

J. MICHAEL SMITH

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STATE OF SOUTH CAROLINA) IN THE COURT OF
 COUNTY OF GREENVILLE) COMMON PLEAS
)
) C/A NO. 2008-CP-
) 23-09194
 *****)
)
 SUSAN K. LENZ, Individually) Former Coal
 and as Personal Representative) chemical
 of the Estate of Gary Lenz,) learner and
 Plaintiff,) mechanical
) assistant
 vs.) (Various
) locations in
 Allis Chalmers Corporation) South
 Product Liability, et al,) Carolina);
 Defendants.) Mesothelioma
)

Audiovisual Deposition of
 Riley Stoker Corporation
 By Its Designee J. Michael Smith
 Wednesday, May 13, 2009
 Cetrulo & Capone, LLP
 Two Seaport Lane
 Boston, Massachusetts

----- Darlene Caiazzo Sousa, CSR, RPR -----

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copies sent to HG Litigation to be distributed
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1 representative produced for Riley Stoker.

2 The court reporter is Darlene Sousa.

3 Counsel will please give their appearances for
the record.

4 MR. STUEMKE: This is Jay Stuemke with
Simons Eddins & Greenstone appearing on behalf
of the plaintiffs.

5 MR. SAUL: Jason Saul, Cetrulo &
Capone appearing on behalf of Riley Power.

6 MR. RADCLIFFE: This is Tom Radcliff
appearing on behalf of Riley Power.

7 THE VIDEOGRAPHER: Would the court
reporter please administer the oath.

8 J. MICHAEL SMITH,
having first been satisfactorily identified and
duly sworn by the Notary Public, was examined
and testified as follows:

9 EXAMINATION CONDUCTED
BY MR. STUEMKE:

10 Q. Good morning, sir.

11 A. Good morning.

12 Q. My name is Jay Stuemke. You and I met
for the first time just a few moment ago,
correct?

13 A. Yes.

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PROCEEDINGS

* * * * *

10:04 a.m.

(Exhibit No. 1, Notice of Deposition
so marked)

THE VIDEOGRAPHER: I am Bill Slater,
your videographer. I represent the Litigation
Support Company of Dallas, Texas. I'm not
financially interested in this action nor am I
a relative or employee of any of the attorneys
or any of the parties.

The date is May 13, 2009. The time is
10:04 a.m. This deposition is taking place at
Cetrulo & Capone, Two Seaport Lane, Boston,
Massachusetts. The case number is 2008-CP-33-
09194 in the Court of Common Pleas, State of
South Carolina, County of Greenville, entitled
Susan K. Lenz, Individually and as Personal
Representative of the Estate of Gary Lenz
versus Allis Chalmers Corporation Product
Liability.

This deposition is being taken on
behalf of the plaintiff. This begins tape
number one, Volume I in the videotaped
deposition of J. Michael Smith, the corporate

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J. MICHAEL SMITH

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Q. Could you introduce yourself to the
jury, please?

A. My name is initial J. Michael Smith.

Q. What does the J stand for?

A. John.

Q. Nothing too objectionable there. What
is your address, sir?

A. 188 South Road, Holden, Massachusetts
01520.

Q. Is that your residence?

A. Yes.

Q. Do you have a business address?

A. Same one.

Q. How old a man are you?

A. Sixty-five.

Q. And you are presently retired,
correct?

A. Yes.

Q. When did you retire?

A. July 2006.

Q. From what company did you retire?

A. From Riley Power Company.

Q. And that company, Riley Power Company
was previously known as Riley Stoker; is that
correct?

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J. MICHAEL SMITH Page 9 1 A. Yes. 2 Q. Okay. And for the purposes of this 3 deposition, I'm just going to refer to Riley 4 Stoker as referring to all the predecessor 5 entities of that company with respect to Riley 6 Stoker products. Do you understand that? 7 A. We're going to call it Riley Stoker 8 today. 9 Q. We're going to call it Riley Stoker? 10 A. Fine. 11 Q. Sir, can you briefly describe your 12 employment history starting with Riley Stoker? 13 A. With Riley Stoker I started as a 14 boiler design engineer. 15 Q. In what year? 16 A. 1973. 17 Q. And how did your career with Riley 18 Stoker progress after that? 19 A. I was promoted to project engineer in 20 late '74, 1974. I became a project manager, 21 industrial division, in 1976. I became project 22 manager, utility division, in 1977. I became 23 manager of after-market construction in 1980. 24 I became senior project manager, 25 maintenance and repair division, in 1982. I HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 10 1 became vice president of Pace Power 2 Constructors, which is a Riley company, in 3 1985. I became director of the pressure parts 4 group in 1988. 5 I became director of the parts group 6 in 1992. I then became director of the parts 7 group in Erie, Pennsylvania in 1996. I 8 returned to Worcester in 1999 as director of 9 the power services group, and in 2005 I was 10 named director of parts operations until my 11 retirement in July 2006. 12 Q. Do you receive any sort of retirement 13 benefit from Riley Stoker? 14 A. There is a small retirement benefit 15 before they went to the 401K. 16 Q. You receive a pension of some type, 17 correct? 18 A. Yes. 19 Q. Okay. In addition to the pension 20 payment, do you have a 401K fund that was 21 administered through Riley Stoker? 22 A. Was. It's not administered now. 23 Q. Have you rolled that over into an IRA 24 of some type? 25 A. I've rolled it over into my own 401K. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 11 1 Q. Okay. Prior to joining Riley Stoker 2 in 1973, what prior jobs had you had? 3 A. I worked for Ebasco, E-B-A-S-C-O, 4 Services. They're out of New York City, but I 5 worked in the field construction division from 6 1966 to 1973. 7 Q. What were your job responsibilities in 8 the field construction division of Ebasco 9 Services in that time? 10 A. In 1966 I was an assistant engineer at 11 the Dallas Power and Light Mountain Creek 12 Station. In June of 1967 I became field 13 engineer at the Lake Ray Hubbard Power Plant in 14 Mesquite, Texas. In 1978 I was assigned to 15 field engineer at the Bridgeport Harbor Station 16 in Bridgeport, Connecticut. 17 Q. You mean 1968? 18 A. What did I say? 19 Q. '78. 20 A. No, '68 definitely. Sorry. In 1969 I 21 was assigned to the -- as a field engineer to 22 the Vermont Nuclear Power Plant in Vernon, 23 Vermont. 24 Q. 1969? 25 A. '69, yes. In 1971 I was assigned to HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 12 1 the George Neal Power Plant in Sioux City, 2 Iowa, as a field and then an office engineer. 3 In February 1973 I left Ebasco and started with 4 Riley Stoker. 5 Q. Sir, when did you graduate from high 6 school? 7 A. 1962. 8 Q. Where did you go to college? 9 A. Worcester Polytechnic Institute. 10 Q. Did you attain a degree? 11 A. Yes. 12 Q. What was that degree in? 13 A. Bachelor of science in civil 14 engineering. 15 Q. What year? 16 A. 1966. 17 Q. Have you done any post-graduate 18 education? 19 A. Yes. 20 Q. What have you done? 21 A. I obtained a Master's degree in 22 business administration. 23 Q. From what school? 24 A. Anna Maria College in Paxton, Mass. 25 Q. In what year? HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 13 1 A. 1982. 2 Q. Did Riley Stoker pay for your tuition? 3 A. Pardon? 4 Q. Did Riley Stoker pay for your tuition 5 for the MBA program? 6 A. Yes. 7 Q. Do you hold any professional 8 certifications? 9 A. Yes. I'm a licensed professional 10 engineer. 11 Q. When did you become a licensed 12 professional engineer? 13 A. I became a licensed professional 14 engineer in 1972 in Iowa and subsequently in 15 Massachusetts in around 1980, I believe it was. 16 Q. Are you a licensed professional 17 engineer in any other jurisdictions? 18 A. No. 19 Q. You would agree with me that the code 20 of ethics of professional engineers requires 21 them to look out first and foremost for public 22 safety, correct? 23 A. Rephrase that, please. 24 Q. You're familiar with the codes of 25 ethics governing licensed professional HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 14 1 engineers' conduct, correct? 2 A. Yes. 3 Q. You would agree with me that those 4 codes of ethics require you as a professional 5 engineer to look out for the public safety? 6 A. The codes of ethics require you under 7 all times to act in the best interest and the 8 best engineering process, procedures to ensure 9 that you do it the right way. 10 Q. And that is to protect the public 11 safety, correct? 12 A. Yes. 13 Q. That's always been the case, as far as 14 you know, with respect to engineering codes of 15 ethics, correct? 16 A. Not just engineering codes. Many 17 codes of ethics have certain requirements. 18 Q. Sure. Specifically engineering codes 19 of ethics, as long as you've been aware of 20 them, have had that requirement, true? 21 A. Yes. 22 Q. You do not have any medical training, 23 correct? 24 A. No. 25 Q. You have no training in industrial HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 15 1 hygiene, correct? 2 A. I do not have any training in 3 industrial hygiene. 4 Q. Have you seen the notice of deposition 5 in this case, sir? 6 A. No. 7 Q. I will hand you what we've already 8 marked as Exhibit 1 and ask you to take a look 9 at that? 10 A. (Witness complies) I scanned it. 11 Q. You haven't memorized it yet? 12 A. No. 13 Q. Do you see on the first page, sir, 14 that the deposition is noticed for the 15 corporate representative of Riley Stoker? 16 A. Yes. 17 Q. Okay. And that it's noticed for 18 today's date and time? 19 A. Yes. 20 Q. Okay. So you understand that for 21 purposes of this deposition you're appearing as 22 the corporate representative of Riley Stoker, 23 correct? 24 A. I'm here because -- 25 MR. RADCLIFFE: Tom Radcliffe. Object HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 16 1 to the form. 2 A. The Riley Stoker lawyers asked me to 3 come here an answer questions; that's why I'm 4 here today. 5 Q. You understand that you're appearing 6 in response to this notice, correct? 7 A. I understand I was asked to come here 8 to answer questions by the attorneys. I have 9 not seen this. 10 Q. You understand you're testifying on 11 behalf of Riley Stoker, correct? 12 A. I'm answering questions from my 13 knowledge about Riley. 14 Q. Okay. 15 MR. STUEMKE: Mr. Radcliffe, can I get 16 a stipulation that he is appearing as a 17 corporate representative in response to the 18 notice of deposition attached as Exhibit 1? 19 MR. RADCLIFFE: I will agree with you 20 that he is the designated witness on behalf of 21 Riley Power, yes. 22 Q. This is not the first time in which 23 you've been asked to give testimony on behalf 24 of Riley Stoker in an asbestos case, correct? 25 A. It's not the first time. HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 17 1 Q. How many times previously have you 2 testified in asbestos cases such as this one? 3 A. Previously, I believe it's around 18 4 separate cases. 5 Q. Okay. When was your most recent 6 deposition? 7 A. In April. 8 Q. For you this is deposition number 19 9 in asbestos litigation for Riley Stoker? 10 A. That's my count, yes. 11 Q. And you're currently retired from 12 Riley Stoker. You're getting paid separately 13 for your time today; is that correct? 14 A. I'm getting paid for my time 15 separately, yes. 16 Q. Okay. And do you bill by the hour? 17 A. Yes. 18 Q. At what rate? 19 A. For working \$100 per hour. 20 Q. Okay. Do you bill it a different rate 21 for something other than working? 22 A. Travel. 23 Q. Travel. What is your rate for travel? 24 A. \$75 an hour. 25 Q. Your travel would be driving from your HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 18 1 home in -- was it Holden, Massachusetts -- 2 A. Yes. 3 Q. -- to Boston? 4 A. Yes. 5 Q. Okay. Did you stay at a hotel? 6 A. No. 7 Q. Sir, do you know how many hours you 8 have done work on behalf of Riley Stoker in 9 asbestos litigation cases in 2009? 10 A. No, I don't. 11 Q. Okay. In 2008 you've testified that 12 you earned about \$60,000 from doing work in 13 asbestos litigation cases for Riley Stoker; is 14 that about right? 15 A. 60, 65, definitely that range, yes. 16 Q. Okay. So in 2008 we're looking at 600 17 to 650 hours of work you did for Riley Stoker; 18 is that fair? 19 A. I worked in the range of 600 to 20 650 hours, yes. 21 Q. Okay. In 2007 you've testified that 22 you earned about \$80,000 from your work in 23 asbestos litigation for Riley Stoker. Does 24 that sound about right to you? 25 A. Yes. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 19 1 Q. That would be about 800 hours? 2 A. Yes. 3 Q. In 2006 I think you've testified that 4 you only earned about \$8,000 or \$9,000 from 5 doing this type of work. Does that sound about 6 right? 7 A. Yes. 8 Q. That would be about 80 to 90 hours; is 9 that correct? 10 A. What was the number you gave? 11 Q. \$8,000 to \$9,000? 12 A. The hours run less than that because 13 of the travel. There's a lot of travel when 14 I'm working, so it's in the range of 800 hours. 15 Q. Okay. You mean 80 hours? 16 A. 80, yes. 17 Q. You make a good point. You bill a 18 lower rate for travel, so the amount of hours 19 that you worked would actually be higher than 20 what we've just stated, correct? 21 A. Could be. We're rounding everything. 22 Q. Absolutely. It's not less than these 23 numbers. It's likely more than these numbers 24 to account for the lower travel rate? 25 A. Well, the billing also includes HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 20 1 travel. A couple of times I've flown and had 2 airline flights, hotels. 3 Q. Sure. 4 A. I'll give you round numbers, and I'll 5 live with that. 6 Q. Okay. When did you first start doing 7 this type of work for Riley Stoker in asbestos 8 litigation cases? 9 A. I started in 2005. 10 Q. Okay. And about how much money did 11 you earn from Riley Stoker for doing this type 12 of work in asbestos litigation cases in 2005? 13 A. It wasn't very much, and it wasn't 14 from Riley Stoker. I bill Cetrulo & Capone. 15 Q. Okay. Cetrulo & Capone you understand 16 to be the attorneys for Riley Stoker, correct? 17 A. Yes. 18 Q. At least some of the attorneys for 19 Riley Stoker, correct? 20 A. Yes. 21 Q. Now, in 2009 you've given a lot of 22 depositions already, correct? 23 MR. RADCLIFFE: Object to form. Tom 24 Radcliffe. 25 A. I don't know about a lot. I've given HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 21 1 three. This would be maybe the fourth. 2 Q. Okay. 3 MR. STUEMKE: And just for the record, 4 Tom, I think that you're the only counsel on 5 the phone so you don't need to identify 6 yourself. If there's anybody else, I'll 7 stipulate that an objection by one defendant is 8 good for all defendants appearing in the 9 deposition. 10 MR. RADCLIFFE: Sorry. I didn't know 11 that. 12 MR. STUEMKE: No problem. 13 Q. Do you have an estimate, sir, of how 14 many hours you've spent working on behalf of 15 Riley Stoker in asbestos litigation in 2009 so 16 far? 17 A. In 2009 I've worked several hundred 18 hours already. 19 Q. At least 300; is that fair? 20 A. At least 250. 21 Q. Okay. Sir, since you started doing 22 work in asbestos litigation cases for Riley 23 Stoker, you have earned approximately \$175,000 24 \$180,000, would that be about right? 25 A. I never added it up. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 22 1 Q. Okay. Thinking about it now, does 2 that sound about right? 3 A. Could be in that range. 4 Q. Okay. And that would reflect work 5 time of approximately 1,600, 1,700 hours of 6 work that you've performed in asbestos 7 litigation? 8 A. Over a four-year period, yes. 9 Q. You've previously testified, sir, that 10 when you were employed by Riley Stoker you were 11 a loyal employee; is that true? 12 MR. RADCLIFFE: Object to form. 13 A. I was loyal to Riley Stoker, yes. 14 Q. Are you still loyal to Riley Stoker? 15 A. Loyal in what way? 16 MR. RADCLIFFE: Object to the form. 17 A. I'm not in the office. I'm not there. 18 I mean, certainly I wouldn't do anything to 19 harm Riley. 20 Q. Okay. I'd like to talk to you, sir, 21 about several main topics in this deposition 22 today. First I want to talk to you about the 23 company Riley Stoker, a little bit about its 24 history and its usage of asbestos-containing 25 products over time. Are you prepared to HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 23 1 discuss that issue today? 2 A. I can talk about the history, and I 3 can talk about what I know from the time I got 4 there and what I learned about the past. 5 Q. Okay. And, sir, I'd also like to talk 6 to you about the information you've learned 7 about the specific boilers that were at the 8 Interstate Power Plant, Lansing, Iowa, that is 9 at issue in this case. Are you prepared to do 10 that? 11 A. Yes. 12 Q. Sir, finally, I'd like to talk to you 13 today about Riley Stoker's knowledge of the 14 hazards of asbestos and what actions they did 15 or did not do in response to that knowledge. 16 Are you prepared to talk about that today? 17 A. I can talk about -- 18 MR. RADCLIFFE: Object to form. 19 A. -- what Riley knew about thermal 20 insulation in our products, yes. 21 Q. First, to give the jury an idea of the 22 history of Riley Stoker, the company itself 23 started in 1913; is that right? 24 A. Yes. 25 Q. And Riley Stoker entered the boiler HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 24 1 business in 1931 when they acquired 2 Badenhause; is that correct? 3 A. That's correct. 4 Q. And, sir, it's true that from 1931 to 5 the present, Riley Stoker has been in the 6 business of designing, fabricating and selling 7 boilers, correct? 8 A. Yes. 9 Q. And not just boiler but the entire 10 steam generating units that would be utilized 11 in factories, correct? 12 A. No. 13 Q. Okay. When did Riley Stoker enter the 14 business of selling steam generating units? 15 A. The steam generating units started in 16 1931 when -- we're talking the boilers. 17 Q. Okay. In your mind are steam 18 generating units synonymous with the term 19 "boilers"? 20 A. No. 21 Q. Okay. What is the distinction between 22 those terms? 23 A. A steam generating unit encompasses 24 the whole -- can encompass the whole power 25 island; that includes the boiler, auxiliary HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 25 1 equipment to make it run. We don't design, we 2 don't make -- such as fans, motors, pumps, we 3 don't design or make any of that stuff. 4 There's a lot of things we don't design and 5 fabricate. 6 Q. Okay. The steam generating units 7 include a boiler that is designed and 8 fabricated by Riley Stoker, correct? 9 A. Can be, yes. 10 Q. Okay. As well as auxiliary equipment 11 that would typically be designed and 12 manufactured by some separate party; is that 13 correct? 14 A. Some third party, yes. 15 Q. But you would agree that from 1931 to 16 the present Riley Stoker has sold the entire 17 steam generating units, correct, including the 18 auxiliary? 19 MR. RADCLIFFE: Object to form. 20 A. They have sold a wide variety of 21 different combinations not -- and not always 22 the whole steam generating units. 23 Q. Sure. With respect -- strike that. 24 Regardless of whether it happened 25 every time or just a lot of times, you'd agree HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 26 1 that it's been the business model of Riley 2 Stoker since 1931 to sell steam generating 3 units to industry? 4 MR. RADCLIFFE: Object to form. You 5 know, Mr. Stuemke, the problem I have is that I 6 don't know that we've defined "steam generating 7 units," and he already said that -- 8 MR. STUEMKE: We just did. 9 MR. RADCLIFFE: Well, there is a lot 10 more to a steam generating unit than just the 11 boiler. 12 MR. STUEMKE: Now you're coaching the 13 witness because we did just define steam 14 generating units. 15 Q. You can answer the question. 16 MR. RADCLIFFE: I didn't hear it, and 17 I'm not coaching the witness. 18 A. Riley's business model wasn't to sell 19 the whole steam generating unit. Riley's 20 business model was to respond to customer 21 requests for products via their specification 22 of whatever -- however way it was conveyed to 23 us, and our scope varied greatly. 24 Q. Okay. Now, customers didn't call 25 Riley Stoker and say they needed a pallet of HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 27 1 breakfast cereal, did they? 2 A. No. 3 Q. No. They were selling steam 4 generating units; that's their business, 5 correct? 6 MR. RADCLIFFE: Object to form. 7 A. They were selling boilers. 8 Q. Okay. Nothing else? 9 A. No. I already said we can't say that 10 everything we sold was a steam generating unit. 11 A boiler is part of it. Sometimes we only 12 supplied the bare bones ASME code steel 13 components, nothing else. And some other 14 person, entity took and added the rest of the 15 items to make the boiler complete and then 16 added the rest of the balance of plants to make 17 the boiler work. 18 Not always -- so we have went from 19 that to where we have supplied a great amount 20 of the equipment for the steam generating unit, 21 rarely all of it, but a good amount of it. So 22 we had that whole range, and it varies by 23 contract. 24 Q. Okay. Right. I think we'll come back 25 to that. It sounds like you're -- are you -- HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 28 1 strike that. 2 From 1931 to the present, Riley Stoker 3 has also been in the business of servicing, 4 repairing and providing replacement parts for 5 its old boiler s, correct? 6 A. I don't know when that started. 7 Q. Okay. 8 A. Like I ran the parts department for a 9 number of years, and I'm aware they were in 10 business in the '60s and maybe '50s. 11 Q. Okay. 12 A. I don't know prior to that. 13 Q. You're not aware of a time after 1931 14 when Riley Stoker did not have a business of 15 servicing its old boilers, correct? 16 A. I'm not aware when they did or didn't. 17 Q. You're aware they did in the '70s and 18 '60s and '50s. You just testified to that, 19 correct? 20 A. Yes, I did. 21 Q. You're not aware of the time prior to 22 that when they did not have that business, 23 correct? 24 A. I'm not aware of the time they didn't 25 have it or when they did have it prior to my HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 29 1 knowledge base. 2 Q. Where is Riley Stoker based, sir? 3 A. The headquarters of Riley Stoker is in 4 Worcester, Massachusetts. 5 Q. Okay. And has that always been true 6 since the formation of the company? 7 A. Yes. 8 Q. Okay. Has Riley Stoker ever 9 manufactured boilers in Worcester, 10 Massachusetts? 11 A. No. 12 Q. Where has Riley Stoker manufactured 13 its products? 14 A. Okay, we need to define the products 15 more than just boilers because they started off 16 as a stoker company and bought up several other 17 stoker companies to give them a wide range of 18 products like service the entire industry. And 19 at that time they were doing some stokers in 20 Worcester, some in Rhode Island. 21 There was some -- Detroit there was a 22 foundry. There was -- over the years they 23 bought and sold several entities. The boilers 24 themselves were manufactured at Badenhausen in 25 Cornwells, Pennsylvania, and in the '30s up HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 30 1 until the '60s when Riley bought the United -- 2 Union Iron Works in Eerie, Pennsylvania. That 3 was in the '60s. 4 And then after that they added Riley 5 Southwest in Sapulpa, Oklahoma. And they added 6 another one in Shreveport, Louisiana. And they 7 subsequently closed Cornwells, closed -- sold 8 off Louisiana and sold off Oklahoma and right 9 today it's Eerie. 10 Q. Okay. Through the 1960s it's true 11 that all Riley Stoker boilers were manufactured 12 in Pennsylvania, correct? 13 A. One of two locations, yes. 14 Q. Okay. And could you tell the jury 15 what a stoker is? 16 A. A stoker is -- there's many 17 variations, but basically what it is, think of 18 it as an outdoor grill that you put charcoal on 19 the grill and light it and it burns. But in 20 this case it's a contained vessel so that the 21 burning of the charcoal on the grill actually 22 heats water. So basically it's a piece of 23 equipment that burns the fuel you need to run 24 the boiler. 25 Q. Okay. Sir, you would agree that from HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 31 1 at least the 1940s Riley Stoker held a position 2 of leadership within the boiler industry? 3 A. No. 4 MR. RADCLIFFE: Object to form. 5 Q. You wouldn't agree with that? 6 A. No. 7 Q. You're aware, sir, that Riley Stoker 8 has historically advertised in Power magazine, 9 correct? 10 A. I'm aware -- 11 MR. RADCLIFFE: Object to form. 12 A. -- they have advertised in Power 13 magazine. 14 Q. What is Power magazine, sir? 15 A. It's a trade magazine. 16 Q. Okay. For the utility and industrial 17 market? 18 A. Yes. 19 MR. STUEMKE: Mark this as Exhibit 2. 20 (Exhibit No. 2, Excerpt from Power 21 Magazine, May 1947 so marked) 22 Q. Sir, I've handed you Exhibit 2. Why 23 don't you take a quick look at that. 24 MR. RADCLIFFE: What was Exhibit 1? 25 MR. STUEMKE: The notice. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 32 1 MR. RADCLIFFE: Depo notice? 2 MR. STUEMKE: Yes. 3 MR. RADCLIFFE: Thank you. 4 Q. Sir, you see that Exhibit 2 is an 5 excerpt of Power magazine, May 1947? 6 A. I don't see a correlation on the page 7 back to the cover illustration you have there. 8 Q. Do you see on the third page there's a 9 copy of a cover of Power magazine dated 10 May 1947? 11 A. Yes, there is. 12 Q. Okay. And this is the same Power 13 magazine, as far as you know, that you would 14 agree Riley Stoker advertised in? 15 A. I believe it would be. 16 Q. Okay. The first two pages of 17 Exhibit 2 comprise a two-page advertisement for 18 Riley Stoker; is that correct? 19 A. That's what it appears to be, yes. 20 Q. Okay. And the heading of the 21 advertisement across both pages is "Ten Good 22 Reasons Why So Many Engineers Prefer Riley 23 Units"; is that correct? 24 A. That's what it says, yes. 25 Q. Okay. And then it points out various HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 33 1 features of Riley Stoker boilers, correct? 2 A. Yes. 3 Q. In fact, it points out various 4 features of Riley Stoker steam generating units 5 including auxiliary equipment, correct? 6 A. No. There's no -- these ten items 7 they have pointed out are not auxiliary 8 equipment. 9 Q. Okay. There's a -- look on the first 10 page at the bottom left of the diagram. 11 There's an item called a dust collector, 12 correct? 13 A. Yes. 14 Q. Is that part of the boiler or is that 15 auxiliary equipment? 16 A. Auxiliary equipment. 17 Q. Okay. And that's on the 18 advertisement? 19 A. It's shown on the advertisement. 20 Q. Okay. Also above that there's 21 something called a Riley air heater, correct? 22 A. Yes. 23 Q. Is that part of the boiler? 24 A. Yes. 25 Q. There's something called a Riley HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 34 1 pulverizer, correct, at the bottom right, sir? 2 A. Yes. 3 Q. Is that part of the boiler? 4 A. No. 5 Q. Is that auxiliary equipment -- 6 A. Yes. 7 Q. -- shown on the advertisement? 8 A. Yes. 9 Q. Then if you look at the second page of 10 the exhibit, sir, it goes through and gives a 11 detailed description of the ten reasons that 12 are highlighted by the advertisement. Do you 13 see that? 14 A. Yes, that's what it looks like. 15 Q. Okay. And the bottom paragraph says, 16 "These are just a few of the main distinctive 17 features of Riley's steam generating units 18 which assure continuous satisfactory operation 19 at high efficiency." Did I read that 20 correctly? 21 A. Yes. 22 Q. Okay. The paragraph goes on to state, 23 "Riley units had to be good for Riley to climb 24 so rapidly to a position of leadership in the 25 boiler industry." Did I read that correctly? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 35 1 A. You read what's there. 2 Q. Okay. Do you have any reason to 3 dispute, sir, that in 1947 Riley was in a 4 position of leadership in the boiler industry? 5 MR. RADCLIFFE: Object to form. 6 A. We were not the biggest boiler 7 manufacturer at that time. We never have been. 8 We never have been. We have some technological 9 advantages on certain kinds of boilers that 10 gave us a leg up on sales. If that's 11 leadership, it's a technical leadership. It's 12 not we are the best and the largest in the 13 industry. How you interpret it, either way. 14 Q. Okay. It sounds like the point you're 15 making is that the position of leadership is 16 somewhat vague, and you're not sure what's 17 intended by that; is that fair? 18 MR. RADCLIFFE: Object to the form. 19 That's not what he said. 20 A. I believe there is an issue of 21 technical leadership. It's not stated that 22 way, but what they're saying is they created a 23 boiler, and these particular attributes of the 24 boiler are better than someone else's. And 25 that's what they're trying to sell, is a better HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 36 1 mousetrap, so to speak. 2 Q. Okay. They're selling their technical 3 expertise in the quality of the engineering 4 that goes into their product; is that right? 5 A. It could be phrased that way, I 6 believe. 7 Q. That's fair. When they're referring 8 to position of leadership here, you think 9 that's a fair characterization? 10 A. Fair, what does "fair" really mean? 11 You think of one thing; I think another thing. 12 But this is what -- it says what it says. 13 They're saying it's leadership. 14 Q. Okay. Then it says, "You can rely on 15 Riley," correct? 16 A. Yes. 17 Q. That was a catch phrase of Riley 18 advertising for a while, wasn't it? 19 A. I don't know. I need to get some more 20 water. 21 Q. Also on Exhibit 2, sir, on the second 22 page, you see it lists a number of what it 23 refers to as recent contracts for Riley Stoker, 24 correct? 25 A. Yes. HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 37 1 Q. Down the right-hand column, and 2 including Interstate Power Company in Lansing, 3 Iowa? 4 A. Yes. 5 Q. Including probably 10 to 12 public 6 utilities plants and probably 15 or so industry 7 plants that are identified here; is that right? 8 A. There's 15 or 16 utilities and 9 probably more industrial plants. 10 Q. Okay. 11 MR. RADCLIFFE: Let's mark this as 12 Exhibit 3, please. 13 (Exhibit No. 3, Excerpt from Power 14 Magazine, January 1951 so marked) 15 Q. Sir, if you take a look at Exhibit 3? 16 A. (Witness complies) 17 MR. RADCLIFFE: Would you mind stating 18 for the record what Exhibit 3 is. 19 MR. STUEMKE: I was going to have him 20 do that, but just for your own edification, 21 Tom, it's the January 1951 edition of Power 22 magazine, an excerpt of it. 23 A. Not the whole magazine. 24 Q. I have the whole magazine if you'd 25 like, if you want to read the whole thing? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 38 1 A. No. It's about 12 to 13 pages here. 2 Q. Okay. And sir, these are double-sided 3 pages, correct? 4 A. Yes. 5 Q. Sir, if you turn to the -- strike 6 that. 7 The cover of Exhibit 3 indicates that 8 it is the January 1951 edition of Power 9 magazine, correct? 10 A. Yes. 11 Q. And the third page of the exhibit, 12 sir, is the first page of a two-page Riley 13 Stoker advertisement in the January '51 Power 14 magazine, correct? 15 A. Yes. 16 Q. Okay. And the heading going across 17 both pages of the two-page advertisement is, 18 "Why Do So Many Companies Repeatedly Order 19 Riley Boiler Units"; is that correct? 20 A. Yes. 21 Q. You see going across the bottom of the 22 two-page advertisement it's Riley complete 23 steam generating units that are being 24 advertised, correct? 25 A. The advertisement is for complete HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 39 1 steam generating units. 2 Q. Okay. And across the bottom of the 3 two-page advertisement it identifies the 4 various components of the complete steam 5 generating units being advertised, correct? Or 6 at least some of the components of it; is that 7 correct? 8 A. Some of the components. 9 Q. Okay. And the components that are 10 listed are boilers, pulverizers, burners, 11 stokers, super heaters, flue gas scrubbers, 12 economizers, water-cooled furnaces, steel-clad 13 insulated settings and air heaters, correct? 14 A. Yes. It's a list of products, not 15 necessarily on all one unit. 16 Q. You see on the second page there's the 17 question asked, "Why do so many companies 18 repeatedly order Riley boiler units?" Do you 19 see that? 20 A. Yes. 21 Q. And it indicates that "Large numbers 22 of the country's well managed leading public 23 utility and industrial companies have with 24 gratifying regularity placed repeat orders for 25 more Riley units when installing additional HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 40 1 steam generating units," correct? 2 A. That's what it says. 3 Q. And it goes on to say, "This 4 preference, this refusal to accept something 5 almost as good at a lower price tells a 6 significant story of the satisfactory 7 performance of Riley steam generating 8 equipment." Did I read that correctly? 9 A. Yes. 10 Q. Okay. You don't have any reason to 11 dispute that Riley Stoker steam generating 12 units were preferred by large numbers of the 13 country's public utility and industrial 14 companies, do you? 15 A. I have no idea. This is an ad in a 16 magazine. What's large numbers? I don't know 17 what that means. It's relative. I mean, they 18 do list actual places we've sold repeat orders. 19 Q. Sure. They list one, two, three four, 20 five, six, seven, eight, nine, 10, 11, 12, 13 21 different companies that have repeatedly 22 ordered Riley boiler units, correct? 23 A. They've had repeat orders. 24 Q. Okay. Including Interstate Power 25 Company, second from the bottom, correct? HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 41 1 A. Yes. 2 Q. Okay. Again, this fits in with what 3 you were telling the jury based on the prior 4 advertisement that Riley advertised their 5 technological expertise as being a big selling 6 point for Riley steam generating units, 7 correct? 8 A. That was what they wanted to be, yes. 9 Q. That's what they were claiming here, 10 correct? 11 A. They're saying customers once they get 12 one, they like them; they want another one. I 13 think a lot of it has also to do with the sales 14 area, salesmen. I can show you many, many 15 customers we don't have one single boiler in 16 their system. 17 Q. The advertisement also indicates that 18 Riley units have operating advantages resulting 19 from the many distinctive design 20 characteristics, liberal design, sound 21 engineering and excellent fabrication and 22 erection of Riley units; is that correct? 23 A. Yes. 24 Q. And it indicates at this point in 25 January 1951 that Riley sales are the highest HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 42 1 in its history, correct? 2 A. Yes. 3 Q. Okay. 4 A. That's a relative term too. I mean, 5 they have one one year and five the next. 6 Q. Sure. We can't tell from this exactly 7 how many Riley boilers are being sold, just 8 that they're selling more now in '51 than they 9 ever have before? 10 A. Right. And we can also tell how many 11 that it is of the industrial -- of the sales of 12 all of the boilers in the country. 13 Q. Sure. We'll get to that. The last 14 thing I want to mention on this advertisement 15 is, once again, it states the same phrase we 16 saw before, "You can rely on Riley," correct? 17 A. Yes, it does. 18 MR. STUEMKE: Let's mark this document 19 as Exhibit 4. 20 (Exhibit No. 4, Excerpt from Power 21 Magazine, December 1959 so marked) 22 Q. Would you take a look at Exhibit 4, 23 sir. 24 A. (Witness complies) Okay. 25 Q. And you see at the bottom of Exhibit 4 HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 43 1 that this is taken from Power magazine, 2 December 1959? 3 A. That is Power, December of 1959. 4 Q. Okay. And, once again, this is a 5 two-page Riley Stoker advertisement? 6 A. That's what it appears to be. 7 Q. Okay. Now, you were making a 8 distinction before between a Riley boiler and 9 then the auxiliary equipment that may be 10 associated with it when you're selling a steam 11 generating unit as a whole, correct? 12 A. Yes. 13 Q. And in the first page of Exhibit 4 14 they're describing Riley boilers equipped with 15 complete Riley fuel burning systems, correct? 16 A. Yes. 17 Q. Okay. That fuel burning system is a 18 piece of auxiliary equipment, correct? 19 A. It's a system. It's several pieces of 20 equipment. 21 Q. Okay. It's a system of auxiliary 22 equipment, correct? 23 A. It is the fuel system. 24 Q. Okay. It's not part of the boiler 25 proper, correct? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 44 1 A. It's required to make the boiler run, 2 and it's a product we made, manufactured. 3 Q. Right. But you didn't sell every 4 boiler with a Riley fuel burning system, 5 correct? 6 A. That's correct. 7 Q. Okay. And, obviously, if a Riley 8 boiler was sold with a Riley fuel burning 9 system, that would be more money for Riley, 10 correct? 11 A. We'd like to think a boiler would run 12 better because of it. 13 Q. And you also charge more than just 14 selling the boiler? 15 A. We charge for the product, yes. 16 Q. Sure. And this indicates that, "A 17 Riley boiler installation complete with Riley 18 fuel burning equipment assures Riley's 19 undivided responsibility." Do you see that? 20 A. Yes. 21 Q. This concept of undivided 22 responsibility is something that Riley focused 23 on a fair amount, correct? 24 MR. RADCLIFFE: Object to the form. 25 A. I think everybody did. Every boiler HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 45 1 manufacturer wanted as much that they could 2 get. 3 Q. Sure. It's a business? 4 A. It's a business and -- but it's a good 5 thing for the customer because when there's an 6 issue, they don't have -- they have one source 7 to go to. That was the goal of having this so 8 the customer has a better deal, and we can 9 actually control the issues. So when an issue 10 comes up, we can't say, look, it's not ours. 11 It's this guy over here. It's this guy over 12 here. 13 Q. Riley Stoker would have undivided 14 responsibility for as much of the steam 15 generating unit as it supplied, correct? 16 A. Yes. 17 Q. Okay. And they would be the expert on 18 that steam generating unit in its entirety as 19 opposed to only specifying components; is that 20 fair? 21 A. They would be an expert on the 22 products they designed and manufactured and how 23 they went together and how they worked. If 24 other components were put on there because of 25 the specification by a customer, they'd be on HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 46 1 there. 2 But to say we're the expert in a soot 3 blower or expert in a fan or motor, we're not 4 the experts in that. We depend on the designer 5 of the product to be the expert. We would be 6 responsible for forcing them to belly up to the 7 bar if something was wrong, but we would not be 8 the expert on every single aspect of it. 9 Q. Okay. But the point of the 10 advertising is to tell the customer that if you 11 buy all of this from us, then you have one 12 person that you look to if there's ever a 13 problem with your steam generating unit, 14 correct? It's our undivided responsibility? 15 A. Yes. 16 Q. Turning to the second page of the 17 advertisement, it indicates that Riley provides 18 skilled construction engineering services. Do 19 you see that? 20 A. Yes. 21 Q. Indicating that they're -- strike 22 that. 23 This indicates that Riley construction 24 crews employ the latest in construction methods 25 and techniques, correct? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 47 1 A. That's what it says. 2 Q. Okay. It also references the Riley 3 service engineers that are trained for prompt 4 and efficient servicing of all Riley 5 installations, correct? 6 A. That's what it says, yes. 7 Q. It says, "These experienced engineers 8 work closely with your operators," correct? 9 A. That's right. 10 Q. Getting back to the theme that we've 11 seen in other advertisements, language going 12 across the middle of the page basically is 13 "Riley Custom Boiler Engineering Know-How and 14 Combustion Techniques, Selectivity of Fuel 15 Burning Equipment Can Give You Top Performance 16 Regardless of the Nature of Fuel, Load and 17 Steam Conditions," correct? 18 A. That's what it says, yes. 19 Q. And scrolling across the bottom of 20 this reference it states that "A survey of your 21 plant by a qualified consulting engineer can 22 show you ways" -- and it's a little difficult 23 to make out here, to, perhaps maximize savings 24 in your power costs. Do you see that? Can you 25 make out that exact language? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 48 1 A. No. 2 Q. Okay. It is difficult to read just 3 the way the copy came out? 4 A. This is -- something missing in there, 5 but there's something about "have a consulting 6 engineer show you ways to" blank, blank, blank, 7 "savings and power costs." 8 Q. Okay. And so Riley had consulting 9 engineers that it would send out to customers' 10 locations to talk to them about ways they could 11 save on power costs; is that correct? 12 A. We were not consulting engineers per 13 se like that. 14 Q. Okay. You'd agree this advertisement 15 is suggesting to the potential customer that 16 they could have Riley send a qualified 17 consulting engineer to the plant? 18 A. That is not what that says. This says 19 that a survey of your plant by a qualified 20 consulting engineer can show you ways to do 21 whatever and save money. 22 Q. If a customer called Riley Stoker in 23 response to this ad and said, I'd like to have 24 a qualified consulting engineer come to my 25 plant and tell me how I can save money, would HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 49 1 Riley Stoker be able to send somebody there or 2 would they say, Sorry, can't help you? 3 A. They would probably arrange to get 4 someone there to help them out. 5 Q. All right. Once again, in this 6 exhibit they identify a number of public 7 utilities that are using Riley equipment, 8 correct? 9 A. Yes. 10 Q. Okay. And that includes Interstate 11 Power Company, correct? 12 A. Yes. 13 Q. It indicates that Interstate Power 14 Company's purchased seven boilers or seven 15 steam generating units from Riley, correct? 16 A. Seven boilers, yes. 17 Q. It doesn't say boilers; it says Riley 18 equipment, correct? 19 A. Right. 20 MR. STUEMKE: Mark this as Exhibit 5, 21 please. 22 (Exhibit No. 5, Excerpt from Power 23 Magazine, April 1965 so marked) 24 A. Okay. 25 Q. Sir, you see that Exhibit 5 is another HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 50 1 Riley advertisement from Power magazine? 2 A. Yes. 3 Q. Okay. You see the Power magazine 4 cover page indicates it's April 1965? You can 5 only see the last two letters of the month, but 6 we know it's April, right? 7 A. I-L 1965. 8 Q. There's no other months that end in 9 I-L other than April, are there? 10 A. No. 11 Q. Exhibit 5 indicates that "Riley has 12 set the record for selling the world's largest 13 industrial boiler," correct? 14 A. That's what the ad says, yes. 15 Q. Okay. It even says that it's the 16 third time within a year that Riley Stoker has 17 sold a boiler which they understand to be the 18 world's largest industrial boiler, correct? 19 A. Correct. They say, "To the best of 20 our knowledge, this is the largest industrial 21 boiler in the free world." 22 Q. Okay. Would you agree with me, sir, 23 that by 1965 Riley had assumed a position of 24 leadership in the boiler industry at least when 25 it comes to making the biggest boilers in the HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 51 1 world? 2 A. The biggest industrial boiler, they 3 did -- that was what they did in '65. 4 Q. Okay. Industrial boilers are the 5 biggest boilers there are, right? 6 A. No. 7 Q. What boilers are bigger than 8 industrial boilers? 9 A. Utilities, a utility boiler. 10 Q. They're drawing a distinction here 11 between a power plant boiler and an industrial 12 boiler? 13 A. Yes. 14 Q. Okay. Sir, you would agree with me 15 that by April 1965 Riley had established itself 16 in a position of leadership in the boiler 17 industry when it comes to selling the largest 18 industrial boilers in the world? 19 A. They had sold the largest industrial 20 boiler as of that time. 21 MR. STUEMKE: Mark that as Exhibit 6, 22 please. 23 (Exhibit No. 6, Excerpt from Power 24 Magazine, February 1966 so marked) 25 Q. Sir, you see that Exhibit 6 is an HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 52 1 excerpt from the February 1966 edition of Power 2 magazine? 3 A. Yes. 4 Q. And that the first two pages comprise 5 a two-page Riley Stoker advertisement, sir? 6 A. Yes. 7 Q. Okay. And, once again, Riley Stoker 8 is listing in this advertisement a number of 9 the utility companies that have purchased its 10 steam generators, correct? 11 A. Yes. 12 Q. Okay. And Riley Stoker here 13 advertises that over 100 million pounds per 14 hour of generated steam for these good Riley 15 boiler customers, correct? 16 A. Yes. 17 Q. Okay. We've talked some about Riley 18 assuming a position of leadership within the 19 boiler industry. This advertisement indicates 20 that a recent survey showed that of 151 21 domestic investor-owned electrical utilities 22 operating thermal power plants, 63 or 23 41.7 percent of them have installed Riley 24 boilers or have them on order, correct? 25 A. That's what it says. HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 53 1 Q. Okay. You don't have any reason to 2 dispute that? 3 A. Not what they said here. 4 Q. Okay. Sir, wouldn't you agree that a 5 company that's sold almost 42 percent of the 6 boilers in use in electrical utility power 7 plants has assumed a position of leadership in 8 that industry? 9 A. No. That is not what that says. 10 Q. That's not what that says? 11 A. No. 12 Q. Okay. You think that by 196 -- excuse 13 me, by February 1966 Riley Stoker has still not 14 assumed a position of leadership in the boiler 15 industry? 16 A. No. What this ad says is that -- 17 they're not saying how many boilers. These are 18 not all the electrical utilities in the 19 country. These are investor-owned utilities. 20 There's a lot of municipal utilities. There 21 are REA. There's a wide range of -- all this 22 says is of that 41 percent of this grouping has 23 bought at least a boiler from Riley. 24 We don't know what the whole 25 population is. I know for a fact that Riley HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 54 1 Stoker, when all was said and done, had a grand 2 total of about 8 or 9 percent of the industry 3 when I was at Riley. That was what -- the 4 dominant ones were, CE, B&W, and Foster Wheeler 5 was third, and we were the last on the totem 6 pole. 7 MR. STUEMKE: I'll object as 8 nonresponsive. 9 Q. Sir, you don't have any reason to 10 dispute that by 1966 41.7 percent of the 151 11 domestic investor-owned electrical utilities in 12 the country operating thermal power plants had 13 installed Riley boilers or had them on order, 14 do you? 15 A. I do not dispute that. 16 Q. You see also on the first page of 17 Exhibit 6, sir, at the bottom, once again, it 18 states, "A careful survey of your plant by," 19 probably, a qualified, but it says "consulting 20 engineer." It again makes reference to a power 21 plant customer should have a qualified 22 consulting engineer take a look at their power 23 plant; is that fair? 24 A. Yes. 25 Q. Again, if a customer called Riley HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 55 1 Stoker and said, We'd like to have you send a 2 qualified consulting engineer to our plant, 3 Riley Stoker would arrange for that to happen, 4 true? 5 A. We will participate in some manner, 6 yes. 7 MR. STUEMKE: Let's mark this as the 8 next exhibit, No. 7. 9 (Exhibit No. 7, Complete Riley Steam 10 Generating Units so marked) 11 Q. Take a look through Exhibit 7 if you 12 would, sir. 13 MR. STUEMKE: We've been going for a 14 little bit over an hour. Why don't we go ahead 15 and take a break. During that break you can 16 take a look through this. 17 THE VIDEOGRAPHER: The time is 11:13. 18 We're off the record. 19 (Recess 11:13 a.m. to 11:19 a.m.) 20 THE VIDEOGRAPHER: This is the 21 beginning of tape number two. We're back on 22 the record. The time is 11:20. 23 BY MR. STUEMKE: 24 Q. Sir, you've now had an opportunity to 25 glance through Exhibit 7, correct? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 56 1 A. Yes. 2 Q. Can you identify Exhibit 7, please? 3 A. The best of my ability, it looks like 4 a compilation of several different Riley 5 brochures. 6 Q. Okay. These appear to you based on 7 your experience with the company to be 8 authentic Riley Stoker documents? 9 A. They say Riley Stoker. 10 MR. RADCLIFFE: Object to form. 11 Q. You don't have any reason to believe 12 that these are not authentic Riley documents, 13 correct? 14 MR. RADCLIFFE: Object to the form. 15 A. I have no reason to believe they are 16 or they aren't other than they say Riley 17 Stoker. 18 Q. Okay. Sir, if you look to page 12 -- 19 strike that. 20 Let's look first at the cover of 21 Exhibit 7. The cover of Exhibit 7 is labeled 22 "Complete Riley Steam Generating Units," 23 correct? 24 A. Yes. 25 Q. And then down the left-hand side of HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 57 1 the cover it identifies the various elements of 2 those steam generating units, correct? 3 A. Yes. 4 Q. Okay. And those elements include 5 boilers, water-cooled furnaces, super heaters, 6 reheaters, economizers, air heaters, 7 indoor/outdoor steel-clad insulated settings, 8 gas, oil, coal burners, stokers and 9 pulverizers, correct? 10 A. Yes. 11 Q. If you turn, sir, to page 12, I'll 12 show you what it looks like so you can find it 13 easily. 14 A. (Witness complies) 15 Q. Okay. Actually, look at page -- 16 THE WITNESS: She's bringing in more 17 water. 18 MR. STUEMKE: Just what we need. 19 Q. Sir, looking at pages 12 and 13 of 20 Exhibit 7, we see again the one contract one 21 responsibility theme, correct? 22 A. Yes. 23 Q. Okay. Again, it says, "Because Riley 24 designs, manufactures and erects the complete 25 steam generating unit including every type of HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 58 1 fuel burning equipment, the purchaser can place 2 one contract with undivided responsibility for 3 the complete unit with Riley, thus preventing 4 the possibility of difficulties which often 5 arise when divided responsibility is involved." 6 Did I read that correctly? 7 A. You read what's there. 8 Q. It goes on to state on the next page, 9 "With Riley designing all the elements of a 10 complete boiler unit, a coordinated, well 11 balanced installation results. With undivided 12 responsibility, close cooperation as possible 13 among the purchaser, his consulting engineer 14 and Riley, for efficient and expeditious 15 handling of the contract." Did I read that 16 correctly? 17 A. Yes. I'd like to point out that what 18 they are saying here I totally agree with, the 19 complete boiler unit. The components listed on 20 the cover are part of the boiler unit. It does 21 not including the auxiliaries that we were 22 talking about earlier. 23 Q. See on page 12 there's a heading, "A 24 Typical Riley Steam Generating Unit Going Up," 25 and then there are a series of illustrations of HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 59 1 various phases of erection of a boiler, 2 correct? 3 A. It's primarily the drum raising is 4 what they're showing here. That's the first 5 phase. 6 Q. And the heading -- the title of this 7 document says, "Complete Riley Steam Generating 8 Units," correct? 9 A. Back on page one. 10 Q. Yes, sir. 11 A. Yes. 12 Q. And you just testified that the 13 products that are listed down the left-hand 14 side of the first page are the various elements 15 of those complete Riley steam generating units, 16 true? 17 A. I believe Riley steam -- it's the 18 complete boiler. This would be the complete 19 product that Riley would do for the boiler. It 20 would not -- this would not allow the unit to 21 run as a steam generating unit by itself. 22 That's the struggle I'm having. 23 Q. Okay. Well, a boiler is an element of 24 a complete stem generating unit, correct? 25 A. Yes. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 60 1 Q. Okay. As are the various other items 2 that are listed down the left-hand side of the 3 first page of Exhibit 7, correct? 4 A. Yes. 5 Q. Okay. And is it now your testimony 6 that the one contract, one responsibility that 7 Riley is talking about on pages 12 and 13 is 8 only for the boiler element; is that what 9 you're telling this jury? 10 MR. RADCLIFFE: Object to the form. 11 A. No. 12 Q. Okay. 13 A. Because these are the products that we 14 have some involvement in designing or 15 specifying. I've personally been on jobsites 16 where the owner has said, I want you to erect 17 everything, even if you didn't supply it, that 18 makes up the steam, the boiler. They call it 19 the boiler island, which is all the pieces. 20 And then there's a turbine island, and then 21 there's the balance of plant island. 22 Q. Sure. 23 A. And it's just -- I just don't want to 24 get overly simplistic, just the boiler, it's 25 just this. There's a lot of pieces here. HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 61 1 Q. Sure. And I think you and I are 2 talking a little bit at cross purposes. I 3 don't think we're disagreeing here. 4 A. Okay. 5 Q. My point simply is that one of the 6 ways that Riley marketed itself to its 7 customers was that you should buy all of these 8 elements from us that are listed on the first 9 page; that way there will be one undivided 10 responsibility for that entire steam generating 11 unit, including all of those elements. Is that 12 right? 13 A. That would be Riley's desire, yes. 14 Q. Okay. They're pointing out if you buy 15 it all from us, then there's one contract, 16 undivided responsibility, and you only have one 17 person to look to for all of those different 18 elements, correct? 19 A. Listed, yes. 20 Q. Now, we've talked about, and you've 21 mentioned several times that the scope of what 22 Riley would do would be determined by whatever 23 the purchaser wanted, whatever they contracted 24 for, correct? 25 A. Yes. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 62 1 Q. The contract responsibility of Riley 2 Stoker frequently included installation, 3 correct? 4 A. It did include sometimes, yes. 5 Q. Okay. Actually, if we look back at 6 Exhibit 2 that we looked at earlier, you'll 7 see, again, this is the 1947 Power magazine 8 advertisement, correct? 9 A. Yes. 10 Q. Okay. And you see on the second page, 11 sir, one of the items that Riley is pointing 12 out as a reason that so many engineers prefer 13 their products is the flanged air and gas tight 14 casing, correct? 15 A. Yes. 16 Q. Can you tell the jury what the casing 17 is? 18 A. The casing is the -- it can be 19 interior casing and exterior casing on certain 20 components. We have wide space tubes that have 21 -- made for a penthouse or something like that. 22 Essentially, the casing is put onto the boiler 23 after you do all the pressure part work, 24 including the tubes, etcetera. 25 Then you apply your external setting, HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 63 1 insulation, and then you wrap that with a steel 2 casing that is fully welded, very similar to 3 the casing I describe on a stove in your home. 4 It seals everything in. And these have to be 5 totally gas tight. You can't have any leaks in 6 them for anything to come out of that casing. 7 So the entire boiler is wrapped in a steel 8 envelope, so to speak. 9 Q. And what this is saying is flanged air 10 and gas tight casing. What does the "flange" 11 refer to? 12 A. That's where you would -- it's a -- 13 they're steel panels. To join they would often 14 put a flange on them and weld the flange, and 15 that's how you sealed it. 16 Q. Okay. And this paragraph, again, from 17 the 1957 advertisement states, "The heavily 18 insulated setting minimizes radiation losses," 19 correct? 20 A. Yes. 21 Q. Okay. And radiation is a form of heat 22 energy, correct? 23 A. It is heat. They're trying to keep 24 the heat in the boiler and away from the people 25 outside the boiler. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 64 1 Q. Right. And in order to do that, you 2 put a lot of insulation in the casing? 3 MR. RADCLIFFE: Object to form. 4 A. You put the required insulation for 5 the temperature and conditions required. 6 Q. To use Riley's words, "You heavily 7 insulate the setting," correct? 8 A. That's what it says. 9 MR. RADCLIFFE: Object to form. 10 Q. That's a fair characterization of it, 11 isn't it? 12 MR. RADCLIFFE: Object to form. 13 A. It's relative to the temperature of 14 the boiler. I mean, you got some boilers that 15 are upwards of 2,200 degrees; others are down 16 to 300 or 400. They're going to have a 17 different amount of insulation on them. 18 Q. Sure. But they're all going to have 19 insulation? 20 A. Yes. 21 Q. Okay. Covering the entire area of the 22 boiler, correct? 23 MR. RADCLIFFE: Object to form. 24 A. The boiler has to be insulated. 25 Q. Okay. HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 65 1 A. Yes. 2 Q. Turning your attention back, sir, to 3 Exhibit 7, I'm looking at page three in one of 4 the sections. It's the page that looks like 5 this, sir. This page is talking about the 6 boiler settings for Riley steam generating 7 units, correct? 8 A. Yes. 9 Q. Okay. And this states that "Boiler 10 settings" -- I'm reading the first paragraph. 11 "Boiler settings for Riley steam generating 12 units are designed, engineered and fabricated 13 to assure permanent air and gas tightness at 14 all ratings and pressures." And that's what 15 you were just talking about with the jury, 16 correct? 17 A. Yes. 18 Q. Okay. It says, "Materials used and 19 methods of fabrication employed are selected to 20 meet the maximum in operating requirements and 21 to keep maintenance costs at a minimum." What 22 does that mean, sir? 23 A. There are many -- as you probably have 24 seen, there are many different types of 25 settings used depending on the type of HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 66 1 construction of the boiler itself. There's 2 many different versions of boilers. And they 3 want to do it right the first time so that we 4 don't have to go back and have any maintenance 5 on it. 6 Because if you have a problem with 7 your casing, you're probably going to be -- 8 have the unit come down for repairs because you 9 cannot operate with gas leaks or with anything 10 like that. So they maximize it. They use 11 everything they need to so the customer won't 12 have problems. 13 Q. Okay. And then underneath the 14 paragraph I just read there are four 15 subparagraphs entitled "Effective Expansion 16 Provisions, Construction is Sturdy, Low 17 Radiation Loss and Modern in Appearance," 18 correct? 19 A. Yes. 20 Q. Okay. And again, it says, "low 21 radiation loss." It's talking about heat loss, 22 correct? 23 A. This paragraph is talking about 24 potential heat loss, yes. 25 Q. What that says is, "Adequate thickness HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 67 1 of top quality insulating materials used in 2 Riley settings ensure against radiation loss 3 and provide cool external surfaces," correct? 4 A. That's what it says, yes. 5 Q. Okay. And so here Riley is indicating 6 that they use only top quality insulating 7 materials, correct? 8 A. That's what it says, yes. 9 Q. You don't have any reason to dispute 10 that, do you? 11 A. No. 12 Q. Okay. Now, I just want to walk 13 through a few of those paragraphs with you. 14 The next page, sir, is a continuation, it looks 15 like, this is entitled "Construction," correct? 16 A. Okay. 17 Q. And this indicates that -- the 18 standard roof design section says, "The 19 standard roof section utilizes a layer of heavy 20 interlocking or "T" tile covered with a layer 21 of high-temperature block insulation and a 22 layer of mineral wool felt compressed by a 23 steel roof casing," correct? 24 A. Yes. 25 Q. And off to the right we have a diagram HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 68 1 of what, sir, the top picture on the right-hand 2 column? 3 A. Could be a picture of that roof 4 design, but there's a lot of black in there. I 5 don't see any tubes there. 6 Q. Do you see tubes running diagonally 7 across underneath the tiles? 8 A. They shouldn't be that far apart on a 9 roof. If your -- I don't see them as tubes. 10 That's what you're telling me they are. 11 Q. No, I'm asking you. If you can't 12 tell, that's fine. 13 A. I really can't, but this is -- it 14 could be a picture of roof design. 15 Q. The next page is talking about the 16 side walls for contingent tubes, and it refers 17 to the high-temperature plastic refractory then 18 high-temperature block insulation and then 19 followed again by the mineral wool felt. Do 20 you see that? 21 A. Yes. 22 Q. Then turning to the next page, sir, 23 you see again under "Refractory Supports" it 24 references -- excuse me, sir, do you see under 25 "Single Header Hopper Bottom Units" again it HG LITIGATION SERVICES HGLITIGATION.COM

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1 references plastic refractory or interlocking
2 tile backed by a layer of block insulation with
3 mineral wool felt compressed between the block
4 insulation and the steel casing, correct?

5 A. Yes.

6 Q. And what we're seeing here is
7 basically the way that the heat of the boiler
8 is prevented from escaping outside into
9 whatever facility it's installed in, correct?

10 A. What we're seeing here is the
11 configuration to keep the heat in the boiler
12 and to keep it from going out.

13 Q. Right.

14 A. Both have to be done to make this an
15 effective boiler.

16 Q. Okay. And if you're starting inside
17 the boiler itself where all the heat is, the
18 first level of defense that you get to as you
19 move outward is the tile, correct?

20 A. Well, the first level is the tubes.

21 MR. RADCLIFFE: Objection to form.
22 Now, are you talking about a specific boiler or
23 are you just talking in general?

24 MR. STUEMKE: I'm talking boiler
25 design in general.

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1 MR. RADCLIFFE: I object to the form.
2 It's misleading, and you haven't established
3 that all boilers are the same.

4 MR. STUEMKE: Okay.

5 Q. Sir, talking about boilers in general,
6 you said all boilers are insulated, correct?

7 A. Yes.

8 Q. Okay. Now, if you're inside a boiler,
9 number one, you hope it's not on, but, number
10 two, if you want to look at how that boiler
11 prevents heat from escaping into the factory or
12 whatever facility it's in, you indicated that
13 the first level of defense of heat escape would
14 be the tubes; is that right?

15 A. Yes.

16 Q. And that's the function of a boiler is
17 to transfer heat from the inside of the boiler
18 to the water in the tubes, correct?

19 A. Yes.

20 Q. Okay. But all the heat is not
21 absorbed by the water in the tubes, correct?

22 A. That's correct.

23 Q. Okay. After the tubes what's the next
24 layer that you come to in terms of what
25 prevents the heat from escaping?

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1 A. It depends on the construction of the
2 boiler.

3 Q. And also the area of the particular
4 boiler you're looking at, correct?

5 A. Yes.

6 Q. Okay.

7 A. You have many different tube
8 configurations depending on what area of the
9 boiler you're in, what year the boiler was
10 designed. As design moves forward, you
11 progress. And the in '60s they were getting to
12 the point where they were getting into welded
13 wall construction. And we have no date on this
14 document, so I have no idea when this document
15 came out.

16 Q. Okay. Let me just address that real
17 quick, sir.

18 A. I don't know whether this was '40s,
19 '50s, '60s, '70s.

20 Q. There is actually a print date. If
21 you go back toward the front of the exhibit by
22 one, two, three, four, five, six, seven, you
23 come to this page. Do you see at the bottom
24 right it says, "Printed in the U.S.A." Do you
25 see that?

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1 A. Yes.

2 Q. "4M5" and then "57" at the end?

3 A. That's what it says.

4 Q. You understand that to refer to a
5 print date of 1957?

6 A. No. I don't know what that means. It
7 says printed, but I don't know if that means --
8 what's 4M? It's not the fourth month because
9 then you have a five and that would have been
10 May '57. And this is the first -- that's the
11 first -- I can't count how many pieces we have
12 in this package, but it looks like there is as
13 least three or four.

14 Q. Okay.

15 A. Maybe five.

16 Q. In your review of this document, you
17 didn't see anything that was inconsistent with
18 the way Riley Stoker boilers were designed and
19 erected in the 1950s, did you?

20 A. I wasn't there in the '50s. I've
21 worked on boilers that were erected in the
22 '50s.

23 Q. Okay. You didn't see anything in here
24 that was inconsistent with that, correct?

25 A. No. It's a wide variety of different

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J. MICHAEL SMITH Page 73 1 applications that Riley could produce. 2 Q. Okay. So getting back to the question 3 of what one encounters as one moves outward 4 from the boiler to the facility in which it's 5 installed, you first come to the tubes. Next 6 you'll come to some type of a refractory 7 material, either a refractory cement or a brick 8 or something of that nature, correct? 9 A. It will be an insulating cement or 10 insulating brick. It will not be a refractory. 11 The outside of the boiler is insulation. Once 12 again, where I was going with it, it depends on 13 the configuration of the tubes. Like in the 14 '60s the first line was the tubes themselves, a 15 fin welded between them and that was it. After 16 that we just had mineral wool and casing, real 17 simple. That was all that was done. All this 18 evolved over the years. 19 Q. Sure. 20 A. And these here are showing tangent 21 tubes which is not the same thing as a welded 22 wall. A tangent tube essentially is supposed 23 to touch, but they're very, very, very, very 24 close. 25 Q. Sure. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 74 1 A. There they would just put a tile 2 behind them, and then they go multiple layers 3 because you cannot have any joints that line up 4 because that would be an escape route for 5 gases. So you would offset on three different 6 layers, and then you put the gas tight casing 7 on the outside. 8 Q. Okay. And the multiple layers you're 9 referring to are what? 10 A. Well, the ones that they're showing 11 here essentially is a plastic refractory, 12 high-temp block insulation, mineral wool and 13 then the steel casing. 14 Q. Okay. Sir, if you turn to page nine 15 in this section which looks like this -- 16 A. (Witness complies) 17 Q. There you go. There's a paragraph at 18 the top headed "Minimum Radiation Loss," 19 correct? 20 A. Yes. 21 Q. Okay. And they talk about the 22 efficiency of the insulation that is done on 23 Riley's settings, correct? 24 A. They are talking about the 25 efficiencies. I see it's a factual chart of HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 75 1 the tile face temperature and the outside 2 casing temperature. 3 Q. Okay. And in this chart when it says 4 "tile face temperature," that's the temperature 5 of the air and gases and whatnot inside the 6 boiler that reaches the first surface of the 7 tile, correct? 8 A. If that's the configuration. 9 Q. Right. 10 A. Yes. 11 Q. But that's what the chart's referring 12 to? 13 A. I've never seen this before, so I 14 really don't know. 15 Q. That's the reasonable reading of the 16 chart, correct? 17 A. It could be a reasonable reading, yes. 18 Q. This refers to if the tile face 19 temperature is 1,600 degrees Fahrenheit, 2,000 20 degrees Fahrenheit or 200 degrees Fahrenheit, 21 then the temperature of the outside casing 22 which is, you know, after the high-temp 23 insulating block, after the mineral wool, the 24 temperature of the outside casing itself is 25 reduced to 103 degrees, 109 degrees and HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 76 1 111 degrees respectively, correct? 2 A. That's what the chart shows, yes. 3 Q. So what that demonstrates to us that 4 the -- number one, the insulation that Riley 5 Stoker is using was effective in reducing the 6 outside casing temperature of the boiler to 7 what is a safe and workable level outside the 8 boiler; is that fair? 9 A. Yes. 10 MR. RADCLIFFE: Object to the form. 11 Q. And reducing the outside casing 12 temperature to a safe and workable level was 13 something that's necessary in order to actually 14 utilize a boiler in a plant, correct? 15 A. It's necessary for personal safety. 16 Q. Okay. And that's engineering that is 17 performed by Riley Stoker in order to determine 18 the amount of insulation that's necessary given 19 the configuration of the boiler to reduce the 20 outside casing temperature to a safe level, 21 correct? 22 A. No. 23 MR. RADCLIFFE: Object to the form. 24 A. I don't agree with that. Riley Stoker 25 would come up with a configuration like we HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 77 1 looked at earlier that this will be ASME code. 2 It will be -- it will do this, this, the 3 customer's spec, whatever it is. Then this is, 4 okay, the way we want to do it, and everyone 5 agrees. Then they go to the insulation people 6 and say, What do you have that will do this 7 job? We want to do some block here. We want 8 to use mineral wool here, whether the 9 thickness. What do we need to do? And that's 10 how it would be done because we didn't design 11 the insulation. 12 Q. Okay. 13 A. We came up with the configuration to 14 safely protect the boiler in and boiler out, 15 but the design of the actual insulation was the 16 responsibility of the insulation companies, the 17 refractory companies or whatever it was. They 18 gave us what they would put in that 19 application. 20 Q. Okay. 21 MR. STUEMKE: I'm going to object as 22 nonresponsive. 23 Q. I think you're hearing a different 24 question than what I asked. My question, sir, 25 is: Riley Stoker decided how much insulation HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 78 1 in terms of thickness and whatever else needed 2 to be put between the inside of the boiler and 3 the outside to reduce the casing surface 4 temperature to a safe level, correct? 5 A. No. 6 MR. RADCLIFFE: Objection. Asked and 7 answered. 8 A. No. The thickness of insulation was 9 determined by the insulation manufacturers. We 10 told them what we wanted to do. We want to put 11 -- what the characteristics of the material 12 were as far as is it hard; is it soft, whatever 13 it was. And we want to reduce temperature from 14 A to B. And they came back and told us what to 15 put in there. They designed the insulation and 16 the thickness, etcetera. 17 Q. Okay. So are you telling the jury 18 that Riley Stoker engineers, whenever they were 19 designing a boiler, sent letters to insulation 20 manufacturers saying, How thick do I need to 21 make the insulation? 22 A. No. 23 Q. Now, if Riley Stoker was responsible 24 for insulation in their contract, Riley Stoker 25 would either subcontract the work out to an HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 79 1 insulation contractor or hire employees 2 directly from the union hall to do that work, 3 correct? 4 A. Would you repeat that? I'm sorry. 5 Q. Yes, sir. In the case of when Riley 6 Stoker contracts to sell a boiler, if they're 7 responsible under that contract for the 8 insulation, there would be one of two ways that 9 Riley Stoker would go about fulfilling that 10 obligation. Either they would subcontract the 11 work out to an insulation contractor or they 12 would go down to the union hall and hire 13 employees directly from the hall to do the 14 insulation work, correct? 15 MR. RADCLIFFE: Object to form. 16 A. Those are two ways, yes. 17 Q. Okay. It's true that Riley Stoker did 18 not field erect all the boilers it sold, 19 correct? 20 A. We did not do the erection on all the 21 boilers, no. 22 Q. Okay. Riley Stoker erected some of 23 the boilers, but in some circumstances the 24 customer would chose to use a different 25 erector, correct? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 80 1 A. Yes. 2 Q. But you would agree that even if the 3 customer selected their own erector, Riley 4 Stoker would always have representatives 5 on-site to supervise the construction of 6 boiler, correct? 7 A. Not always -- 8 MR. RADCLIFFE: Objection to form. 9 A. -- no, no. 10 Q. Are you familiar with Harold Ritter? 11 A. Yes. 12 Q. Who is Harold Ritter? 13 A. He worked at Riley for quite a while. 14 I knew him for a few years, quite a few years 15 before he retired. 16 Q. He started working for Riley when, 17 sir? 18 A. I don't know. I did or he did? 19 Q. I'm sorry, Mr. Ritter started working 20 for Riley when? 21 A. I have no idea. 22 Q. You understand that Mr. Ritter has 23 been deposed on behalf of Riley Stoker in 24 asbestos litigation, correct? 25 A. I've been told that he was deposed. HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 81 1 Q. Okay. You've never read any of his 2 deposition transcripts? 3 A. No. 4 Q. Okay. Sir, I'm going to show you a 5 portion of the deposition transcript of Riley 6 Stoker Corporation through its designee Harold 7 Ritter that was taken March 5, 2003. I show 8 you first the front page. Do you see this is 9 the deposition of Riley Stoker Corporation 10 through its designee Harold Ritter? 11 A. Yes. 12 Q. Okay. Then you see March 5, 2003, 13 correct? 14 A. Yes. 15 Q. Okay. And I'm turning, sir, to page 16 19 of the transcript. Do you see here starting 17 on line 7, "If the customer selected their own 18 erection company, did Riley Stoker send 19 representatives to the field to supervise the 20 construction of the boiler?" There's an 21 objection, and then the answer is, "Yes, they 22 did." Do you see that? 23 A. Yes. 24 Q. Do you have any reason to change the 25 testimony of Riley Stoker today with respect to HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 82 1 that question, sir? 2 A. Can I see that again? 3 MR. RADCLIFFE: I object to form. 4 It's improper impeachment. Go ahead and 5 answer. 6 A. I have no idea why he said this, but I 7 know for a fact that there was many boilers we 8 had no one there when the boilers were erected. 9 I also was project manager, though, who was 10 responsible for a lot of these and ran 11 divisions. So I possibly had some more 12 experience than he did. He was inside 13 engineering. 14 Q. Would you change Mr. Ritter's 15 testimony as the designee of Riley Stoker to be 16 that Riley Stoker frequently would have 17 representatives on-site to supervise the 18 construction of the boiler by a different 19 company? 20 A. You're saying -- 21 MR. RADCLIFFE: The witness is not 22 here to change Mr. Ritter's testimony. You're 23 free to ask him a question, and he'll give the 24 answer, but he's not here to change testimony. 25 MR. STUEMKE: For the record, it's HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 83 1 Riley Stoker's testimony, not Mr. Ritter's. 2 MR. RADCLIFFE: It is a witness; it is 3 a person. He's not here to change this 4 person's testimony. 5 A. I know that it's certain jobs that 6 Riley Stoker sold that we did not have 7 representatives on-site during the erection or 8 startup of the boilers. 9 Q. Okay. Most of the time they did? 10 A. A majority of the time they did. 11 MR. RADCLIFFE: Object to form. 12 Q. Okay. And just for the record and 13 because of the objection, the majority of the 14 time when a Riley Stoker boiler was being 15 erected by some other company, Riley Stoker 16 representatives were on-site to supervise the 17 erection, correct? 18 MR. RADCLIFFE: Object to form. 19 A. Depended on the contract. 20 Q. Based on your experience, the majority 21 of the time there was a Riley Stoker 22 representative on-site, true? 23 A. Majority being more than 50 percent, 24 yes. 25 Q. Sir, I want to ask you about the HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 84 1 asbestos components that were historically 2 incorporated within Riley steam generating 3 units. Historically, Riley Stoker incorporated 4 gaskets, correct? 5 MR. RADCLIFFE: Object to form. 6 Q. Strike that. 7 Historically, Riley Stoker steam 8 generating units incorporated 9 asbestos-containing gaskets, correct? 10 MR. RADCLIFFE: Object to form. 11 A. We had gaskets on certain components 12 of the boiler. 13 Q. That contained asbestos? 14 A. Some might have contained -- some did 15 contain asbestos, others did not. 16 Q. But on every Riley Stoker steam 17 generating unit sold at least before the mid 18 1980s, there would have been 19 asbestos-containing gaskets, true? 20 A. I don't know. 21 MR. RADCLIFFE: Object to form. 22 Q. Are you aware of a single Riley Stoker 23 boiler that was ever sold before the mid 1980s 24 that did not include at least one 25 asbestos-containing gasket? HG LITIGATION SERVICES HGLITIGATION.COM

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1 A. I don't know because some of the
2 gaskets were not labeled in the contracts I
3 reviewed. I've seen many jobs where they want
4 stainless steel all through on the areas that
5 later that -- other times you've seen asbestos
6 labeled gasket. You've seen Flexitallic. So I
7 don't know every single job definitely had an
8 asbestos gasket.

9 Q. Okay.

10 MR. STUEMKE: And I'll object as
11 nonresponsive.

12 Q. I'm actually asking you, sir, whether
13 you can identify for the jury a single Riley
14 Stoker steam generating unit sold before the
15 mid 1980s that did not include an asbestos
16 gasket?

17 A. No.

18 Q. Riley Stoker steam generating units
19 historically incorporated asbestos-containing
20 rope, correct?

21 MR. RADCLIFFE: Object to form.

22 Q. Strike that.

23 Riley Stoker steam generating units
24 historically incorporated asbestos rope,
25 correct?

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1 MR. RADCLIFFE: Object to form.

2 A. Riley Stoker units erected prior to
3 the '80s where we supplied the refractory and
4 insulation might have contained asbestos rope.

5 Q. Might have or did?

6 MR. RADCLIFFE: Object to the form.
7 Asked and answered.

8 A. Might have.

9 Q. Can you identify a single Riley Stoker
10 stem generating unit sold before the mid 1980s
11 that did not contain asbestos rope?

12 A. By name, no.

13 Q. Historically, Riley Stoker steam
14 generating units incorporated
15 asbestos-containing packing, correct?

16 A. No. Packing as far as valves?

17 Q. Within the steam generating unit, sir?

18 A. In the steam generating unit, we
19 didn't make anything with it. The only way it
20 could have been there if someone put it in
21 their valve that we bought.

22 Q. Sir, Riley Stoker doesn't dispute that
23 its steam generating units historically
24 contained asbestos packing, do they?

25 MR. RADCLIFFE: Object to the form.

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1 A. I've never had it asked that way so
2 I'm -- some of the pieces of equipment that we
3 had on the boiler such as valves might have
4 contained asbestos packing.

5 Q. I'm going to show you, sir, another
6 deposition of Mr. Ritter, this one taken
7 February 6, 2002. And I will point your
8 attention, sir, to page 23. There's a question
9 and answer that's highlighted. Would you
10 please read that?

11 MR. RADCLIFFE: I object to the form
12 of this. It seems to me you're trying to
13 impeach him with the testimony of a different
14 witness. Go ahead.

15 A. This is only question out of a whole
16 series of discussions. I do not know what he
17 was answering when he said this.

18 Q. Well --

19 A. I really can't comment on it.

20 Q. The question that's highlighted is,
21 "So from 1953 to 1972 you had an understanding
22 that asbestos packing and asbestos gaskets were
23 being used in connection with the boilers that
24 you were designing for Riley Stoker?" And his
25 answer was, "Yes," correct?

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1 A. That's what I read.

2 Q. Do you have any reason to tell this
3 jury that Mr. Ritter was wrong when he
4 testified to this in 2002?

5 A. I don't know what he was talking
6 about.

7 MR. RADCLIFFE: Object to form.

8 Q. So apparently Mr. Ritter knows things
9 about these boilers that you don't; is that
10 fair?

11 A. That's not what I said.

12 MR. RADCLIFFE: Object to form.

13 A. That's not what I said. It's not what
14 I said. There's a whole series leading up to
15 that, and I don't know what it was.

16 Q. Okay.

17 A. I wasn't there, so I can't comment on
18 that.

19 Q. Okay. And you've given now, this is
20 your 19th deposition as testifying on behalf of
21 Riley Stoker in these cases, correct?

22 A. It's the 19th case I've testified,
23 some with doubles.

24 Q. Okay. And in all that time you've
25 never read the previous testimony of Riley

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J. MICHAEL SMITH Page 89 1 Stoker corporate designees, correct? 2 A. That's correct. 3 Q. Okay. So when you say to this jury 4 now, Well, I don't know what he is talking 5 about because there's all these other questions 6 and answers that are there, it's not because 7 you haven't had a chance to look at this, 8 correct? 9 MR. RADCLIFFE: Object to form. 10 A. I just don't agree with that 11 statement. He could be calling asbestos rope 12 packing versus valve packing which is a totally 13 different thing. That's why I said I don't 14 know what he was talking about. 15 Q. Okay. But I want the record to be 16 clear. When you point out that there's all 17 this other stuff in here, you don't know what 18 he is saying, it's not because you haven't had 19 plenty of time to look at this if you wanted 20 to, right? 21 MR. RADCLIFFE: Object to form. 22 A. It was never given to me to look at. 23 Q. You've never asked anybody for it? 24 A. No. 25 Q. The lawyers that you're working with HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 90 1 on behalf of Riley Stoker have never given this 2 to you, have they? 3 A. No. 4 MR. RADCLIFFE: Object to form. 5 Q. You've known that Mr. Ritter gave 6 testimony from very early on when you started 7 giving testimony, correct? 8 A. Rephrase that, please. 9 Q. Okay. Before you gave your first 10 deposition in an asbestos case for Riley 11 Stoker, you knew that Mr. Ritter had already 12 done that, correct? 13 A. I knew he had been working with the 14 lawyers. 15 MR. RADCLIFFE: Object to form. 16 A. I did not know exactly what he had 17 done. 18 Q. In all that time you've never once 19 asked to see what he said? 20 A. No. 21 Q. If Mr. Ritter testified he started 22 working for Riley Stoker in 1953, you don't 23 have any reason to dispute that, do you? 24 A. Don't -- I have no reason to say 25 anything about it. I don't know. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 91 1 Q. Okay. So let's assume that he did 2 testify to that -- and I can show you that if 3 you'd like -- that would mean that he was 4 working at Riley Stoker 20 years longer than -- 5 20 years earlier than you were, correct? 6 A. Yes. 7 Q. Okay. And that 20-year period from 8 '53 to '73 that's a time period that you've 9 been asked about an awful lot since you started 10 being deposed in asbestos cases for Riley 11 Stoker, correct? 12 A. Yes. 13 MR. RADCLIFFE: Object to form. 14 Q. And you've never once looked at what 15 he said to find out what he knew from that time 16 frame, correct? 17 A. I've never read his depositions. 18 Q. It's true that historically Riley 19 Stoker steam generating units included 20 asbestos-containing refractory materials, 21 correct? 22 MR. RADCLIFFE: Object to form. 23 A. Some of the units, some of the 24 material possibly contained small amounts of 25 asbestos in refractory products. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 92 1 Q. Which ones? 2 A. I don't know. You'd have to go back 3 to the manufacturers. I read the abstracts, 4 and some of them they said in all the years 5 they made refractory they had a handful that 6 might have contained a small amount of asbestos 7 for a period. And for two or three of them, 8 don't remember them offhand, but not all 9 refractory had asbestos in it. 10 Q. What abstracts are you talking about? 11 A. I have to use the right terminology. 12 Harbison Walker answers to plaintiffs 13 interrogatories, Massachusetts; Harbison-Walker 14 response to plaintiff's master interrogatories, 15 Rhode Island; Johns Manville answers to 16 plaintiff's interrogatories, Texas; Keene 17 Corporation answers to interrogatories, Mass.; 18 A.P. Green Industries answers to plaintiff's 19 revised standard interrogatories, Mass. Those 20 are the ones I'm referring to. 21 Q. Okay. For the record, you referred to 22 a three-ring binder you've brought with you to 23 this deposition, correct? 24 A. Yes. 25 Q. Okay. And there is a sheet of paper HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 93 1 affixed to the front of that notebook, correct? 2 A. Yes. 3 Q. And what does that say? 4 A. "Deposition materials property Mike 5 Smith." 6 Q. Okay. Where did you get these 7 deposition materials, sir? 8 A. Combination of from the Riley 9 attorneys and different cases when issues would 10 come up and we'd do some research. 11 Q. Okay. Are there any materials 12 contained within this binder that did not come 13 from Riley Stoker's attorneys? 14 A. Most of them did come from the Riley 15 attorneys. 16 Q. There's an index that you've referred 17 to. How many items are on that index, sir? 18 A. Thirty-one. 19 Q. Okay. Can you identify any of those 20 31 items that you received from somebody other 21 than attorneys working for Riley Stoker in 22 asbestos litigation? 23 A. No. 24 Q. Okay. 25 MR. STUEMKE: Let's go ahead and mark HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 94 1 the notebook as exhibit -- I think we're up to 2 8. 3 (Exhibit No. 8, Three-Ring Binder so 4 marked) 5 THE WITNESS: Can we take a break? 6 THE VIDEOGRAPHER: The time is 12:08. 7 We're off the record. 8 (Recess 12:09 p.m. to 12:14 p.m.) 9 THE VIDEOGRAPHER: We're back on the 10 record. The time is 12:14. 11 BY MR. STUEMKE: 12 Q. Before the short break we had been 13 talking a little bit about the materials in 14 your binder. That came out because I'd asked 15 you about asbestos-containing refractory 16 materials. So the record is clear, it sounds 17 like what you're saying is that some asbestos 18 -- so the record is clear, it sounds like what 19 you're saying is that some refractory materials 20 historically contained asbestos and others did 21 not; is that fair? 22 A. And at various times in the 23 manufacturing in the life process of the 24 product. 25 Q. Right. And they stopped containing HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 95 1 asbestos at some point in time? 2 A. Yes. Pretty much all '72, if they had 3 it at all. 4 Q. And today you are aware that 5 high-temperature insulation that was utilized 6 in Riley Stoker boilers prior to 1972 at least 7 contained asbestos, correct? 8 A. Some of it might have contained 9 asbestos. 10 MR. RADCLIFFE: Object to the form. 11 Q. You're aware that 85 percent magnesia 12 thermal insulation products utilized in Riley 13 Stoker boilers prior to 1972 contained 14 asbestos, correct? 15 A. I'm aware -- 16 MR. RADCLIFFE: Object to the form. 17 A. -- up until that, yes. 18 Q. You're aware that calcium silicate 19 thermal insulation products prior to 1972 20 contained asbestos, correct? 21 A. Yes. 22 Q. And both of those types of insulation 23 were specified for use on Riley Stoker boilers 24 by Riley Stoker, correct? 25 A. Not. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 96 1 MR. RADCLIFFE: Object to form. 2 A. I don't agree with that. 3 Q. Sir, you're aware today that certain 4 diatomaceous earth insulation products utilized 5 asbestos as a binding agent, correct? 6 A. I don't know that. I haven't got into 7 that one. 8 Q. That's a new one for you? 9 A. Yes. 10 Q. You're aware that insulating cement 11 prior to 1972, at least as utilized in Riley 12 Stoker boilers, contained asbestos, correct? 13 MR. RADCLIFFE: Object to form. 14 A. I don't know which cements might or 15 might not have contained asbestos. 16 Q. Okay. You know that some of them did, 17 correct? 18 A. I've been told that. 19 MR. RADCLIFFE: Object to form. 20 Q. Do you know of any high-temperature 21 insulating cements before 1972 did not contain 22 asbestos? 23 A. I don't know. 24 MR. RADCLIFFE: Object to form. 25 Q. Okay. You don't know of any, correct? HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 97 1 A. I don't know the answer. 2 Q. Now, in some of your previous 3 depositions you've testified that until 1972 4 nobody at Riley Stoker had any idea that 5 thermal insulation had asbestos in it? 6 MR. RADCLIFFE: Object to form. It 7 misstates his prior testimony. 8 Q. Okay. Sir, does that -- did I in some 9 way misstate what you've previously testified? 10 A. I would like you to re-ask that, 11 please. 12 Q. Okay. Do you remember being deposed 13 on March 10, 2006, in a case called Pretco 14 pending in the district court in Harris County, 15 Texas? 16 A. Yes. 17 Q. I'll show you this in just a second. 18 I just want to read it for the record. On page 19 27 starting at line 12 in this deposition the 20 question is: "Well, you said you got to Riley 21 in '73, and you got this impression somehow 22 that everybody was clueless that there was 23 asbestos in insulation. That's the impression 24 I got from your testimony." And your answer 25 was: "Prior to -- prior to OSHA it did -- we HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 98 1 did not have any awareness that there was 2 asbestos insulation." I'm reading that from 3 page 27 there, sir. 4 MR. RADCLIFFE: Is there a question? 5 MR. STUEMKE: I'm letting him review 6 it. 7 A. Okay. 8 Q. Did I read that question and answer 9 correctly, sir? 10 A. Yes. 11 Q. Okay. Now, it's your testimony in 12 2006 was that prior to OSHA Riley Stoker did 13 not have awareness there was asbestos 14 insulation? 15 A. Yes. 16 Q. Correct? Is that still your testimony 17 today, sir? 18 MR. RADCLIFFE: Object to the form. 19 A. The people at Riley that I talked to 20 and myself personally prior to '72 were not 21 aware that insulation we were using was 22 potentially hazardous on our boilers because of 23 asbestos. 24 Q. Okay. 25 MR. STUEMKE: Now, I'll object as HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 99 1 nonresponsive. 2 Q. Sir, are you telling the jury in this 3 case that before 1972 Riley Stoker had no idea 4 that the insulation on its boiler contained 5 asbestos? 6 A. Riley Stoker is made up of many 7 people. I don't know what every single person 8 knew or did not know. As a general rule, the 9 people I worked with when I got there had no 10 knowledge it had been asbestos until OSHA came 11 out and they were told stop using any 12 asbestos-containing insulation or refractory 13 material. That's what I was told when I got 14 there. 15 Q. Okay. So you said as a general rule, 16 the people you worked with you don't believe 17 knew insulation had asbestos? 18 A. Right. 19 Q. Okay. How many people is that? 20 A. Excuse me, we're going back 37 years, 21 36 years. 22 Q. I was born in '72 so I can tell you 23 it's 36 years, 37 depending on what part of the 24 year. 25 A. There was a lot of people. There were HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 100 1 different groups. What happened is you'd get 2 together, you start the design process. And 3 you get together with different groups to go 4 through the process, and that's where this 5 asbestos thing kept coming up. And that's why 6 I say I can't put a number on it. The company 7 had hundreds of people involved in the 8 engineering and design at that point in time. 9 Q. Okay. 10 A. So I can't give a real number. 11 Q. You didn't poll those people to say, 12 Hey, did you know this had asbestos in it? 13 A. No. What we did -- the basis for that 14 statement, and it's labeled in there later on 15 in that testimony, is that we did a lot of work 16 on these old boilers in one of my roles there 17 in the plant improvement M&R division. And we 18 had to go back. And what we used to do is when 19 we got the boiler drawings, we'd go back to the 20 squad leader -- at that time most of them were 21 still there -- we'd ask them about this since 22 we knew we can't use asbestos. Did this have 23 asbestos? And the answer always was, We don't 24 know. That is why I said that. We don't know. 25 So we would always go out and tell the HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 101 1 customer, If you want us to work on that, you 2 got to abate it. They were doing that anyway 3 after '72. That wasn't something we started. 4 The customers were doing it. The premises 5 owners were doing it. 6 MR. STUEMKE: Object as nonresponsive. 7 Q. Sir, can you tell this jury that 8 before 1972 Riley Stoker the company had no 9 knowledge that the insulation it was using on 10 its boilers contained asbestos? 11 A. Riley Stoker -- 12 MR. RADCLIFFE: Object. Asked and 13 answered. If you want the court reporter to 14 read it back, we can have that done. 15 MR. STUEMKE: Tom, again, you're 16 coaching the witness. I'd ask that you stop 17 that. 18 MR. RADCLIFFE: By saying that it's 19 been asked and answered you think that's 20 coaching the witness? 21 MR. STUEMKE: It's a different 22 question, Tom. Let him answer, please. You 23 can just restrict your objection to the legal 24 objection. Let's try that. 25 MR. RADCLIFFE: This is a legal HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 102 1 objection. Once you start to ask the same 2 question over and over again, it's harassment. 3 MR. STUEMKE: That's a different one 4 than you said before. Now I am harassing the 5 witness? 6 MR. RADCLIFFE: I said asked and 7 answered. You asked it, and he answered it. 8 MR. STUEMKE: Well, I objected because 9 his answer was nonresponsive which makes it 10 previously asked but not previously answered if 11 you really want to go down this road on the 12 record. 13 Q. In any event, sir, you can answer the 14 question. 15 MR. RADCLIFFE: That is not accurate. 16 You asked the question two or three times ago. 17 You then asked a different question to which 18 you objected as nonresponsive. Go ahead and 19 answer. 20 A. Now I've forgot the question. 21 Q. I will ask it again. Mr. Smith, do 22 you intend for this jury to understand that 23 before 1972 Riley Stoker did not know that the 24 thermal insulation that was being used on its 25 boilers contained asbestos? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 103 1 MR. RADCLIFFE: Same objection. 2 A. Riley Stoker is made up of people. 3 They are the company. And the people I worked 4 with who have been working there for a long 5 time when this issue came up in '72 -- in '73 6 when I was there, they did not know that there 7 was asbestos in the insulation that we were 8 using. 9 That is the basis for my answer in 10 that deposition, and it's the basis today. No 11 one that I've ever run into who said, yeah, I 12 know we had asbestos and we did it -- we knew 13 it. I just haven't run into anybody. After 14 the fact we all became suspicious and basically 15 kept away from insulation pre '72. 16 Q. Okay. You say you've never run into 17 anybody that's told you that. Have you gone 18 and asked Riley Stoker employees from the '50s 19 and from the '60s whether they knew if the 20 insulation was being used on those boilers had 21 asbestos in it? Have you gone out and asked 22 them? 23 A. No. 24 Q. So just by happenstance nobody has 25 come up to you and volunteered, hey, I knew HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 104 1 insulation had asbestos in it, correct? 2 MR. RADCLIFFE: Object to the form. 3 A. In response to direct questions about 4 that over a period of many years, no one 5 responded they knew. 6 Q. Who did you ask? 7 A. I've already answered that. 8 Q. Okay. You just said -- I thought you 9 just said that you never went out and sought 10 out employees of Riley Stoker from the '50s and 11 '60s to ask them if they knew that insulation 12 had asbestos in it, correct? 13 A. No. I said already that we were 14 working on old contracts, and we went to the 15 employees who were listed on the drawing and 16 asked them if it had asbestos, and their answer 17 they didn't know. 18 Q. Okay. The draftsmen you're talking 19 about? 20 A. Drafting, engineers, whoever it was 21 that was listed on the drawing, squad leaders, 22 whatever. 23 Q. Okay. Now, you've never looked for 24 documents of Riley Stoker from the '50s and 25 '60s and the '40s and '30s to see if those HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 105 1 documents indicate that Riley Stoker knew the 2 insulation that was specifying for its boiler 3 had asbestos in it, correct? You've never 4 looked for those documents? 5 MR. RADCLIFFE: Object to form. 6 A. No, I had no reason to. 7 Q. In this your 19th deposition in an 8 asbestos case, you're telling this jury you had 9 no reason to go and look for documents about 10 whether Riley Stoker knew the insulation it was 11 providing contained asbestos? 12 MR. RADCLIFFE: Objection to form. 13 A. I'm responding to these questions 14 based on my knowledge and my experience at 15 Riley Stoker. 16 Q. Okay. You've not attempted to do 17 anything to learn about what Riley Stoker knew 18 or didn't know about the content of its 19 insulation products other than just relying on 20 your own personal experience, correct? 21 MR. RADCLIFFE: Object to form. 22 A. I've already answered that. I'm 23 answering based on my knowledge from my 24 experience and my interaction with other Riley 25 employees. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 106 1 Q. Okay. But, sir, you understand and 2 the notice shows we noticed this deposition of 3 Riley Stoker, and this jury wants to hear what 4 Riley Stoker knew, not just what one individual 5 at Riley Stoker learned starting in 1973. And 6 that's why you're here today, sir, is to tell 7 this jury what Riley Stoker knew. Is it true, 8 sir, that in attempting to do that you have 9 not -- 10 MR. RADCLIFFE: Object. 11 Q. -- looked for any document that would 12 answer that question? 13 MR. RADCLIFFE: I'm going to object. 14 That's not a question. That's a speech on your 15 part. You have to ask a question. 16 MR. STUEMKE: I did. If you would 17 have let me finish, you would have heard it. 18 Q. You can answer the question, sir. I'm 19 sure you heard it. 20 MR. RADCLIFFE: I'm going to have to 21 ask it be read back. 22 (Question read) 23 MR. RADCLIFFE: I'm not sure what that 24 question means. You've not looked for any -- I 25 object to the preamble. It's a speech. It's HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 107 1 not part of the question, and the question 2 appears to be you haven't looked for any 3 documents to answer the question. What 4 question? 5 Q. You can answer the question, sir. 6 A. I never saw that document before 7 today. That's all I can tell you. I was asked 8 to come here and answer questions; that's what 9 I've done. I had not seen this document. 10 Q. Okay. 11 A. You asked me about that. I didn't 12 know about it. I didn't see it until you gave 13 it to me. 14 Q. For the record, when you say "that 15 document," you're referring to the notice of 16 deposition? 17 A. Yes. 18 Q. Riley Stoker's lawyers never showed 19 you that? 20 A. No. 21 Q. Now, this question has come up before 22 in prior depositions you've given for Riley 23 Stoker, correct? 24 A. Which question? 25 MR. RADCLIFFE: Object to form. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 108 1 Q. The question of whether Riley Stoker 2 knew the insulation being used on its boilers 3 before 1972 contained asbestos; that question 4 has come up a lot of times in your prior 5 testimony, correct? 6 A. Yes. 7 Q. Okay. 8 MR. RADCLIFFE: Object to form. 9 Q. Still to this day you have never gone 10 and looked for any documents at Riley Stoker 11 that would tell you whether Riley Stoker knew 12 the insulation it was using contained asbestos 13 or not, correct? 14 MR. RADCLIFFE: Object to form. 15 A. I have not done that. 16 Q. Okay. And you have not asked Riley 17 Stoker's lawyers to find for you former 18 employees of Riley Stoker from the '50s and 19 '60s that actually worked with this insulation 20 so that you could ask them if they knew it 21 contained asbestos or not, have you? 22 A. I've asked that through the course of 23 my employment there. That's what I'm telling 24 you. 25 MR. RADCLIFFE: Object to form. HG LITIGATION SERVICES HGLITIGATION.COM

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1 A. That's exactly what we did when we had
2 boilers from the '50s, the '40s, '50s. When we
3 first started, they still had some of the same
4 people there. And the issue -- this was just
5 now getting real hot '72, '73 about asbestos.
6 And every time we got into one of these jobs,
7 we had to research it, and we could never find
8 any documentation.

9 Q. Okay. And you're talking about people
10 in the engineering department, right?

11 A. People in engineering, the paperwork,
12 which was probably a little more fresh than it
13 is today after 60 years in some of these cases.
14 The only answer we had was we got to go test
15 it.

16 Q. You had a construction division,
17 right?

18 A. Yes.

19 Q. The people would actually go out there
20 and build the boilers?

21 A. Right.

22 Q. Did you ever ask anybody in the
23 construction division whether they knew if the
24 insulation they were using contained asbestos?

25 A. No, because I had been in construction
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1 until '73, and I was supervising insulators and
2 I didn't know it. I was hands-on, and I did
3 not know it. It was not something that was
4 talked about. It wasn't -- someone knew. I'm
5 not saying that someone somewhere in some
6 company didn't know this.

7 But the day-to-day people who worked
8 in this, I mean, I was supervising insulators
9 in the field, and I didn't know it had
10 asbestos. Even if it did, I didn't know what
11 asbestos -- what the problem was.

12 Q. Okay.

13 A. I was personally involved and didn't
14 know it.

15 Q. Sir, you would agree that you really
16 don't have any basis to tell this jury what
17 Riley Stoker knew about asbestos and insulation
18 in the 1950s, do you?

19 MR. RADCLIFFE: Object to form.

20 A. I just answered that. I've talked to
21 people who were working there and doing the
22 drawings in the 1950s on existing boilers and
23 they didn't know. That's the basis for my
24 answer.

25 Q. Now, in this same deposition in the
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1 Pretco case in 2006 you were asked this
2 question, and I'll show you this in just a
3 second. You're asked the question, "But, of
4 course, you really don't have any basis to tell
5 us what the gentlemen -- ladies and gentlemen
6 knew about asbestos in insulation in the 1950s.
7 You don't have any knowledge about that, do
8 you?" Do you see your answer there on line 24?

9 A. It says, "I do not."

10 Q. Okay. Now, have you gained some new
11 basis for understanding what Riley Stoker knew
12 about asbestos in insulation since 2006?

13 MR. RADCLIFFE: Object to the form.

14 A. There was more to this -- that does
15 not stand alone. There was a lot more flow to
16 that question than right there. I just gave
17 the same explanation then I just gave you about
18 working with older units. I don't know where
19 it is in here, but it's in there.

20 Q. Following the explanation that you
21 gave in 2006, you're asked this question. "You
22 really don't have any basis to tell us what the
23 ladies and gentlemen knew about asbestos in
24 insulation in the 1950s. You don't have any
25 knowledge about that, do you?" And your answer

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1 at that time was, "I do not." And now what
2 you're telling --

3 MR. RADCLIFFE: Objection.

4 Q. -- the ladies and gentlemen of this
5 jury that you do have some basis for telling
6 them what Riley Stoker knew about asbestos in
7 insulation in the '50s; is that right?

8 A. No. That's taken out of context.

9 MR. RADCLIFFE: Objection to form.

10 A. There's more in that deposition which
11 is exactly what I just said here because when
12 there was confusion. It got clarified, and I
13 went through the same explanation because
14 that's exactly how I learned what happened.

15 Q. Okay. So your testimony today is that
16 the engineering people that you worked with at
17 Riley Stoker in the 1970s didn't know that
18 insulation had asbestos in it before 1972,
19 correct?

20 MR. RADCLIFFE: Objection. Asked and
21 answered.

22 A. I think I have answered that several
23 times.

24 Q. Okay. But you're not answering for
25 Riley Stoker the corporation as a whole,

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J. MICHAEL SMITH Page 113 1 correct? 2 A. I did not -- 3 MR. RADCLIFFE: Object to form. 4 A. I have not polled every single person 5 that ever worked for Riley. 6 Q. Okay. Now, you're not suggesting to 7 this jury that it was unknown to industry that 8 thermal insulation products up to 1972 had 9 asbestos in them, are you? 10 A. No. Excuse me, let me stop. What 11 industry? 12 Q. Well, people that used asbestos 13 insulation in their products? 14 A. The suppliers obviously knew; they put 15 it in there. The insulators themselves, maybe. 16 But the general populous, once again, I was out 17 there in the field '66 to '73 right in the 18 middle of this. 19 Q. Okay. 20 A. They didn't. If they knew it, they 21 kept it to themselves because, boy, we sure 22 didn't know it out there. And we were 23 supervisors right on the line. 24 Q. Okay. It was some -- are you 25 suggesting it was some kind of secret that this HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 114 1 material had asbestos in it? 2 A. Oh, no, there was -- 3 MR. RADCLIFFE: Objection -- 4 A. No. 5 MR. RADCLIFFE: -- to form. 6 A. In this book right here, you'll find 7 we have -- there's been excerpts from I think 8 way back in the '30s or '40s that some people 9 knew asbestos was in stuff, what it could do. 10 It was not a known factor in the boiler 11 industry that insulation was potentially 12 harmful until '72. 13 MR. STUEMKE: Let's go ahead and mark 14 this exhibit as the next in order. I think 15 we're up to No. 9, please. 16 (Exhibit No. 9, Affidavit of Document 17 Authentication so marked) 18 Q. Front page of Exhibit 9 you see is an 19 affidavit of document authentication, correct? 20 A. Yes. 21 Q. That's what it's entitled? 22 A. Yeah. 23 Q. If you turn to the next page, sir, 24 you'll see that this is Power magazine January 25 1951, correct? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 115 1 A. Yes. 2 Q. We had an excerpt of the magazine as 3 Exhibit 3. Do you recall that? 4 A. Right. 5 Q. I indicated I had the complete 6 magazine. Here it is. 7 A. You said that. 8 Q. Now, if you turn, sir, to page 104 -- 9 A. (Witness complies) 10 Q. -- you see 104 and the next page 105; 11 that's the two-page Riley Stoker advertisements 12 we looked at earlier, correct? 13 A. Yes. 14 Q. Okay. 15 A. I believe it is. Exhibit 3? 16 Q. I think so, yes. Yes, that's right. 17 A. Okay. 18 Q. Page 104 and 105, Power magazine 1951, 19 Riley Stoker's advertising, correct? 20 A. Yes. 21 Q. Now, if you turn, sir, a grand total 22 of 11 pages further back into that magazine, do 23 you see an article entitled, "How Your Steam 24 Turbine is Insulated," correct? 25 A. Yes. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 116 1 MR. RADCLIFFE: Objection to form. 2 Q. In the middle column, sir, there's a 3 section heading called "Insulation," correct? 4 A. Yes. 5 Q. Okay. And that says, "For surfaces 6 with temperatures at and below 500 degrees 7 Fahrenheit, 85 percent magnesia has proved most 8 economical." Did I read that correctly? 9 A. Yes. 10 Q. Now, 85 percent magnesia is one of the 11 insulation products that Riley Stoker was using 12 on its boilers, correct? 13 MR. RADCLIFFE: Object to form. 14 A. It was used on some boilers, yes. 15 Q. Okay. And this paragraph goes on to 16 state that, "This material contains hydrated 17 basic carbonate of magnesium bonded with about 18 15 percent of asbestos fiber." Do you see 19 that? 20 A. Yes. 21 Q. It goes on to state that, "The 22 asbestos fibers act as a heat resisting 23 reinforcement to add structural strength and 24 long life." Do you see that? 25 A. Yes. HG LITIGATION SERVICES HGLITIGATION.COM

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1 Q. Okay. So it wasn't a secret in 1951
2 that 85 percent magnesia insulation contained
3 asbestos, was it?

4 A. I never said it was a secret.

5 Q. Okay. Well, it's true that if Riley
6 Stoker had read the magazine in which it
7 advertised in 1951, it would have known that
8 that insulation contained asbestos, correct?

9 MR. RADCLIFFE: Object to form.

10 A. That's a stretch. I mean, we
11 advertised in a magazine, doesn't mean we're
12 reading every single article in it and we
13 understand what they're talking about. This is
14 a turbine generator. I'm a boiler guy. I'm
15 not going to read this.

16 Q. You've testified that if insulation
17 was in Riley Stoker's contract, Riley Stoker
18 would either subcontract the work to an
19 insulation contractor or hire employees
20 directly from the union hall, correct?

21 A. You're talking about the labor to
22 apply it?

23 Q. Yes, to do the insulation?

24 A. If it was -- all right, if it was in
25 our scope of work for erection --

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1 Q. Right.

2 A. -- it usually was one of the two, yes.

3 Q. Okay. Sir, what union did Riley
4 Stoker go to to get insulators?

5 A. It was probably the Asbestos Workers
6 Union.

7 Q. Okay. Riley Stoker when it's their
8 job to install, make sure the insulation gets
9 installed on their boilers, they go to the
10 Asbestos Workers Union to get insulators that
11 can do that work, correct?

12 A. That's -- no, only part of the name of
13 the union. It's Asbestos Workers and Heat.

14 Q. Could I see Exhibit 8, sir, your
15 binder?

16 A. (Witness complies)

17 Q. Thank you very much.

18 A. I forget what the name of the full
19 union is.

20 Q. Sir, I have looked in your binder
21 here, and I've turned you to a page in
22 Exhibit 8. Do you see in Exhibit 8 is a
23 portion of the Asbestos Worker magazine,
24 correct?

25 A. Yes.

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1 Q. And it states it's the official
2 journal of the International Association of
3 Heat and Frost Insulators and Asbestos Workers,
4 correct?

5 A. That's right.

6 Q. You refer to them simply as the
7 Asbestos Workers Union, correct?

8 A. I couldn't remember the whole name.

9 Q. Sure. And that's what they were
10 commonly known as, correct?

11 A. We called them insulators.

12 Q. Okay. You called them just a minute
13 ago the Asbestos Workers Union, correct?

14 A. Yes, I did.

15 Q. That's where you -- go ahead.

16 A. We called them insulators.

17 Q. And the Asbestos Workers Union is
18 where Riley Stoker would go to hire employees
19 that could do insulation work, correct?

20 A. Go into the -- go into the union for
21 the heat and frost insulators and asbestos
22 workers.

23 Q. Okay. Don't you think, sir, a
24 reasonable company that has to hire employees
25 to do insulation work and they go to the

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1 Asbestos Workers Union to do that, don't you
2 think that they would understand that
3 insulation contains asbestos?

4 MR. RADCLIFFE: Object to form.

5 A. I didn't make the connection. I don't
6 know.

7 Q. It certainly would be a pretty good
8 clue that the insulation that these asbestos
9 workers were working with contains asbestos
10 just from the name of the union that you go to;
11 wouldn't you agree with that?

12 A. They have put on a lot of --

13 MR. RADCLIFFE: Objection to form.

14 A. They put on a lot of different
15 materials. I'm not -- I don't know if what we
16 had was asbestos. I know where you're trying
17 to go with this, but I just can't deal with it
18 because I lived this and no one knew it. I
19 don't think it's a stretch to say I never made
20 the connection. I'm not a stupid guy. I don't
21 know if someone did, but I sure didn't. And
22 the people that we were working with in
23 construction that was never known, at least not
24 the ones I was working with.

25 Q. Sir, don't you think it's a good idea

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J. MICHAEL SMITH Page 121 1 for a manufacturer to understand the nature and 2 makeup of the products that are specified on 3 its machinery designs? 4 MR. RADCLIFFE: Object to form. 5 A. I don't understand the question. 6 Q. Okay. Well, you agree Riley Stoker 7 specified certain products for use in and on 8 its boilers, correct? 9 MR. RADCLIFFE: Object to form. 10 A. The customer gave us a specification. 11 We took that specification, matched it with 12 ASME code and came up with a design that would 13 work to make our boiler do what we wanted it to 14 do. And then we went out to the industry and 15 said, Give us something to fit this design. 16 That's how we did it. And it was usually done 17 through purchasing. And after so many of these 18 they finally said, okay, these are the 19 standards. This is what works in this 20 application. And that's how we did it. It was 21 a generic term. To this day we still use cal 22 sil as a generic term for pipe insulation, 23 never changed it. 24 MR. STUEMKE: I'm going to object as 25 nonresponsive. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 122 1 Q. Sir, does Riley Stoker believe it's a 2 good idea to understand the nature and the 3 makeup of the products that it specifies on its 4 designs? 5 MR. RADCLIFFE: Object to the form. 6 A. We specified design. It's on a Riley 7 boiler for -- they call it for the auxiliary 8 equipment or the ancillary equipment to the 9 boiler. We give the conditions under which it 10 has to operate. We don't design it. They 11 design it. We just specify what it has to do. 12 There's a difference between designing and 13 specifying. 14 Q. Okay. You specify insulation? 15 A. We specify -- the customer specifies 16 it to us, and we specify it out, yes, we do. 17 Q. Okay. And don't you agree that it's a 18 good idea for Riley Stoker to understand the 19 composition of the insulation that it's 20 specifying for use on its products? 21 MR. RADCLIFFE: Object to the form. 22 A. You know that's like I need to 23 understand the design of the tires I have on my 24 car. I don't understand the design. I know 25 the tire works. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 123 1 Q. All right. 2 A. It has to be the right size, but I 3 don't understand the design. I'm not going to 4 design the tire. If it's our stuff, you know, 5 our boilers, our tubes, our drums, darn right 6 we have to understand it because that's the 7 ASME code; that's what we do. 8 Q. Shouldn't you understand at least the 9 composition of the product that you're 10 intending to be used on your boiler if for no 11 other reason than so you can make sure it's 12 safe? 13 MR. RADCLIFFE: Object to form. 14 A. That's the responsibility of the 15 manufacturer and supplier of that product to 16 inform us if there's a problem. 17 Q. Okay. You're not the first 18 professional engineer that Riley Stoker has 19 ever had, are you? 20 A. I don't think so. 21 Q. We talked earlier about how the codes 22 of ethics for professional engineers require 23 them to protect the public safety. You 24 remember that? 25 A. Yes, we did. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 124 1 Q. Okay. Now, the Riley Stoker engineers 2 who are ethically charged to protect the public 3 safety, don't you think that they should have 4 understood the composition of the insulation 5 products going on their boilers so that they 6 could make sure it wasn't going to kill people 7 that worked with and around it? 8 MR. RADCLIFFE: I object. That's 9 argumentative. Don't answer that. 10 MR. STUEMKE: He can answer the 11 question. Argumentative is not a basis for you 12 to instruct him not to answer. 13 MR. RADCLIFFE: It is if it arises to 14 the level of harassment. Rephrase your 15 question. 16 MR. SAUL: Counsel, we have three 17 minutes left on the video right now. I don't 18 know if we want to just kind of transition here 19 and take a break, switch tapes or if we want to 20 take a break for lunch, depending on how 21 everybody is doing. 22 MR. STUEMKE: Well, I want an answer 23 to the question first, and then we can go to 24 lunch. 25 MR. RADCLIFFE: I'm instructing him HG LITIGATION SERVICES HGLITIGATION.COM

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1 not to answer the question. You may rephrase
2 it.

3 MR. STUEMKE: What's the legal basis
4 for you to instruct him not to answer?

5 MR. RADCLIFFE: That is including to
6 language "to kill people" in the question is
7 argumentative and amounts to harassment. It's
8 not a proper question. There's no question
9 that a judge would let you get away with in a
10 Court of law.

11 MR. STUEMKE: Okay.

12 Q. Sir, the professional engineers at
13 Riley Stoker in the 1940s and 1950s and 1960s
14 would have had an ethical obligation to protect
15 public safety, correct?

16 MR. RADCLIFFE: Object to form.

17 A. For the work we did, yes.

18 Q. Okay. Don't you think that would
19 extend to at least learning the composition of
20 the insulation materials they specified to make
21 sure that it would be safe for the people
22 working with and around it?

23 MR. RADCLIFFE: Object to form.

24 A. They specified the properties of the
25 material to make our boilers work right and

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1 safe. The vendors came back and said, This is
2 the product that will work in that environment
3 according to the ASME code and everything else.
4 That is all -- why would we go any further?

5 Our main focus is the boiler. The
6 suppliers are focused on theirs. If they have
7 a problem, they should be informing us of the
8 -- we can't ask every single person in the
9 world, Is this safe? What does it contain?
10 There's a lot of products that go into a
11 boiler. We do not know the composition of
12 every single one, at least I don't, and I don't
13 know anybody who does.

14 MR. STUEMKE: Why don't we go ahead
15 and take our brief lunch break now.

16 THE VIDEOGRAPHER: The is the end of
17 tape number two. The time is 12:49. We're off
18 the record.

19 (Lunch Recess 12:50 p.m. to 1:32 p.m.)

20 (Mr. Kennaday did not return on
21 teleconference)

22 THE VIDEOGRAPHER: This is beginning
23 of tape number three. We're back on the
24 record. The time is 1:32.

25 BY MR. STUEMKE:

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1 Q. Mr. Smith, are you ready to continue?

2 A. Yes.

3 Q. Very good. I'd like to turn your
4 attention now, sir, to what we know about the
5 Riley Stoker boilers that were installed at
6 Interstate Power in Lansing, Iowa. I
7 understand that you have reviewed certain
8 documents relating to those boilers; is that
9 correct?

10 A. Yes.

11 Q. Okay. And can those documents
12 generally be described as the contract
13 documents? Pull them out if you want to.

14 A. Okay. Probably the same as yours.

15 Q. Mine have more tabs on them.

16 A. These are the documents that we
17 obtained from our records on the two contracts
18 that I'm sure you have copies of.

19 Q. Yes. And we have a contract in 1946
20 for units one and two, correct?

21 A. The contract was sold in 1946.

22 Q. And that is for units number one and
23 two, correct?

24 A. Yes. That is contract No. B-1744.

25 Q. Okay. What does the P-4657 indicate?

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1 It's right next to the B.

2 A. I'm not sure. I think that's a fuel
3 burning number.

4 Q. Okay.

5 A. The main contract was B-1744.

6 Q. Okay. Does B stand for boiler?

7 A. Badenhausen.

8 Q. Badenhausen. Got you. And the other
9 contract documents are for unit number three,
10 correct?

11 A. Yes. Contract B-2249.

12 Q. Okay. These documents are Bates
13 numbered at the bottom. Do you see that?

14 A. Yes.

15 Q. Are your copies Bates numbered?

16 A. Yes, they are.

17 Q. Okay. And the Bates numbers for
18 contract -- excuse me, for units number one and
19 two contract documents extend through 216,
20 correct?

21 A. Drawings 216.

22 Q. Yes.

23 A. Okay, 216.

24 Q. Okay. Then the second set of drawings
25 extends from 217 through 414, correct?

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J. MICHAEL SMITH Page 129 1 A. Yes. 2 Q. Okay. 3 MR. STUEMKE: And I assume, Tom, we'll 4 have a stipulation these are authentic business 5 records of Riley Stoker, Bates numbers 1 6 through 414? 7 MR. RADCLIFFE: Documents that we have 8 produced to you we will not object on the basis 9 of authenticity or that they're not business 10 records. 11 MR. STUEMKE: Okay. 12 Q. And for the record, the complete label 13 on the Bates label is Gary Lenz, Greenville 14 County South Carolina, Simon, Eddins & 15 Greenstone, May 2009, then numbers 1 through 16 414, correct? 17 A. Yes. 18 Q. Okay. Now, Mr. Smith, how were these 19 documents located? 20 A. The documents were located based on 21 information given to us to look for Interstate 22 Power Company, Lansing Power Station, Lansing, 23 Iowa. 24 Q. Okay. 25 A. With that information we then searched HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 130 1 our records. 2 Q. Okay. You say "we." Who was it that 3 did the search? 4 A. We have two document specialists in 5 the Worcester office, the Riley office that 6 I've worked with for years, and they're very 7 familiar with all the card file, the master 8 record, if you will, that we use, the location 9 of the -- in some cases current documents, but 10 in these cases these are old documents. And 11 there's various places they're found, and they 12 know where they are. And they know how to find 13 them. 14 Q. Who are these document specialists? 15 A. Tammy McCaie. 16 Q. How do you spell the last name? 17 A. M-C-C-A-I-E. 18 Q. And who is the other? 19 A. Tony Kirouac, K-I-R-O-U-A-C. 20 Q. Okay. And by whom is Tammy McCaie 21 employed? 22 A. Cet Cap. 23 Q. Cetrulo & Capone? 24 A. Yes, Cetrulo & Capone. 25 Q. Attorneys for Riley Stoker? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 131 1 A. Yes. 2 Q. She's not an employee of Riley Stoker 3 herself? 4 A. Not to my knowledge. 5 Q. By whom is Tony Kirouac employed? 6 A. The same. 7 Q. Cetrulo & Capone? 8 A. Yes. 9 Q. So Cetrulo & Capone, the attorneys for 10 Riley Stoker, have two people who actually work 11 at the Riley Stoker Worcester office? 12 A. Yes. 13 MR. RADCLIFFE: Object to form. 14 Q. That's their full-time location? 15 A. I don't know if it's a hundred percent 16 full-time. They're here some of the time, too, 17 here in Boston. 18 Q. Here in Boston, you're referring to 19 where we are today, the offices of Cetrulo & 20 Capone? 21 A. Yes. 22 Q. Now, what involvement did you have in 23 locating the documents that have been produced 24 to the plaintiffs in this case? 25 A. The involvement I had was primarily HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 132 1 after the fact. They had already located them 2 by the time I was told about the case. 3 Q. Okay. So before you even knew that 4 there was a case involving Gary Lenz, to your 5 understanding these documents had already been 6 located, correct? 7 A. They were given to me last week. 8 Q. Okay. 9 A. That's when I got them. 10 Q. Last week you found out there was a 11 Gary Lenz case, and by the way, here's all the 12 documents. Is that basically what happened? 13 A. Yes. 14 Q. Okay. Can you tell me where these 15 documents were located? You mentioned a card 16 file. 17 A. The old contracts in Riley are filed 18 on it's a card system, and it is based on the 19 customer name and the customer location. That, 20 in turn, if successful, find a successful 21 match, we then -- the card will give us the 22 appropriate -- excuse me -- contract number. 23 And that contract number is a number 24 we just referenced for each of these. And then 25 they search -- they have some microfiche, they HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 133 1 have some microfilm. And then we have some 2 hard copies in an off-site warehouse that is 3 filed by contract number. And they go through 4 and pull all the appropriate documents they can 5 find from the three sources. That is the 6 extent of the sources. I mean, that's all we 7 got. 8 Q. Okay. Is there a different type of 9 document that would be located in one of those 10 sources versus another, if you understand the 11 question? 12 A. It really is dependent on the original 13 source of the boiler as far as was it Riley, 14 Badenhausen, Union Iron Works and the timing. 15 Because there was a period of time when 16 everything was put onto microfiche, and then 17 there was a period where everything was put 18 onto microfilm, and then they stopped doing it 19 for whatever reason. So you have to search all 20 three every time. 21 Q. You say "they stopped doing it," you 22 mean for that period of time you just have the 23 hard copies? 24 A. Hopefully, yes. 25 Q. Do you know approximately what year HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 134 1 they stopped converting the hard copies to 2 microfiche or microfilm and you just have the 3 hard copy? 4 A. I used to know. I forget. 5 Q. Can you give me a decade? 6 A. Maybe the '70s. 7 Q. Okay. 8 A. It's a guess. 9 Q. Sure. To your best guess today, 10 documents older than the 1970s would have been 11 found on either microfiche or microfilm? 12 A. There still might have been hard 13 copies left somewhere too. 14 Q. Obviously, Riley Stoker had a number 15 of different departments at the time you worked 16 there, correct? 17 A. We had a lot of departments. 18 Q. Okay. You yourself had experience in 19 the boiler design department and the parts 20 group. Is that a department? 21 A. Oh, yeah. 22 Q. The industrial division, the utility 23 division. You were in a lot of different areas 24 within the company? 25 A. Construction division. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 135 1 Q. Construction division. All of those 2 different areas of the company generate 3 documents, correct, in general? 4 A. Yes. 5 Q. Now, how many of those areas of the 6 company may generate documents relating to a 7 specific boiler, say, one in the '40s or '50s? 8 A. Every division that touches the 9 contract would have some active records. Then 10 at the end of the contract, the successful 11 turnover to the customer after final 12 acceptance, the documents would be 13 consolidated. 14 Q. Okay. 15 A. And then they'd be culled. And, 16 fortunately, there was no particular way of 17 culling them, the project manager, whoever did 18 it. They said get rid some of volume because 19 you get a lot of documents. 20 Q. Sure. 21 A. There were certain ones they usually 22 tried to keep. And I know for my -- I'm 23 talking from my perspective as project manager 24 what I wanted to keep to look back at. And it 25 was primarily if you could, you want to keep HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 136 1 the request for proposal, your proposal, 2 specifications, any contract papers. 3 Obviously, the drawings have to be kept because 4 we're -- it's national board. You have to keep 5 drawings. 6 Q. Define what you mean by "national 7 board" real quick? 8 A. National board is the Hartford Steam 9 Boiler national board number, and as Hartford 10 Steam Boiler, there's also a national board 11 associated ASME, ASME boiler code. You have to 12 register with the national board, and Hartford 13 Steam Boiler actually helps tracking the board 14 numbers. There's a national board number on 15 every boiler that we make. 16 Q. Okay. Just for the court reporter, 17 you're saying Hartford Steam Boiler? 18 A. Hartford Steam. 19 Q. I didn't mean to interrupt. I just 20 wanted to make sure the jury understood what 21 you're talking about. The documents that are 22 located in the microfiche and microfilm and the 23 hard copy off-site records that are maintained 24 today, those are the documents that were 25 generated up to and including the final HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 137 1 acceptance of the boiler by the purchaser, 2 correct? 3 A. No. 4 Q. Okay. How is that wrong? 5 A. If -- there are some documents right 6 here, I'll show you. That because there were 7 issues with the boiler after it was up and 8 running, and paperwork is always generated to 9 document any changes or anything else to the 10 boiler, particularly on the original contract. 11 And they may go out several years after the 12 boiler was theoretically erected until the 13 boiler is finally satisfying all its 14 contractual requirements. 15 Q. Okay. So maybe not the best analogy 16 in the world, but if you buy a new house these 17 days, typically the new home builder will give 18 you a one-year warranty on various things. And 19 if you have a problem with it, you got to 20 contact him within a year, and they come and do 21 the work; otherwise, you're on your own. 22 Is that basically the type of process 23 that you're talking about, probably not just 24 for one year, but where Riley Stoker would keep 25 records of going out to fix issues that may HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 138 1 arise that are causing the boiler not to work 2 optimally? 3 MR. RADCLIFFE: Object to form. 4 A. Riley has a contractual obligation to 5 provide a boiler to meet certain 6 specifications. We'll see that in these 7 documents. 8 Q. Sure. 9 A. If it does that and it runs fine, then 10 the warranty, whatever it is, one year, 11 18 months after receipt of the material, the 12 warranty expires and we all live -- we move on, 13 but we still keep track of the boiler per se as 14 far as if something changes on the boiler, the 15 customer comes back, I'm going to change my 16 fuel. And we make a modification to the boiler 17 to make the customer happy, that modification 18 is normally gone back to and noted on the 19 drawings. If this was -- super heated was 20 changed in, you know, '67 or something like 21 that so it's not a pure -- the contract is 22 over. We end it. There is some track of any 23 major changes or anything like that. 24 Q. All right. Major changes, warranty 25 work, things of that nature generally? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 139 1 A. Warranty work is usually documented in 2 the original contracts. 3 Q. Okay. Now, is there a name for these 4 files? 5 A. Contract files. 6 Q. Contract files. You indicated that at 7 the time of final acceptance all of the 8 documents from all the different Riley Stoker 9 divisions that relate to a particular contract 10 will be consolidated, and then the project 11 manager will go through those documents, cull 12 through them and decide which need to be saved, 13 and are the rest discarded? 14 A. Yes. 15 Q. Okay. And it sounds like from your 16 testimony that there may have been some degree 17 of variance in what difference project managers 18 chose to keep; is that fair? 19 A. Yes. 20 Q. Would all of the post final acceptance 21 documents we just talked about, would all of 22 those be saved or was there a similar culling 23 process by somebody to determine what should be 24 saved in the contract file and what could be 25 discarded? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 140 1 A. There was no particular process. 2 Normally, if a -- the way a document, there 3 would be a work correction order, and that 4 would -- that documents what was done, and that 5 would be in here. Even some of the old ones 6 even had a contract change later on, that paper 7 would be in here too. Okay, this changed four 8 years later or five years later they changed 9 something. They added -- changed the 10 temperature or changed the pressure, whatever. 11 We -- there is a reasonable level of keeping 12 the documents together over time. 13 Q. Okay. You'd agree that if there's a 14 change that alters the design of the boiler or 15 the operational characteristics of the boiler, 16 that records of that type of a change would 17 likely be maintained? 18 A. There would be some record -- for 19 design change there would be some record 20 because that would also have to be registered; 21 that would have to be a registered change. 22 Q. Okay. But you're not able to say that 23 Riley Stoker today has records in its contract 24 files of each and every visit for whatever 25 reason, major reason or minor reason, that a HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 141 1 Riley Stoker representative would go on to a 2 site and do something in connection with the 3 boiler? 4 A. We would not have all those. 5 MR. RADCLIFFE: Object to form. 6 Q. You do not have all of those records? 7 A. No. Because that -- if it affected 8 the design of the boiler, it would. But a 9 visit by a service engineer or salesman, no, we 10 wouldn't have records. 11 Q. Okay. So substantial changes, yes; 12 just visits by a service engineer or 13 salespeople, no, you're not going to have those 14 records. Is that fair? 15 A. That's fair. 16 Q. Sir, do you know whether the documents 17 produced by the plaintiffs in this case that 18 bear the Bates labels 1 through 414 are all of 19 the documents that were located in Riley 20 Stoker's contract files? 21 A. They are all the documents. 22 Q. And you didn't participate in the 23 search, so you don't say that from your own 24 personal knowledge. You're relying on what 25 somebody else told you about that, correct? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 142 1 A. Right. When I get -- 2 MR. RADCLIFFE: Object to form. 3 A. When I get involved in a case, and it 4 looks like we're going to be doing something 5 with it, I call Tammy and Tony, and we do a 6 double, triple check, particularly if there's 7 one where we can't get a match. That's when I 8 do my own search. In this case they said this 9 is what we got. 10 Q. Okay. It's fair to say then for your 11 testimony that these are all of the documents 12 that were located you're relying on the truth 13 of what these two individuals told you? 14 A. Yes. 15 MR. RADCLIFFE: Object to form. 16 Q. Okay. 17 A. I worked with them for years. I've 18 cross checked them. 19 Q. Sure. 20 A. They're right. 21 Q. And you trust them based on your 22 experience with them is what you're saying? 23 A. Yes. 24 Q. But your only basis to tell the jury 25 in this case that these are all the documents HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 143 1 is what these two people told you? 2 A. Yes. 3 Q. Okay. You mentioned service 4 engineers. We saw a reference to service 5 engineers in one of the Power magazine 6 advertisements we looked at earlier. Do you 7 recall that? 8 A. Yes. 9 Q. Okay. What was the job of the service 10 engineers at Riley Stoker? 11 A. They serve multi functions. On a new 12 project service engineers would get involved 13 probably during the later -- the latter phase 14 of the construction where they would start 15 interfacing with the owner and their operators 16 to get them up to speed on what equipment was 17 being put in. 18 The owners wrote their own operating 19 manuals because it wasn't just the boiler. 20 They had to incorporate all the equipment on a 21 power house. We might go in there and do some 22 training on a particular Riley boiler or some 23 aspect of it, maybe the control system or 24 something along with the control system 25 manufacturer. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 144 1 And then they would usually, usually, 2 not always, be there to assist the customer 3 during the startup because we can't run a 4 boiler. We're not operators; we're not 5 licensed, never have been, never will. And 6 they would assist the owner in the startup of 7 the process. 8 They also would participate if there 9 was a required testing program to prove the 10 integrity of the boiler, they would initiate 11 the test program and execute it with the 12 customers and other equipment manufacturers' 13 participation. 14 They would prepare a final report or 15 someone in their division would. Then after 16 that everything was up and fine and set, they 17 would on a regular basis visit the customer to 18 see how it was going, could they assist them in 19 any way. 20 Sometimes a customer would ask us 21 occasionally to come in during the annual 22 inspection and look at a particular issue they 23 might be having. They were pretty much after 24 the erection phase of a contract, the service 25 department would kind of be the hand holder for HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 145 1 Riley for the future. 2 Q. Okay. And records of those visits by 3 the service engineers after the initial startup 4 and after they'd done their final report, these 5 aren't records that Riley Stoker believes it 6 still has copies of? 7 A. No. Those aren't contract records. 8 Those are -- I don't have a term for it. 9 Business records. 10 Q. Right. Those records, to the extent 11 they ever existed, they're gone now? 12 A. They're gone. We never see them. 13 Q. Sure. Would service engineers 14 typically also visit a customer's site if they 15 were doing significant maintenance to the 16 boiler? 17 A. We need to define "maintenance." 18 Q. Sure. You're aware that certain 19 boilers need to have the firebrick replaced, 20 correct? 21 A. A lot of boilers don't have firebrick. 22 Q. Certainly if it never had it, it 23 doesn't need to be replaced. We'll stipulate 24 to that. 25 A. Okay. The firebrick is usually a HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 146 1 condition of how they operate the boiler. Some 2 boilers they never touched; others they do have 3 to touch it because of the conditions the fuel. 4 The boiler got out of balance on the air when 5 it's acidic or something like that. But that 6 is really a repair rather than maintenance. 7 Q. Okay. 8 A. Maintenance is when you just basically 9 keep the boiler maintained. You inspect it 10 once a year. You make sure everything is in 11 adjustment. You know, your water gauge, your 12 water is the right condition. Your water is 13 the right level. And you keep inspecting it, 14 follow the codes, that's maintenance. Repair 15 is when you go in and have to start taking 16 something apart. 17 Q. It would be considered a repair if you 18 had to rebrick a portion of a boiler? 19 A. Yes. 20 Q. Okay. And for that type of repair, 21 you would expect that a Riley Stoker service 22 engineer would be on-site? 23 A. Not necessarily. That's something -- 24 MR. RADCLIFFE: Object to form. 25 A. -- that could be done without a HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 147 1 service engineer there. 2 Q. Okay. Would you -- it wouldn't be 3 uncommon to have a service engineer present for 4 that type of repair? 5 MR. RADCLIFFE: Object to form. 6 A. Service engineer couldn't lend 7 anything to that. Service engineer might be 8 on-site during that period of time for other 9 reasons because it was an outage and it gave 10 the owner an ability to use a service engineer 11 to look at different things they might have 12 concerns about. 13 Q. Ordinarily you can't go inside a 14 boiler? 15 A. You better not. 16 Q. Wouldn't last very long. If the 17 boiler is being rebricked, obviously, it's off? 18 A. Definitely. 19 Q. And that's an opportunity for the 20 owner to have the Riley Stoker service engineer 21 come out, actually get inside the boiler and 22 look at various things to make sure everything 23 other than the brick is performing adequately? 24 A. It's possible. 25 Q. Generally, utility plants tend not to HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 148 1 turn off boilers, correct? 2 A. They normally do it on a scheduled 3 basis on what they call the off-peak seasons. 4 Q. Okay. And during the off-peak season 5 in a power plant that had, say, three Riley 6 Stoker boilers, during the off-peak season you 7 might shut one of those down at a time in order 8 to do repairs or inspections; is that correct? 9 A. You might. 10 Q. Okay. And repairs or inspections are 11 the type of thing where Riley Stoker service 12 engineers may be called out to participate in? 13 A. They might be. 14 Q. Okay. 15 MR. RADCLIFFE: Objection to form. 16 Q. If they were in a particular case, if 17 there ever was a record of it, that's a record 18 that Riley Stoker does not have now and would 19 not expect to have now, correct? 20 A. We don't have them. 21 Q. Okay. 22 A. That's all I can tell you. 23 Q. In this case the contract documents 24 that have been produced to the plaintiff, if 25 these contract documents don't contain any HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 149 1 record of Riley Stoker service engineers 2 visiting the Interstate Power Company Power 3 Plant, it doesn't mean the service engineers 4 never went there, correct? 5 MR. RADCLIFFE: Objection to form. 6 A. Lack of records here does not mean he 7 never -- a service engineer never visited the 8 plant. 9 Q. Okay. Riley Stoker today simply 10 doesn't know if and if so when its service 11 engineers visited the Interstate Power Plant in 12 Lansing, Iowa, correct? 13 MR. RADCLIFFE: Objection to the form. 14 A. We have some documents in these two 15 packages that do reference correction order 16 work after the work was done. 17 Q. Fair point. Other than those records 18 and other than the visits reflected by those 19 records, Riley Stoker doesn't have information 20 about whether or not service engineers were on 21 this site for other reasons? 22 A. We have no files. 23 MR. RADCLIFFE: Objection to the form. 24 Q. They could have been there; you just 25 don't know? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 150 1 MR. RADCLIFFE: Objection to the form. 2 Q. Is that fair? 3 A. It's possible. 4 Q. You have a handwritten sheet on top of 5 two stacks of documents here, correct? 6 A. Yes. 7 Q. What is that handwritten sheet? 8 A. It is -- 9 Q. It's partially handwritten. 10 A. It is my notes, my reviewing the 11 contracts to get pertinent data that we 12 regularly wind up talking about in these 13 events. 14 Q. Okay. 15 MR. STUEMKE: Let's mark the -- 16 Q. It's entitled "Contract Review," 17 correct? 18 A. Yes. 19 MR. STUEMKE: Let's mark the contract 20 review for units one and two contract documents 21 as Exhibit No. 10. 22 (Exhibit No. 10, Contract Review, 23 Units One and Two so marked) 24 (Exhibit No. 11, Contract Review, Unit 25 Three so marked) HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 151 1 Q. Could I take a second and review 2 Exhibit 10, please. I take it you made the 3 notes that are reflected by Exhibits 10 and 11 4 yourself? 5 A. Yes. That's my name on them. 6 Q. And it's your work, right? 7 A. Yes. 8 Q. Okay. How did you decide what aspects 9 of the contract documents to highlight on your 10 notes? 11 MR. RADCLIFFE: Objection to form. 12 Q. What were you looking for? 13 A. This is the form that I made up quite 14 a while ago to get a uniform look at a contract 15 when I'm reviewing it to make sure I picked up 16 items that I was regularly asked about. 17 Q. Okay. And in looking at the summary 18 contract B-1744 which is for units number one 19 and two, if we look at page one, this is -- 20 it's called a summary of the contract, correct? 21 A. Contract summary. 22 Q. Okay. And the contract summary 23 indicates that the steam temperature for these 24 units is 910 degrees, correct? 25 A. Yes. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 152 1 Q. Operating at 975 pounds of pressure? 2 A. Operates at 875. 3 Q. Okay. That's right. The drum 4 pressure is rated at 975? 5 A. Yes. That would be design. 6 Q. Okay. And it indicates who supplies 7 the equipment for these boilers, correct? 8 A. Yes. 9 Q. Okay. And there are two initials in 10 front of each of the items that are listed on 11 this chart C and P. I assume C stands for 12 contractor? 13 A. Yes. 14 Q. Does P stand for purchaser? 15 A. Yes. 16 Q. There were certain pieces equipment 17 that were simply not a part of this contract, 18 correct, such as an economizer, platforms and 19 ladders, stack, dust collector, ash gate, 20 correct? 21 A. Yes. 22 Q. Okay. What is a dust collector? 23 A. It basically collects -- it's on the 24 back end of the boiler. It meets after the 25 combustion process, and it is like a HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 153 1 precipitator. It collects some of the ash from 2 the air, purifies the air before it goes out 3 the stack. 4 Q. To minimize pollution? 5 A. Yes. 6 Q. What happens to the dust once it's 7 gotten in the collector? How is it removed? 8 A. There's usually ash removal system on 9 them. 10 Q. Then the ash is just taken away 11 somewhere? 12 A. There's a whole process. Ash comes 13 out of the boiler, comes out of different 14 thing, and they have ash removal systems. They 15 have ash disposal systems and it's someone 16 else. 17 Q. I'm sure it's a fascinating topic we 18 don't need to get into today. The contract 19 summary for units one and two indicates that 20 Riley Stoker provides the insulation, correct? 21 A. Yes. 22 Q. Okay. I want to go through this chart 23 here and have you tell me which of the pieces 24 of equipment that are identified here as being 25 furnished for these boilers would need be HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 154 1 insulated, okay. The boiler, that would be 2 insulated, correct? 3 A. Yes. 4 Q. The super heater would be insulated, 5 correct? 6 A. No. Not -- some headers might be, but 7 the super heater is inside the boiler. 8 Q. Okay. Where would the headers be? 9 A. Up at the -- this is the top of the 10 boiler. This is the super heater in here 11 inside the boiler, and these are the two inlet 12 and outlet headers or super heaters. 13 Q. For the super heater? 14 A. Yes. 15 Q. And those inlet and outlet headers 16 would be insulated? 17 A. Yes. 18 Q. What is the steam temperature control 19 equipment? 20 A. That's a control system that usually 21 has an attemporator. It's a pipe where you 22 control the temperature of the super heater 23 steam and the pipes -- exposed pipes would be 24 insulated. 25 Q. Water walls are insulated, correct? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 155 1 A. Yes. 2 Q. The air heater is insulated, correct? 3 A. Yes. 4 Q. The setting is insulated, correct? 5 A. That is the insulation on the outside. 6 Q. Okay. 7 A. Part of it, the inside and out. 8 Q. The setting includes refractory 9 insulation and steel casing material? 10 A. It's a little confusing if you go into 11 this. The setting will give you the outside 12 constituents for all the different areas, but 13 then the insulation is primarily the boiler, 14 the walls, the big areas. So it's -- both are 15 insulation, but the setting also contains some 16 stuff that's used inside. 17 Q. Okay. Is structural steel insulated? 18 A. No. 19 Q. Are gas ducts insulated? 20 A. Gas ducts are usually insulated. 21 Q. Are air ducts insulated? 22 A. Depends where. If they're pre -- if 23 it's ambient air, it would not be insulated. 24 Q. Okay. So some of the air ducts 25 furnished by the contractor in this case would HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 156 1 have been insulated, correct? 2 A. I believe so. 3 Q. The fuel burning equipment is 4 insulated? 5 A. Not necessarily. 6 Q. Would a portion of that be inside the 7 boiler? 8 A. No. 9 Q. No? Okay. 10 A. No. 11 Q. Where would the fuel burning equipment 12 be located? 13 A. Fuel burning equipment is if you go 14 down to the bottom of that sheet, it says 15 combustion engineering company Raymond Bowl 16 Mills. Those are located outside the boiler 17 where they receive the coal from a hopper which 18 is fed from a coal pile. They, in turn, 19 process the coal and send it up in connecting 20 duct work to the burner then it's burned. 21 Q. Okay. Is any portion of the fuel 22 burning equipment insulated? 23 A. Part of the burners may be if they're 24 extended out the wind box type thing. 25 Q. Okay. HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 157 1 A. Depending on the configuration. 2 Q. Are soot blowers insulated? 3 A. The piping to them would be. 4 Q. Are forced draft fans insulated? 5 A. We didn't supply them on this job. 6 Q. I understand. But are they insulated? 7 A. ID fans are definitely insulated. 8 Forced draft may not be depending on the source 9 of the air. 10 Q. "ID" meaning induced draft? 11 A. Yes. 12 Q. Okay. The forced draft fan drive, is 13 that insulated? 14 A. That's a motor. 15 Q. Is it insulated? 16 A. A motor would not be, a steam turbine 17 drive might be -- would be. 18 Q. I hope so. Can you tell from the 19 contract documents whether the forced draft fan 20 drive was steam driven? 21 A. It wasn't in our scope so it's not 22 documented. 23 Q. Okay. You said the induced draft fan 24 would have been insulated? 25 A. Normally. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 158 1 Q. Would the driver for the induced draft 2 fan be insulated? 3 A. If it was a turbine. 4 Q. Okay. Would the fittings be 5 insulated? 6 A. Fittings are part of piping at the end 7 of steam drums, things like that, so they 8 pretty much all would be insulated. 9 Q. Is the combustion control equipment 10 insulated? 11 A. I don't know what kind it is so I 12 can't answer you. 13 Q. Are the instruments insulated? 14 A. The instrument take-offs might be. 15 The taps we call them. 16 Q. That's where the sensor feeds into the 17 boiler? 18 A. Or takes it out of the boiler, but I 19 could have it plugged into a pipe. 20 Q. Right. These instruments have sensors 21 that convey information from the boiler to the 22 instrument, correct? 23 A. Yes. 24 Q. Okay. And the point where the sensor 25 goes into the boiler or attaches to the boiler, HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 159 1 that's going to be insulated, correct? 2 A. If that is a hot area, yes. 3 Q. Okay. And, sir, if we turn to page 4 number six -- well, it says at the top page 5 number six. It's Bates labeled four at the 6 bottom. Is this still part of the contract 7 summary, sir? 8 A. Yes. 9 Q. Okay. It says page number six at the 10 top. The previous page at the top says page 11 number three. Do you know what happened to 12 pages four and five? 13 A. Right behind them. They're out of 14 sequence. 15 Q. Okay. The page says page number six 16 at the top. This is the contract summary for 17 the setting; is that right? 18 A. Yes. 19 Q. Okay. And this indicates it's going 20 to have 10-gauge steel casing, correct, over 21 the entire unit? 22 A. Yes. 23 Q. And indicates that the roof is going 24 to have 3 inches of firebrick tile, correct? 25 A. Interlocking firebrick tile. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 160 1 Q. And then underneath that firebrick 2 tile there's going to be 6 inches of 3 insulation, correct? 4 A. On top of that. 5 Q. Depending which way you're going. If 6 you're coming from the boiler going outward, 7 it's going to be underneath the tile, correct? 8 A. No. 9 Q. Well, since it's on the roof? 10 A. The tile would be against the tube, 11 then the insulation, then the casing. 12 Q. Right. And what was that insulation 13 for these two boilers, sir? 14 A. The only reference I have is that the 15 high-temp block was a 48 or equal mineral wool 16 on the boiler. 48 being a supplier. 17 Q. Okay. Is that for all the high-temp 18 block on the entire boiler, sir? 19 A. No. 20 Q. Okay. Is that just for the roof? 21 A. No, it's for the boiler. 22 Q. Okay. Is all the high-temp block for 23 this boiler mineral wool, 48 or equal? 24 A. On the boiler. 25 Q. Okay. HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 161 1 A. Yes. 2 Q. As opposed to the other pieces of 3 equipment that were furnished and had to be 4 insulated? 5 A. On the air heater breaching this is -- 6 this is duct work that called for 85 percent 7 mag block insulation. It's boiler proper, you 8 know, it is all mineral wool underneath the 9 casing. 10 Q. And what information in this contract 11 document tells you that? 12 A. The requisitions you get back in the 13 range of about 110 to 142. 14 Q. Okay. See on page 113 there is a 15 requisition for 552 square feet of 3-inch thick 16 48 insulation or equal high-temperature mineral 17 wool block, correct? 18 A. Yes. 19 Q. If you turn to page 118, this is a 20 requisition for I can't tell how many square 21 feet. Can you tell how many square feet that's 22 for, sir? 23 A. It's somewhere like 1,600 to 1,800. 24 Q. That's what I was thinking as well. 25 A. Square feet. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 162 1 Q. That's 88 cartons of 2-inch thick 2 high-temp block, correct? 3 A. Yes. 4 Q. And that is not mineral wool, correct? 5 MR. RADCLIFFE: Objection to form. 6 A. I don't know what that is. 7 Q. We know that when Riley Stoker 8 requisitions mineral wool block, at least on 9 page 113, they say high-temperature mineral 10 wool block, correct? 11 MR. RADCLIFFE: Object to the form. 12 A. On page 113 they said mineral wool 13 block. 14 Q. And on page 118 they just say 15 high-temp block, correct? 16 A. Yes. 17 Q. Okay. It's not your testimony that 18 this high-temp block on page 118 is mineral 19 wool, is it? 20 A. My testimony was -- 21 MR. RADCLIFFE: Object to form. 22 A. -- I don't know. 23 Q. You do know that 48 Insulation made 24 high-temperature block that contained asbestos, 25 correct? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 163 1 A. No, I did not know. 2 Q. Okay. If you turn, sir, to page 120, 3 this is another Riley Stoker contract material 4 requisition, correct? 5 A. Yes. 6 Q. Okay. And at the top it indicates 7 this is an order for two boilers at Interstate 8 Power Company, correct? 9 A. Yes. 10 Q. Underneath that it says times 6 - 11 applied insulation, correct? 12 A. No. That's not times six. That's a 13 drawing reference. 14 Q. Okay. X6? 15 A. Yes. 16 Q. Okay. It's a reference to an applied 17 insulation drawing? 18 A. Yes. 19 Q. That drawing was not included in the 20 documents produced, correct? 21 A. It was not included. 22 Q. Okay. Does Riley Stoker maintain 23 copies of drawings relating to its boilers 24 other than in the contract documents? 25 A. They keep -- they have some documents HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 164 1 in the -- in reprographics room, but they also 2 looked for them too. The reprographics room is 3 where we keep the card file. So it's part of 4 the process when they go through it to find out 5 what we have left. This file is 62 years old. 6 Q. Okay. And this requisition on page 7 120 calls for 4,824 square feet of 1 1/2-inch 8 high-temp block, correct? 9 A. Yes. 10 Q. It calls for 4,554 square feet of 2 11 1/2-inch thick high-temp block, correct? 12 A. Yes. 13 Q. It calls for 8,500 pounds of 14 insulating cement, correct? Pardon me, it 15 calls for 5,500 pounds of insulating cement, 16 correct? 17 A. Yes. 18 Q. It calls for 8,700 pounds of finish 19 cement, correct? 20 A. Yes. 21 Q. Now, there's nothing to suggest to you 22 that this material is mineral wool, is there? 23 A. No. 24 MR. RADCLIFFE: Object to form. 25 A. But I did want to point out to you is HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 165 1 at the very top of this requisition it says, 2 "The following 48 or equal insulations," and 3 that this is just the requisition. What was 4 actually bought, I don't know what was actually 5 bought in the final. This went from 6 engineering to purchasing, and then they 7 execute whatever they -- they get the bids and 8 supply the material to the -- 9 Q. Could be 48 Insulation or a material 10 that's considered to be equivalent in 11 performance, correct? 12 A. Right. 13 Q. That's what 48 or equal means, right? 14 A. Yes. 15 Q. In your three-ring binder, your 16 deposition materials -- you don't have to look 17 at it yet -- you had interrogatories from 18 several asbestos product manufacturers, 19 correct? 20 A. From several refractory manufacturers, 21 yes. 22 Q. Okay. You didn't have any 23 interrogatories in there that would provide you 24 information about the asbestos content of 48 25 Insulation, correct? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 166 1 A. There was nothing in there from 48 on 2 interrogatories. 3 Q. Okay. So counsel for Riley Stoker 4 hasn't given you that information, correct? 5 MR. RADCLIFFE: Object to the form. 6 A. I have not seen any. 7 Q. Okay. As you sit here today, again, 8 just as we looked at before, for the 9 requisition on page 120 you just don't know 10 whether this insulating material contained 11 asbestos or not, correct? 12 A. I've already said this twice, no. 13 Q. And so far we've seen requisitions for 14 a total of 552 square feet of high-temperature 15 mineral wool block, correct? 16 MR. RADCLIFFE: Object to the form. 17 A. So far. 18 Q. Okay. And on this page alone, page 19 120 alone, we've got almost 9,400 square feet 20 of let's just refer to it as high-temp block, 21 correct? 22 A. Yes. 23 MR. RADCLIFFE: Object to the form. 24 Q. We've got 13,200 pounds of insulating 25 and finish cement, correct? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 167 1 A. Yes. 2 MR. RADCLIFFE: Object to form. 3 Q. 6 1/2 tons? 4 A. It is what it is. 5 Q. That's what the math works out to be? 6 You're the engineer not me? 7 MR. RADCLIFFE: Object to the form. 8 Q. That's what the math works out to be? 9 A. I didn't do it in my head. 10 Q. If you turn to page 125, sir? 11 A. (Witness complies) 12 Q. This is a requisition for 85 percent 13 magnesia premolded pipe insulation, correct? 14 A. Yes. 15 Q. You know all that contains asbestos, 16 correct? 17 A. Yes. 18 MR. RADCLIFFE: Object to the form. 19 Q. Okay. This calls for 510 linear feet 20 of one dimension of pipecover, 129 linear feet 21 of another dimension and either 15 or 18 of 22 another size; is that right? 23 A. Yes. 24 Q. Okay. That's about 650 linear feet, 25 correct? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 168 1 A. Approximately, yes. 2 Q. On the next page, page 126, it calls 3 for another 291 linear feet of premolded pipe 4 insulation, correct? 5 A. Yes. 6 Q. Okay. It doesn't indicate the 7 material on this, does it? 8 A. No. 9 Q. Okay. Who would make the decision as 10 to what type of material to purchase for this? 11 A. Purchasing would based on the letter 12 from Fuel Economy, whatever was said there. 13 Q. Okay. Fuel Economy being the erector 14 on these boilers, correct? 15 A. On boilers one and two, yes. 16 Q. Yes. Riley Stoker had certain 17 standards for insulating products that 18 purchasing would look at in fulfilling these 19 requisitions, correct? 20 A. We had this project was at an 21 engineering standard from Sargent & Lundy from 22 Interstate Power. That was a standard we had 23 to follow as well as the ASME code and the 24 ASTM. And then Riley puts our own stamp on it 25 after reviewing all that to make sure the HG LITIGATION SERVICES HGLITIGATION.COM

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1 configuration, as we looked at this morning,
2 can be met.

3 Q. Turn sir, to page 128, this is a
4 requisition for, it looks like, about
5 1,892 square feet of 85 percent magnesia
6 insulation block, correct?

7 MR. RADCLIFFE: Object to the form.

8 A. Yes. That's what it says.

9 Q. Page 129 there is another requisition
10 form for 85 percent magnesia block, correct?

11 A. Yes.

12 Q. Okay. This calls for 6,408 square
13 feet of one size, 810 square feet of another
14 size and 126 square feet of another size,
15 correct?

16 A. Yes.

17 Q. It's about 7,300 square feet, isn't
18 it?

19 MR. RADCLIFFE: Object to the form.

20 A. The total is about 7,300 square feet.

21 Q. Is this per boiler?

22 A. No.

23 Q. This is total between the two boilers?

24 A. Yes.

25 Q. Okay. If you turn to page 133, sir,

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1 this is another requisition for 48 or equal
2 insulations high-temp block, correct?

3 A. Yes.

4 Q. Okay. Same material, you don't know
5 one way or the other if it contained asbestos,
6 correct?

7 A. Yes.

8 Q. And it calls for 2,484 square feet of
9 one size, 954 square feet of another size,
10 4,320 square feet of another size and
11 1,836 square feet of another size, correct?

12 A. Yes.

13 Q. It's about 9,500 square feet, isn't
14 it?

15 A. Yes.

16 MR. RADCLIFFE: Object to the form.

17 MR. STUEMKE: Are you objecting to me
18 doing math on the record, Counsel?

19 MR. RADCLIFFE: I'm objecting to your
20 questions that are it's about, it's
21 approximately, it's this. You want to ask the
22 question about what it is, ask the question
23 what it is. Otherwise, I don't think we have a
24 clear record.

25 MR. STUEMKE: Okay.

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1 Q. Sir, you understand that I've been
2 asking you for estimates based on the numbers
3 that are provided here, correct?

4 A. You've given me the estimates pretty
5 much first.

6 Q. Right. And you've been looking at the
7 numbers, and you've found those number to be
8 reasonable estimates, correct?

9 MR. RADCLIFFE: Object to form.

10 A. So far, yes.

11 Q. This requisition also calls for
12 thousands of square feet of felt, correct?

13 A. Yes.

14 Q. You don't know one way or the other
15 what the composition of that felt is, correct?

16 A. 8-pound minimum density felt is a
17 mineral felt. It does not have an asbestos.

18 Q. How do you know that?

19 A. It's a -- I've lived it.

20 Q. You've lived felt but not high-temp
21 block?

22 MR. RADCLIFFE: Object to form.

23 A. Felt is a -- mineral wool we have been
24 using on boilers almost exclusively now for
25 years, and we know it doesn't have any asbestos

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1 in it.

2 Q. You know it doesn't now or you know it
3 didn't in the 1940s?

4 A. Mineral wool, everything I've looked
5 at says mineral wool never had asbestos in it.

6 Q. Okay. The next page is page 134.
7 This is a requisition for 1,500 pounds of A.P.
8 Green cast set, correct?

9 A. Yes.

10 Q. Okay. What is cast set?

11 A. Some kind of refractory material.

12 Q. Okay. Does that contain asbestos?

13 A. I don't know.

14 Q. Okay. In your binder which is Exhibit
15 No. 8 you have interrogatories relating to A.P.
16 Green refractories, don't you?

17 A. Yes.

18 Q. Why don't we pull those out and take a
19 look?

20 A. (Witness complies)

21 Q. Do you mind if I stand over and look
22 at what you're looking at, sir?

23 A. This is the materials list they gave
24 us. It's not listed as an asbestos-containing
25 material.

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J. MICHAEL SMITH Page 173 1 Q. Okay. 2 A. Can we get a break? 3 Q. Sure. One question. Obviously, you 4 don't know anything about the composition of 5 A.P. Green cast set other than just looking at 6 that one chart that's part of the interrogatory 7 responses in your binder, correct? 8 A. That's all I know about it, yes. 9 Q. That's the only information you have 10 one way or the other? 11 A. Yes. 12 Q. Very good. 13 MR. STUEMKE: Yes, we can take a 14 break. 15 THE VIDEOGRAPHER: The time is 2:35. 16 We're off the record. 17 (Recess 2:35 p.m. to 2:43 p.m.) 18 THE VIDEOGRAPHER: Back on the record. 19 The time is 2:43. 20 BY MR. STUEMKE: 21 Q. Sir, if you can turn your attention to 22 page 137. 23 A. (Witness complies) Yes. 24 Q. This is a specification change in the 25 amount of poured refractory, correct? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 174 1 A. It's changing the quantity on a 2 previously issued requisition. 3 Q. I think the previous requisition is 4 the next page, 138. 5 A. Okay. 6 Q. There's a description after the term 7 "poured refractory." Could you read that? 8 A. EST 3, something. E3. 9 Q. Okay. Sir, do you know what that term 10 ESTE 3 refers to? 11 A. We just always called it TE 3. It's a 12 refractory we used. That was a Riley's generic 13 name for it. 14 Q. Okay. And, obviously, this is page 15 137 is calling for 88,000 pounds of that poured 16 refractory, correct? 17 A. That's what it calls for. 18 Q. Who are the suppliers of that poured 19 refractory, sir? 20 A. I don't know. 21 Q. Do you know the composition of that 22 poured refractory? 23 A. No. 24 Q. So this could be calling for 44 tons 25 of an asbestos product or 44 tons of a HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 175 1 nonasbestos product. We just don't know? 2 MR. RADCLIFFE: Object to the form. 3 A. I don't know what the materials 4 consisted of. 5 Q. Okay. Sir, if you look at page 139 -- 6 A. Yes. 7 Q. -- this is a requisition for 8 firebrick, correct? 9 A. Yes. 10 Q. And it identifies many thousands of 11 pieces of firebrick of varying dimensions, 12 correct? 13 A. Yes. 14 Q. It also calls for 7,000 pounds of 15 high-temperature cement, correct? 16 A. Yes. 17 Q. It describes the high-temperature 18 cement as wet, in wide mouth drums. What does 19 that mean, sir? 20 A. I'm aware that you can get high-temp 21 cement either wet or dry. And when it's wet, 22 they want the wide mouth drums. I've seen that 23 repeatedly. I've never seen -- personally seen 24 the drum. 25 Q. Okay. You know now that this HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 176 1 high-temp cement would have contained asbestos, 2 correct? 3 A. I don't know that. 4 MR. RADCLIFFE: Object to the form. 5 A. I don't know it. 6 Q. You believe it more likely than not? 7 A. I've been told some of it does. 8 Q. Okay. 9 A. Did. 10 Q. And this says that this 7,000 pounds 11 of high-temperature cement is for "buttering 12 edges of tile and laying FB" -- that's 13 firebrick -- "in the front wall," correct? 14 MR. RADCLIFFE: Object to the form. 15 A. That's what it says? 16 Q. FB does stand for firebrick? 17 A. That's my understanding. 18 MR. RADCLIFFE: Object to the form. 19 Q. What does it mean to butter edges of 20 tile? 21 A. It's like building something with 22 brick, a mason building with brick. When he 23 puts the bricks, he butters, he puts the cement 24 on each side before he puts it in. 25 Q. This is the mortar for the firebrick? HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 177 1 I mean in the brick analogy, this is like the 2 mortar? 3 A. In the brick analogy, this is the 4 mortar. 5 Q. Okay. In fact, we know that it's 6 high-temperature cement, correct? Correct? 7 A. Yes. 8 Q. Let's see, if you turn, sir, to page 9 152 -- 10 A. (Witness complies) 11 Q. -- this is a requisition for certain 12 Crane valves; is that correct? 13 A. Yes. 14 Q. It also indicates "Each manufacturer 15 supplying valves must clearly mark each and 16 every valve furnished by him with the service 17 and location for which valve is intended to the 18 end that the valve packing and trim will be 19 suitable for the service and that the valve 20 will be installed in the location for which it 21 is intended," correct? 22 A. That's what it says. 23 Q. Okay. Was that standard practice for 24 Riley Stoker when requisitioning valves? 25 A. That usually is -- HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 178 1 MR. RADCLIFFE: Object to form. 2 A. That type of requirement I've seen is 3 usually the engineer's requirement so they can 4 actually mark and tag a valve so they can track 5 it long term. It also often they use it just 6 so they know where they are in the system. 7 Q. Okay. Regardless of whether it's the 8 engineer's requirement or Riley Stoker's 9 requirement or somebody else's, this is a 10 requirement that you have frequently seen in 11 your career in the context of boiler 12 construction with respect to valves? 13 MR. RADCLIFFE: Object to form. 14 A. I have seen it throughout the power 15 plants. As a site engineer, I'd be dealing 16 with all systems. 17 Q. Sure. 18 A. This was universally used. It's 19 usually the engineer who specifies this is what 20 you got to do, and you got to comply with it. 21 Q. So if a valve manufacturer were to 22 tell a jury that it never had any idea what its 23 valves were going to be used for, you know that 24 to be false, correct? 25 MR. RADCLIFFE: Objection. Object to HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 179 1 the form. 2 A. I don't know if every valve 3 requirement had this on it. 4 Q. Sure. If Crane Co. told the jury that 5 they never knew what service or process their 6 valves were intended for, you know that's 7 false, correct? 8 MR. RADCLIFFE: Object to form. 9 DEFENSE COUNSEL: Object to form. 10 A. This does not -- this doesn't tell you 11 what the valve is going to be used for on this 12 requisition. It's a miscellaneous valve. 13 Q. Right. But it requires the valve 14 manufacturer to mark each and every valve 15 furnished by him with the service and location 16 for which the valve is intended, correct? 17 A. That's what it says. 18 MR. RADCLIFFE: Object to form. 19 Q. If a valve manufacturer such as Crane 20 Co. were to tell a jury that they never had any 21 reason to know the service or location for 22 which its valve were intended, you know that 23 that's a false statement, don't you? 24 MR. RADCLIFFE: Object to form. 25 A. I still don't know where this valve HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 180 1 was being used. 2 Q. My question simply is: If Crane Co. 3 tells a jury that they were never required to 4 know the usage or the location of usage for its 5 valves, you know that's a false statement, 6 don't you? 7 MR. RADCLIFFE: Object to form. 8 A. I don't know it's a false because I 9 don't have any documents to show me that they 10 didn't know anything. This says it's a 11 miscellaneous valve. It doesn't -- I don't 12 know where this is going. I don't know how 13 they would. 14 Q. Okay. But this requires them to know, 15 doesn't it? 16 MR. RADCLIFFE: Object to form. 17 A. It says they're supposed to mark the 18 valve with the service and location. It is 19 what it is. I mean, I can't analyze this. 20 Q. You said this is a requirement that 21 you saw all the time and being, you know, in 22 power plants, throughout power plants, right? 23 A. Yes, I have. 24 MR. RADCLIFFE: Object to form. 25 Q. Did valve manufacturers ever comply HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 181 1 with this requirement or was it universally 2 disregarded? 3 A. I don't know. 4 MR. RADCLIFFE: Object to form. 5 A. I don't know. 6 Q. Now, when we were going through 7 earlier, I made notations of the amount of 8 various high-temperature insulation that was 9 not labeled as mineral wool. And I just want 10 to sum this up for the jury if we can quickly. 11 On page 120 we had about 9,400 square feet of 12 high-temp block and about 13,200 pounds of 13 insulating and finish cement. Do you recall us 14 discussing that, sir? 15 MR. RADCLIFFE: Object to form. 16 A. You're going over what we already did? 17 Q. Do you recall us discussing those 18 numbers? 19 A. Yes. 20 Q. Okay. And on page 125 we had 650 feet 21 of 85 percent mag pipecovering. On page 128 we 22 had 1,892 square feet of magnesia block, 23 85 percent mag block. On page 129 we had 24 7,300 square feet approximately of 85 percent 25 mag block. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 182 1 MR. RADCLIFFE: Was that a question? 2 Q. On page 133 we had about 9,500 square 3 feet of high-temp block. So if we add up the 4 square footage of either 85 percent magnesia 5 block insulation or just high-temp block 6 insulation that is called for in these 7 requisitions, we end up with about 8 28,000 square feet of block insulation that's 9 not mineral wool. Does that sound about right 10 to you, sir? 11 MR. RADCLIFFE: Object to form. 12 A. No. We already said we didn't know on 13 a good part of that whether it was or was not, 14 mineral wool was listed high-temp block. What 15 was actually bought, we don't know. 16 Q. Okay. But does 28,000 square feet of 17 block insulation to cover two boilers, does 18 that sound about right to you? 19 A. That's not all of it, I don't think, 20 because that's duct work. That's more than 21 just the boilers. 22 Q. Okay. It's boiler and associated 23 equipment? 24 A. Yes. 25 Q. Okay. And this is block that's HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 183 1 furnished by Riley Stoker under the contract, 2 correct? 3 A. It's supplied by Riley through a third 4 party direct to the jobsite. 5 Q. Okay. Riley makes money off of the 6 items that they sell as part of the contract, 7 correct? 8 A. I hope we do. 9 MR. RADCLIFFE: Object to form. 10 Q. That's the idea? 11 A. That's the idea. 12 Q. We also saw more than 20,000 pounds of 13 cement of various types. Does that sound like 14 about the right amount that would be used in 15 the boilers and associated equipment? 16 A. I don't know if that's the correct 17 amount or not. I know that's what we saw 18 today. 19 Q. Okay. Regardless whether this math is 20 exactly right or not, you would agree with me 21 that there were tens of thousands of square 22 feet of high-temperature insulating block as 23 called for to insulate these boilers and 24 associated equipment, correct? 25 MR. RADCLIFFE: Object to the form. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 184 1 A. There was a lot. You have the number 2 there. That's what was requisitioned. 3 Q. And earlier I asked you about the 4 insulation on the roof. I thought you told me 5 that all of that was mineral wool? 6 A. No. 7 Q. Okay. So the only block insulation we 8 saw in going through these contract documents 9 for units number one and two was for 552 square 10 feet of mineral wool block, correct? 11 A. No. I don't agree with you. 12 Q. Okay. Well, I'm sorry if I misstated 13 it. Where is the other square footage of 14 mineral wool block indicated by these 15 requisition forms? 16 A. Well, we had all this minimum density 17 felt which I call -- I'm considering mineral 18 wool, 9,000. 19 Q. My question was restricted to block. 20 A. A thousand square feet on page 114. 21 That's just another thousand. 22 Q. Page 114 was also for mineral wool 23 felt, correct? 24 A. Yes. 25 Q. The only block that we saw in all of HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 185 1 these requisitions that indicated it was 2 mineral wool was 552 square feet? 3 A. That's correct. 4 Q. As opposed to almost 30,000 square 5 feet of block which was either 85 percent 6 magnesia or simply labeled as high-temp block, 7 correct? 8 A. Yes. 9 MR. RADCLIFFE: Object to form. 10 Q. Now, earlier -- and I apologize if I 11 misstate this -- I thought you told the jury 12 that the boiler proper was insulated just with 13 mineral wool, not with asbestos? 14 A. I said the boiler proper was insulated 15 with the plastic, with the shiplap tile or 16 tile, high-temp block, then mineral wool over 17 that. 18 Q. Okay. So if all almost 30,000 square 19 feet of this 85 percent mag or high-temp block 20 is asbestos containing, then you would agree 21 that there was -- strike that. 22 We haven't talked about the 23 requisitions also indicate that there are 24 asbestos handhold gaskets, correct? 25 A. Yes. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 186 1 Q. Okay. And Flexitallic gaskets, 2 correct? 3 A. Yes. 4 Q. You understand Flexitallic gaskets to 5 be an asbestos-containing product? 6 A. Yes. 7 Q. There's also a lot of asbestos 8 millboard that's specified for this boiler, 9 correct? 10 A. There is asbestos millboard 11 requisitioned for the boiler. 12 Q. Okay. As far as you know, all of the 13 insulating and finish cement that was called 14 for was asbestos-containing, correct? 15 A. I do not know that. I've already 16 stated that. 17 Q. Okay. You don't have any information 18 that any of those cements were available in 19 that time frame in a nonasbestos formulation, 20 correct? 21 MR. RADCLIFFE: Object to form. 22 A. I don't know what they contained. 23 Q. All right. 24 MR. STUEMKE: Let's take a short break 25 just to change the videotape. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 187 1 THE VIDEOGRAPHER: This is the end of 2 tape number three. The time is 3:01. We're 3 off the record. 4 (Recess 3:01 p.m. to 3:04 p.m.) 5 THE VIDEOGRAPHER: Back on the 6 stenographic record. 7 MR. RADCLIFFE: It's three o'clock by 8 my time. I'm obviously attending by phone, so 9 I'm having difficulty being able to gauge the 10 fatigue level of the witness. But I have 11 spoken with Mr. Saul, who is present in the 12 room with the witness, and based on the amount 13 of time that we've taken so far and where 14 things stand, we're going to have to end this 15 deposition at four o'clock. The witness has 16 been up since a very early hour, and it's 17 reaching a point where he's just going to not 18 be able to perform under the questioning. So, 19 Mr. Stuemke, you've got until four o'clock to 20 conclude the deposition. You can reserve any 21 of the right that you want, but we're just 22 going to have to end it at four. 23 THE WITNESS: I still have a two-hour 24 drive. 25 MR. RADCLIFFE: And by saying you can HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 188 1 reserve whatever rights you want, I'm not 2 agreeing that you can take this deposition 3 again. I think -- just so the record is clear, 4 I think that you've spent an inordinate amount 5 of time asking questions that have been covered 6 in previous depositions. You've demonstrated 7 that you are well aware of this witness' 8 testimony from past transcripts. It just 9 doesn't seem to me that we've moved as 10 expeditiously as we could. 11 MR. STUEMKE: Okay. Number one, there 12 was never any indication given to us that this 13 deposition was going to be limited in time 14 until now when you're telling me that I have 15 54 minutes to conclude the entire deposition. 16 I have more material than that, as you well 17 know because you've asked me off the record. 18 Now to tell me with 54 minutes remaining that I 19 have to conclude in that amount of time is bad 20 faith. It's absurd. Now, if you will agree to 21 reproduce the witness to continue the 22 deposition tomorrow morning, that's fine. 23 Otherwise, we are going to have a very serious 24 problem. And by "we," I mean Riley Stoker 25 because we are entitled -- Mr. Radcliffe are HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 189 1 you there? 2 MR. RADCLIFFE: I think somebody who 3 was participating has hung up, and now we're 4 getting a message. But I didn't hear the end 5 of what you said. 6 MR. STUEMKE: I stopped. 7 MR. RADCLIFFE: Okay. 8 MR. STUEMKE: Now, will you agree to 9 reproduce the witness for deposition tomorrow 10 morning? 11 MR. RADCLIFFE: I cannot agree to 12 produce him tomorrow morning. 13 MR. STUEMKE: Why not? I'm already 14 here. If I have to come back, you're going to 15 pay for our travel expenses. 16 MR. RADCLIFFE: Now, well, you can ask 17 for your travel expenses, but you certainly 18 can't tell me that I'm going to pay for your 19 travel expenses. 20 MR. STUEMKE: I'm sorry, if my manners 21 offend you. I've just been given 50 minutes to 22 conclude a deposition, which is the first time 23 there's ever been any indication that you 24 proposed any kind of a time limit to this 25 deposition. If you thought the witness would HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 190 1 be unable to go a full day, you should have 2 sought a motion for protection. You should 3 have at least advised us in advance so we could 4 make the appropriate motion to the court. Now 5 I need to be able to conclude this deposition 6 tomorrow morning. 7 MR. RADCLIFFE: I think that your 8 logic is a little bit faulty. Had I known that 9 you were going to spend at least an hour or two 10 replowing old ground, including ground that was 11 covered by your office a couple of months ago, 12 I would have informed you immediately of the 13 time constraints. 14 MR. STUEMKE: I'm sorry that I didn't 15 tell you my deposition strategy before I got 16 here. 17 MR. RADCLIFFE: Can I finish? Am I 18 allowed to finish? 19 MR. STUEMKE: I don't know. How much 20 more of the witness' time do you intend to use 21 up? I say we just get the judge on the phone. 22 MR. RADCLIFFE: You're the one who is 23 making a record. Am I allowed to reply? 24 MR. STUEMKE: In my time, sure, why 25 not. I'm a generous guy. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 191 1 MR. RADCLIFFE: Well, if you want to 2 talk about a waste of time, then you have to 3 look at what you've done. You have not used 4 your time as efficiently as you could. If you 5 want to -- if you're going to tell me that you 6 have a specific amount of time within which you 7 will complete this deposition, I will work with 8 you to reschedule it. It cannot be tomorrow 9 morning. 10 MR. STUEMKE: Why not? 11 MR. RADCLIFFE: It might have to be on 12 Saturday. 13 MR. STUEMKE: Why would it have to be 14 on Saturday? We can do this tomorrow morning. 15 We noticed the deposition continuing from day 16 to day. We didn't notice it to do at your 17 convenience. You produced the witness. The 18 notice of deposition states, "The deposition 19 shall continue from day to day, excluding 20 Saturdays and holidays, until completed." 21 That's on the notice to which you did not 22 object. Now, we need to get this thing done. 23 We have trial starting on Monday. This is a 24 blatant delay tactic. It's designed to 25 prejudice the plaintiff's case. This is HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 192 1 frankly unbelievable, Tom. 2 MR. RADCLIFFE: It's not a delay 3 tactic. I'm not trying to delay your case. We 4 also have schedules to work around. I'm trying 5 to work with you. 6 MR. STUEMKE: The deposition continues 7 tomorrow morning or we get the judge on the 8 phone. 9 MR. RADCLIFFE: You know, I'm not 10 prepared to go before the judge right now, 11 although -- 12 MR. STUEMKE: I bet you're not. 13 MR. RADCLIFFE: -- I've been admitted 14 pro hoc in this case, I believe as I am 15 required to have South Carolina counsel with me 16 as I believe you are. I don't think that it's 17 appropriate for us to call the judge on this 18 issue. If you want to try to work it out, I'm 19 happy to work it out. 20 MR. STUEMKE: Fine. Produce the 21 witness tomorrow. 22 MR. RADCLIFFE: If you want to go 23 before the judge, we'll take it before the 24 judge when we can. 25 MR. STUEMKE: Produce the witness HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 193 1 tomorrow. If you can't do it to tomorrow 2 morning, let's do it tomorrow afternoon 3 starting at one. 4 MR. RADCLIFFE: Tomorrow is not an 5 available day. I have commitments tomorrow and 6 Friday. 7 MR. STUEMKE: Mr. Smith, are you 8 available tomorrow? 9 THE WITNESS: I believe so. 10 MR. STUEMKE: Mr. Saul, are you 11 available tomorrow? 12 MR. SAUL: I'll have to check and see. 13 MR. STUEMKE: Mr. Radcliffe, Riley 14 Stoker has a bunch of lawyers. The witness 15 said he's available. The deposition is noticed 16 of Riley Stoker. We're going to continue 17 tomorrow. 18 MR. RADCLIFFE: Well, you're not going 19 to continue tomorrow if the witness doesn't 20 show up. Let's do it on Saturday. How many 21 hours do you need? 22 MR. STUEMKE: I told you I probably 23 had three hours at most. I don't know for sure 24 how long it's going to take. I don't know how 25 much more of my time you intend to use up HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 194 1 making your bogus record. 2 MR. RADCLIFFE: You know, those are 3 the kind of comments that are not designed to 4 deal in good faith with the issue that we have. 5 MR. STUEMKE: You know, I'm sorry if 6 I'm a bit perturbed. 7 MR. RADCLIFFE: If that's the record 8 you want to make, you go ahead and make that 9 record. But right now I'm trying to deal with 10 you on a specific timing issue. Are you 11 available Saturday? 12 MR. STUEMKE: No, I'm not available on 13 Saturday. Believe it or not, I intend to 14 comply with the notice which says that it shall 15 continue from day to day, excluding Saturdays 16 and holidays until completed. 17 MR. RADCLIFFE: What about Sunday? 18 MR. STUEMKE: Well, if we get to 19 Sunday after Thursday and Friday, that's fine, 20 but the notice says day to day; that's 21 tomorrow. 22 MR. RADCLIFFE: What about Monday 23 evening after court? 24 MR. STUEMKE: No. Monday evening 25 after court doesn't work, surprise, surprise. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 195 1 We need to get the deposition done. The 2 witness is available tomorrow. Let's do it. 3 MR. RADCLIFFE: I am not available 4 tomorrow. 5 MR. STUEMKE: I didn't know that you 6 were an essential party to this deposition, 7 sir. 8 MR. RADCLIFFE: Well, are you an 9 essential party to the deposition? 10 MR. STUEMKE: It's my deposition, Tom. 11 MR. RADCLIFFE: Okay. Well, it's my 12 deposition to defend. If you're an essential 13 party, I'm an essential party. Your firm has 14 extra lawyers. Get one of your other lawyers 15 to do it on Saturday. 16 MR. STUEMKE: Are you going to pay for 17 my expenses to come up here, Tom? 18 MR. RADCLIFFE: I'm not going to pay 19 your expenses to come up here. I'm going to 20 work with you in good faith like we have in the 21 past, like your firm has worked with us in the 22 past. 23 MR. STUEMKE: You can start on that 24 now by agreeing to produce the witness 25 tomorrow. Are you in court tomorrow, Tom? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 196 1 MR. RADCLIFFE: I am not in court 2 tomorrow. 3 MR. STUEMKE: Let's do it tomorrow. 4 MR. RADCLIFFE: I am unavailable 5 tomorrow. 6 MR. STUEMKE: Let's go back on the 7 video record. 8 MR. RADCLIFFE: Let me take that back. 9 I am available tomorrow. Unfortunately, it's 10 not until very late in the evening at 11 six o'clock. So if you want to do it starting 12 at six o'clock tomorrow evening, I'm happy to 13 continue. 14 MR. STUEMKE: Let the record reflect 15 the witness may be becoming exasperated with 16 both of us. 17 THE WITNESS: I'm getting very tired. 18 I've been on the road for 10 hours. I have two 19 more to go. 20 MR. RADCLIFFE: We're ending at four; 21 it's only 45 more minutes. Are you okay to 22 continue for 45 more, Mr. Smith? 23 THE WITNESS: Yes. 24 MR. RADCLIFFE: Okay. 25 THE VIDEOGRAPHER: Just a suggestion HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 197 1 off the record, but what if you got him a hotel 2 room or something so he didn't have to drive, 3 and finish it tonight or today. 4 MR. STUEMKE: The videographer makes a 5 very good suggestion. In order to -- 6 MR. RADCLIFFE: I couldn't hear him. 7 MR. STUEMKE: In order to alleviate 8 the witness' concern over having a two-hour 9 drive tonight, perhaps Riley Stoker would agree 10 to provide him a hotel room for the -- so we 11 could conclude without him having to drive 12 home. If the concern actually is that the 13 witness is too tired to continue and may not 14 safely drive home, I think that would be a 15 reasonable accommodation. 16 MR. RADCLIFFE: Just to continue at 17 what time? 18 MR. STUEMKE: To continue it today; 19 that way the witness doesn't have to have a 20 two-hour drive home today. 21 MR. RADCLIFFE: What time would you 22 finish today? 23 MR. STUEMKE: At the very latest I'm 24 sure I'd be done by six, probably earlier. 25 MR. RADCLIFFE: Let me speak with Mr. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 198 1 Saul for a moment if I can. Jason, will you 2 call me on my cell? 3 MR. SAUL: Sure. Give me just a 4 second here to step away. 5 (Recess 3:16 p.m. to 3:19 p.m.) 6 MR. RADCLIFFE: I've spoken with Mr. 7 Saul. I'm at somewhat of a disadvantage 8 because I'm not there to physically observe Mr. 9 Smith and make a determination as to whether or 10 not he's fatigued and not ready to continue. 11 Mr. Saul has provided me input on that issue. 12 Based on Mr. Stuemke's representation that 13 he'll conclude no later than six tonight, we 14 can continue past four as long as the witness 15 is not overly fatigued. And not to give him a 16 hard time, but he is a retired gentleman. He's 17 60-something years old. We've been going since 18 ten o'clock with a 40-minute break for lunch, 19 about a five-minute break every hour or so and 20 he was up early to drive to Boston. So Mr. 21 Stuemke, go back on, continue to ask your 22 questions. Mr. Saul is going to be my eyes for 23 me. If he thinks that the witness is overly 24 fatigued and not able to answer questions, 25 we'll have to revisit this issue. Based on HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 199 1 your representation that you'll finish by no 2 later than six, let's keep going. 3 MR. STUEMKE: Very good. Back on the 4 video record. 5 THE VIDEOGRAPHER: This is the 6 beginning of tape number four. We're back on 7 the record. The time is 3:20. 8 BY MR. STUEMKE: 9 Q. Are you ready to continue, sir? 10 A. Yes. 11 Q. Very good. I'd like to turn your 12 attention, sir, to the collection of documents 13 that begins at Bates numbered page 217. This 14 is for Interstate Power Company boiler number 15 three, correct? 16 A. Yes. 17 Q. In the scope of work section of your 18 contract review document which is Exhibit 11, 19 you indicated on the material line only and 20 circled that. What does that mean, sir? 21 A. That's all we supplied on that unit. 22 We just supplied the material, no labor, no 23 supervision. 24 Q. Opposed to the prior contract we 25 looked at where supervision was provided by HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 200 1 Riley Stoker, correct? 2 A. Labor was also subcontracted by Riley 3 to a contract change order later on. 4 Q. Okay. So FEE Company, which was the 5 erector, was a subcontractor of Riley's, not of 6 the purchaser? 7 A. Yes. That was a change as the 8 contract went forward. 9 Q. Okay. Unit number three was a larger 10 boiler than units number one and two, correct? 11 A. Yes. 12 Q. Okay. Going back to units one and 13 two, were they identical? 14 A. Yes. 15 Q. And looking at the drawing, can you 16 get the drawing out for units number one and 17 two real quick, please? 18 A. (Witness complies) 19 Q. Can you provide the jury a rough 20 approximation of the height and width of units 21 number one and two? 22 A. Units one and two were 73 feet high, 23 27 feet wide -- I mean, deep, and 16 feet wide. 24 Q. Okay. I made you get out those 25 drawings out unnecessarily because you already HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 201 1 knew that, didn't you? 2 A. That's why. 3 Q. Very good. And the 73 feet high, 4 that's from the top of the boiler to ground 5 level, correct? 6 A. Yes. 7 Q. Okay. 8 A. To the floor, the operating floor, 9 basement floor in this case. 10 Q. Okay. And unit number three was 11 12 feet higher, 21 feet deeper and 8 feet 12 wider; is that correct? 13 A. Yes. 14 Q. Unit number three operated at the same 15 pressure, correct? 16 A. Same pressure and temperature. 17 Q. Yes. With respect to unit number 18 three, although Riley Stoker was not 19 responsible for any labor or supervision of 20 erection, they were still responsible for 21 insulation, correct? 22 A. Insulation and setting. 23 Q. I'm sorry, I didn't understand your 24 answer. 25 A. Insulating and setting. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 202 1 Q. And the setting, okay. Are there 2 differences in the way in which units one and 3 two were insulated in comparison with unit 4 three? 5 A. The configuration of the boiler was a 6 little bit different so they had some different 7 tube spacing in certain areas, but, 8 essentially, for the boiler setting it was the 9 same. It had plastic refractory, the tile, 10 high-temp block, mineral wool, depending on 11 where you were, and the casing had a complete 12 10-gauge welded casing totally air tight all 13 around the boiler. 14 Q. Okay. And that was true for units one 15 and two also? 16 A. Right. They're both sealed up, yes. 17 Everything that's inside the casing is sealed. 18 Q. Unless it's open to do repair or 19 maintenance? 20 A. Repair, not for maintenance. 21 Q. Or inspections? 22 A. They don't open for inspections. We 23 don't open that casing. 24 Q. I'd like you to turn to Bates label 25 page 243, please? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 203 1 A. (Witness complies) 2 Q. This indicates that "Contractor shall 3 cause the work to comply with all applicable 4 laws, ordinances and regulations of any public 5 authorities having jurisdiction." Is that 6 correct? And then it goes on, correct? 7 A. Yes. 8 Q. Sir, to your knowledge did -- number 9 one, was this a fairly standard provision in a 10 contract in the 1950s and 1960s? 11 A. I don't know. 12 Q. Have you seen provisions similar to 13 this before? 14 A. Yes. 15 Q. What steps did Riley Stoker take, if 16 any, to ensure that the work relating to unit 17 number three complied with all applicable laws, 18 ordinances and regulations? 19 A. It has to comply with ASME, Hartford 20 Steam Boiler, Iowa and the customer's 21 specifications. 22 Q. Okay. Would it have to comply with 23 Occupational Safety & Health regulations? 24 A. If they existed. 25 MR. RADCLIFFE: Object to the form. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 204 1 Q. Do you know if Iowa had any 2 Occupational Safety & Health regulations in the 3 1950s? 4 A. I do not. 5 Q. If you turn to page 306, sir -- 6 A. (Witness complies) 7 Q. -- it says, "Specification for calcium 8 silicate pipe insulation," correct? 9 A. It's a requisition, contract material 10 requisition for cal sil pipe insulation. 11 Q. Okay. It indicates that it is to 12 replace material and correctly specified? 13 A. Yes. 14 Q. Is the word "specified" use correctly 15 there, sir? 16 MR. RADCLIFFE: Object to the form. 17 Q. Or can you tell? 18 A. We specified a certain thickness based 19 on input from vendors, and it was the incorrect 20 thickness if you find the other requisition. 21 This is a work correction order. 22 Q. Okay. Is there any mineral wool block 23 that was used to insulate unit number three, 24 sir? 25 A. There was mineral wool felt specified HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 205 1 by the owner. 2 Q. Okay. Was there any mineral wool 3 block, sir? 4 A. I don't know. 5 Q. Okay. You went through the 6 requisition forms and made notations of type of 7 insulation that were called for, correct? 8 A. Yes. 9 Q. Okay. And you didn't make any 10 notations that there was mineral wool block to 11 be used, correct? 12 A. Correct. 13 Q. If you would turn sir, to page 344? 14 A. (Witness complies) I'm there. 15 Q. This is a requisition for insulation 16 material, correct? 17 A. Yes. 18 Q. It calls for high-temperature block 19 insulation of either 1 1/2-inch thickness or 20 2-inch thickness, correct? 21 A. That's part of it, yes. 22 Q. It calls for 3,690 square feet on one 23 size and 8,054 square feet on another size, 24 correct? 25 A. Yes. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 206 1 Q. Okay. That's 11,744 square feet 2 approximately, correct? 3 A. Yes. 4 MR. RADCLIFFE: Object to form. 5 Q. Okay. It calls for 10,750 pounds of 6 power house cement, correct? 7 A. Yes. 8 Q. Did power house cement contain 9 asbestos? 10 A. I don't know. 11 Q. Do you see there is a letter B next to 12 the second high-temperature block size? Do you 13 see that? 14 A. Yes. 15 Q. Okay. And that is for Baldwin Hill, 16 correct? 17 A. No. 18 MR. RADCLIFFE: Object to form. 19 Q. What does B represent, sir? 20 A. It represents the area where it was 21 used. 22 Q. Okay. 23 A. It's a reference right below it. 24 Q. Okay. So down at the bottom there's a 25 line that has the B in front of it. What does HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 207 1 that line indicate? 2 A. That's where it was used. 3 Q. Okay. I'm sorry, sir, I'm looking 4 here at the bottom of the page. There's A, B, 5 C, D, and E at the bottom left. Do you see 6 that? 7 A. Yes. 8 Q. Okay. In line B it says "Sup 2." Do 9 you see that? 10 A. Yes. 11 Q. Then it says "Baldwin Hill." Do you 12 see that? 13 A. Yes. 14 Q. What does Baldwin Hill represent here? 15 A. I believe that would probably be the 16 supplier. 17 Q. Do you know, sir, that Baldwin Hill 18 manufactured asbestos-containing high-temp 19 block in the 1950s? 20 MR. RADCLIFFE: Object to the form. 21 A. I don't know when they made it. I'm 22 aware they have made products with asbestos in 23 it. 24 Q. Okay. 25 MR. RADCLIFFE: Excuse me for a HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 208 1 moment. Mr. Saul, I've had something that I've 2 got to handle come up. I'll try to come back 3 in, but for the mean time, can you take over as 4 counsel for Riley? 5 MR. SAUL: Sure, Tom. 6 MR. RADCLIFFE: Okay. If anything 7 comes up, call me on my cell. I'll try to join 8 back in. Excuse the interruption. 9 MR. SAUL: All right. 10 Q. Sir, if you turn to page 352? 11 A. (Witness complies) Okay. I'm there. 12 Q. And this calls for the same type of 13 poured refractory that we discussed with 14 respect to units number one and two, correct? 15 A. TE 3, yes. 16 Q. This calls for 62,000 pounds of that, 17 correct? 18 A. No. It calls for 24,000 pounds of TE 19 3, 6,000 pounds of TE 3A and 32,000 of TE 12. 20 Q. Totalled up it's 62,000 pounds, 21 correct? 22 A. Yes. 23 Q. And do you know the differences, if 24 any, between E 3A, E 3 and E 12? 25 A. No. HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 209 1 Q. You indicated earlier this was just 2 kind of a Riley Stoker generic reference to 3 refractory; is that correct? 4 A. To two types of refractory, that's 5 correct. 6 Q. Okay. Where could we go to find out 7 what the composition of that refractory 8 material was? 9 A. We should have been able to go to the 10 engineering standards for that time, but they 11 don't exist because as standards get 12 superceded, they get destroyed. 13 Q. Okay. 14 A. That's what this ES stands for, 15 engineer standard. TE 3, TE 3A, TE 12. 16 Q. So at this point it's anybody's guess 17 as to what was in that refractory material? 18 A. Unless you found the purchase order to 19 Mexico Refractories and find out what we 20 actually bought, that would be the only way, or 21 you tested it. 22 Q. Do you have any information as to the 23 products manufactured by Mexico Refractories? 24 A. I do not. 25 Q. Do you know whether Mexico HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 210 1 Refractories is located in the country of 2 Mexico or in Mexico, Missouri? 3 A. I believe it was located in the 4 states. 5 Q. Okay. Why do you believe that? 6 A. Because someone told me that, and I 7 don't remember who. 8 Q. Okay. 9 A. I thought it was out of the country, 10 and I was corrected on that. 11 Q. As with units one and two, the 12 contract documents for unit three reflect pipe 13 insulation, correct? 14 A. Yes. 15 Q. Okay. That would be furnished by 16 Riley Stoker under its contract, correct? 17 A. Yes. 18 Q. And this was calcium silicate pipe 19 insulation, correct? 20 A. On this contract it was cal sil. 21 Q. Okay. Also asbestos rope, correct? 22 A. Yes. 23 Q. Asbestos millboard, correct? 24 A. Yes. 25 Q. Flexitallic gaskets, correct? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 211 1 A. Yes. 2 Q. You understand those to be 3 asbestos-containing, correct? 4 A. Yes. 5 Q. And I am not sure that I located all 6 the references to block insulation here, but 7 the one that we talked about on page 344 called 8 for 11,744 square feet of insulating material, 9 correct, of high-temp block, correct? 10 A. Yes. 11 Q. And that was supplied by Baldwin Hill, 12 correct? 13 A. Yes. 14 Q. Sir, in your three-ring binder you 15 have interrogatories of Keene Corporation, 16 correct? 17 A. There is one with Keene, I believe. 18 Q. Let's pull that out. I'll represent 19 to you that Keene Corporation is a successor in 20 interest to Baldwin Hill? 21 A. Which means? 22 Q. That there were various name changes 23 and acquisitions. Keene Corporation became 24 responsible for the Baldwin Hill insulating 25 products manufactured in the '50s. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 212 1 A. Legal talk. 2 Q. I've tried to talk a little bit of 3 engineering to you, but that just gets me in 4 trouble. 5 A. All right. 6 Q. Do you mind if I peer over your 7 shoulder here? 8 A. Please. What am I looking for here? 9 These are the products they said. 10 Q. Okay. For the record, we are looking 11 at Exhibit 8, tab No. 25 which are 12 interrogatory answers of Keene Corporation, 13 correct? 14 A. Yes. 15 Q. Okay. That indicates that Keene 16 Building Products Corporation and its corporate 17 predecessors, including the Baldwin Hill 18 Company manufactured the following thermal 19 insulation products which contained varying 20 amounts of asbestos fiber, correct? 21 A. That's what this says, yes. 22 Q. Baldwin Hill manufactured -- it 23 appears that they manufactured 85 percent 24 magnesia pipe and block covering, correct? 25 A. Yes. HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 213 1 Q. In the time frame that unit three was 2 constructed, correct? 3 A. Yes. 4 Q. They manufactured monoblock 5 high-temperature insulation, correct? 6 A. Yes. 7 Q. In the time frame that unit three was 8 constructed, correct? 9 A. Right. 10 Q. And that indicates that it was 11 manufactured by B-H which you understand refers 12 to Baldwin Hill, correct? 13 A. And BEH also. 14 Q. Yes, sir. Also indicates -- strike 15 that. 16 The only block high-temperature 17 insulation indicated in those interrogatories 18 that was manufactured directly by Baldwin Hill 19 is the monoblock high-temperature insulation, 20 correct? 21 MR. SAUL: Objection to form. 22 A. Yes. 23 Q. You don't have any reason to think 24 that Baldwin Hill manufactured a 25 nonasbestos-containing high-temperature HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 214 1 insulation in that time frame, do you, sir? 2 A. I don't know. 3 Q. I'd like to turn your attention, sir, 4 to page 371. This is a requisition for valves, 5 correct? 6 A. Yes. 7 Q. And the requisition includes packing 8 which is identified as Garlock No. 935, 9 correct? 10 A. It's 9 something. Mine is a little 11 bit fuzzy. 12 Q. Look at mine? 13 A. 935, 925. 14 Q. Okay. You don't have any reason to 15 dispute that was an asbestos-containing packing 16 material, do you? 17 A. I don't know. 18 DEFENSE COUNSEL: Object to form. 19 Q. Sir, in addition to your review of 20 these contract documents, did you review any 21 deposition testimony taken in this case? 22 A. Yes. 23 Q. What deposition or depositions did you 24 review? 25 Let me withdraw that question. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 215 1 There's one other thing I want to ask you about 2 before we move on to that. 3 MR. STUEMKE: Let's mark this as the 4 next exhibit, please. 5 (Exhibit No. 12, Riley Stoker 6 Engineering Standards so marked) 7 Q. You can set the contract documents 8 aside if you'd like. 9 A. I don't know where all the exhibits 10 are. 11 Q. We'll find them later. They're all 12 floating around somewhere. You've been handed 13 Exhibit No. 12, sir. Are you familiar with 14 this document? 15 A. No. 16 Q. Okay. This is, according to the 17 document, a Riley Stoker Corporation 18 engineering standard, correct? Do you see that 19 at the top? 20 A. Yes. 21 Q. Okay. This indicates that it was 22 originally issued it appears to be January 25, 23 1950, correct? 24 A. Yes. 25 Q. It appears to have had four -- or a HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 216 1 total of three revisions after that, correct? 2 A. It looks like there's one more down 3 the bottom there. 4 Q. Okay. 5 A. I can't read it. 6 Q. At any rate this has been revised? 7 This was revised several times to get to this 8 version, correct? 9 A. Yes. 10 Q. Okay. This is the Riley Stoker 11 engineering standard for trowelable lightweight 12 plastic refractories, correct? 13 A. That's what it says. 14 Q. Okay. You don't have any reason to 15 dispute that, do you? 16 A. No. 17 Q. This is what engineering standards 18 from Riley Stoker looked like, correct? 19 MR. SAUL: Objection to form. 20 A. Not always, no. 21 Q. This is a format you've seen them in 22 before, though, correct? 23 A. I've seen this format before. 24 Q. Okay. Did you say that you'd never 25 seen this document before or do you recall? HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 217 1 A. I don't remember. 2 Q. Do you know which, if any, of the 3 refractory materials that are listed here 4 contain asbestos? 5 A. No. 6 Q. In your binder you have 7 interrogatories from A.P. Green, correct? 8 A. Yes. 9 Q. Okay. Do you know if you have any 10 interrogatories for any of these other 11 manufacturers that are identified here? 12 A. I don't remember. I don't believe so. 13 Q. Could we look real quick at the A.P. 14 Green interrogatories? Actually, the relevant 15 page is on the last page of this I believe. 16 Here we go. You see in Exhibit 12 there's an 17 A.P. Green refractory product known as SK 7, 18 correct? 19 A. Yes. 20 Q. Do you see SK 7 here? 21 A. Yes. 22 Q. You see that was manufactured from 23 1953 to 1972? 24 A. Yes. 25 Q. And that it contained 2.3 percent HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 218 1 asbestos? 2 A. Yes. 3 Q. You don't have any information one way 4 or the other about the asbestos content of any 5 of the other products identified on Exhibit 12, 6 correct? 7 A. That's correct. 8 Q. Okay. Do you have any reason to 9 dispute that they also contained asbestos? 10 A. I don't know. 11 Q. Okay. In the 1940s and 1950s, did 12 Riley Stoker know whether the refractory 13 products it was using with its boiler contained 14 asbestos? 15 A. Not to my knowledge. 16 Q. But you don't know one way or the 17 other? 18 A. No. 19 Q. You reviewed certain depositions taken 20 in this case, correct? 21 A. Yes. 22 Q. Which depositions did you review? 23 A. I reviewed Gary W. Lenz, Senior's 24 Volume I deposition and Volume II deposition, 25 Volume III video deposition and Volume IV. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 219 1 Q. Okay. And you made notes relating to 2 those depositions, correct? 3 A. Yes. 4 Q. Okay. Could we remove your notes from 5 each volume of the deposition and mark the 6 notes collectively as the next exhibit, No. 7 13. We can have a copy made at a break. 8 A. (Witness complies) There are no 9 notes for Volume IV. 10 THE WITNESS: Can we take a break. 11 MR. STUEMKE: Sure. 12 THE VIDEOGRAPHER: The time is 3:52. 13 We're off the record. 14 (Recess 3:52 p.m. to 4:01 p.m.) 15 (Exhibit No. 13, Handwritten Notes of 16 Lenz Depositions so marked) 17 THE VIDEOGRAPHER: Back on the record. 18 The time is 4:01. 19 BY MR. STUEMKE: 20 Q. Sir, we have marked the notes that you 21 took relating to your review of Mr. Lenz's 22 various depositions as Exhibit 13. Sir, with 23 your review of Volume I of his deposition, you 24 did not make any notations nor was there any 25 testimony relating to Riley Stoker boilers, HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 220 1 correct? 2 A. That's correct. 3 Q. Okay. We turn to your review of his 4 deposition Volume II. You made a note that he 5 testified there was a Riley Stoker boiler at 6 Interstate Power, correct? 7 A. Yes. 8 Q. All right. And you note he worked 9 there as an equipment operator between '71 and 10 '74, correct? 11 A. Yes. 12 Q. You don't have any information to 13 dispute either of those things, correct? 14 A. No. That's what he said. 15 Q. And you indicate that on page 195 he 16 said that he did no work directly on the 17 boilers at Interstate Power, correct? 18 A. Correct. 19 Q. With respect to your review of the 20 videotaped deposition of Mr. Lenz, you indicate 21 that page one of seven that he testified he 22 never personally did any physical work at IP in 23 Lansing, Iowa. Is that what your note reads? 24 A. That's what it reads. 25 Q. I'd like you to turn, please, to page HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 221 1 107 of that deposition, please. 2 A. (Witness complies) Yes. 3 Q. Okay. Now, where on page 107 does he 4 testify that he never did any physical work at 5 IP? 6 A. Line 13 he was asked that question. 7 Q. Line 13 he's asked, "You never 8 personally did any of that work at Lansing; is 9 that fair?" And he says, "That's fair." 10 A. Yes. 11 Q. The work is referring to the question 12 that begins at line 5, correct? 13 A. That's my understanding. 14 Q. Okay. You're not saying that he had a 15 job at the power plant that didn't require him 16 to do any work, are you? 17 A. No. 18 Q. Okay. What you were meaning to state 19 simply that he didn't do the type of work that 20 was described beginning at line 5? 21 A. Yes. 22 Q. Okay. And he does say that he talks 23 about being around other people that were doing 24 that type of work at IP, correct? 25 A. He talked about being around other HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 222 1 people who were doing some kind of work but not 2 repair work because he stated that anyone who 3 did repair work cleaned up their own stuff. He 4 only did -- when he was on housekeeping, he 5 only did general housekeeping, sweeping the 6 floor. 7 Q. And you indicated that at page 112 Mr. 8 Lenz said that he rebricked the Riley boiler; 9 is that right? 10 A. He participated in the rebricking. 11 Well, he said, "I rebricked part of the furnace 12 on number three while I was there." 13 Q. Okay. And you don't have any reason 14 to dispute that that's true, correct? 15 A. Yes, I do. 16 Q. Why? 17 A. There is no brick on the furnace -- in 18 the furnace of the Riley boiler. 19 Q. Okay. 20 A. In the furnace there's no brick. 21 Q. Okay. Now, in the boiler itself there 22 is brick, correct? 23 A. No. There's no brick in the boiler. 24 In the furnace on the boiler he said, 25 "Rebricked part of the furnace on number three HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 223 1 while I was there." The furnace does not have 2 any brick on the inside of furnace. 3 Q. Okay. Is there brick in the boiler? 4 A. Somewhere in the boiler there is but 5 not in the furnace. 6 Q. What's in the furnace? 7 A. Tubes, boiler tubes. 8 Q. Okay. Now, you've been in the boiler 9 business for 36 years? 10 A. Forty-three. 11 Q. Forty-three years, sorry. You 12 certainly have an intimate familiarity with 13 each and every part of a boiler system, 14 correct? 15 MR. SAUL: Objection to form. 16 A. Enough to know that I'm not an expert 17 on every part of every boiler because there's 18 so many variations. 19 Q. But you know what all the correct 20 terms are? 21 A. Most of them. 22 Q. Okay. You could certainly call 23 yourself more of an expert on the terminology 24 of boilers and their component parts than Mr. 25 Lenz? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 224 1 A. I don't know what he knew. I would be 2 presumptive on my part to say that. 3 Q. Okay. You don't know if Gary Lenz 4 understood exactly what the furnace part of a 5 boiler actually is in your correct terminology, 6 do you? 7 MR. SAUL: Objection to form. 8 A. Could you rephrase that? 9 Q. Sure. You don't know that when Mr. 10 Lenz was referring to the furnace, a Riley 11 Stoker boiler, that he's referring to what is 12 actually technically the furnace. He might 13 have gotten the term wrong; is that fair? 14 A. That is possible. 15 Q. Okay. What does it mean to rebrick a 16 boiler? 17 A. Older industrial type boilers had 18 brick components in them. Periodically, you 19 may get deterioration because of the fuel is 20 acidic or something happened; they had a puff 21 and they broke part of it. And you physically 22 go in there and remove brick and you replace it 23 with new brick. 24 Q. Okay. 25 A. Including with mortar and whatever it HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 225 1 is. That's what rebricking a boiler, a furnace 2 means to me. 3 Q. Now, when you say "older industrial 4 boilers," what time frame are you talking 5 about? 6 A. '30s, maybe early '40s. 7 Q. Okay. Is there any firebrick in unit 8 number three? 9 A. I'm sure there is, yes. 10 Q. Where is it? 11 A. I don't know. 12 Q. Okay. 13 A. I don't. The drawing, we have a 14 general arrangement drawing, and it doesn't 15 really say. It's very difficult to read. 16 Q. That firebrick that was in unit number 17 three could deteriorate? It's possible? 18 A. Anything is possible, right. 19 Q. So it's possible that unit number 20 three needed to be rebricked, correct? 21 A. The furnace did not have to be 22 rebricked because there was no brick there. I 23 don't know where the brick was, but anything is 24 possible. Is it likely? No. This boiler was 25 only, what, 12, 13 years old when he got there. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 226 1 That's pretty young to do that kind of work. 2 Q. What were the conditions of the fuel 3 that was utilized at the Interstate Power 4 Plant? 5 A. It was coal. 6 Q. Was it acidic? 7 A. I don't know. I don't know for sure. 8 Q. Okay. One of the factors that you 9 indicated would come into play in determining 10 whether a boiler had to be rebricked was the 11 acidity of the fuel, correct? 12 A. Acidity of the fuel of the combustion 13 process if it got out of hand. 14 Q. You don't know the degree to which the 15 fuel utilized in boiler number three at 16 Interstate Power was acidic, do you? 17 A. I looked at it. I don't know. 18 Q. Okay. So you can't say that boiler 19 number three did not have to be rebricked in 20 the time that Mr. Lenz was at Interstate Power, 21 can you? 22 A. The drawings we have do not show any 23 brick inside boiler number three inside. 24 Q. I thought you said you couldn't tell 25 where the brick was? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 227 1 A. I can't because I can't see any on the 2 inside of the whole boiler. So the firebrick 3 was bought; I'm not sure where it went. 4 Q. Okay. They didn't just throw it away, 5 did they? 6 A. I don't think so. 7 Q. They wouldn't requisition it if they 8 didn't need it? 9 A. I agree. 10 Q. I'm hearing you say there was 11 firebrick on that boiler somewhere? 12 A. Somewhere there was firebrick. 13 Q. You don't put firebrick in a place 14 where it's cold; you put firebrick where it's 15 hot, right? 16 A. Normally. 17 Q. Okay. So I'm a bit confused because 18 I'm hearing you say two different things. 19 You're saying, as I understand your testimony, 20 and I'm not an engineer, number one, there was 21 no firebrick inside the boiler. But, number 22 two, there was firebrick that was ordered, and 23 there was firebrick there somewhere. Am I 24 understanding you correctly? 25 MR. SAUL: Objection to form. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 228 1 A. Those three statements are true. 2 Q. Okay. Do you know what page the 3 firebrick requisition is for unit number three, 4 sir? 5 A. 354 is one of them, not much. 6 Q. Okay. Is there more, do you know? 7 How about on page 356? 8 A. I don't see any firebrick listed 9 there. 10 Q. Okay. What is the function of shiplap 11 tile? 12 A. That can be used in the first layer 13 off the tubes. We talked about the buttering 14 earlier. 15 Q. Yes, sir. Does that tile ever need to 16 be replaced? 17 A. Only if you would have some kind of 18 major accident or something. You just have to 19 take the whole -- you have to take the casing 20 off basically have a major --it can be a major 21 shutdown. 22 Q. You don't know whether there was a 23 major shutdown of boiler unit number three at 24 Interstate Power while Mr. Lenz there was? 25 A. I believe at one point he said they HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 229 1 ran every day he was there; except unit three 2 was shut down. There was an electrical 3 problem. I think he said a rectifier blew out, 4 and it was shut down for like six months or 5 something. 6 Q. Okay. 7 A. He made no reference of it, and we 8 have no record of it. 9 Q. So just to kind of sum this up, we 10 know that there was firebricks supplied by 11 Riley Stoker for unit number three, correct? 12 A. Yes. 13 Q. And we know that firebrick can degrade 14 and need to be replaced, correct? 15 A. It can degrade. 16 Q. Okay. And we know that the 17 replacement of degraded firebricking is a 18 process known as rebricking, correct? 19 A. I'll give you that. 20 Q. Okay. Which was what Mr. Lenz 21 testified to participating in on that unit 22 number three, correct? 23 A. Yes. 24 Q. As firebrick is installed, sir, is 25 there any insulating cement or anything else HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 230 1 that's underneath it? 2 A. I would have to see the detail of the 3 installation. 4 Q. Which you're referring to the 5 insulation drawings that would have been 6 prepared by Riley Stoker draftsmen in 7 connection with this unit number three, 8 correct? 9 A. Yes. 10 Q. Okay. We don't have those? You don't 11 have those? We don't have those? Nobody has 12 those? 13 A. I don't have them, no. 14 Q. It is not an unusual installation of 15 firebrick to have insulating cement underneath 16 it or between the bricks, correct? 17 A. Some bonding mortar-type material when 18 you put it in. 19 Q. Okay. Which oftentimes would be 20 high-temperature insulating cement, correct? 21 A. Could be. 22 Q. And you understand today that a lot of 23 the high-temperature insulating cement that was 24 used in the 1940s, 1950s and 1960s contained 25 asbestos, correct? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 231 1 MR. SAUL: Objection to form. 2 A. I've been told that some of it does 3 contain asbestos. I don't know how much or 4 what percentage. 5 Q. Okay. And would there be block 6 insulation beneath the firebrick? 7 A. No. 8 Q. No? 9 A. No. 10 Q. What would be beneath the firebrick? 11 A. It depends where it is. 12 Q. What are the options? What could it 13 be? 14 A. Inside -- on this unit, I don't know. 15 Q. Okay. 16 A. I just don't know. 17 Q. You would agree that if the firebrick 18 in unit number three was installed utilizing 19 high-temperature insulating cement as a base or 20 mortar or whatever you want to describe it as, 21 and then Mr. Lenz worked in removing that 22 firebrick, that would have caused him to be 23 exposed to dust from the insulating cement? 24 MR. SAUL: Objection to form. 25 A. He never testified to that. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 232 1 Q. But you know based on your experience 2 that that's what would have happened, correct? 3 MR. SAUL: Objection to form. 4 A. I've never done it. 5 Q. You've seen boilers being rebricked 6 certainly, correct? 7 A. I've seen them being rebricked. 8 Q. Okay. Is that dusty or a clean 9 process? 10 A. I didn't consider that dusty. 11 Q. What tools did they use to rebrick the 12 boiler or to remove the brick from the boiler? 13 A. I never watched them remove it. 14 Q. Okay. You weren't actually inside the 15 boiler when this was being done, correct? 16 A. No. No. 17 Q. Okay. Try to avoid going inside 18 boilers? 19 A. No. No. Just timing. You're running 20 jobs. There would be certain times we go and 21 certain times we wouldn't. 22 Q. I'm sorry to interrupt. When you saw 23 boilers being rebricked, what were the men 24 inside doing with the waste material? Were 25 they just throwing it out the door? HG LITIGATION SERVICES HGLITIGATION.COM

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1 A. It normally was taken -- whatever
2 section they were working on, and, like I said,
3 these mainly were the old industrial boilers
4 where maybe putting a stoker in or something.
5 There is a wall there. They take the wall out.
6 They take the stoker apart, take the wall out
7 and then go back. And that material would be
8 taken out of the boiler and put into whatever
9 the disposal area was.

10 Q. Okay.

11 A. Usually it was done by laborers,
12 definitely not operators and mechanics. This
13 would be laborers, and then we call them
14 brickies would put it back together. It wasn't
15 a job really for an amateur. I wouldn't
16 attempt to do it, I'll tell you, and I'm pretty
17 handy.

18 Q. Okay.

19 MR. STUEMKE: I'll object to the
20 nonresponsive portions.

21 Q. You'd agree that Mr. Lenz testified
22 that there were three boilers at that plant,
23 correct, at the Interstate Power Plant?

24 A. He testified there were three boilers
25 when he was there.

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1 Q. He said that he knew one of them was
2 Riley Stoker, and he didn't know what the other
3 two were, correct?

4 A. Yes.

5 Q. You know that all three of them were
6 Riley Stoker boilers, correct?

7 A. Yes.

8 Q. I want to talk a little bit big
9 picture about what Riley Stoker understood
10 about the way its boilers would be used after
11 they were sold. You would agree with me that
12 -- and the time frame I'm going to talk about
13 is from, you know, from 1931 to 1980. Let's
14 cut it off there.

15 You'd agree with me that Riley Stoker
16 understood that people would have to repair
17 their boilers on occasion?

18 A. Riley Stoker boilers might have to be
19 repaired depending on situation and conditions.

20 Q. Sure. Riley Stoker understood that
21 when they sold it?

22 A. Yes.

23 Q. Okay. Riley Stoker understood that
24 people would maintain their boilers, correct?

25 A. Boilers had to be maintained.

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1 Q. Right. Riley Stoker understood that
2 this repair and maintenance could be done by
3 people other than Riley Stoker employees,
4 correct?

5 A. Yes.

6 Q. That would be done by employees of the
7 power plant or industrial facility where the
8 boiler was located oftentimes, correct?

9 A. Are you talking about maintenance or
10 repairs?

11 Q. Maintenance.

12 A. Maintenance, opening and closing and
13 looking at things, the power, the premises
14 owner would probably do it with his people.
15 Repairs, normally my experience has been that
16 it was beyond the scope of the ability of his
17 people, and they'd hire it out to a contractor.
18 And there's a wide variety of contractors they
19 could pick from.

20 Q. Was it foreseeable to Riley Stoker
21 that people would need to remove and disturb
22 and ultimately replace thermal system
23 insulation on the exterior of Riley Stoker
24 boilers during the life of those boilers?

25 MR. SAUL: Objection to form.

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1 A. It was possible if they had a problem
2 with the boiler or an accident they might have
3 to do that.

4 Q. So the answer is yes, that was
5 foreseeable?

6 A. It was possible.

7 Q. Riley Stoker knew that was possible at
8 the time it sold the boilers, correct?

9 A. Knew that it might have an accident
10 and might have to be repaired, it's possible.

11 Q. In your review of Mr. Lenz's
12 testimony, is there anything with respect to
13 his testimony regarding Riley Stoker boilers
14 that is fundamentally inconsistent with the way
15 that you understand Riley Stoker boilers to
16 have been used, repaired or maintained in the
17 field?

18 A. He did not talk much about the Riley
19 Stoker boilers.

20 Q. He wasn't asked many questions about
21 them, was he?

22 A. No.

23 Q. Okay. You understand Riley Stoker had
24 a lawyer present at that deposition, correct?

25 MR. SAUL: Objection.

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J. MICHAEL SMITH Page 237 1 A. I'm aware of that. 2 Q. Okay. So getting back to my other 3 question, sir, is there anything about Mr. 4 Lenz's testimony regarding Riley Stoker boilers 5 that is fundamentally inconsistent with the way 6 you understand those boilers would have been 7 used, maintained and repaired in the field? 8 MR. SAUL: Objection to form. 9 A. There's no testimony about that, so I 10 don't know whether I can be inconsistent with 11 nothing because that's basically what we have 12 as far as his testimony. The fact is he said 13 he didn't do any work on them, any of the 14 boilers. Then all of a sudden the last day he 15 said he did do some work, that is confusing to 16 me. He said he basically did not -- he didn't 17 talk much about the boilers at all even in his 18 own Volume II, III. Volumes II and III was 19 primarily where there was discussion about work 20 other than the Navy. The depo one was 21 primarily his personal background and the Navy, 22 and two and three were really his work scope 23 other than the Navy. 24 Q. Okay. 25 A. There was very little there. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 238 1 Q. Okay. 2 MR. STUEMKE: I'm going to object as 3 nonresponsive. 4 Q. I just want you to focus on the 5 testimony that is there, the answers to the 6 questions that were asked. With respect to Mr. 7 Lenz's testimony about Riley Stoker boilers, 8 there is nothing in that testimony that is 9 fundamentally inconsistent with the way you 10 know Riley Stoker boilers were used, repaired 11 and maintained in the field, correct? 12 MR. SAUL: Objection to the form. 13 A. I've already stated that his one line 14 of testimony about the Riley boiler was that he 15 went in and rebricked the furnace. And we've 16 already been through all that; our furnace 17 didn't have brick in it. So, therefore, I do 18 disagree with that statement based on the face 19 value of what he said. 20 Q. Okay. That boiler had brick in it 21 somewhere; we know that, right? 22 A. It had some amount of brick in it. 23 Q. Okay. You understood that Mr. Lenz 24 isn't here to clarify his testimony, correct? 25 A. I just found out. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 239 1 Q. Okay. If Riley Stoker wanted to know 2 more details about that, they should have asked 3 him when they had the chance? 4 A. That's over and above me. 5 MR. SAUL: Objection to form. 6 A. That's above me. 7 Q. Finally, sir, I want to turn your 8 attention to the topic of asbestos hazards, 9 when Riley Stoker knew about asbestos hazards 10 and what, if anything, Riley Stoker did about 11 that knowledge. Now, first, as you sit here 12 today, you understand that asbestosis, lung 13 cancer, and mesothelioma are all deadly 14 diseases, correct? 15 MR. SAUL: Objection to form. 16 A. I've been told that. 17 Q. Okay. You understand that all of 18 those diseases can be caused by exposure to 19 asbestos, correct? 20 A. I've been told that. 21 Q. You understand -- strike that. 22 We've talked about this is I believe 23 your 19th deposition in asbestos litigation 24 cases for Riley Stoker, correct? 25 A. Nineteenth case. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 240 1 Q. Okay. And you understand that one of 2 the issues in this case is when Riley Stoker 3 knew about the health hazard of asbestos 4 exposure, correct? 5 MR. SAUL: Objection to form. 6 A. That question has been asked. 7 Q. The question has been asked a lot? 8 A. Yeah. 9 Q. Okay. Sir, have you ever yet 10 investigated to try to find out when Riley 11 Stoker first learned that the inhalation of 12 asbestos fibers could cause lung impairment? 13 A. Asbestos fibers? 14 Q. Yes. 15 A. I do not know when anyone at Riley 16 found that out. 17 Q. Okay. I understand as you sit here 18 today you don't know. My question is: Have 19 you ever done the research to try to find out? 20 A. The fact is the asbestos was not a 21 product that we, you know, mined, made, 22 designed or anything. The issue that we had 23 was with thermal insulation. When we were 24 notified in 1972 by OSHA that it was a 25 potentially hazardous situation by putting that HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 241 1 on our boilers, and our response was we stopped 2 putting it on the boilers. 3 Q. Do you remember the question, sir? 4 A. I thought I did. 5 MR. STUEMKE: Let's have it read back. 6 (Question read) 7 A. I don't know how to answer that. We 8 found documents that said what I just told you. 9 Q. In January of this year you gave a 10 deposition in the Von Saint James case pending 11 in Minnesota. You recall that? 12 A. Yes. 13 Q. You were asked the question on page 69 14 of that deposition, "Have you researched the 15 issue of when Riley Stoker first found out that 16 the inhalation of asbestos fibers could cause 17 lung impairment?" And what was your answer at 18 that time, sir? 19 A. I never investigated that statement, 20 asbestos fibers. I'm separating asbestos from 21 thermal insulation. 22 Q. Okay. Sir, the problem is that you 23 can't separate thermal insulation from asbestos 24 prior to 1972, can you? 25 MR. SAUL: Objection to form. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 242 1 A. I don't -- asbestos is a separate 2 product. 3 Q. Okay. 4 A. It's a pure product. Asbestos, by 5 asbestos, we never used asbestos as a product. 6 We did sometimes use thermal insulation that we 7 now know some of it did contain asbestos. 8 Q. Okay. Arsenic is a poison, isn't it? 9 A. I've been told it is. 10 Q. Okay. If you put arsenic in a muffin, 11 it's still going to kill you, isn't it? 12 A. I'm not going to try it. 13 MR. SAUL: Objection to relevance. 14 A. I'm not going to try it. 15 Q. Well, you're saying that we just had 16 products that had asbestos. We didn't put the 17 actual asbestos fibers out there. 18 A. No, that's not what I'm saying. 19 MR. SAUL: Objection. Misstates prior 20 testimony. 21 A. I'm not saying that. 22 Q. Okay. Have you ever researched the 23 issue of when Riley Stoker first found out that 24 the inhalation of asbestos could cause lung 25 impairment? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 243 1 A. No. 2 Q. Riley Stoker has never asked you to 3 look into their historical records to try to 4 give you any factual information about when 5 Riley Stoker knew about the hazards of 6 asbestos, correct? 7 MR. SAUL: Objection to form. 8 A. Who at Riley? 9 Q. Anybody? 10 A. No. 11 Q. Their lawyers haven't even asked you 12 to do that, have they? 13 A. No. 14 MR. SAUL: Objection to form. 15 Q. And you've never done it, right? 16 A. Never done what? I'm losing it now. 17 Q. You've never looked in the historical 18 records of Riley Stoker to try to find any 19 factual information about when Riley Stoker 20 knew about the hazards of asbestos? 21 MR. SAUL: Objection, Counsel. Asked 22 and answered. 23 A. Never looked. 24 Q. Not only have you never looked; you've 25 never asked anybody about Riley Stoker what HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 244 1 they knew about the hazards of asbestos, have 2 you? 3 MR. SAUL: Objection to form. 4 A. I've never asked anybody about that 5 subject, no. 6 Q. When did Riley Stoker establish a 7 position known as a safety supervisor? 8 A. Where? 9 Q. Anywhere? 10 A. I don't know when they set one up. It 11 was in the construction division. 12 Q. They had a safety supervisor in the 13 construction division when you joined the 14 company, correct? 15 A. Yes. 16 Q. Do you know who it was? 17 A. I don't remember right now. 18 Q. Okay. If you wanted to, you could 19 have figured out who safety supervisors in the 20 construction division at Riley Stoker were in 21 the 1950s and 1960s, couldn't you? 22 MR. SAUL: Objection to form. 23 A. I don't know that. 24 Q. Okay. In any event, you've never 25 tracked down any Riley Stoker safety HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 245 1 supervisors to ask them if they knew anything 2 about the hazards of asbestos prior to 1972, 3 correct? 4 A. I've never tracked down Riley safety 5 supervisors. 6 Q. Okay. And we talked already a little 7 bit about Mr. Ritter, and he's given deposition 8 on behalf of Riley Stoker in cases like this 9 before, correct? 10 A. We talked about him today. 11 Q. Okay. And you never read his 12 testimony to see what he had to say about 13 asbestos hazards, correct? 14 MR. SAUL: Objection. Asked and 15 answered. 16 A. We've already been through that. 17 Q. Sir, you'd agree that you have no 18 basis whatsoever to tell this jury what Riley 19 Stoker knew about the hazards of asbestos in 20 the 1940s or 1950s or the 1960s, wouldn't you? 21 A. No. 22 MR. SAUL: Objection to form. 23 A. No, I don't agree with you. We've 24 already been through that too. 25 Q. Respectfully, sir, we were talking HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 246 1 about whether Riley Stoker knew there was 2 asbestos in the insulation it was using. I'm 3 asking you now about the hazards of asbestos? 4 A. Asbestos itself, I have no idea. 5 Q. How about asbestos products? 6 A. The hazard associated with them? 7 Q. Yes. 8 A. That is after OSHA. 9 Q. Okay. And you have no basis at all to 10 tell this jury what Riley Stoker knew about the 11 hazards of asbestos or asbestos products in the 12 1940s, 1950s or 1960s, do you? 13 MR. SAUL: Object to the form. 14 A. About the hazards of the -- no. 15 Q. Let's look at some of the documents 16 that are available to Riley Stoker so that the 17 jury can gain an understanding of what was 18 available to Riley Stoker had they bothered to 19 look for it about the hazards of asbestos? 20 MR. SAUL: Object to the extent that's 21 not a question. 22 Q. Are you familiar with an organization 23 called the ASME? I think I've heard you 24 mention that a few times today. 25 A. Yes. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 247 1 Q. What is that? 2 A. American Society of Mechanical 3 Engineers. 4 Q. Okay. 5 MR. STUEMKE: Mark this as the next 6 exhibit, please. 7 (Exhibit No. 14, Excerpt ASME 8 Membership List, 1928 so marked) 9 Q. Sir, I'm handing you Exhibit 14. This 10 is an excerpt of the ASME membership list from 11 1928. Do you see that? 12 A. Yes. 13 Q. I'd like you to turn to the second 14 page of the exhibit. This is the membership 15 list for a number of different places including 16 Worcester, Mass., correct? 17 A. That's what it says. 18 Q. Okay. And I have highlighted a number 19 of different individuals who are associated -- 20 were associated with Riley Stoker Corporation. 21 Do you see that? 22 A. Yes. We've already been through this 23 with your firm. 24 Q. Okay, sir. You haven't been through 25 that with this jury so we're going to ask the HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 248 1 questions. Now, do you see that there are 12 2 names that are highlighted? 3 A. There are 12 names highlighted. 4 Q. Okay. And those are all people to 5 your understanding that were members of the 6 ASME in 1928, correct? 7 A. That's what this says. 8 Q. Okay. And if you look at Mr. Fred H. 9 Daniels, you see he's identified as the 10 president of Riley Stoker Corporation, correct? 11 A. Yes. 12 Q. If you look on the next page at Mr. 13 William Pestell, P-E-S-T-E-L-L, you see he's 14 identified as the vice president of Riley 15 Stoker Corporation, correct? 16 A. Yes. 17 Q. You don't have any reason to dispute 18 that all of the name that are highlighted on 19 this list were members of the American Society 20 of Mechanical Engineers in 1928, do you? 21 A. No. 22 (Exhibit No. 15, Excerpt ASME, 1940 so 23 marked) 24 Q. Do you see that Exhibit 15 is an 25 excerpt of the ASME membership list from 1940, HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 249 1 correct? 2 A. Yes. 3 Q. Do you see the second page of 4 Exhibit 15 includes the membership list for 5 Worcester, Mass., correct? 6 A. Yes. 7 Q. Okay. And you see that I've 8 highlighted nine different names of individuals 9 that were members of ASME that were associated 10 with Riley Stoker Corporation, correct? 11 A. Yes. 12 Q. Okay. And that includes the president 13 of Riley Stoker, Fred H. Daniels, correct? 14 A. Yes. 15 Q. You've seen before, sir, that the ASME 16 published certain articles in which hazards of 17 asbestos dust were discussed, correct? 18 MR. SAUL: Objection. 19 A. In industrial environments. 20 Q. And let's be clear, you've seen those 21 only in the context of appearing for 22 depositions like this today, correct? 23 A. Yes. 24 Q. You've never searched through the 25 records of Riley Stoker Corporation to see if HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 250 1 they have these copies of the Mechanical 2 Engineering Journal, correct? 3 A. That's correct. 4 Q. Okay. 5 MR. STUEMKE: Let's mark this as next 6 in order, please. 7 (Exhibit No. 16, Excerpt Mechanical 8 Engineering, February 1933 so marked) 9 Q. Sir, Exhibit 16 an excerpt from the 10 Mechanical Engineering Journal in 11 February 1933, correct? 12 A. Yes. 13 Q. You're a member of the American 14 Society of Mechanical Engineers, correct? 15 A. Yes. 16 Q. Are you okay? 17 A. Yes. Getting a little dry. 18 Q. You've been a member of ASME since the 19 early 1980s, correct? 20 A. Yes. 21 Q. And you know that ASME publishes a 22 journal known as Mechanical Engineering, 23 correct? 24 A. Yes, I am. 25 Q. You receive that journal, correct? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 251 1 A. Yes, I do. 2 Q. Okay. And to your understanding 3 that's a journal that they've always published 4 to their members, correct? 5 A. They published it for quite a while. 6 Q. Okay. And you see that in 7 February 1933 they published an article 8 entitled, "Dust in Industry," correct? 9 A. Yes. 10 Q. Okay. If you turn to that article, 11 you see it's written by a doctor, Frederick 12 Willson, M.D., correct? 13 A. Yes. 14 Q. And it is titled, "Dust in Industry, 15 Shop Methods and Equipment Effective in 16 Controlling Dust Hazards," correct? 17 A. Yes. 18 Q. Okay. And I've highlighted certain 19 portions of the article. You see that on the 20 first page of the article Dr. Willson reports 21 that it should be borne in mind that the 22 particles which do the most harm are invisible 23 and they remain long and suspension in the air. 24 Do you see that? 25 A. Yes. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 252 1 Q. He reports, "Furthermore, dust of 2 dangerous character may be so extremely fine in 3 grain as never to settle at all but remain in 4 suspension indefinitely." Do you see that? 5 A. Yes. 6 Q. Do you see on the next page Dr. 7 Willson reports, "Workmen having to do with bag 8 filling, loading and unloading of pulverized 9 sand, asbestos, talc, clay, feldspar and other 10 silicates, as well as those handling lead in 11 bulk, should receive special care as should 12 also workmen making up batches in glass 13 plants." Is that correct? 14 A. That's what it says. 15 Q. He also reports, "Full cooperation" -- 16 strike that. 17 Later in that page Dr. Willson talks 18 about the reluctance of workmen to employ 19 safeguards such as wearing respirators, 20 correct? It's the section heading at the 21 bottom of the first column, sir. 22 A. I read that. 23 Q. He indicates that, "Full cooperation 24 will probably not be attained without 25 acquainting the worker with the danger to which HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 253 1 he will be exposed if totally or partially 2 unprotected," correct? 3 A. That's what it says. 4 Q. Dr. Willson reports that, "The most 5 erroneous and expensive policy any employer can 6 adopt is to minimize to his workmen the dangers 7 of free silica dust, no true observance of dust 8 protection can be expected from the workman 9 unless he is fully acquainted with the dangers 10 of his occupation." Did I read that correctly? 11 A. Yes. 12 Q. From having looked at these articles 13 before, sir, you know that asbestos is a free 14 silicate dust, correct? 15 MR. SAUL: Objection to form. 16 A. Is a what? 17 Q. Asbestos is a free silica? 18 A. I picked up on that before. Sorry. I 19 just want to point out that this article was 20 written about the industrial factory setting. 21 This was not written about boilers or anything 22 about them. 23 MR. STUEMKE: Could we mark that as 24 the next exhibit, please. 25 (Exhibit No. 17, Excerpt Mechanical HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 254 1 Engineering, April 1933 so marked) 2 Q. Do you see Exhibit 17, sir, is another 3 copy or another edition of the Mechanical 4 Engineering Journal, this one from April 1933? 5 A. Yes. 6 Q. Do you see again there's an article 7 entitled "Dust in Industry." This one with a 8 different subtitle? 9 A. Yes. 10 Q. And now I want to ask you, sir, is on: 11 Page 229 of the journal in a section entitled 12 "Nature of dust" it discusses various classes 13 of dust. The first class it mentions is "Those 14 composed completely of combined silica, that 15 is, silicates such as pure asbestos." You 16 understand that asbestos is a silicate, 17 correct? 18 A. I did not know that. 19 Q. Okay. Assuming that this author is 20 correct in the statement, you understand that 21 now? 22 A. I'm aware of it. 23 MR. SAUL: Objection to the extent the 24 question is outside the scope of the deponent's 25 area of expertise. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 255 1 Q. If we turn our attention back, sir, to 2 Exhibit 16, the last paragraph of Exhibit 16 3 Dr. Willson states that, "When management and 4 workmen pool their interests in behalf of 5 safety, then certainly safety will finally be 6 won. Research lies with the scientist, but the 7 intelligent application of the knowledge that's 8 obtained as it applies to occupational diseases 9 is a moral responsibility of industry." Did I 10 read that correctly? 11 A. That's what it says. 12 Q. Do you think that's a correct 13 statement, that the intelligent application of 14 knowledge is a moral responsibility of 15 industry? 16 A. I can't comment on that. That's a 17 moral responsibility, that's very subjective, 18 very subjective. I'm not qualified to comment 19 on that. 20 MR. STUEMKE: Let's take a break. 21 THE VIDEOGRAPHER: This is the end of 22 tape number four. The time is 4:46. We're off 23 the record. 24 (Recess 4:47 p.m. to 4:53 p.m.) 25 (Exhibit No. 18, Excerpt Mechanical HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 256 1 Engineering, February 1935 so marked) 2 THE VIDEOGRAPHER: This is the 3 beginning of tape number five. We're back on 4 the record. The time is 4:53. 5 BY MR. STUEMKE: 6 Q. Sir, I'm handing you what we've marked 7 as Exhibit 18. Do you see this is the 8 February 1935 Mechanical Engineering Journal? 9 A. Yes. 10 Q. And do you see there is an article 11 entitled, "Occupational Diseases, Problems and 12 Prevention" and an article entitled "The 13 Administration of Occupational Disease Control" 14 and article entitled "Toxic Dusts, Origin and 15 Sources in Industry"? 16 A. Yes. 17 Q. I want to focus your attention on the 18 toxic dusts article. Specifically, if you turn 19 to -- it's the second to last page, but you 20 can't see it. There you go. Do you see 21 there's a paragraph entitled "Asbestos in 22 Asbestos Goods Manufacturing." And do you see 23 here that it mentions at the end, "crushing and 24 grinding asbestos products generates dust." Do 25 you see that? HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 257 1 A. Yes. 2 Q. You would agree that a reasonable 3 company that reads this would be put on notice 4 that you can generate toxic dust from 5 operations on asbestos products? 6 DEFENSE COUNSEL: Objection to form. 7 A. I would never pick that up. 8 Q. Okay. Well, it's an article with the 9 title "Toxic Dusts," correct? 10 A. Uh-huh. Yes. 11 Q. It says, "crushing and grinding 12 asbestos products generates dust"? 13 A. Are they talking about the mining and 14 quarry operations or something else? 15 Q. Well, they're talking specifically 16 about asbestos products, aren't they? 17 A. Also quarrying. What was the question 18 again, please? 19 Q. Wouldn't you agree, sir, a reasonable 20 company reading that crushing and grinding 21 asbestos products generates dust in an article 22 entitled "Toxic Dusts," would be put on notice 23 that you can generate toxic dust from working 24 with asbestos products? 25 MR. SAUL: Objection to form. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 258 1 A. I don't know if you're put on notice. 2 You'd have to know you had asbestos. I can't 3 -- I can't answer that. It doesn't make sense 4 to me. 5 Q. We talked earlier a couple of times 6 about professional engineers codes of ethics 7 that they requires the engineer to protect the 8 public health? 9 A. We have rules and regulations and 10 standards we're supposed to meet in doing our 11 work. 12 Q. And protect the public health is a 13 foremost objective, correct? 14 MR. SAUL: Objection to the extent 15 it's asked and answered. 16 A. I've already been through that this 17 morning. 18 Q. And the answer is yes, correct? 19 A. There is responsibility to do our job 20 according to what we agree to do. 21 Q. And if you look, sir, at the last page 22 of this article from 1935, it says, "All in 23 all, it is best for any engineer to proceed 24 upon the basis that any dust of any type in any 25 concentration creates an industrial exposure HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 259 1 and to suppress the dust at its origin"? 2 A. That's what it says. 3 Q. Now, following the publication of 4 these articles in the ASME Journal of 5 Mechanical Engineering, you're not aware of 6 Riley Stoker taking any action with respect to 7 any of its products, correct? 8 MR. SAUL: Objection to form. 9 A. I'm not aware of anything in that time 10 frame. 11 Q. I saw in your binder that you had at 12 least one document that related to -- actually, 13 can I see your binder real quick? 14 A. (Witness complies) 15 Q. Number six in your binder is the 16 occupational health regulations from the Texas 17 State Department of Health Division of 18 Occupational Health. Do you see that? 19 A. Yes. 20 Q. Dated 1958, correct? 21 A. Yes. 22 Q. Why is that in that binder? 23 A. We had quite a few cases in Texas that 24 we were looking at the level exposure and the 25 different rules were put into effect, and that HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 260 1 was part of the review. 2 Q. Okay. And are you aware that in those 3 Texas regulations in 1958 they established a 4 maximum concentration of asbestos fibers that 5 was permitted in air in the workplace? 6 A. I'm aware that's in there. I don't 7 know what it is. 8 Q. Okay. Do you know at that time that 9 Texas recognized asbestosis as a compensable 10 disease under the Workers' Compensation Act? 11 A. No. 12 Q. Now, you've testified earlier today 13 that all Riley Stoker boilers up to, I think it 14 was, 1970 were manufactured in the state of 15 Pennsylvania, correct? 16 A. You asked me that question, through 17 the '60s. I don't know when Sapulpa actually 18 opened up, so that would be a stretch to say to 19 1970. I don't know. 20 Q. Okay. Through at some point in the 21 1960s? 22 A. We had two sites going in the 1960s, 23 and one of them -- one was Cornwells and one 24 was Eerie. 25 Q. Okay. You would agree with me, sir, HG LITIGATION SERVICES HGLITIGATION.COM

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1 that Riley Stoker would have been aware of the
2 laws and regulations in the state of
3 Pennsylvania that applied to it, correct?

4 MR. SAUL: Objection to form.

5 A. I don't know.

6 Q. Is it a reasonable assumption for this
7 jury to make that Riley Stoker was aware of
8 workplace safety laws that governed its
9 workplaces in the state of Pennsylvania?

10 A. I don't know.

11 Q. You would hope Riley Stoker would be
12 aware of those things, wouldn't you?

13 A. I would think they would be, but I
14 don't know.

15 Q. Okay. Are you aware that in 1939
16 Pennsylvania passed an Occupational Disease
17 Act?

18 A. No.

19 Q. Are you aware that in 1939
20 Pennsylvania's Occupational Disease Act
21 identified asbestosis as a compensable
22 occupational disease?

23 A. No.

24 Q. But you would expect Riley Stoker to
25 have been aware of that at that time, correct?

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1 done my best. I'm sorry.

2 MR. STUEMKE: I understand you've been
3 put in a little bit of a difficult situation.
4 I've got a case set for trial on Monday. I've
5 got to get the deposition done.

6 MR. SAUL: Right. What do you think
7 in terms of, you know Mike, can we get you some
8 coffee, a quick walk around the office? Do you
9 think you can do maybe another 15 minutes?

10 THE WITNESS: What have you got left?

11 MR. STUEMKE: I've got probably 30 to
12 40 minutes.

13 MR. SAUL: Do you want to try and just
14 work through it? You've been doing things
15 pretty quickly. We've been moving right along.
16 I know Mike's doing his best. If we can try to
17 just cover new ground, I think that's going to
18 work.

19 THE WITNESS: Okay. I don't want to
20 try to do something improper.

21 MR. SAUL: Do you need to stand up,
22 stretch a little.

23 THE WITNESS: I'm okay. It's just be
24 aware that I'm not hearing real good at this
25 moment.

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1 MR. SAUL: Object to form.

2 A. If it applied to them, I expect it
3 would be.

4 Q. And as you sit here today, you cannot
5 testify regarding any actions that Riley Stoker
6 ever took with respect to preventing asbestosis
7 in its workers, learning about asbestos hazards
8 or protecting the users of its product from
9 asbestos hazards, can you?

10 MR. SAUL: Objection to the form. It
11 misstates prior testimony.

12 THE WITNESS: We need to go off the
13 record.

14 MR. SAUL: Do you need a break?

15 THE WITNESS: We need to talk.

16 MR. SAUL: You're not feeling it?

17 THE WITNESS: I'm just too tired.

18 MR. SAUL: What do you think?

19 THE WITNESS: I've been up since five
20 o'clock. I'm not understanding you. I'm not
21 trying to be insulting.

22 MR. SAUL: We can go off the record
23 for a second.

24 THE WITNESS: I just don't understand.
25 I'm not hearing the questions properly. I've

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1 MR. STUEMKE: Okay. Can I have the
2 last question read back, please?

3 (Question read)

4 A. No.

5 MR. SAUL: Same objection.

6 Q. Prior to 1972 Riley Stoker never did
7 any investigation of the asbestos content of
8 the component parts of its boilers, correct?

9 A. Not to my knowledge.

10 MR. SAUL: Objection to form.

11 Q. Prior to 1972 Riley Stoker never did
12 any research into the medical literature to
13 learn about potential hazards of exposure to
14 asbestos, correct?

15 A. Not that I'm aware of.

16 Q. Riley Stoker never had a medical
17 department, correct?

18 A. No.

19 Q. Riley Stoker -- that is correct?

20 A. That's what I meant. We never had a
21 medical department.

22 Q. Riley Stoker never had a medical
23 director, correct?

24 A. That's correct.

25 Q. Riley Stoker never had an industrial

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J. MICHAEL SMITH Page 265 1 hygienist on its staff, correct? 2 A. That's correct. 3 Q. Prior to 1972 Riley Stoker never did 4 any testing for safe levels of exposure to 5 asbestos in its plants or on its jobsites, 6 correct? 7 MR. SAUL: Objection to form. 8 A. Not to my knowledge. 9 Q. Prior to 1972 Riley Stoker never did 10 any -- strike that. I'm sorry. 11 Prior to 1972 Riley Stoker never 12 recommended any work practices to be used in 13 association with its boilers that would 14 minimize workers' exposure to asbestos, 15 correct? 16 MR. SAUL: Objection to form. 17 A. That's correct. 18 Q. And prior to 1972 Riley Stoker never 19 warned a single person about asbestos hazards, 20 correct? 21 MR. SAUL: Objection to form. 22 A. Not to my knowledge. 23 (Exhibit No. 19, Memo to M&R Staff, 24 3/13/72 so marked) 25 Q. It's Riley Stoker's contention that it HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 266 1 first learned about the hazards of asbestos in 2 1972 when OSHA regulated asbestos in the 3 workplace, correct? 4 A. No. It is Riley Stoker's contention 5 that we were unaware of the potential hazards 6 of thermal insulation associated with our 7 boilers until 1972. 8 Q. Okay. Prior to 1972 was Riley Stoker 9 aware of the hazards of exposure to asbestos 10 regardless of the source? 11 A. I have no idea. 12 MR. SAUL: Objection. Asked and 13 answered. 14 Q. I'd like to look at what Riley Stoker 15 did after the passage of OSHA with respect to 16 its products. Sir, I've handed you Exhibit 19. 17 This is a Riley Stoker document, correct? 18 A. Yes. 19 Q. Okay. And this is a letter from D.A. 20 East dated March 13, 1972, correct? 21 A. Yes. 22 Q. Do you know who the author is or was? 23 A. Doug East. 24 Q. Okay. Do you know if he's still 25 alive? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 267 1 A. I do not. 2 Q. What was his position in the company? 3 A. I believe he was vice president of the 4 maintenance and repair division. 5 Q. Okay. And this is a memo to all 6 maintenance and repair division staff, correct? 7 A. Yes. 8 Q. Regarding OSHA standards? 9 A. Yes. 10 Q. And in this memo Mr. East indicates 11 that the law requires compliance with OSHA 12 standards by the contractor, not just the 13 premises owner, correct? 14 A. For the work the contractor is doing, 15 his employees, yes. 16 Q. All right. He states that all of 17 Riley Stoker's bids will be to OSHA standards 18 whether the customer requires it or not? 19 A. Yes. 20 Q. Correct? 21 (Exhibit No. 20, Riley Stoker Memo, 22 3/24/72 so marked) 23 Q. You've had a chance to look at 24 Exhibit 20. Exhibit 20 is a Riley Stoker 25 document, correct? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 268 1 A. Yes. 2 Q. Have you seen this document before, 3 sir? 4 A. Yes. 5 Q. What is this document? 6 A. This is a document from the proposal 7 department to -- there was a distribution I 8 thought on this somewhere. And this is 9 building up to this whole thing about Doug East 10 and Kate Crooks when they found out about OSHA 11 and what the issues were. And that he was 12 getting requests for quotes in that still 13 contained the requirement for cal sil. At that 14 point cal sil still had asbestos in it. 15 Q. And he indicates in the middle 16 paragraph of this document that "Many forms of 17 insulation containing no asbestos are available 18 for use with our equipment and the obvious 19 reason for use of such material where ever and 20 when ever possible is apparent." Did I read 21 that correctly? 22 A. Yes. 23 Q. What is the obvious reason for using 24 nonasbestos material in Riley Stoker's mind in 25 1972? HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 269 1 A. I don't know. 2 Q. Okay. Do you know if that was obvious 3 to avoid liability for Riley Stoker? 4 A. I don't know. 5 MR. SAUL: Objection. Asked and 6 answered. 7 Q. Okay. Moving on, it indicates, "The 8 calcium silicate insulation does contain 9 asbestos fiber. I believe this is factual 10 regardless of manufacturer or trade name." Did 11 I read that correctly? 12 A. Yes. 13 Q. The bottom of the paragraph the author 14 states, "I don't know what, if any, action we 15 will take regarding current contracts including 16 cal sil material, but we probably will take 17 exception to including cal sil on future bids 18 where such material is specified." Did I read 19 that correctly? 20 A. Yes, you did. 21 Q. So what he's saying there is that even 22 though we know all calcium silicate insulation 23 contains asbestos, for those contracts where 24 that's already been spec'd, we are going to 25 continue to perform, correct? HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 270 1 A. That's not what I read there. 2 Q. He says, We may continue to perform. 3 Don't know for sure yet. Is that right? 4 A. That's not what -- I don't read that. 5 Q. How do you read that sentence then? 6 A. "I don't know what, if any, action we 7 will take on recurrent contracts." He's not 8 responsible for the current contracts. He's 9 only responsible for quoting them new work. 10 Q. Okay. Do you, sir, know what Riley 11 Stoker did regarding current contracts that it 12 had to supply cal sil insulation? 13 A. I know what happened in '73 when I got 14 there; that there was nothing being put out at 15 all. They were buying -- you could get 16 asbestos-free cal sil by the summer of '72. 17 Q. You don't know what Riley Stoker did 18 in this time frame with respect -- regarding 19 calcium silicate insulation, correct? 20 A. No. 21 MR. SAUL: Objection to form. 22 (Exhibit No. 21, Memo to All Domestic 23 Sales Offices, 7/31/72 so marked) 24 Q. You've seen Exhibit 21 before, 25 correct? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 271 1 A. Yes. 2 Q. What is this document? 3 A. This is a memo to all domestic sales 4 offices from Sam Mencow who was the author of 5 the prior exhibit, Exhibit 20, that in 6 follow-up to the March 24 memo, he not only did 7 it internal. This was all domestic sales 8 offices in the United States. He also copied 9 the entire senior staff, it looks like to me 10 that asbestos-free cal sil is available as of 11 August 1. 12 Q. Okay. 13 A. And we're going to be using it. 14 Q. He indicates that "The insulation will 15 be available without asbestos, and its cost 16 will be exactly the same as the current price 17 lists with asbestos," correct? 18 A. Yes. 19 Q. In other words, the nonasbestos 20 version isn't more expensive? 21 A. No. This is the way it shook out. 22 Q. Sir, you've talked and we've discussed 23 the actions that Riley Stoker took regarding 24 asbestos insulation following the passage of 25 OSHA, but Riley Stoker boilers included other HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 272 1 asbestos products besides thermal insulation, 2 correct? 3 A. Riley Stoker boilers, once again, 4 depending on the scope, the temperature, the 5 pressure, might have had a number of what they 6 call nonfriable asbestos components such as 7 millboard or gaskets or rope. 8 Q. Okay. And Riley Stoker continued to 9 use those asbestos products without 10 interruption? 11 A. We had no choice. 12 Q. Okay. 13 A. And they were -- because of their 14 condition, they were not -- OSHA didn't ban 15 them. It was a matter of be careful using 16 them, and they were trying to develop 17 alternative products. And that was not -- the 18 vendors were not successful until the early 19 '80s. 20 Q. Well, OSHA didn't ban the thermal 21 insulation either, did it? 22 A. No, but it was the -- the 23 concentration they kept lowering it as -- once 24 they put the first issue out, they kept 25 lowering it, and that was what everyone was HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 273 1 concerned about. 2 Q. Okay. Now, Riley Stoker never 3 researched whether the asbestos gaskets in its 4 products could create an exposure above the 5 OSHA limit, did it? 6 A. I don't know that. 7 Q. Well, you understand you're testifying 8 here today for Riley Stoker regarding what it 9 did in response to knowledge about asbestos 10 hazards? 11 A. Right. 12 Q. You can't tell this jury that Riley 13 Stoker ever did anything to determine whether 14 the asbestos gaskets in its products could be 15 safely used, correct? 16 MR. SAUL: Objection for form. 17 A. It was -- I was there in '73. This 18 was discussed repeatedly, and we were just told 19 that this was acceptable to go on, but we had 20 to eventually replace. And we worked -- we 21 were after the manufacturers to change it. 22 That's what we did. 23 Q. Okay. 24 MR. STUEMKE: I'm going to object as 25 nonresponsive. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 274 1 A. It's a safety issue because like 2 Flexitallic gaskets, that -- if a gasket fails 3 under those conditions, it can be catastrophic. 4 So safety was number one, and that was why we 5 kept using it. It was a safety issue. 6 Q. You just told this jury that safety 7 was number one, and that's why you continued to 8 use asbestos gaskets, correct? 9 A. That's correct. 10 Q. If safety was so important to Riley 11 Stoker, why did it not ever investigate whether 12 the use of asbestos gaskets was safe? 13 MR. SAUL: Objection to form. 14 A. I don't know how that determination 15 was made. I don't know if they did or we took 16 information from the suppliers. I don't know 17 how it was done. 18 Q. If safety is so important to Riley 19 Stoker, why did Riley Stoker never warn anybody 20 that was working with the asbestos gaskets it 21 supplied that exposure to the asbestos from 22 those gaskets could be hazardous? 23 MR. SAUL: Objection to form. 24 A. OSHA had already done all those 25 warnings to suppliers, vendors, designers, HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 275 1 premises owners. Everybody had been warned. 2 We couldn't add anything to that warning. 3 Q. So Riley Stoker assumed that everybody 4 else new as soon as it did? 5 MR. SAUL: Objection to form. 6 A. OSHA applied to everybody. Everybody 7 did know. 8 Q. Do you know whether OSHA required 9 Riley Stoker to label its asbestos-containing 10 products? 11 A. We did not have asbestos-containing 12 products. 13 MR. SAUL: Objection. 14 A. We did not make them. It came from 15 outside third-party suppliers, so it was not 16 our product to label. 17 Q. Okay. Did Riley Stoker, after OSHA 18 told it about the hazards of asbestos in 1972, 19 do any testing of any of its 20 asbestos-containing components in its boilers 21 that it continued to use to see if using them 22 was safe? 23 MR. SAUL: Objection to form. 24 A. You keep saying in the boiler. The 25 boiler themselves didn't have asbestos. Pieces HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 276 1 attached to them might have had asbestos. 2 Q. They had asbestos millboard, asbestos 3 rope, asbestos gasket, asbestos packing. It 4 had all of those? 5 A. Packing I still don't -- I don't know 6 about that one. I never heard that until 7 today. But we continued to use those products 8 until we could get a suitable substitute. 9 Q. You never tested to see whether the 10 use of those products could release asbestos 11 fibers into the air, correct? 12 A. I don't know who tested that. 13 MR. SAUL: Objection to form. 14 A. I've already said that. I don't know 15 who did it. 16 Q. But you know Riley Stoker didn't? 17 A. I don't believe Riley Stoker did. 18 MR. SAUL: Asked and answered. 19 Q. Now, we talked about the board numbers 20 for boilers, and that this is information that 21 Riley Stoker maintains. It's true that Riley 22 Stoker can locate the original installation 23 point for every boiler its ever made, right? 24 MR. SAUL: Objection to form. 25 A. I don't understand the question. HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 277 1 Q. Okay. For all the boilers that Riley 2 Stoker has made since it started making boilers 3 in 1931, Riley Stoker can check its records and 4 see where that boiler was originally installed, 5 correct? 6 A. If we have the name and the location, 7 we can do that. 8 Q. Okay. And up to 1972 Riley Stoker 9 sold boilers that had asbestos-containing 10 insulation in them as well as other 11 asbestos-containing products, correct? 12 A. They might have had 13 asbestos-containing insulation. 14 MR. SAUL: Objection for form. 15 A. Thermal insulation that contained 16 asbestos, they might have had that. It was 17 thermal insulation that might have had 18 asbestos, not asbestos insulation. We never 19 called it asbestos insulation, no one did that 20 I know of. 21 Q. Not even the Asbestos Workers Union 22 you hired to install it? 23 MR. SAUL: Objection to form. 24 A. I don't know about that. I can't 25 speak for them. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 278 1 Q. Sir, Riley Stoker could identify every 2 customer that ever bought a boiler from it in 3 1972; they could have done that, correct? 4 MR. SAUL: Objection to the extent it 5 misstates prior testimony. 6 A. It's possible. 7 Q. Riley Stoker could have sent a warning 8 to all of those customers telling them that 9 there's asbestos-containing insulation in that 10 boiler, and these are the ways that you have to 11 work with it in order to keep your employees 12 safe. They could have done that, correct? 13 MR. SAUL: Objection. Calls for 14 speculation. 15 A. It had already been done by OSHA. 16 There's nothing we could have added that was 17 more informative than what OSHA sent out. OSHA 18 was the expert. 19 Q. You could have sent information to be 20 put on a placard or name plate or something 21 like that that would go on the boiler, couldn't 22 you? 23 MR. SAUL: Objection. Calls for 24 speculation. 25 A. OSHA took care of that. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 279 1 Q. You're just expecting that all of your 2 customers would follow OSHA guidelines? 3 A. We all had to. 4 Q. You know everybody always did? 5 A. I don't know that. 6 Q. OSHA has an enforcement division, 7 correct? 8 A. They sure were around our construction 9 sites enough. 10 Q. OSHA cites companies that don't comply 11 with OSHA, correct? 12 A. That's correct. 13 Q. So you know that not all companies 14 comply with OSHA requirements, true? 15 MR. SAUL: Objection to form. 16 A. That's a stretch. I don't know that. 17 Q. Have you ever seen a company get an 18 OSHA citation? 19 A. I've seen Riley get plenty of them. 20 Q. They don't get those because they're 21 complying with OSHA requirement, do they? 22 A. No. 23 Q. Sir, what documents exist that can 24 show this jury when Riley Stoker last utilized 25 an asbestos-containing thermal insulation HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 280 1 product? 2 A. I don't know. 3 Q. Okay. You're not aware of any that 4 would tell the jury? 5 A. Specific document that this is the 6 last day of -- 7 Q. Right. 8 A. I do not know of any. 9 Q. Okay. We have this March 1972 memo 10 that talks about calcium silicate. You haven't 11 seen any document from Riley Stoker that talks 12 about 85 percent magnesia insulation products, 13 have you? 14 A. Not like this, no. 15 Q. Do you know when Riley Stoker stopped 16 using asbestos-containing 85 percent magnesia 17 thermal insulation in its boilers? 18 A. Thermal insulation that contained 19 asbestos was ended in 1972 along with the 20 refractories. Anything that -- any thermal 21 insulation refractory that contained asbestos 22 was ended in '72 because the vendors stopped 23 making it because of the OSHA rules. In '72, 24 and I don't have a date, but this is indicative 25 of what we were doing. We just plain stopped. HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 281 1 Q. So Riley Stoker utilized 2 asbestos-containing thermal insulation and 3 refractory as long as the vendors continued to 4 make it? 5 MR. SAUL: Objection to form. 6 A. That's not what I said. When this 7 came out in '72, it was already putting the 8 brakes on because people didn't -- OSHA came 9 out and no one new. Now we know. So what are 10 we going to do about it? I can tell you that 11 suppliers stopped making it, we stopped using 12 it. 13 Q. Okay. 14 A. It was in '72. 15 MR. SAUL: Jay, we've got 5:25. How 16 are we doing here? 17 MR. STUEMKE: I'm still on track. 18 Q. Mr. Smith, you can't tell this jury 19 when Riley Stoker stopped using asbestos 20 gaskets, can you? 21 A. Specifically, no. 22 Q. Sir, I've gotten confused with a 23 couple of ways that you've worded the answer to 24 some of the questions. I just want to make 25 sure that the record is clear. Does Riley HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 282 1 Stoker contend that it had knowledge that 2 asbestos could cause any disease in humans 3 before 1972? 4 MR. SAUL: Objection to the form to 5 the extent it's been asked and answered. 6 A. You asked if we knew. 7 Q. That asbestos, regardless of whether 8 it's from insulation products or from anything 9 else, just asbestos, did Riley Stoker know 10 before 1972 that asbestos could cause any 11 disease in humans? 12 A. I don't know that. 13 MR. SAUL: Same objection. 14 A. I don't know. 15 Q. Okay. So they may have learned that 16 in 1956, correct? 17 MR. SAUL: Objection. Calls for 18 speculation. 19 A. I don't know. 20 Q. Are you familiar with a workers' 21 compensation claim that was made in 1957 -- 22 strike that. 23 Are you familiar with a workers' 24 compensation claim made in 1956, sir? 25 A. Which one are you talking about? HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 283 1 Q. This is the one by Lewis Munger, 2 M-U-N-G-E-R. 3 A. I have a record in here that I'm 4 trying to find. 5 Q. Sure. 6 A. Okay. 7 Q. And for the record, you've turned to 8 tab seven in your three-ring binder of 9 deposition materials? 10 A. Yes. 11 Q. Okay. Tab seven is a one-page 12 handwritten set of notes followed by a printout 13 from an Internet Website, correct? 14 A. Correct. 15 Q. Who wrote the one page of handwritten 16 notes? 17 A. I did. 18 Q. Okay. How did you gain the 19 information that you wrote on that one page of 20 notes? 21 A. I was given -- documents were given to 22 me in of my earlier depositions, and we 23 reviewed them. And I wrote up a summary so I 24 didn't have to keep going back and looking at 25 them again. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 284 1 Q. Okay. And you understand that in 1956 2 a claim was made by Lewis Munger against 3 Armstrong Cork, correct? 4 A. Yes. 5 Q. And you understand that Armstrong Cork 6 caused Riley Stoker as a former employer of 7 Louis Munger to be brought into that action, 8 correct? 9 A. We understand that Armstrong did bring 10 Riley in along with seven other companies. 11 Q. Okay. And you understand those 12 companies that were brought in to have been 13 former employers of Mr. Munger, correct? 14 A. That's correct. 15 Q. You know that Riley Stoker was, in 16 fact, a former employer of Mr. Munger, correct? 17 A. I could not figure out whether he was 18 employer or employed by Armstrong Cork who 19 worked for Riley. 20 Q. Okay. Let's take a look at this 21 document then. 22 (Exhibit No. 22, Riley Stoker Memo, 23 1/9/57 so marked) 24 A. Okay. 25 Q. And this is a Riley Stoker document, HG LITIGATION SERVICES HGLITIGATION.COM

J. MICHAEL SMITH Page 285 1 correct? 2 A. Yes, it is. 3 Q. It's a letter from the manager of 4 industrial relations to the safety supervisor 5 dated January 7. It says 1956, but it's 6 actually 1957, isn't it? 7 A. Probably. Date stamp is '57. 8 Q. You see in the first paragraph it 9 mentions a memo of January 2, 1957? 10 A. Yes, I do. 11 Q. Okay. You see in the second paragraph 12 there's a reference to a letter from your 13 office meaning, Mr. Michaelian, the safety 14 supervisor for Riley Stoker. There's a letter 15 from your office dated August 13, 1956, stating 16 "Claimant worked for Riley Stoker Corporation 17 during part of 1952 as an insulator mechanic at 18 the James DeYoung steam plant." Is that 19 correct? 20 A. Yes, that's what it says. 21 Q. Okay. The letter goes on to state 22 that, this person Ms. Irvine is confident Riley 23 Stoker corporation's share would not exceed two 24 or three hundred dollars in insurance benefits 25 provided Lewis M. Munger should win at the HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 286 1 hearing. Did I read that correctly? 2 A. Yes. 3 Q. So Riley Stoker knew in 1956 that its 4 employment for some period of time in 1952 of 5 an insulator was going to cause it potentially 6 to pay \$200 to \$300 in compensation for a 7 disability claim of that insulator, correct? 8 MR. SAUL: Objection to form. 9 A. This was a workers' compensation claim 10 which basically means that a worker is 11 entitled, if he gets an illness, he can sue 12 anybody he ever worked for, whether or not they 13 had any responsibility for his illness. It's a 14 no-fault system. 15 Q. Okay. 16 A. So the insurance company handled 17 something like this, and he never said he got 18 -- I think what was he -- he had -- I can't say 19 it. Pneumocosis. 20 Q. Pneumoconiosis? 21 A. Yes. And he said that's what he had. 22 He never said he got -- was exposed to it at 23 Riley. There's no statement anywhere that said 24 he was. There was a potential award. And, 25 frankly, at that time they probably said it was HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 287 1 going to be cheaper just to pay a couple of 2 hundred bucks than to fight the case. 3 Q. Cheaper just to pay a couple of 4 hundred bucks than to investigate whether 5 there's actually any hazards, correct? 6 A. I don't know that. 7 Q. Okay. You know that they didn't 8 investigate whether there was a hazard to 9 insulators that they employed, correct? 10 A. I don't know that for a fact. 11 Q. Okay. There's no document that exists 12 that would suggest that Riley Stoker ever 13 investigated whether there was a hazard to 14 insulators it employed relating to asbestos, 15 correct? 16 MR. SAUL: Objection to form. 17 A. None that I'm aware of. 18 Q. Okay. And you haven't looked? 19 A. No. 20 Q. Even though this is your 19th 21 deposition in an asbestos case, you've never 22 looked for documents that say that? 23 MR. SAUL: Object to the form. It 24 misstates his prior testimony. 25 A. I have not looked. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 288 1 Q. Can you tell the jury a single action 2 that Riley Stoker took in response to the Lewis 3 M. Munger claim other than having to pay money 4 to resolve it? 5 A. No, I can't. 6 Q. There's another workers' comp claim in 7 1972, correct? 8 A. I don't know about that one. 9 Q. The Nead (phonetic) claim, Douglas 10 Nead? 11 A. No. 12 Q. You're not familiar with that? 13 A. No. Never heard of that one. 14 Q. You are familiar, though, with a 15 workers' compensation claim in 1948, correct? 16 A. Yes. 17 Q. Okay. The claim was filed by Ernest 18 Moreno, correct? 19 A. Yes. 20 (Exhibit No. 23, Workers' Compensation 21 Claim, 7/6/48 so marked) 22 A. Okay. 23 Q. Have you seen Exhibit 23 before, sir? 24 A. I have seen -- I don't know if I've 25 seen this exact one, but I've seen documents on HG LITIGATION SERVICES HGLITIGATION.COM

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1 this case.
 2 Q. Okay. And you see on the first page
 3 there's a caption that printing is very
 4 difficult to read but there's a received stamp
 5 from Riley Stoker Corporation, July 6, 1948,
 6 correct?
 7 A. Yes.
 8 Q. In Worcester, Mass., correct?
 9 A. Yes.
 10 Q. Okay. Then if you turn to the second
 11 page, there's another document from the same
 12 Ernest Moreno case, correct?
 13 A. It's what, please?
 14 Q. It's another document from the Ernest
 15 Moreno case. You see at the top it says
 16 "Ernest Moreno applicant"?
 17 A. Okay.
 18 Q. Let's keep going, sir, to the page
 19 that's Bates page labeled at the bottom RS 31.
 20 Do you have that page, sir?
 21 A. Yes.
 22 Q. Okay. And you see this has a received
 23 stamp Riley Stoker Corporation in 1948 at the
 24 top?
 25 A. Yes.
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1 employers in the State of California for
 2 periods of time here in after set forth
 3 sustained injury arising out of and occurring
 4 in the course of his employments by reason of
 5 his occupational activities consisting of
 6 exposure to asbestos dusts. The accumulated
 7 effects of each day's exposure caused an
 8 industry asbestosis resulting in temporary
 9 total disability on December 8, 1944." Did I
 10 read that correctly, sir?
 11 A. Yes.
 12 Q. Okay. So what we have here is a
 13 finding of fact that, number one, Ernest Moreno
 14 was an asbestos worker, correct?
 15 A. That's what it says.
 16 Q. Okay. That he was exposed to asbestos
 17 dust, correct?
 18 A. Yes.
 19 Q. Okay.
 20 A. That's what it says.
 21 Q. And that that exposure caused an
 22 industrial asbestosis, correct?
 23 A. Yes, it does.
 24 Q. Riley Stoker knows today that
 25 asbestosis can be a deadly disease, correct?
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1 Q. And this is a claim by Ernest Moreno,
 2 correct?
 3 A. Yes.
 4 Q. Okay. And have you read this, sir?
 5 A. I have. I've not read it this week.
 6 Q. Do you see on the second page, sir,
 7 that there's a section entitled " Findings of
 8 Fact"?
 9 A. Yes.
 10 Q. Okay. Now, before we get into this,
 11 what does your summary of the Moreno claim say
 12 in your notebook?
 13 A. Basically, it says that there was no
 14 description of work, what he actually did for
 15 Riley. There was no award. It was filed too
 16 late.
 17 Q. Okay. Now, let's see what -- you'd
 18 agree this document comes from Riley Stoker's
 19 files, right?
 20 A. It's got Riley Stoker stamps on it. I
 21 don't know where it came from.
 22 Q. Okay. Let's look at the findings of
 23 fact section here. It says in paragraph one,
 24 "Ernest R. Moreno, born December 12, 1903,
 25 while employed as an asbestos worker by various
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1 MR. SAUL: Objection to form. Asked
 2 and answered.
 3 A. I -- know we know that there's
 4 problems with asbestos today.
 5 Q. You'd agree that in 1948 when they got
 6 this document if they'd have gone to the
 7 medical library, they could have found out
 8 asbestosis was a fatal disease too, correct?
 9 A. I don't know that.
 10 MR. SAUL: Objection to form.
 11 Q. You've never checked to see if that's
 12 true?
 13 A. No.
 14 Q. And this is important. I want you to
 15 look back at the finding of fact, number one.
 16 It says, "The accumulated effects of each day's
 17 exposure caused an industrial asbestosis." Do
 18 you see that?
 19 A. Yes.
 20 Q. This is a factual finding by the
 21 California Industrial Accident Commission that
 22 each day of exposure that Mr. Moreno had to
 23 asbestos contributed to cause his disease,
 24 correct?
 25 A. That's what it says.
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J. MICHAEL SMITH Page 293 1 Q. You don't have any reason to dispute 2 that that's scientifically true, do you? 3 A. I have no idea. 4 MR. SAUL: Objection to form. Calls 5 for speculation. 6 Q. Now, if we look at finding of fact 7 number two which begins on the next page, 8 subparagraph B indicates that, "Commencing 9 August 27, 1942, to and including September 26, 10 1942, a period of 31 days, said applicant was 11 employed by Riley Stoker Corporation." 12 Correct? 13 A. Yes. 14 Q. Okay. And we know by looking back at 15 finding of fact number one that he was exposed 16 while employed as an asbestos worker by the 17 employers that are set forth in finding of fact 18 number two, correct? 19 MR. SAUL: Objection to form. 20 A. That's what it says. 21 Q. What you have in your notes about this 22 case was that the case was dismissed because it 23 was filed too late? 24 A. Against Riley. 25 Q. Okay. We see in finding of fact HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 294 1 number five, if you look on what's page four at 2 the bottom -- do you see that? Finding of fact 3 number five says that, "The claims against the 4 other defendants listed in finding number two 5 was not filed with the time allowed by law." 6 And it goes on. And I'll agree that includes 7 Riley Stoker. 8 Now, what that means, as you say in 9 your notes, that the case was dismissed as to 10 Riley Stoker because it wasn't filed in time, 11 right? 12 A. Yes. 13 Q. Okay. The case wasn't dismissed 14 against Riley Stoker because anybody determined 15 that his employment with Riley Stoker didn't 16 cause his disease, was it? 17 MR. SAUL: Objection. Calls for 18 speculation. It's outside the scope of the 19 witness' knowledge. 20 A. I don't know. 21 Q. Okay. That's not what this finding of 22 fact says. Just that it wasn't file in time so 23 the case was dismissed? 24 A. We're into legal stuff. I'm not a 25 lawyer. I'm not a hygienist. HG LITIGATION SERVICES HGLITIGATION.COM
J. MICHAEL SMITH Page 295 1 Q. Okay. Now let's turn to the next 2 page, sir, page five. Finding of fact number 3 10 begins, "Applicant was also employed by" and 4 then it lists a number of four different 5 employers or so. Finding of fact number 11 6 says, "The employment duties of the applicant 7 during the periods of his employment with the 8 defendant employers as set forth in finding 9 number 10 neither caused nor exacerbated 10 applicant's industrial injury, and for that 11 reason said employers and their insurance 12 carriers are entitled to be dismissed and 13 discharged here from." Did I read that 14 correctly? 15 A. Yes. 16 Q. So what the Industrial Accident 17 Commission of California is saying here is that 18 these jobs did not cause or exacerbate his 19 disease, correct? 20 MR. SAUL: Objection. You're calling 21 for speculation. Counsel, let's move it along 22 from this stuff into something that's relevant 23 to this case. 24 A. This is all over and above me at this 25 point. HG LITIGATION SERVICES HGLITIGATION.COM	J. MICHAEL SMITH Page 296 1 Q. Okay. But you see, sir, that when -- 2 in this case when they determined that an 3 employment did not cause disease they said so, 4 right? 5 MR. SAUL: Counsel, you're again 6 asking the witness to speculate on matters that 7 he has no knowledge off. 8 MR. STUEMKE: I'm asking him to read 9 the document. 10 A. I read the document. That's what it 11 says. I can't figure it out. 12 Q. And they didn't say that about the 13 work at Riley Stoker, did they? 14 A. I did not see that. 15 Q. Okay. In 1948 we had the Industrial 16 Accident Commission of California telling Riley 17 Stoker that your employee, the asbestos worker 18 you hired to do insulating work caused him to 19 be exposed to asbestos, caused an asbestosis, 20 but you get off because the case wasn't filed 21 in time? 22 MR. SAUL: Objection to form. 23 Argumentative. Counsel, we've been down this 24 road. The witness has answered every question 25 that you've asked. HG LITIGATION SERVICES HGLITIGATION.COM

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1 THE WITNESS: I'm really at the end
2 here folks, so let's figure it out.

3 Q. I just need an answer to the question.

4 A. I totally disagree.

5 MR. SAUL: If you know, you can
6 answer.

7 A. I can't right now. I'm totally
8 confused at this point.

9 Q. Mr. Smith, you would agree that there
10 is nothing that you've ever seen at Riley
11 Stoker and nothing that Riley Stoker's lawyers
12 have ever showed you that would suggest that
13 after the Moreno case Riley Stoker ever did a
14 single thing to investigate the hazards of
15 asbestos?

16 MR. SAUL: Objection to form. It's
17 argumentative and misstates prior testimony.

18 A. I've never seen anything.

19 Q. Sir, if Riley Stoker understood in
20 1948 that exposure to asbestos from insulation
21 work could cause a fatal disease, don't you
22 think it should have told somebody about that?

23 MR. SAUL: Objection to form.

24 A. I can't answer that. I wasn't there.
25 I don't know what they did or didn't do or why

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1 they didn't do it.

2 Q. My question isn't at this point what
3 they did do. I'm asking what they should have
4 done. As a corporate representative for Riley
5 Stoker, if Riley Stoker knew in 1948 that
6 exposure to asbestos from insulation of dust
7 could cause disabling fatal diseases, shouldn't
8 they have told somebody?

9 A. I don't know that was what happened
10 then. I read this today. I don't know what
11 happened then. You're asking me to speculate.
12 You're calling me a corporate witness again.
13 And I've already said that I'm here to answer
14 questions. And this is really the end of the
15 day, and I don't know where we're going, but
16 I've had enough.

17 MR. STUEMKE: Okay. I'll pass the
18 witness -- strike that. One more question.

19 Q. Have I been polite to you today, sir?

20 A. Sure.

21 MR. STUEMKE: Okay. I'll pass the
22 witness now.

23 MR. SAUL: Folks on the phone, do we
24 have any questions?

25 DEFENSE COUNSEL: No questions.
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1 MR. SAUL: Okay. It's lonely out
2 there. Concluded.

3 THE VIDEOGRAPHER: This is the end of
4 tape number five, and the deposition time is
5 5:47. We're off the record.

6 (Whereupon, the deposition concluded
7 at 5:47 p.m.)
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1 CHANGES AND SIGNATURE
2 PAGE LINE CHANGE REASON
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8
9
10
11
12

13 I, J. MICHAEL SMITH, have read the
14 foregoing deposition and hereby affix my
15 signature that the same is true and correct
16 except as noted above.

17 J. MICHAEL SMITH
18 THE STATE OF)
19 COUNTY OF)
20 Before me on this
21 day, personally appeared J. MICHAEL SMITH,
22 known to be (or proved to me under oath or
23 through) to be the person whose name
24 is subscribed to the foregoing instrument and
25 acknowledged to me that he executed the same
for the purposes and consideration therein
expressed.

Given under my hand and seal of office this
day of , 2009.

Notary Public in and for the State of

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J. MICHAEL SMITH

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1 REPORTER'S CERTIFICATION
2 DEPOSITION OF J. MICHAEL SMITH
3 WEDNESDAY, MAY 13, 2009
4

5 I, Darlene Caiazzo Sousa, Registered
6 Professional Reporter and Certified Shorthand
7 Reporter in and for the Commonwealth of
8 Massachusetts, hereby certify to the following:

9 That the witness, J. MICHAEL SMITH, was
10 duly sworn by the officer and that the
11 transcript of the oral deposition is a true
12 record of the testimony given by the witness;
13

14 That the deposition was submitted on
15 to the witness or the attorney for
16 the witness for examination, signature, and
17 returned to HG LITIGATION SERVICES, P.C.
18 by
19

20 That pursuant to information given to the
21 deposition officer at the time said testimony
22 was taken, the following includes counsel for
23 all parties of record:
24
25

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1 I further certify that I am neither
2 counsel for, related to, nor employed by any of
3 the parties or attorneys in the action in which
4 this proceeding was taken, and further, that I
5 am not financially or otherwise interested in
6 the outcome of the action.
7

8 Certified to by me this ____ day of
9 _____, 2009.
10
11
12
13

14 DARLENE CAIAZZO SOUSA, CSR, RPR #004028
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