORSON: Sorry. 9 BY MR. BERGMAN: 10 Q Sir, on what basis do you draw the conclusion that 11 the second, third, fourth, and fifth pages of 12 Exhibit 8 are not related to the first page of 13 Exhibit 8? 14 A I don't believe there's any reference to it in the 15 first page. While I've been presented this group 16 of documents in the past in depositions, and they 17 always seem to come to me from our -- your 18 colleagues in this format, I don't believe they -- 19 they came together like that originally. 20 MR. BERGMAN: All right. Well, let's do 21 this, then. If the court reporter would be so 22 kind as to take the second, third, fourth, and 23 fifth pages of Exhibit 8 and redesignate them as 24 Exhibit 9. We will at least suspend the cycle of 25 error that my colleagues have perpetrated.
156 1 Calls for speculation. 2 THE WITNESS: That's the way it appears. 3 BY MR. BERGMAN: 4 Q Okay. Do you know what -- looking at the upper 5 right-hand corner of the first page of Exhibit 8, 6 what Manual No. 9 refers to? 7 A No, I don't have any historical record of these 8 sales parts or service parts bulletins. 9 Q Have you seen a bulletin such as Exhibit 8, at 10 least the first page, before? 11 A I've seen other service parts bulletins, yes. 12 Q Okay. And what is the purpose of a service parts 13 bulletin? 14 MR. THORSON: Object to the form of the 15 question. Overly broad. 16 THE WITNESS: In this particular case, 17 it appears it was to talk about -- or advise about 18 making sure the rear door was sealed properly. 19 BY MR. BERGMAN: 20 Q And then looking at the subsequent pages of 21 Exhibit 8, does it appear to be a specification 22 for a 60-inch diameter rear head? 23 A As I pointed out before, it appears to be an 24 unnumbered, undated, incomplete specification 25 which is not part of the document, or at least it	158 1 MR. THORSON: And so Exhibit -- what was 2 previously marked as Exhibit A now will be -- 3 excuse me, Exhibit 8 will now be a one-page 4 document? 5 MR. BERGMAN: Yes. 6 (Exhibit No. 9 was marked.) 7 THE WITNESS: Okay. That's been done. 8 BY MR. BERGMAN: 9 Q Okay. And Mr. Tornetta, your conclusion that now 10 the new Exhibit 9 is incomplete is based on the 11 fact that there is no page 2? 12 A Correct. And it's not dated. I, quite frankly, 13 don't know -- there's no number on it, so I would 14 have no way to trace it and see what exactly it's 15 for other than what the title block there says. 16 Q Okay. And from your previous testimony, I 17 garnered that you have seen Exhibit 9 before? 18 A Yes, in the deposition -- in the context of 19 depositions, yes, I have. 20 Q Okay. 21 MR. THORSON: And if I could just make a 22 clarifying request, on both Exhibits 8 and 9 as 23 we've seen on other exhibits marked in this 24 deposition, they -- both of these exhibits appear 25 to have someone's handwriting and marking on them.

159 1 So. For example, on Exhibit 8, there's a question 2 mark and something drawn on top and manual 9 is 3 circled, and then on Exhibit 9 -- on page 3 of 4 Exhibit 9, there's some marginality handwritten 5 notes and so forth. Maybe they're Counsel's 6 notes, as we saw, I think, on some of the other 7 deposition exhibits. Maybe they're not. But if 8 Counsel could clarify to that, I would appreciate 9 it so we don't create a record of exhibits that 10 contain someone's notes. And if we can identify 11 that, let's do that. 12 MR. BERGMAN: Let's do that. 13 MR. BERGMAN: So in the rush to get the 14 materials to Mr. Tornetta in time and to get 15 everything ready, unfortunately, some of my 16 working copies were inadvertently copied as 17 exhibit copies, and so I believe that the 18 marginality that you've been referring to is mine. 19 MR. THORSON: Thank you. 20 MR. BERGMAN: I certainly recognize the 21 illegibility. What I would propose is that we go 22 through and provide the court reporter with clean 23 copies for the final exhibits for this deposition, 24 giving Counsel the opportunity to inspect to make 25 sure we are substituting the correct copies.	161 1 A Okay. 2 Q Do you know whether part -- part No. 872-22 and 3 872-167 is Weber's 48 High Temp block? 4 MR. THORSON: Objection. Form. Calls 5 for speculation. Overly broad. Lack of 6 foundation. 7 THE WITNESS: I certainly don't recall 8 all our part numbers in the descriptions. I would 9 have to look at those part numbers to be sure. 10 Off the top of my head, I can't say. It may be. 11 I'm not sure. 12 BY MR. BERGMAN: 13 Q Okay. And just -- in the course of the extensive 14 reviews that you've done in this case and other 15 cases, Mr. Tornetta, have you seen a part number 16 associated with Weber's 48? 17 A Any component we used would have a part number 18 associated with it, so yes. 19 Q Okay. Looking at the second page of Exhibit 9, 20 there's reference to J.M. 450. Do you see that, 21 sir? 22 A Yes, I do. 23 Q And, then, cross referencing that to the second 24 full page -- the second page unnumbered of 25 Exhibit 7, does that conform to part 872-26?
160 1 MR. THORSON: Thank you, Counsel. 2 BY MR. BERGMAN: 3 Q So I want to ask you some questions about 4 Exhibit 9, Mr. Tornetta. And I guess the first 5 question I would like to ask you, on the first 6 page of Exhibit 9, are you familiar with Weber's 7 48 High Temp block? 8 A I've seen that description before, yes. 9 Q And what do you understand that product to be, 10 sir? 11 A High temperature block insulation. 12 Q And what -- are you aware of whether or not 13 Cleaver-Brooks' boilers utilized Weber's 48 High 14 Temp block as a component? 15 MR. THORSON: Object to the form of the 16 question. It's vague. Overly broad. 17 THE WITNESS: I haven't come across that 18 I can recall, again, without seeing them again, 19 where that's been called out in the documents we 20 previously provided in this case, but I do recall 21 seeing that in the past used in other boilers. 22 BY MR. BERGMAN: 23 Q Do you know whether -- and I will direct your 24 attention back to Exhibit 7 on the second page -- 25 not the number, but the second page.	162 1 A I think 872-26 did say J.M. 450 -- just a second, 2 or equal, yes. 3 Q If you could look to the third page of Exhibit 9. 4 A Okay. Page 4 of 5, you're talking about? 5 Q I am, yes. 6 A Or sheet 4 of 5, I should say. 7 Q Yeah. 8 A Okay. 9 Q Have you seen that document before, sir? 10 A Again, I've seen this compilation of documents in 11 the past in the context of depositions. 12 Q What does it appear to you to be? 13 MR. THORSON: Objection. Calls for 14 speculation. Lack of foundation. Assumes facts. 15 THE WITNESS: I think it's sheet 4 of 5 16 of this unnumbered, undated, incomplete, what says 17 "specification" on the bottom. 18 BY MR. BERGMAN: 19 Q Do you have any reason to believe this is not a 20 general Cleaver-Brooks' document? 21 A If it was -- if Cleaver-Brooks put this document 22 together, it would be dated, numbered, and 23 complete. This just says S-nothing. There's no 24 number to it. I have no idea how to interpret 25 this document and haven't been able to since it's

163 1 been put in front of me the first time. 2 Quite frankly, when you look at some of 3 the text on page 3 of 5, you see it looks odd as 4 it gets into the properties of the different 5 components, the font changes. So I don't know if 6 that was a copy issue, shrinking, blowing up, or 7 what. I just -- I have no idea. Again, it's an 8 unnumbered, undated, incomplete set of papers. 9 Q Sir, have you seen the format represented by 10 Exhibit 9 in other documents that you know to be 11 genuine and authentic? And by "format," I mean 12 not the text, but the manner in which the document 13 is framed with the Cleaver-Brooks' designation on 14 the bottom and the statement on the left side that 15 this drawing is the property of Cleaver-Brooks'? 16 MR. THORSON: Object to the form of the 17 question. It's vague. 18 MR. BERGMAN: Do you understand my 19 question, sir? 20 THE WITNESS: Yes, I believe so. And 21 yes, the shell of this document, I guess I would 22 call it, which are the title block, the frame 23 around it, and various notes is familiar to me and 24 our drawing system. 25 BY MR. BERGMAN:	165 1 back, please? 2 (Requested question read.) 3 THE WITNESS: And the answer was, it can 4 be, yes. 5 MR. BERGMAN: If the court reporter 6 could open Exhibit 22 -- or -- not exhibit, but 7 envelope 22. And before handing it to the 8 witness, remove the last two pages. 9 (Exhibit No. 10 was marked.) 10 BY MR. BERGMAN: 11 Q Mr. Tornetta, this is a document that has been 12 provided to you at least in one prior deposition. 13 My question is, do you recognize it? 14 A I certainly don't recall every document that's 15 been put in front of me in depositions. And, 16 actually, I think this is -- I would guess many 17 documents, when you look at the different formats. 18 I certainly have seen things of this type before. 19 Whether I've come across this specific one, I 20 certainly couldn't say for sure. 21 Q Okay. And, again, I would ask you to look through 22 Exhibit 10 and my question is a simple one. Does 23 it appear to you to be copies of advertisements 24 for Cleaver-Brooks' boilers? 25 MR. THORSON: And while he's doing that,
164 1 Q Okay. And what is a rear head on a 60-inch 2 Cleaver-Brooks' boiler? 3 A I believe we're talking about the rear door. 4 Q Oh, okay. Are -- is it ever -- are you generally 5 familiar with the maintenance repair of rear doors 6 on Cleaver-Brooks' boilers? 7 MR. THORSON: Object to the form of the 8 question. It's vague. 9 THE WITNESS: I think we talked about 10 that earlier. Yeah, I'm generally familiar with 11 that. 12 BY MR. BERGMAN: 13 Q Is it ever the practice to remove the rear door 14 prior to replacing the refractory contained 15 thereon? 16 A It can be. Normally, it would be, in the 17 instances I'm aware of, laid down in the boiler 18 room and poured that way. It's usually related to 19 the fact it's a little simpler to pour it in a 20 horizontal position than in a vertical position. 21 And, quite frankly, it's a heavy door. So, 22 normally, if they lay it down, it's right where 23 the boiler is. 24 Q So the answer to my question would be yes? 25 MR. THORSON: Can we have the question	166 1 I will just state a general objection to lack of 2 foundation, lack of any show of authenticity, but 3 we can certainly answer as to what this appears to 4 be. 5 THE WITNESS: I would say certainly not 6 every page is an advertisement, or what could be 7 characterized as an advertisement. Some are cover 8 pages, presumably, which may be a presumption, of 9 the magazine from which the following pages came 10 out of, but in general, it looks like a group of 11 advertisements over the years, yes. You did hear 12 that, right? Is my microphone -- 13 MR. BERGMAN: Yeah. 14 THE WITNESS: I want to make sure my 15 microphone is still working. 16 MR. BERGMAN: Yeah, it is. Could the 17 witness please be handed envelope -- or could the 18 court reporter open exhibit 39 (verbatim) and 19 provide it to the witness as an exhibit. 20 (Exhibit No. 11 was marked.) 21 BY MR. BERGMAN: 22 Q Mr. Tornetta, are you familiar with heating and 23 ventilating air conditioning guide? 24 MR. THORSON: This document or just in 25 general?

167 1 MR. BERGMAN: The guide itself. 2 MR. THORSON: I will object to the form 3 of the question. It's vague. 4 THE WITNESS: No, I'm not. 5 BY MR. BERGMAN: 6 Q Okay. I will -- this is a voluminous document. I 7 will ask you to turn to the last page of 8 Exhibit 11 and ask you whether that appears to be 9 an advertisement for a Cleaver-Brooks' boiler? 10 MR. THORSON: Object to the form of the 11 question. 12 THE WITNESS: It shows the 13 Cleaver-Brooks' company, it appears to be some 14 type of advertisement, as well as Cyclotherm. To 15 be quite honest, I'm not quite sure it's from the 16 same book. Because if you look at the preceding 17 page, it would say the page number and 1951 guide 18 and things of that sort at the top, but perhaps 19 it's an appendix that didn't do that. Without the 20 whole guide, I guess it would be hard to say if 21 it's part of that document. But yes -- 22 BY MR. BERGMAN: 23 Q In fairness -- I didn't mean to cut you off, 24 Mr. Tornetta. In fairness, I'm not asking you to 25 opine whether it's the same document or not.	169 1 THE WITNESS: I'm sorry. Was there a 2 question that you actually asked in that? I 3 missed it. 4 MR. BERGMAN: Yes, indeed, sir. 5 BY MR. BERGMAN: 6 Q On Exhibit 12, does the -- if you look at the last 7 page, page No. 1353, does that appear to be a 8 Cleaver-Brooks advertisement? 9 MR. THORSON: Object to the form of the 10 question. You can answer. 11 THE WITNESS: Yeah, it's a -- whether it 12 was used for advertising, I suppose it is, since 13 it gives a telephone directory number. It appears 14 to be a Cleaver-Brooks' Company part and Babcock & 15 Wilcox part on the last page. 16 MR. BERGMAN: Could the witness please 17 be handed document exhibit 41, and I will 18 incorporate in my questioning pertaining to this 19 document Counsel's objections with respect to 20 Exhibit 12. 21 (Exhibit No. 13 was marked.) 22 THE WITNESS: Okay. I have it. 23 BY MR. BERGMAN: 24 Q Okay. And subject to and incorporating Counsel's 25 prior objections, I will represent to you that
168 1 A Oh, I thought when I was handed the stapled set of 2 sheets together, they were assumed to be part of 3 the same thing. 4 Q They are, but that's for me to testify to, not 5 you. 6 A Okay. 7 MR. BERGMAN: Could the witness please 8 be handed the document contained in envelope 40. 9 (Exhibit No. 12 was marked.) 10 BY MR. BERGMAN: 11 Q Mr. Tornetta, I will represent to you that 12 Exhibit 12 is a segment from the 1952 heating and 13 ventilating air conditioning guide. My question 14 to you is, once again, a simple one, which is 15 whether or not the last page of Exhibit 12 depicts 16 an advertisement? 17 MR. THORSON: I will object to the form 18 of the question. Lacks foundation. I will also 19 object to both this document and the previous 20 exhibit, Exhibit 11, as not appearing to 21 constitute a document at all, but rather a 22 collection of pages. So certainly as to 23 foundation and authenticity. You can answer, if 24 you're able, as to what it appears to be, 25 Mr. Tornetta.	170 1 this is the 1953 Heating and Ventilating Air 2 Conditioning Guide, and once again, on the last 3 page of this excerpt from said guide, does that 4 appear to be a Cleaver-Brooks' advertisement? 5 A Yes. 6 MR. BERGMAN: Could the witness please 7 be handed envelope 42? 8 (Exhibit No. 14 was marked.) 9 BY MR. BERGMAN: 10 Q Okay. Mr. Tornetta, I'm once again incorporating 11 your Counsel's prior objections to the last 12 exhibits. I will represent to you that this is a 13 1954 Heating Guide, or an excerpt therefrom, and I 14 simply want to ask you whether on the last page of 15 that document, it appears to be a Cleaver-Brooks' 16 advertisement? 17 A Yes, it does. 18 MR. BERGMAN: Could the witness please 19 be handed envelope -- the document in envelope 43? 20 (Exhibit No. 15 was marked.) 21 BY MR. BERGMAN: 22 Q Okay. Once again, incorporating your Counsel's 23 prior objections, in the 1955 Heating Ventilating 24 Air Conditioning Guide. And once again, subject 25 to those objections by your Counsel, does the last

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1 page of this excerpt represent Cleaver-Brooks' advertising?

2

3 **A Yes, it appears to.**

4 MR. BERGMAN: Could the witness please

5 be handed the document in envelope 44?

6 (Exhibit No. 16 was marked.)

7 BY MR. BERGMAN:

8 Q Okay. Exhibit 16 is an excerpt from a 1956

9 Heating Ventilating Air Conditioning Guide.

10 Subject, once again, to your Counsel's prior

11 objections, does the last page of that excerpt

12 appear to have a Cleaver-Brooks' advertisement on

13 it?

14 **A Yes, it does.**

15 MR. BERGMAN: If the witness could

16 please be handed exhibit 45 -- document in

17 envelope 45.

18 (Exhibit No. 17 was marked.)

19 THE WITNESS: Okay. I have it.

20 BY MR. BERGMAN:

21 Q I'm handing you -- or you've been handed Exhibit

22 17, the excerpt from a 1957 Heating and

23 Ventilating Air Conditioning Guide, and, again,

24 subject to your Counsel's prior objections, does

25 the last page of that exhibit appear to be a

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1 Cleaver-Brooks' advertisement?

2 **A Yes, it does.**

3 MR. BERGMAN: Could the witness please

4 be handed the documents in envelope 46?

5 (Exhibit No. 18 was marked.)

6 THE WITNESS: Okay.

7 BY MR. BERGMAN:

8 Q I'm handing you Exhibit 18. I will represent the

9 the 1959 Heating Ventilating Air Conditioning

10 Guide, an excerpt from that guide, I should say,

11 and again, incorporating your Counsel's objections

12 from the prior use of the exhibit -- or a prior

13 exhibit, does the last page appear to have -- be a

14 Cleaver-Brooks' advertisement?

15 **A Yes, it does.**

16 MR. BERGMAN: Okay. And could the

17 witness be handed the document in envelope 47?

18 (Exhibit No. 19 was marked.)

19 THE WITNESS: Okay.

20 BY MR. BERGMAN:

21 Q You've been handed Exhibit 19, which is an excerpt

22 from a 1960 Heating and Ventilating Air

23 Conditioning Guide. Subject to and incorporating

24 your Counsel's prior objections, does the last

25 page appear to be a Cleaver-Brooks' advertisement?

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1 **A Yes, it does.**

2 MR. BERGMAN: Could the witness please

3 be handed the document in envelope 25?

4 (Exhibit No. 20 was marked.)

5 THE WITNESS: Okay.

6 BY MR. BERGMAN:

7 Q Mr. Tornetta, can you identify Exhibit 20?

8 **A It says at the top, "Quotation," written at the**

9 **top, and then "General Service Report" to Fred**

10 **Schmidt from Don Harper, regarding Cabot Corp.,**

11 **Machinery Division, boiler -- excuse me, boiler**

12 **No. 0-18796. That's, I guess, about the only way**

13 **I could identify it.**

14 Q Does it appear to be -- the upper left-hand

15 corner, does that appear to be the Cleaver-Brooks'

16 logo and address -- sir, do you need a minute?

17 **A No, I'm fine. Thank you.**

18 Q Get a glass of water.

19 **A I have a glass of water right here. I'm fine.**

20 Q Okay. All right. Does that appear to be

21 Cleaver-Brooks' logo and address?

22 MR. THORSON: Object to the form of the

23 question. It's vague.

24 THE WITNESS: Certainly our name and our

25 address. I'm not sure I see a logo anywhere, but

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1 --

2 BY MR. BERGMAN:

3 Q Okay. Have you seen documents such as Exhibit 20

4 in the format -- not necessarily the text, but the

5 general format entitled "General Service Report"?

6 **A Yes, I have.**

7 Q Okay. And does the format appear to be similar to

8 those documents -- does the format in Exhibit 20

9 appear to you to be similar to the format of the

10 documents that you've seen in Cleaver-Brooks'

11 records?

12 MR. THORSON: Object to the form. It's

13 vague.

14 THE WITNESS: The headings and things of

15 that sort, yes, they do.

16 BY MR. BERGMAN:

17 Q Okay. Looking toward the item indicated by No. 9

18 in the -- about two-thirds of the way down Exhibit

19 20, do you see that, sir?

20 **A Yes, I do.**

21 Q Okay. And it indicates, "Asbestos cement"?

22 **A And then gives a part number behind it of 872-26,**

23 **yes.**

24 Q And do you understand 872-26 to be the part number

25 for asbestos cement?

175 1 A I believe if we go back several exhibits, you will 2 see that as the J.M. 450 or equal material, yes. 3 MR. BERGMAN: Okay. Let's turn, if we 4 could, sir -- or if the court reporter would 5 kindly give the witness exhibit -- or envelope 27. 6 (Exhibit No. 21 was marked.) 7 BY MR. BERGMAN: 8 Q Mr. Tornetta, you've been handed Exhibit 21. I 9 would like you to please take your time to review 10 that document. Once you've completed your review, 11 my first question will be, can you identify it? 12 A They appear to be the drawings I pulled for at 13 least part of the boilers shipped to the Naval Air 14 Station in Whidbey Island. 15 Q Okay. I'm going to work through those documents 16 for you -- with you. 17 MR. THORSON: Let me just, before we go 18 on, state for the record, I don't think this was 19 the Counsel's intent, but the cover letter on 20 Exhibit 21 refers to a scope of documents, not all 21 of which are attached to this letter. So it is 22 not a complete exhibit. And with the cover letter 23 attached to it, we should state that, for the 24 record, just so no one misunderstands, there are 25 some 30 documents or so that appear not to be	177 1 Q And it says -- it looks like there's -- it says 2 "required," and it's -- there's a five hatch. Do 3 you know what that refers to? 4 A I think it's pound, and I'm not sure if it's a 5 five or three, but it could be either. 6 Q Okay. And, then, the part number is 872-26, and 7 again, we're referring to Bates stamp 171 of 8 Exhibit 21. Is that the part number for J.M. 450 9 asbestos cement? 10 A Yes. If you look further into the documents 11 provided, you will see that part number and that 12 description. 13 Q Okay. Looking at the next page of Exhibit 21, 14 Bates stamp No. 172. 15 A Yes. 16 Q There is -- there's reference to lagging. What is 17 your understanding as to what the lagging was or 18 is with reference to the 1959 boilers shipped by 19 Cleaver-Brooks to the Whidbey facility? 20 A That's the term that we used for the sheet metal 21 exterior over, in this case, the microlite blanket 22 insulation around the shell of the boiler. 23 Q Okay. And is it -- it was -- was that shell -- 24 you said a microlite? 25 A Yes.
176 1 included as a part of this exhibit that were 2 referenced in the cover letter. 3 MR. BERGMAN: Point well taken. 4 BY MR. BERGMAN: 5 Q Mr. Tornetta, could you turn to the first page of 6 Exhibit 21, Bates stamped CB 171? 7 A Okay. I'm there. 8 Q What is that document, sir? 9 A It is a drawing, what I would refer to as a higher 10 level drawing, of the boiler and base frame for a 11 50-horsepower low pressure boiler related to the 12 three 1959 boilers, shipped to Whidbey Island -- 13 Naval Air Station, Whidbey Island. 14 Q Okay. And would this be a document used by 15 Cleaver-Brooks in constructing the boilers or a 16 document used by the customers in operating and 17 maintaining the boilers? 18 MR. THORSON: Object to the form. 19 THE WITNESS: Used by Cleaver-Brooks in 20 construction -- constructing the boilers. 21 BY MR. BERGMAN: 22 Q Okay. And looking at the upper left, kind of, box 23 of Bates stamp No. 171 on Exhibit 21, there's -- 24 indicates item 31. Do you see that, sir? 25 A Yes.	178 1 Q What is microlite, sir? 2 A It's called out in that material list as 3 insulation blanket microlite 8305, it looks like. 4 As far as I know, it's nonasbestos material. I 5 was never told otherwise. I believe it's a 6 blanket-type insulation similar to fiberglass. 7 Q And is that part number -- well, for instance, 8 107-69M -- 9 A No. It's part numbers -- it's item number -- if 10 you want to follow it that way, looking at that 11 bill of material, item Nos. 10 and 11, and it's 12 872, it looks like, 159. 13 Q Okay. All right. And so the lagging referenced 14 on page 172 on Exhibit 21 is the metal skin of the 15 boiler; is that correct? 16 A Correct. 17 Q Okay. 18 A Metal skin -- just not to confuse it with the 19 shell of the boiler, it's the metal skin over that 20 microlite insulation. 21 Q Okay. And, then, if you could, please, turn to 22 the document referenced by CB 175 on Exhibit 21. 23 A Okay. 24 Q What is that document, sir? 25 A That is a drawing for the rear door of the boilers

179 1 that went to Whidbey Island in 1959. 2 Q And there's a reference in the upper left-hand 3 corner to V-Block Mix and it says "asbestos." Do 4 you see that? 5 A Yes. 6 Q And that's 872-162 part number? 7 A Yes. 8 Q And does that correspond to the V-Block mixed 9 referenced on the second page unnumbered on 10 Exhibit 16? 11 A Yes, it does. 12 MR. THORSON: Object to form of the 13 question. 14 THE WITNESS: I'm sorry. 15 BY MR. BERGMAN: 16 Q And looking again at Bates stamp 175 of 17 Exhibit 21, there's a product at the second box in 18 the upper left-hand corner, 872-105. Do you see 19 that product? 20 A Yes, I do. 21 Q And it indicates "cement, asbestos furnace"? 22 A Yes. And then "J-M Firite." 23 Q And so is -- so 872-105 is the part number for J-M 24 Firite, and that's F-I-R-I-T-E? 25 A That's what it says there, yes.	181 1 Q If you could turn with me, sir, to page 193 to 2 Exhibit 21. 3 A 193, you said? 4 Q Yes, sir. 5 A Okay. I'm there. 6 Q Okay. There's a part -- a J.M. 106 millboard. 7 A Yes. 8 Q And that's part No. 872-61? 9 A Yes. 10 Q And does that correspond, looking at the second 11 page unnumbered of Exhibit 16 -- 12 MR. THORSON: I'm sorry. Go ahead. 13 BY MR. BERGMAN: 14 Q -- to the product set forth in the third column on 15 that page, sir? 16 MR. THORSON: Object to form. It's 17 vague. Calls for speculation. 18 THE WITNESS: Yes, it appears to be. 19 BY MR. BERGMAN: 20 Q And looking at Bates stamp No. 197 of Exhibit 21. 21 A Yes. 22 Q There's a reference to the 872-162 product, and it 23 indicates Kaiser Vee-Block; is that correct? 24 A Yes. 25 MR. THORSON: I will object to the form
180 1 Q And drawing your attention to Cleaver-Brooks' 2 Bates stamp No. 180 on Exhibit 21, what is the 3 plate-head? 4 A That is called out in that -- the bill of material 5 under Item No. 1? Is that what you're talking 6 about? 7 Q It indicates "Plate-head-front." 8 A I'm sorry. I didn't see that down in the drawing. 9 Q Yes, sir. 10 A This drawing is of the inner door front plate 11 assembly. 12 Q All right. So essentially it's the front door -- 13 A No. It's the inner door. 14 Q -- the plate? Okay. But it's the inside inner -- 15 it's the inner door of the front of the boiler as 16 opposed to the rear door that we've been talking 17 about in some detail today? 18 A Yes. It's the one I discussed earlier that 19 separates the blue gas side from the combustion 20 air side in the front of the boiler. 21 Q Okay. And, once again, looking at the part 22 number, 872-162, there's reference to Asbestos 23 V-Block Mix, correct? 24 A Yes. It says, "V-Block Mix, Asbestos, part No. 25 872-162."	182 1 of the question. That's an incomplete reference 2 to what the document says. 3 BY MR. BERGMAN: 4 Q Why don't you read for me what it says, 5 Mr. Tornetta. 6 A It says, "872-162, Refractory, Vee-Block Mix, 7 Kaiser," and parentheses, "50 pound bags." 8 Q Okay. Is this the only reference that you've seen 9 connecting Kaiser to the Vee Block Mix, or have 10 you seen other documents in the course of your 11 review establishing that connection? 12 MR. THORSON: Outside the context of 13 this case, you mean? 14 MR. BERGMAN: Yes, sir. 15 THE WITNESS: Boy, I certainly wouldn't 16 want to sit here and testify I have never seen the 17 name Kaiser in any other context than that. It 18 may have shown up on other drawings, in the bills 19 of materials. I don't know. It certainly didn't 20 show up in the other ones here. 21 BY MR. BERGMAN: 22 Q Okay. And recognizing, sir, that in the course of 23 your current job requirements, you have to review 24 a lot of documents and give a lot of depositions, 25 I'm only asking for what you recall here today.

183 1 And so my question is, are -- sitting 2 here today, do you recall coming across the name 3 Kaiser in connection with Vee Block -- the Vee 4 Block product outside of this case? 5 A You know, the only place I can think of is that 6 undated, unnumbered, incomplete specification, I 7 think, actually mentioning Kaiser next to the Vee 8 Block. 9 MR. BERGMAN: Okay. If you could -- if 10 the court reporter can provide the witness with 11 the document in envelope 28. 12 (Exhibit No. 22 was marked.) 13 THE WITNESS: Okay. 14 BY MR. BERGMAN: 15 Q Mr. Tornetta, do you recognize Exhibit 22? 16 A It looks to be a letter from Cole Industrial to 17 the Cleaver-Brooks service department. 18 MR. THORSON: Let me just -- again, this 19 document appears to have a bunch of marginality on 20 it, and it appears to have some kind of Bates 21 reference number. Is that a reference number from 22 this case, Counsel? 23 MR. BERGMAN: It is, yes. 24 MR. THORSON: Because I don't recognize 25 it from this case. If you will give me a chance,	185 1 installed at a particular location? 2 MR. THORSON: Object to the form. You 3 can answer. 4 THE WITNESS: I think it asks for an 5 operating manual, including the parts list, which 6 I took to be an operating manual that is inclusive 7 of. But certainly for somebody to ask for a 8 manual some time after a boiler shipped wouldn't 9 be unheard of. In fact, it appears to have 10 happened here in 1964. 11 BY MR. BERGMAN: 12 Q So your -- Cleaver-Brooks would expect its 13 manufacturer reps to remain engaged with customers 14 years after the sale was transacted? 15 MR. THORSON: Object to the form of the 16 question. It's vague. 17 THE WITNESS: I think it would depend on 18 the customer. I don't know that I can answer that 19 in a general form. Apparently they at least 20 maintained engagement to this point. I would have 21 to look at the rest of our records to see if there 22 was further engagement. 23 BY MR. BERGMAN: 24 Q And based upon your knowledge and experience and 25 research into the Cleaver-Brooks company, was it
184 1 I can check my documents to see whether or not it 2 corresponds to a document that I have seen in this 3 case. I take that back. The marginality threw 4 me. So yes, it does appear to be CB000056 5 produced in this case. I apologize. 6 BY MR. BERGMAN: 7 Q Mr. Tornetta, looking at the, kind of, the upper 8 right-hand quadrant of Exhibit 22, it references 9 serial numbers of -- are those the three boilers 10 that Cleaver-Brooks furnished to the Whidbey 11 facility in 1959? 12 A I believe so, yes. 13 Q Okay. And this is a -- you indicated it was a 14 correspondence from Cole Industrial to 15 Cleaver-Brooks? 16 A Yes, that's what it says. 17 Q Why would it be written on the Cleaver-Brooks' 18 stationary? 19 A It was pretty common for our representatives to 20 actually use our stationary and talk 21 back-and-forth with us. 22 Q And it indicates that it asks that a parts list 23 and operating manual be provided. Was it common 24 for Cleaver-Brooks to receive requests for part 25 lists five years after their boilers were	186 1 common for manufacturers' representatives to 2 remain in contact with customers years after the 3 original sale? 4 MR. THORSON: Object to the form of the 5 question. It's overly broad. Vague. 6 THE WITNESS: I guess I couldn't answer 7 to is it common. I'm not sure exactly what would 8 constitute common. Is it something that happened? 9 Yes. Did it happen in every case? No. 10 BY MR. BERGMAN: 11 Q Okay. Is it surprising to you that five years 12 after the sale of Cleaver-Brooks boiler, a 13 manufacturers' rep would still be in contact with 14 the customer with reference to said boilers? 15 MR. THORSON: Object to the form of the 16 question. It also mischaracterizes the document 17 and assumes facts not in evidence. 18 THE WITNESS: I guess I'm never 19 surprised by anything anymore. So I guess no, it 20 wouldn't be surprising to me. It obviously 21 happened here. As far as them asking us, one 22 would assume someone asked them, but that's not in 23 this document. 24 MR. BERGMAN: And if the witness could 25 be passed the document in envelope 29.

187 1 (Exhibit No. 23 was marked.) 2 THE WITNESS: Okay. 3 BY MR. BERGMAN: 4 Q Can you identify Exhibit 23? 5 A It appears to be somebody responding to Frank J. Erickson in Mount Vernon, Washington, about an operating manual back in 1959. 6 MR. BERGMAN: Okay. Could the witness 7 please be handed exhibit 30 -- I'm sorry, not 8 exhibit 30, envelope 30. 9 (Exhibit No. 24 was marked.) 10 THE WITNESS: Okay. 11 BY MR. BERGMAN: 12 Q Would you identify exhibit 30 -- I'm sorry, 13 Exhibit 24 for us, please, sir? 14 A It appears to be a portion of the documents we produced about the Whidbey Island boilers, and it looks to be the start-up reports or at least portions of the start-up reports for the three boilers in 1959. 15 Q And were these start-up reports -- first of all, 16 was the form of this document prepared by 17 Cleaver-Brooks? 18 A Yes. 19 Q And was Cole Industrial the organization that	189 1 information be furnished to the operator at the 2 time of set-up prior to the lighting off of the 3 Cleaver-Brooks' boiler? 4 MR. THORSON: Object to the form of the 5 question. It's vague as to "operator." Overly 6 broad. 7 THE WITNESS: Yeah, I don't know that I 8 can answer that the way you worded it, but 9 certainly we had a form that someone filled out 10 and supplied to us, asking these questions. 11 BY MR. BERGMAN: 12 Q And there was certain information that 13 Cleaver-Brooks expected its representatives to 14 provide to customers at the time of set-up, set up 15 before the boilers were turned on; is that 16 correct? 17 MR. THORSON: Object to the form. 18 Vague. 19 THE WITNESS: Yes, there are all sorts 20 of blanks on that form to fill in. 21 MR. BERGMAN: Please provide the witness 22 with exhibit -- or envelope 31. 23 (Exhibit No. 25 was marked.) 24 THE WITNESS: Okay. 25 BY MR. BERGMAN:
188 1 filled out the report? 2 A Give me a moment to look for a name. 3 Q Please take your time, sir. Please take your 4 time. 5 A In what you've given me back here, I don't see, unless I'm missing it, their name. And I don't recognize the name of the field representative that signed it, but I -- there may be other documents that are not provided back to me, in this case, that would clear that up. I don't know. 6 Q Was it important that the customer be provided 7 with a face-to-face instruction on the proper use 8 of a Cleaver-Brooks' boiler at the time of 9 start-up? 10 MR. THORSON: Object to the form of the 11 question. It's overly broad and vague. 12 THE WITNESS: I guess I'm not sure how 13 to characterize that. Certainly we had somebody 14 fill out this form which includes things that 15 asked about whether the operator was told this, 16 that, or the other thing. So I think the document 17 speaks for itself as far as importance. 18 BY MR. BERGMAN: 19 Q So it was important to Cleaver-Brooks that certain	190 1 Q Can you identify Exhibit 25, sir? 2 A Again, it seems to be various pages from the documents we produced. One of which is a credit memo to Power & Controls, Inc., for the U.S. Naval Air Station; it looks like Whidbey Island. The second page appears to be a proposal which continues on the third page from 1958. 3 Q Okay. First of all, regarding the bank 1959 4 credit memo, first page of Exhibit 25, how much 5 did Cleaver-Brooks charge for the three boilers 6 delivered to the Naval Air Station in -- on -- in 7 Washington in 1959? 8 MR. THORSON: Charged for freight? For 9 purchase price? I'm sorry. What are we 10 referring -- what do you mean by "charge," 11 Counsel, if I could ask? 12 BY MR. BERGMAN: 13 Q The \$12,669, what does that -- what was that 14 charge for? 15 A I would have to look more accurate, or to be more accurate, I would have to look at the actual invoice which would show what was invoiced. This is a credit memo that is calculating commission. It does say, near the bottom, "Price to customer, \$12,820." However, I would want to look at the

191 1 invoice that we provided to you, which isn't part 2 of this yet, to determine whether that was one 3 boiler or three boilers. Without the invoice, I 4 can't really answer that accurately. 5 Q Okay. I will endeavor to locate that for you, 6 Mr. Tornetta. It would be fair to say, though, 7 that the amount that the U.S. government paid for 8 this was \$12,828; is that correct? 9 A I don't know what the U.S. government paid. I'm 10 not sure we sold it directly to the U.S. 11 government. Again, I would have to look at the 12 invoice. It appears as though -- in looking at 13 the other documents, it's hard to say if this was 14 sold to a contractor or not. So the difference 15 between what a contractor paid for it and what the 16 U.S. government paid that contractor, if, in fact 17 that's what happened, which I can't tell from 18 this, I don't know. 19 It does refer to sold to Bellingham 20 Supply, Inc., which I'm assuming is a contractor 21 and not the U.S. government. So I couldn't tell 22 you what the U.S. government paid. 23 Q Do you have any reason to dispute that the U.S. 24 government paid more than \$10,000 for the three 25 boilers delivered by Cleaver-Brooks to the Whidbey	193 1 THE WITNESS: I guess you would have to 2 ask whoever purchased it from us. That is the 3 start-up that -- we looked at the start-up report 4 from that's being discussed there. 5 BY MR. BERGMAN: 6 Q But in calculating the price for a Cleaver-Brooks' 7 boiler, at least the three boilers at issue in 8 1959, one of the benefits that Cleaver-Brooks 9 conferred upon its customers was not simply the 10 physical boiler, but the expertise in service and 11 experience of its factory-trained field 12 representatives, correct? 13 MR. THORSON: Object to the form of the 14 question. It's overly broad. It's vague. Also I 15 believe it's outside the scope of the 30(b)(6) 16 notice. 17 THE WITNESS: That is what this document 18 seems to say -- or the third page of what you had 19 given me, I should say, not document. 20 MR. BERGMAN: If the witness could 21 please be provided with the document contained in 22 envelope 32. 23 (Exhibit No. 26 was marked.) 24 BY MR. BERGMAN: 25 Q Okay. Please take a look at those documents, sir,
192 1 Island Naval Air Station in 1959? 2 MR. THORSON: 10,000 for all three 3 total -- 4 MR. BERGMAN: Yes. 5 MR. THORSON: -- or 10,000 per boiler? 6 MR. BERGMAN: 10,000 for all three 7 total. 8 THE WITNESS: I don't have any reason to 9 know one way or the other what the U.S. 10 government paid. For all I know, the contractor 11 could have put it in for less than the cost. The 12 answer is I don't know. You would have to ask the 13 U.S. government. 14 BY MR. BERGMAN: 15 Q If you could look to the third page of Exhibit 25. 16 A Yes. 17 Q It states that, "This quotation includes the 18 services of a Cleaver-Brooks factory trained Field 19 Engineer to initially inspect the units, fire and 20 instruct operators in operation and maintenance." 21 Do you see that? 22 A That's what that says, yes. 23 Q Was that a valuable service? 24 MR. THORSON: Object to the form of the 25 question. It's vague.	194 1 and after you review them, if you can identify 2 them. 3 A These appear to be the drawings and parts 4 descriptions for the 19, I believe, 78 boiler 5 shipped to the Naval Air Station at Whidbey Island 6 that were referenced in a previous exhibit in 7 Mr. Thorson's letter to you -- or to your firm. 8 Q And Mr. Tornetta, you're referring to the letter 9 from Mr. Thorson set forth on the first page of 10 Exhibit 21? 11 A That sounds correct, yes. 12 Q If you could, please, turn with me, sir, to 13 document Bates stamp No. 210 of Exhibit 26. 14 A Okay. 15 Q And do you see in the upper left corner -- 16 A What am I seeing in the upper left corner? 17 Q Okay. There's reference to part No. 872-26. 18 A Yes. 19 Q "Asbestos cement"? 20 A Yes, I do see that. 21 Q And does that correspond to the number set forth 22 on the second unnumbered page of Exhibit 16? 23 A Yes, I believe so. 24 MR. THORSON: Let me belatedly object to 25 the form of the question. I think it's vague as

195 1 to the word "correspond." 2 BY MR. BERGMAN: 3 Q And if you could, sir, please turn with me to 4 Bates No. 212 of Exhibit 26. 5 A Okay. 6 Q And if you could look with me at the upper 7 right-hand corner. First of all, sir, what is 8 document 212 of Exhibit 26? 9 A This is the rear head for the 1970- -- or drawing, 10 I should say, of the rear head for the 1978 boiler 11 that was shipped to Naval Air Station Whidbey 12 Island. 13 Q Okay. Looking at the upper right-hand corner, 14 there's reference to part numbers. Do you see 15 that, sir? 16 A Yes. 17 Q And it makes reference to 872-61, both parts No. 3 18 and 4. 19 A Yes. 20 Q And does that conform to, on the second unnumbered 21 page of Exhibit 16, third paragraph, the part 22 872-61? 23 MR. THORSON: Object to the form of the 24 question. It's vague as to the term "correspond." 25 THE WITNESS: I think you mean the third	197 1 Bates stamp 212 of Exhibit 26 correspond to the 2 part number set forth in the second column first 3 row of the second page unnumbered of Exhibit 16? 4 MR. THORSON: I will object to the form 5 of the question. 6 THE WITNESS: Yes, they both call out 7 872-162 Vee Block Mix. However, if your 8 representation earlier about the asbestos content 9 of Vee Block Mix was correct, this particular 10 drawing in referencing asbestos would be 11 incorrect. 12 BY MR. BERGMAN: 13 Q You don't know, do you, whether the Vee Block -- 14 how long the Vee Block Mix that was used on the 15 1978 boiler and referenced in the upper right-hand 16 quadrant of Exhibit 212 of Exhibit 26 was in the 17 Cleaver-Brooks factory before it was installed, do 18 you? 19 A I think earlier you represented that the Vee Block 20 Mix didn't have asbestos after some point in '74. 21 Certainly we wouldn't have had bags of materials 22 like that in the factory for four years. Can I 23 say specifically how long? No. 24 Q How do you know that -- how do you know that you 25 wouldn't have had bags of refractory in the
196 1 column, not third paragraph. 2 MR. BERGMAN: Yes, I did, sir. Thank 3 you. 4 THE WITNESS: Yes, both of this and that 5 have part No. 872-61, and I think they both say 6 board asbestos dimension and J.M. No. 106. 7 BY MR. BERGMAN: 8 Q Okay. And, similarly, once again, looking in the 9 upper right quadrant of Document 212 of 10 Exhibit 26, there's reference to Vee-Block Mix 11 asbestos? 12 A Yes. 13 Q And does that -- and that indicates part 872-162? 14 A Yes, it does. 15 Q And does that correspond to, subject to Counsel's 16 objection, the second column on the second 17 unnumbered page of Exhibit 16? 18 MR. THORSON: Object to the form of the 19 question. It's vague as to "correspond." And 20 when you said the column, do you mean the heading 21 of the column, Counsel, or do you mean the 22 quantities set forth in the column underneath it? 23 BY MR. BERGMAN: 24 Q I mean, does the product -- does the part number 25 872-162 set forth on the upper right quadrant of	198 1 factory for any period of time? 2 MR. THORSON: Well, I object. That's 3 not what he said, Counsel. He said for four 4 years. He didn't say for any period of time. 5 MR. BERGMAN: For four years. 6 THE WITNESS: Because I would consider 7 that a ridiculous amount of time for stock to be 8 sitting around not being used and a plant maybe 9 using that stock. But I said no, I can't say for 10 certain, no. 11 BY MR. BERGMAN: 12 Q And in any event, Cleaver-Brooks' documents dated 13 1978 refer to the Vee Block Mix as an asbestos 14 product; is that correct? 15 MR. THORSON: Object to the form of the 16 question. The document speaks for itself. The 17 question is argumentative. It's also getting very 18 late in the day. It's 6:00 in Milwaukee where the 19 witness is and the reporter and the videographer. 20 This deposition has been ongoing now for 21 approaching seven hours. 22 I would ask that we -- in the little 23 time that's remaining in the deposition under 24 federal rules, I would ask that we get to 25 questions that have some substance to them and not

199 1 argue with the witness. 2 MR. BERGMAN: Court Reporter, Madam 3 Court Reporter, how much time has been expended on 4 actual questioning, excluding breaks and lunch and 5 things like that? 6 (Discussion off the record.) 7 BY MR. BERGMAN: 8 Q Sir, directing your attention to Exhibit 26, Bates 9 stamp 212. Do you see that document, sir? 10 A Yes. 11 Q Okay. Cleaver-Brooks has no independent knowledge 12 that the Vee Block Mix referenced on that page as 13 part No. 872-162 was not asbestos-containing, 14 correct? 15 MR. THORSON: Object to the form of the 16 question. Vague. Ambiguous. Argumentative. 17 THE WITNESS: Other than your 18 representation to me earlier in this deposition, 19 no. 20 BY MR. BERGMAN: 21 Q And I'm sorry, the sound was a little bit garbled. 22 Could you repeat the answer, sir? It was not your 23 fault. 24 A I'm saying other than your representation of the 25 dates of asbestos being in Vee Block Mix earlier	201 1 distributor's warehouse or in Cleaver-Brooks' 2 supply storage area prior to its installation on 3 the boilers that -- boiler that was installed in 4 1978 at Whidbey Island? 5 A I would have no information on that. 6 Q Okay. And because Cleaver-Brooks has no records 7 available documenting its purchase of replacement 8 components or because -- strike that. 9 Because Cleaver-Brooks has no documents 10 available memorializing its purchase of components 11 and parts for its boilers, Cleaver-Brooks has no 12 ability to establish, one way or another, when the 13 components identified in Exhibit 26 were 14 purchased? 15 MR. THORSON: Object to the form of the 16 question. It's vague. Argumentative. Lack of 17 foundation. Calls for speculation. 18 THE WITNESS: As I said just two seconds 19 ago, I have no information on that, no. 20 BY MR. BERGMAN: 21 Q Okay. There's just no way of knowing when these 22 products -- 23 A You can ask it as many times as you like. I'm 24 sorry. 25 MR. THORSON: Mr. Tornetta, let him
200 1 in this deposition, no, we do not. 2 Q In looking, sir, at Bates No. 223 of Exhibit 36. 3 A Okay. 4 Q You have -- that references, once again, product 5 872-26? 6 A Yes, it does. 7 Q And Cleaver-Brooks would not dispute that that is 8 an asbestos-containing product, would you? 9 MR. THORSON: Object to the form of the 10 question. It's vague. 11 THE WITNESS: Again, I would have to 12 check with the manufacturer of that product for 13 the time period we're talking about to see whether 14 or not it was a truly asbestos-containing product. 15 The description says that word, but whether or not 16 it was certainly would be something the 17 manufacturer of that product should be able to 18 tell us -- or may be able to tell us. I don't 19 know. 20 BY MR. BERGMAN: 21 Q And in any event, Cleaver-Brooks today has no 22 knowledge as to how long that product, and by 23 "that product," I mean the product referenced on 24 page -- or Bates No. 223 of Exhibit 26, was 25 sitting around either in a distribute -- wholesale	202 1 finish his question. I think it's an 2 objectionable question, but let's at least do him 3 the courtesy of allowing him to finish. Go ahead, 4 Counsel. 5 MR. BERGMAN: That's okay. I will move 6 on. 7 MR. BERGMAN: Could the witness, please, 8 be provided with the document in envelope 33. 9 (Exhibit No. 27 was marked.) 10 THE WITNESS: Okay. 11 BY MR. BERGMAN: 12 Q And can you identify that document for us, sir? 13 A It appears to be various pages of the information 14 we provided on the boilers, at least based on the 15 unit number, shipped in 1978 to Whidbey Island, 16 including the cover sheet off what was, at one 17 time, a hard file. Yeah, it appears to be. 18 Q And the unit number, if you could look, sir, at 19 the top -- at the upper right-hand corner of 20 Exhibit 27, L-66335? 21 A Yes, on the top of CB000047. 22 MR. BERGMAN: Could you please, sir -- 23 I'm sorry, could the court reporter please give 24 the witness the document in envelope 34. 25 (Exhibit No. 28 was marked.)

203 1 THE WITNESS: Okay. 2 BY MR. BERGMAN: 3 Q Can you identify that document for us, please, 4 sir? 5 A I guess I wouldn't call it a document. It is part 6 of the -- 7 Q That's there. Let -- 8 A -- the documents that we provided to you regarding 9 the Whidbey Island Naval Air Station boiler we 10 shipped in '78, it appears. 11 Q And so -- and it -- that shipment was also through 12 Cole Industrial? 13 A Without the invoice, I'm not sure if it was 14 through Cole Industrial. This document certainly 15 has their name on it -- or this page in the second 16 page and third page certainly have their name on 17 it. Without looking at it and me having a 18 photographic memory of what I provided to you, I 19 can't say for certain. 20 MR. THORSON: The record should also 21 reflect that this document, like a number of 22 others, also appears to contain marginality, 23 handwritten notes of Counsel, that don't appear to 24 be original to the document. 25 MR. BERGMAN: And afterward, we will	205 1 handwritten notes on the document that are not 2 original to the document itself, just for the 3 record. 4 BY MR. BERGMAN: 5 Q And are the items in the questions set forth in 6 the form represented by Exhibit 29 questions that 7 Cleaver-Brooks wanted its field representatives to 8 answer prior to the time a Cleaver-Brooks' boiler 9 was lit the first time by the customer? 10 MR. THORSON: Object to the form of the 11 question. 12 THE WITNESS: There are blanks here to 13 fill in. I'm not sure I would characterize it as 14 before it was lit that these had to be filled out, 15 but certainly this is a form we had, and they're 16 blanks to fill in on that form indicating there 17 would be a request for that information. 18 BY MR. BERGMAN: 19 Q And indeed the form specifically identifies 20 Mr. Wayne McAninch, M-C-A-N-I-N-C-H, as being the 21 individual who the field representative spoke with 22 regarding the items set forth on the checklist, 23 correct? 24 A That is the name listed under "operating 25 instructions" given to -- in that blank, yes.
204 1 work with Counsel and the court reporter to 2 provide the records of the document -- 3 THE VIDEOGRAPHER: We can't hear with 4 the papers on the microphone. 5 MR. BERGMAN: Could the witness be 6 provided with the document in envelope 37. 7 (Exhibit No. 29 was marked.) 8 THE WITNESS: Okay. 9 BY MR. BERGMAN: 10 Q Is -- can you identify 29 for us, please, 11 Mr. Tornetta? 12 A As I stated with several others, it appears to be 13 pieces of paper from what we produced regarding 14 the boiler shipped in '78 to Whidbey Island. This 15 appears to be the start-up report for that 16 boiler -- I'm sorry, the boiler shipped to Whidbey 17 Island in 1978. 18 Q Okay. This is a start-up report form that was 19 prepared by Cleaver-Brooks for use by its field 20 representatives? 21 A Yes, similar to the other one we talked about, 22 yes. 23 MR. THORSON: And this document, again, 24 also contains -- what appears to contain 25 Plaintiff's Counsel's notes or someone's	206 1 MR. BERGMAN: Can the -- if the witness 2 can please be provided with exhibit -- I'm sorry, 3 the documents in envelope 36. 4 (Exhibit No. 30 was marked.) 5 THE WITNESS: Okay. 6 BY MR. BERGMAN: 7 Q Can you identify that for us, please? 8 A Again, as with several others, this is a series of 9 pages from the commercial records that we provided 10 to you in relation to the boiler shipped in 1978 11 to Whidbey Island, Naval Air Station. 12 MR. THORSON: I would also note there's 13 marginality on this document as well that appears 14 to have been added by Plaintiff's Counsel. 15 BY MR. BERGMAN: 16 Q And what is the nature of the communication set 17 forth in Exhibit 30? 18 A It looks as though we are passing along a warning 19 or recall for -- I'm not sure if they actually 20 called that that on their document, related to the 21 McDonnell & Miller water level controls that ITT 22 McDonnell & Miller had passed to us. We are, 23 therefore, passing that on to our customer. 24 Q How come? 25 A Because they asked us to.

207 1 Q Why did Cleaver-Brooks feel a need to communicate 2 safety information to a customer two years after 3 the sale of its boiler? 4 MR. THORSON: Object to the form of the 5 question. Asked and answered. 6 THE WITNESS: I think if you look at the 7 letter from ITT McDonnell & Miller, it asks us to 8 do that, or we were asked that that be done, so we 9 did what our supplier of the product asked us to 10 do with regard to the warning. 11 BY MR. BERGMAN: 12 Q If Cleaver-Brooks had learned of the potential 13 hazard of the McDonald – McDonnell & Miller 14 component through its own research as opposed to 15 at the behest of McDonnell & Miller, would it 16 still have communicated the safety information to 17 its customer two years after the sale? 18 MR. THORSON: Object to the form of the 19 question. That is an incomplete hypothetical. It 20 calls for speculation. It's overly broad and 21 vague and doesn't really appear to have anything 22 at all to do with the notice of deposition in this 23 case. 24 THE WITNESS: I could only guess. I 25 would have no information to tell me one way or	209 1 not, it certainly is under his letterhead. 2 However, you will see quotes of verbatim parts of 3 the ITT McDonnell & Miller on here. 4 BY MR. BERGMAN: 5 Q But at least you would agree that there are 6 contents that, while some of the June 20th, 1980, 7 letter quotes verbatim the ITT communication, some 8 of it is not a verbatim quote? 9 MR. THORSON: Object to the form of the 10 question. The document speaks exactly to that. I 11 can't imagine what possibly Mr. Tornetta could 12 add. I will object. You can answer. 13 THE WITNESS: There are sections that's 14 in quotes and there are sections that are not in 15 quotes. 16 BY MR. BERGMAN: 17 Q Could you please read the second to last paragraph 18 on the letter of Exhibit 30, first page? 19 A "Your immediate action in complying with McDonnell 20 & Miller's recommendations is essential since a 21 float separation of the type described will render 22 the control inoperative and may result in boiler 23 damage and possible serious injury or death." 24 MR. BERGMAN: Could the witness please 25 be provided with a document contained in
208 1 the other. Apparently here we were asked to by 2 the supplier of that product and we did. What we 3 would have done if we had found another way would 4 only be a guess or speculation on my part. 5 BY MR. BERGMAN: 6 Q Why was an identical letter written to Ault Field 7 as set forth in Bates No. 4 of Exhibit 30 and to 8 Talleys Plumbing Bates No. 8 of Exhibit 30? 9 MR. THORSON: Object to the form of the 10 question. It calls for speculation. 11 THE WITNESS: I could only speculate 12 that the -- it is because Talleys Plumbing was the 13 purchaser and Ault Field was the end user -- or 14 Whidbey Island, I think, is another name for Ault 15 Field. 16 BY MR. BERGMAN: 17 Q Was this letter composed by Cleaver-Brooks? And 18 by "this letter," I mean the letter set forth in 19 Exhibit 30. 20 MR. THORSON: Objection. Foundation. 21 Calls for speculation. 22 THE WITNESS: I would have no idea who 23 actually composed what is in CB00004, whether or 24 not Mr. Rexroat, whose name is at the top 25 left-hand corner, as the person who composed it or	210 1 envelope 11, and could the original be marked 31 2 and the copy marked 31A. 3 THE VIDEOGRAPHER: We have five minutes 4 of recording time left. 5 MR. BERGMAN: Why don't we flip it right 6 now. 7 THE VIDEOGRAPHER: All right. This is 8 the end of Disk No. 2. We are off the record at 9 6:17 p.m. 10 (Recess taken.) 11 (Exhibit Nos. 31 and 31A were marked.) 12 THE VIDEOGRAPHER: We are back on the 13 record at 6:27 p.m. 14 BY MR. BERGMAN: 15 Q Mr. Tornetta, would you please take a look at 16 Exhibit 31. 17 A Okay. 18 Q My question is, can you identify it? 19 A It says, "Boiler operating manual, progress and 20 monitor." 21 Q Okay. And is that the Cleaver-Brooks logo on the 22 bottom of the first page of Exhibit 31? 23 MR. THORSON: Object to the form of the 24 question. It's vague. 25 THE WITNESS: It looks familiar to the

211 1 Cleaver-Brooks and the flame and the hand we 2 discussed earlier today. 3 BY MR. BERGMAN: 4 Q In looking at the lower left-hand corner, are you 5 able to date that document, sir? 6 A It has and it's written very small, 4/61, which 7 could mean fourth month of 1961. 8 MR. THORSON: I will object. Lack of 9 foundation. Calls for speculation. 10 BY MR. BERGMAN: 11 Q If you could turn, sir, to page 5-1 of Exhibit 31. 12 A Okay. 13 Q And if you could please read the center section of 14 that page? 15 A "Repair or replacement parts for either progress 16 or monitor boilers should be ordered from your 17 Cleaver-Brooks representative or the 18 Cleaver-Brooks Company, Milwaukee 12, Wisconsin." 19 MR. BERGMAN: Could the witness please 20 be provided with documents that are in 21 exhibit 12 -- envelope 12, and could the court 22 reporter mark the original 32 and the copy 32A. 23 (Exhibit Nos. 32 and 32A were marked.) 24 THE WITNESS: Okay. I have the 25 exhibits.	213 1 Q If you could turn to, please, sir, 7- -- or 2 section 7, page 5? 3 A Okay. I'm there. 4 Q Looking at the section "Refractory." 5 A Yes. 6 Q Do you see the section that says, "872-26"? 7 A Yes, I do. 8 Q "Insulation cement"? 9 A "Cement insulating," yes. 10 Q Okay. And does that entry -- does that part 11 number correspond to the part number set forth on 12 page 2 unnumbered of Exhibit 16? And please feel 13 free to refer back to Exhibit 16, if that would 14 aid your reference. 15 MR. THORSON: I will object to the form 16 of the question, and I will also object to this 17 line of questioning. This is so far field, 18 Counsel. 19 This is a manual -- purports to be a 20 manual that relates to a water tube boiler. There 21 are no allegations in this case whatsoever of any 22 exposure to any water tube boilers. I would -- 23 again, I think you are pressing the limits of good 24 faith in a deposition of 30(b)(6) notice, Counsel. 25 Can you satisfy me as to what possible
212 1 BY MR. BERGMAN: 2 Q Can you identify Exhibit 32 for us, sir? 3 A It says, "Model 4, Steam and Hot Water, Operation, 4 Service and Parts Manual, 1500 through 6000, Fuel: 5 Light Oil, Gas, or Combination." 6 Q And is that the Cleaver-Brooks logo in the lower 7 right-hand corner of the first page of Exhibit 32? 8 MR. THORSON: Object to the form of the 9 question. Vague. 10 THE WITNESS: It looks to be, yes. 11 BY MR. BERGMAN: 12 Q Okay. And looking at the lower left-hand corner of 13 the first page of Exhibit 32, can you date that 14 document for us, please, sir? 15 A Not on the first page, but on the second page, I 16 think it says, "Rev 9/76." You may not have a 17 copy of the cover that I have. 18 Q Okay. Does that appear, then, to be September of 19 1976? 20 MR. THORSON: Object to the form of the 21 question. Document speaks for itself. You're 22 asking the witness to speculate. Lack of 23 foundation. 24 THE WITNESS: That's what it reads, yes. 25 BY MR. BERGMAN:	214 1 relevance this kind of questioning has? It is now 2 past 6:30 where the witness is and the court 3 reporter and the videographer. The deposition has 4 been underway for going on eight hours. Why are 5 you showing him a document relating to a boiler 6 that has no role in this case? 7 MR. BERGMAN: I'm asking him about a 8 part No. 872-26. 9 BY MR. BERGMAN: 10 Q My question to you is, does that correspond to the 11 872-26 identified on Exhibit 16, page -- 12 unnumbered page 2? 13 MR. THORSON: Same objections. And if 14 we don't get closer to something that has 15 something to do with this case soon, Counsel, we 16 will adjourn and go to the Judge. 17 THE WITNESS: The part number is 18 certainly 872-26 in both those instances. Whether 19 or not J.M. 450 was available in 1976, if that's 20 what this manual is from or later, I have no idea. 21 So I'm not sure I would -- I would characterize it 22 as corresponding. The part numbers are certainly 23 equal. 24 MR. BERGMAN: If the witness could 25 please be shown the documents in envelope 15, and

215 1 if the court reporter could make -- label the 2 original documents Exhibit 33 and the copy 33A. 3 (Exhibit Nos. 33 and 33A were marked.) 4 THE WITNESS: Okay. 5 BY MR. BERGMAN: 6 Q Can you identify that for us, please, sir? 7 A This says, "Cleaver-Brooks Model CB Packaged 8 Boilers, Operation, Service, and Parts Manual, 50 9 through 100 Horsepower, Fuel: Light Oil, Heavy 10 Oil, Gas, Or Combination." 11 Q Okay. And are you able to ascertain the date of 12 that document? 13 MR. THORSON: Objection. Lack of 14 foundation. Calls for speculation. 15 THE WITNESS: Again, going to the second 16 page of the booklet that's the original, it does 17 say, "Rev 1/80." 18 BY MR. BERGMAN: 19 Q Turning to section 8, page 8 of Exhibit 33. 20 A Okay. 21 Q Looking at part -- in the upper left-hand section. 22 Are you following me, sir? 23 A Yes, I am. 24 Q And it indicates part No. 87 -- it's cement, 25 Vee-Block Mix, 50 pound bag. Do you see that?	217 1 not J.M. 450 was available and/or an asbestos 2 product at that time, I wouldn't know. And I 3 think you meant to say 1980, since I think this 4 manual is from 1980 or appears to be. I may be 5 wrong in thinking that's what you meant. 6 BY MR. BERGMAN: 7 Q Okay. But was Cleaver-Brooks in 1980 selling 8 asbestos cement under the part number 872-26 by 9 the pound and by bulk? 10 MR. THORSON: Same objection. 11 THE WITNESS: As I just said, I would 12 have to look at the manufacturer of that product, 13 872-26, as it was described in our detailed parts 14 description in the documents we provided to you 15 prior about the other -- the boilers at Whidbey 16 Island or the other ones. And determine through 17 the manufacturer, if possible, whether or not that 18 material had asbestos or not. I don't know. 19 BY MR. BERGMAN: 20 Q So it's possible that Cleaver-Brooks in 1980 would 21 publish a parts list offering cement -- asbestos 22 cement that did not contain asbestos? 23 MR. THORSON: Object to form of the 24 question. Argumentative. Calls for speculation. 25 Lack of foundation. Assumes facts.
216 1 A That's what it says, yes. 2 Q And does it correspond -- does the part 3 No. 872-162 correspond to the part number set 4 forth on page 2 unnumbered of Exhibit 16? 5 MR. THORSON: Object to the form of the 6 question. You're asking him to compare two 7 numbers to see if the two numbers are the same? 8 Is that it? 9 MR. BERGMAN: Mm-hmm. 10 MR. THORSON: We will stipulate that 11 identical numbers are identical to each other. Do 12 we need to do more than that? I mean, really, 13 Counsel. 14 BY MR. BERGMAN: 15 Q Second question on section 8-8. 16 A Yes. 17 Q Can you read the product set forth on 872-26? 18 A It says, "872-26, cement asbestos." 19 Q In 1988, was Cleaver-Brooks selling asbestos 20 cement by the pound? 21 MR. THORSON: Object to the form of the 22 question. Vague. Calls for speculation. 23 THE WITNESS: I would answer it the same 24 way I talked about the 872-26 in the last manual, 25 in that while the numbers are the same, whether or	218 1 THE WITNESS: As I said, I would have to 2 check with the manufacturer. Is that a 3 possibility that that word is incorrect in this 4 particular manual? Absolutely, that's a 5 possibility. 6 BY MR. BERGMAN: 7 Q Well, you don't know one way or the other, do you, 8 sir? 9 A I think my answer the last three times you asked 10 this was "I don't know." 11 Q Okay. And the prior designation of J-M 450 in the 12 document that you testified to indicate "J-M 450 13 or equal," do they not, sir? 14 MR. THORSON: Object to the form of the 15 question. Mischaracterizes testimony. Overly 16 broad. Compound. You can answer. 17 THE WITNESS: I believe it said that in 18 the rear door refractory replacement guide. I 19 don't know that it said that in the part 20 description that we supplied you for the 872-26 21 part that was supplied with the Whidbey Island 22 boilers. I would have to go back and look at 23 that. 24 BY MR. BERGMAN: 25 Q But based upon -- based upon page 8 -- section 8,

219 1 page 8, of Exhibit 33, Cleaver-Brooks cannot 2 exclude the possibility that in 1980 it was 3 selling asbestos cement by the pound, can it? 4 MR. THORSON: Object to the form of the 5 question. It's argumentative. It calls for 6 speculation. The question has been asked and 7 answered repeatedly. You can answer. 8 THE WITNESS: As I said before, I don't 9 know. I don't have the information to tell me, 10 one way or the other. 11 MR. BERGMAN: And could the witness be 12 provided with the document -- or documents in 13 envelope 13, and will the court reporter kindly 14 mark the original Exhibit 34 and the copy 34A. 15 (Exhibit Nos. 34 and 34A were marked.) 16 THE WITNESS: I have it. 17 BY MR. BERGMAN: 18 Q Can you identify Exhibit 34 for us, please, sir? 19 A It says, "Cleaver-Brooks Model, CB Packaged 20 Boilers, Operation, Service, and Parts Manual, 50 21 through 100 Horsepower, Fuel: Light Oil, Heavy 22 Oil, Gas, Or Combination." 23 Q And what is the date of the document set forth in 24 Exhibit 34? 25 MR. THORSON: Object to the form.	221 1 of Exhibit 34 was asbestos-containing? 2 A I would say, at this moment, Cleaver-Brooks does. 3 I'm assuming you're an honest man, and you 4 wouldn't have represented something different than 5 it to be. So, at this moment, yes, Cleaver-Brooks 6 does. 7 BY MR. BERGMAN: 8 Q Okay. Outside of my representation, does 9 Cleaver-Brooks have knowledge on that subject, 10 sir? 11 A I don't believe so, not that I know -- can put my 12 finger on, other than, again, your representation. 13 But since you excluded that from the question, no. 14 Q Okay. And last question, sir, once again, looking 15 at page -- section 8, page 4, of Exhibit 34, can 16 Cleaver-Brooks say, one way or the other, whether 17 the insulating cement identified on that page as 18 part No. 872-26 was asbestos-containing? 19 MR. THORSON: Object to the form of the 20 question. Vague. Calls for speculation. You can 21 answer. 22 THE WITNESS: As I said what seems like 23 four or five other times now, not without 24 information from the supplier of that product. So 25 I don't know.
220 1 Foundation. Document speaks for itself. 2 THE WITNESS: It appears to say, 3 "Revised 12/88." 4 BY MR. BERGMAN: 5 Q If you could turn with me, sir, to section 8.4 of 6 Exhibit 34. 7 A Okay. 8 Q And you see the section marked "Refractory"? 9 A Yes, I do. 10 Q Can Cleaver-Brooks say, one way or the other, 11 whether the cement Vee Block Mix designated by 12 part 872-162 was asbestos-containing? 13 MR. THORSON: Object to the form of the 14 question. Calls for speculation. 15 THE WITNESS: Again, going back to your 16 stipulation earlier -- your noting earlier of the 17 years of asbestos being in Kaiser Vee Block, since 18 this manual appears to be from 1988, some 14 years 19 after what you said was the cut-off, I think that 20 assertion would be ridiculous. 21 BY MR. BERGMAN: 22 Q But outside of any information that I might or 23 might not have, does Cleaver-Brooks have any 24 knowledge, one way or the other, whether the Vee 25 Block Mix identified on page -- section 8, page 4,	222 1 BY MR. BERGMAN: 2 Q And Cleaver-Brooks does not have any records today 3 regarding the supplier of the insulation cement 4 identified on page 8 -- section 8, page 4, of 5 Exhibit 34; is that correct? 6 A I believe we have the parts description which 7 you've been shown. Did you say records of, or did 8 you say records of purchase? I don't -- I may 9 have missed -- 10 Q Records of purchase, yes, records of purchase. 11 A We don't have records of purchase, no, other than 12 the part number that describes the material that 13 was called out. 14 Q Okay. Mr. Tornetta, in your deposition in 2004, 15 you testified that there was never a conscious 16 decision to stop using asbestos in Cleaver-Brooks' 17 boilers. 18 MR. THORSON: Counsel, let's -- would 19 you give us a page -- page reference, please? 20 MR. BERGMAN: Yeah. Most definitely. 21 Page 15. 22 MR. THORSON: Give me a minute, please. 23 MR. BERGMAN: Please take your time. 24 MR. THORSON: Okay. So if I may, I 25 would like to read the passage that I think --

223 1 because I think you mischaracterized -- 2 MR. BERGMAN: Let me -- 3 MR. THORSON: The conscious decision 4 language you referenced wasn't his testimony. It 5 was the question -- it was the question -- it was 6 the questioner's question, and Mr. Tornetta's 7 answer doesn't mention anything like that. So if 8 you're not going to put that in front of him, I 9 would like to at least read that sentence. 10 BY MR. BERGMAN: 11 Q Let me withdraw the question and ask Mr. Tornetta, 12 simply, was there ever a conscious decision by 13 Cleaver-Brooks to stop using asbestos components 14 in its boilers? 15 MR. THORSON: Object to the form of the 16 question. It's vague. Overly broad. 17 THE WITNESS: The manufacturers -- 18 MR. THORSON: I was also going to -- go 19 ahead, John. 20 THE WITNESS: I was going to say. The 21 manufacturers that those components that we 22 purchased that had or may have had asbestos 23 removed the asbestos components of those parts at 24 times unknown to us and for reasons unknown to us. 25 So I would say the answer to your question is no	225 1 reservation, we will conclude our examination, and 2 thank the witness for his time and testimony. 3 MR. THORSON: And let me just state for 4 the record that this deposition was noted up by 5 Plaintiffs Counsel at a time of their choosing. 6 If there was outstanding document production, that 7 was not something that was -- that was something 8 that they knew at the time they noted this 9 deposition. 10 This deposition has now been going on 11 for approaching eight hours from when 12 Mr. Tornetta, the court reporter, and the 13 videographer were instructed to attend. It has 14 been a very long day. It is 7:00 -- approaching 15 7:00 in Milwaukee, and I should say that if this 16 deposition is -- you mean to resume it at some 17 further -- some later date, you will need to 18 confer with Counsel, and I anticipate you will 19 need to make a motion to do so. I believe this 20 has not been a constructive use of anyone's time, 21 for the most part, and I think it's -- it has been 22 an enormous indulgence for Mr. Tornetta to sit 23 through all of this. 24 So as far as we're concerned, this 25 deposition is concluded at this point in time,
224 1 with that explanation. 2 BY MR. BERGMAN: 3 Q When was the last time, sir, you've testified in 4 an asbestos case? 5 A I would say a couple months ago. July sometime, I 6 believe. 7 Q And, sir, how frequently are you called upon to 8 testify on asbestos cases? 9 A On a fairly regular basis. 10 Q Every couple months? 11 A No, I wouldn't characterize it like that. It's 12 been over a few dozen in my 10, 11 years now. 13 MR. BERGMAN: At this point, Madam Court 14 Reporter, how much time are -- what time are we 15 at? 16 THE COURT REPORTER: We're at about six 17 hours. 18 MR. BERGMAN: At this juncture, we 19 have -- I will state for the record that we are 20 still awaiting documents that we have requested 21 pertaining to the Cleaver-Brooks' boilers that 22 were installed at Puget Sound Naval Shipyard. We 23 reserve our right to reopen this deposition to 24 question the witness on those documents as they 25 have not been produced today. With that	226 1 absent a meeting of Counsel and on that order from 2 Judge Layton instructing him to go forward subject 3 to some later production. 4 MR. BERGMAN: Okay. We will have to 5 agree to disagree on that, Counsel. We can go off 6 the record now. Before we go off the record, a 7 couple of housekeeping matters -- well, first of 8 all, Mr. Tornetta, if you need to go, I don't know 9 that you need to stick around for this, but I just 10 want to state for the record that we would like -- 11 we want to retain custody of the original manuals 12 and the manuals that are designated as, for 13 instance, 34A should be part of the record. 14 We would also like to, in conference 15 with counsel and the court reporter, substitute 16 any exhibits that were inadvertently provided to 17 the witness with marginalia and writing on them. 18 And with those clarifications, I think we can go 19 off the record. 20 THE VIDEOGRAPHER: We are off the record 21 at 6:55 p.m. 22 (Proceedings adjourned at 6:55 p.m.) 23 24 25

1 STATE OF WISCONSIN)) SS: 2 COUNTY OF MILWAUKEE) 3 4 5 I, ANDREA REICHLE, a Registered 6 Professional Reporter and Notary Public in and for the 7 State of Wisconsin, do hereby certify that the above 8 deposition of JOHN F. TORNETTA was recorded by me on 9 September 14, 2012, and reduced to writing under my 10 personal direction. 11 I further certify that I am not a 12 relative or employee or attorney or counsel of any of 13 the parties, or a relative or employee of such attorney 14 or counsel, or financially interested directly or 15 indirectly in this action. 16 In witness whereof I have hereunder set 17 my hand and affixed my seal of office at Milwaukee, 18 Wisconsin, this 21st day of September, 2012. 19 20 ----- Notary Public 21 In and for the State of Wisconsin 22 23 My Commission Expires: April 14, 2013. 24 25	227	1 C O R R E C T I O N S 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	229
1 STATE OF)) SS: 2 COUNTY OF) 3 4 5 I, JOHN F. TORNETTA, do hereby certify 6 that I have read the foregoing transcript of 7 proceedings, taken on September 14, 2012, at Whyte 8 Hirshboeck Dudek, 555 East Wells Street, Suite 1900, 9 Milwaukee, Wisconsin, and the same is true and correct, 10 except for the list of corrections noted on the annexed 11 page. 12 13 Dated at _____ 14 this _____ day of _____, 2012. 15 16 17 ----- 18 JOHN F. TORNETTA 19 20 Subscribed and sworn to before me 21 this _____ day of _____ 2012. 22 23 ----- Notary Public 24 25 My Commission Expires:	228		

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