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DATE: 2014

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3718

1 SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - CIVIL BRANCH - PART: 12

2 -----X

In Re: NEW YORK ASBESTOS LITIGATION

3 -----X Action 1

DEBRA TERRY, as Administratrix for the Estate of

4 CARL M. TERRY and DEBRA TERRY, Individually,

5 Plaintiffs,

INDEX NO.

6 -against- 190403/12

7 A.O. SMITH, Water Products Company, et al,

8 Defendants,

-----X Action 2

9 PHYLLIS BROWN, as Administratrix for the Estate
of HARRY E. BROWN, and PHYLLIS BROWN, Individually,

10

Plaintiffs,

11

INDEX NO.

-against- 190415/12

12

BELL & GOSSETT COMPANY, et al,

13

Defendants.

14 -----X Action 3

MARY ANN McCLOSKEY, as Administratrix for the

15 Estate of PATRICK McCLOSKEY and MARY ANN

McCLOSKEY, Individually,

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Plaintiffs,

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INDEX NO.

-against- 190441/12

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A.O. SMITH, Water Products Company, et al,

19

Defendants.

20 -----X

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60 Centre Street

New York, New York 10007

22

January 6, 2014

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B E F O R E:

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HONORABLE BARBARA JAFFE, Justice, and a Jury

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

2 WEITZ & LUXENBERG

Attorneys for Plaintiffs

3

700 Broadway

New York, New York 10003

4 BY: DANNY R. KRAFT, JR., ESQ.
MICHAEL FANELLI, ESQ.
5 PHAN T. ALVARADO, ESQ.
6 BARRY, MCTIERNAN & MOORE, LLC
Attorneys for Cleaver-Brooks, Inc.
7 2 Rector Street
New York, New York 10006
8 BY: SUZANNE HALBARDIER, ESQ.
DAN O'CONNELL, ESQ.
9
BARRY, MCTIERNAN & MOORE, LLC
10 Attorneys for Domco Flooring/Azrock Flooring
2 Rector Street
1 New York, New York 10006
BY: DAVID WYSNEWSKI, ESQ.
1
WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER, LLP
1 Attorneys for Dana Corporation
5615 Kirby Drive - Suite 500
1 Houston, Texas 77005
BY: JAMES H. POWERS, ESQ.
1
ANDREW J. CZEREPAK, ESQ.
1 Assistant General Counsel
Law Department
1 Attorneys for Consolidated Edison Company
4 Irving Place - Room 1901
1 New York, New York 10003
1 McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
Attorneys for Eaton Corp./Cutler-Hammer
2 1300 Mount Kemble Avenue
Morristown, New Jersey 07962
2 BY: ROBERT K. GUNN, ESQ.
2 MCMAHON, MARTINE & GALLAGHER, LLP
Attorneys for Tishman Realty Construction Corp.
2 55 Washington Street
Brooklyn, New York 11201
24 BY: TIMOTHY D. GALLAGHER, ESQ.
25
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APPEARANCES CONTINUED:

1 SEGAL, MCCAMBRIDGE, SINGER & MAHONEY
Attorneys for Port Authority of NY & NJ
1 850 Third Avenue - Suite 1100
New York, New York 10006
1 BY: CHRISTIAN H. GANNON, ESQ.
W. SIMONE NICHOLSON, ESQ.
1

1 CULLEN & DYKMAN, LLP
7 Attorneys for Mario & DiBono Plastering Co.
44 Wall Street

8 New York, New York 10005
BY: JEFFREY C. FEGAN, ESQ.
9 MARVIN BLAKELY, ESQ.
10 DARGER, ERRANTE, YAVITZ & BLAU, LLP
Attorneys for Dana Companies, LLC
11 116 East 27th Street
New York, New York 10016
12 BY: DANIEL E. DECICCO, ESQ.
13 DEBRA SALZMAN, RMR
ANGELA TOLAS, CSR
14 OFFICIAL COURT REPORTER
15
16
17
18
19
20
21
22
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1 Proceedings

2 THE COURT: I have a juror note. "My name is
3 Jeff Kulick. I am Juror Number 11 serving on this case. I
4 am requesting an opportunity to speak with the Judge
5 regarding several matters which are going to prevent me
6 from continuing to serve on this case. Thank you."

7 COURT CLERK: Mr. Kulick?

8 THE COURT: So in the first instance, I'm
9 wondering whether I should be speaking with him alone
10 first. He has to speak with me. I don't know. Anybody
11 have a view?

12 MR. KRAFT: I think you absolutely should talk to
13 him.

14 THE COURT: Alone without counsel?

15 MR. KRAFT: I think it has to be in the presence
16 of everybody. I do.

17 THE COURT: That's what I am asking.

18 MR. KRAFT: Yes, Judge. I would suggest calling
19 him in by himself, just asking him what his concerns are.

20 MR. CZEREPAK: I don't think it would be a
21 problem if you just talk to him just to find out what the
22 situation is.

23 THE COURT: I'll ask him first if he has to be
24 in camera or not, okay.

25 (Juror enters courtroom.)

26 THE COURT: Good morning, Mr. Kulick.

JUROR: Good morning.

THE COURT: How are you this morning?

JUROR: I've been better.

THE COURT: So I have your note, which I read for the record already. What seems to be the issue?

JUROR: Well, there are any number of things. Let me show you this first. This is from a building inspector from HPD that came to my apartment on Sunday. I have several issues in my apartment that need to be fixed. I have kitchen cabinetry that fell off of the wall on December 26 and it's remained on my kitchen floor broken and unattended for a month now.

I have a mold problem in my bathroom that's been going on for several years now.

I have pictures, I didn't take for the purposes of showing you guys, but I have pictures on my computer which I have filed with HPD and several other agencies here in New York that I can show you if you'd like to see so you can, you know, see how serious the situation is.

Also, this hernia I that I told you about before this case started, it's becoming a real problem for me, and when I talked about the commute down here, I wasn't trying to kind of describe any inconvenience. I was trying to explain that I do more walking in the day now than I would typically do in a month, and it's becoming something of a

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health issue. I need to kind of get this fixed. It's resulting in back problems for me. It's affecting the way I walk. It's affecting the way I sleep.

So those two things alone, you know, I feel are also kind of jeopardizing my livelihood. It's hard for me to go in to my place of employment once a week and deal with not only my responsibilities at work but all of these other things that are kind of happening surrounding my service here as a juror. You know, I feel like I tried. I tried to come in and help, but I don't know what more I can do. I'm finding myself increasingly distracted. It's hard for me to focus on the problems that other folks have incurred when I am having extreme problems of my own.

THE COURT: I see. And with these emergency conditions that Mr. Kulick has shown me, it says -- is this against your landlord?

JUROR: Correct. This is the fourth complaint I filed against my landlord.

THE COURT: Against your landlord?

JUROR: Correct.

THE COURT: And your landlord is seeking to remedy these conditions?

JUROR: They have ignored the violations that have been issued by HPD. So I have two options. Again, this is just my living situation, this doesn't have

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anything to do with the way I'm feeling physically and my employment.

I feel I have two options there. I either make myself available so the landlord can come in and fix these situations or I move immediately, like I cannot continue to go back to an apartment that I think is uninhabitable. And, again, I'll be happy to pull up my laptop. They're right on my desktop.

THE COURT: That won't be necessary.

JUROR: I've reached out to an attorney. The inspector himself described it as dangerous. He said, "This is a dangerous mold problem."

It's been going on since I moved in. It's been left unattended for three years.

THE COURT: And the landlord's seeking to enter now to remedy these?

JUROR: Yes. They are going to contact the landlord. The building inspector said they should be contacting them this week. I don't know when that's going to be, you know. So, yeah, I don't really -- I don't want a situation where they are going to claim that they tried to contact me but my phone was off all day or they wanted to come in and see it but I was unavailable. You know, I kind of anticipate -- with my history with them, I kind of anticipate that's what they would claim. "We tried to deal

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with Mr. Kulick, but Mr. Kulick is unavailable." So...

THE COURT: Thank you. I'm going to ask you to step out.

JUROR: Mm hmm.

THE COURT: And so I can talk with the lawyers.

JUROR: Okay.

(Juror exits courtroom.)

THE COURT: Okay. So Mr. O'Connell, your view?

MR. O'CONNELL: It's a sad situation, your Honor. I feel for the juror and I think there is only one appropriate thing to do.

MR. KRAFT: Which is?

MR. O'CONNELL: Excuse him.

MR. KRAFT: Do the defendants agree?

MR. O'CONNELL: That's my opinion only.

THE COURT: Mr. Kraft's indicated he certainly agrees to that.

MR. O'CONNELL: Do you agree?

MR. KRAFT: Absolutely.

THE COURT: I think we can't make him sit here.

MR. BLAKELY: He's not going to concentrate on what he is doing.

THE COURT: Have him come back in and let me

25 thank him.

26 MR. CZEREPAK: Before we do it, do we have any

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2 objections on the record?

3 THE COURT: If there had been, I know I would
4 have heard that.

5 MR. CZEREPAK: Sometimes silence --

6 THE COURT: Silence is not golden in this regard.
7 (Juror enters courtroom.)

8 THE COURT: So, Mr. Kulick, you're excused with
9 mine and the parties' thanks for your attention and
10 cheerful service.

11 JUROR: I almost feel bad that I wasn't able to
12 finish it. I know the stakes are very high.

13 THE COURT: I'm sad that you feel that way. We
14 thank you. I'm going to ask that you not discuss this with
15 anybody. And the lawyers, I believe, are free to talk with
16 you and you're free to talk with them, but you don't have
17 to talk with them.

18 JUROR: Okay.

19 THE COURT: You're free to leave, but don't talk
20 about the case with anybody else, certainly not with the
21 other jurors.

22 JUROR: Thank you.

23 THE COURT: Thank you. Good luck. I hope you
24 can resolve your apartment issues and all the other health
25 issues.

26 JUROR: Thank you.

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 THE COURT: All the best to you, sir.

3 JUROR: Thank you very much.

4 (Juror leaves courtroom.)

5 THE COURT: We'll mark this as a Court Exhibit 6.

6 (Whereupon, Court Exhibit 6 was marked in
7 Evidence at this time.)

8 (Jurors enter courtroom.)

9 THE COURT: Good morning, everybody. I hope you
10 had a great weekend. Please be seated.

11 MR. KRAFT: Your Honor, as promised last week we
12 will be starting with a live witness today. At this time
13 the plaintiffs in the McCloskey case call Cleaver-Brooks
14 corporate representative, John Tornetta, to the stand.

15 J-O-H-N T-O-R-N-E-T-T-A, called as a witness, having been
16 first duly sworn, was examined and testifies as follows:

17 COURT CLERK: Please be seated. In a loud, clear
18 voice, please state your name.

19 THE WITNESS: John Tornetta.

20 COURT CLERK: Please spell it.

21 THE WITNESS: T-O-R-N-E-T-T-A.

22 COURT CLERK: And your business address for the

2. record, sir.

2. THE WITNESS: 11950 West Lake Park Drive,
2. separate words, Milwaukee, Wisconsin 53224.

2. COURT CLERK: Please give your attention to the

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft
2 Court.

3 MR. KRAFT: May I inquire, your Honor?

4 THE COURT: Yes, please.

5 MR. KRAFT: Thank you.

6 DIRECT EXAMINATION

7 BY MR. KRAFT:

8 Q Good morning, Mr. Tornetta.

9 A Good morning.

10 Q Mr. Tornetta, my name is Dan Kraft. I represent the
11 McCloskey family in a case pending against Cleaver-Brooks.
12 We're having a trial here. You understand that, right?

13 A Yes, I do.

14 Q Okay. Mr. Tornetta, the address that you just gave
15 the jury, the Milwaukee address, is the corporate headquarter
16 address of the company that you work for, is that correct?

17 A No, it is not.

18 Q Is that your personal address?

19 A No. It's our company's address in Milwaukee. Our
20 actual corporate headquarters is in Thomasville, Georgia.

21 Q Okay. When you say "our company," what company are
22 you talking about?

23 A Cleaver-Brooks, Inc.

24 Q Okay. Do you work for Cleaver-Brooks, Inc., or Aqua
25 Chem or both?

26 A Cleaver-Brooks, Inc.

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 Q Okay. I just want to go over some ground rules.

3 You've never been questioned by me at trial, is that
4 correct?

5 A Correct.

6 Q You have testified at a trial where I was a lawyer,
7 however, is that correct?

8 A Correct.

9 Q And that was about January 8 of last year down the
10 hallway on this floor in Judge Madden's Court, right?

11 A I think it was in July, actually. It was during
12 summer. I know it was hot.

13 Q I apologize. It was July. July 8, not January 8.

14 Okay. I want to go over some ground rules. I'm going
15 to ask you some questions. If you don't understand the
16 question that I am asking, will you just simply tell me you
17 don't understand and I'll try to ask it a different way?

18 MR. O'CONNELL: Objection, your Honor?

19 THE COURT: Overruled.

20 A I will, yeah.

2 Q If you answer a question, I'm going to assume that you
2 understood that question, is that fair?

2 A Yes.

2 Q If I ask you a yes-or-no question, will you try to
2 answer it "yes" or "no" or simply tell me you can't answer with
2 "yes" or "no" and need to explain?

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 A I will do that, yes.

3 Q Okay. Thank you.

4 Mr. Tornetta, you were born on October 21, 1964, is
5 that correct?

6 A Correct.

7 Q That makes you how old today?

8 A Forty-nine.

9 Q And while you work for Cleaver-Brooks, Inc., in
10 Milwaukee, I believe you actually live right outside of
11 Milwaukee in a small, little town, is that correct?

12 A Correct.

13 Q What's the name of that town, please?

14 A Menomonee Falls, M-E-N-O-M-O-N-E-E.

15 Q I feel like you brought the snow with you from
16 Menomonee Falls.

17 A It appears that way.

18 Q Okay. When you testified in the summer of 2013, you
19 were here on the stand for about three days, is that correct?

20 A I believe so, yes.

21 Q We're going to try to get you out of here this
22 afternoon, is that fair?

23 A That would be nice, yes.

24 Q All right. I want to go over some of your background
25 information very quickly. You graduated from high school in
26 Media, Pennsylvania, in 1982, is that correct?

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 A I graduated from high school in Norristown,
3 Pennsylvania, in 1982.

4 Q Fair enough. What was the name of the high school?

5 A Norristown Area High School.

6 Q And immediately after graduating high school, you went
7 to trade school, is that correct?

8 A Correct.

9 Q I believe the name of the trade school was Williamson
10 Trade School.

11 A Correct.

12 Q And you received an associate's degree from Williamson
13 Trade School in 1985, is that right?

14 A Yes, it is.

15 Q Okay. Now, prior to entering the trade school in
16 1982, you had never done any work on boilers, is that fair?

17 A No, I don't believe I did. That is fair, yes.

18 Q Okay. So prior to graduating high school, you didn't

1 work part-time repairing boilers?

2 A No, I didn't.

2 Q You didn't work part-time servicing boilers?

2 A No.

2 Q You didn't have family members who were boiler service people, did you?

2 A No.

2 Q You graduated with an associate's degree in electric

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 power technology, is that correct?

3 A Correct.

4 Q And Williamson Trade School was in Media, Pennsylvania, right?

6 A Yes.

7 Q Okay. Now, when you were at trade school -- correct me if I am wrong -- that is when you first encountered a Cleaver-Brooks boiler, is that right?

10 A Yes.

11 Q Okay. And you actually did some work on that Cleaver-Brooks boiler, right?

12 A Yes, I did.

14 Q Do you know whether that Cleaver-Brooks boiler that you worked on at Williamson Trade School, whether it contained asbestos?

17 A No, I don't.

18 Q You've never saw fit to look to see whether that boiler contained asbestos?

20 A No, I didn't.

21 Q Okay. But you have pulled the boiler file for that boiler just to confirm that, in fact, it was a Cleaver-Brooks boiler at that location, right?

24 A No. Actually, I knew it was a Cleaver-Brooks boiler because I saw it there.

26 Q Okay. You've testified approximately how many times

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 at depositions?

3 A At least four dozen or so.

4 Q Okay. And how many times have you testified at trial?

5 A Three live at trial.

6 Q All three times that you have testified at trial you've been called by my law firm, Weitz & Luxenberg, is that right?

9 A Yes.

10 Q Okay. If you previously said that you pulled the boiler file to confirm that you had an index card for Williamson Trade School at a prior deposition, would that have been accurate?

14 A I think what I may have said is I pulled the index card to look at what the unit number was.

16 Q Fair enough. But you didn't pull the boiler files for

1 that boiler to see whether the boiler you were working on
1 contained asbestos at that location, is that correct?

1 A That's correct.

2 Q You graduated from Williamson Trade School in April or
2 May of 1985, is that correct?

2 A I think it was May, yes.

2 Q All right. And immediately you applied for and got a
2 job working for Cleaver-Brooks, Inc., is that right?

2 A Correct.

2 Q Okay. You started working at Cleaver-Brooks in June

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft
2 of 1985, correct?

3 A Yes.

4 Q The first job you had was as a service technician,
5 correct?

6 A Correct.

7 Q And as a service technician, you would go out in the
8 field and you would troubleshoot, fix, repair, service
9 Cleaver-Brooks boilers, is that correct?

10 A At times, yes.

1 Q Okay. Did you repair any other manufacturers' boilers
12 besides Cleaver-Brooks boilers?

1 A I don't believe I did. I may have seen them, but I
14 don't believe I was repairing them.

15 Q Okay. You are a Cleaver-Brooks employee going out in
16 the field, working on and around Cleaver-Brooks boilers, is
17 that correct?

18 A At times I was, yes.

19 Q And you did that work from approximately 1985 until
20 1989, is that right?

21 A As a service technician, yes.

22 Q Okay. At some point in 1989 or early 1990, you were
23 promoted to assistant service manager, is that right?

24 A Correct.

25 Q And as assistant service manager, you managed the
26 field technicians who were going out in the field on behalf of

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft
2 Cleaver-Brooks who were doing work on Cleaver-Brooks boilers,
3 is that correct?

4 A Yes. That's one of the things I did.

5 Q And you held that title from 1989 to approximately
6 1992, is that correct?

7 A Yeah. It was '92 or '93. I mix that up all the time.

8 Q Okay. You were then promoted again, is that correct?

9 A Yes.

10 Q You became the service manager at Cleaver-Brooks,
11 right?

12 A I did the service manager duties for a particular
13 product, yes.

14 Q Okay. And you had the title -- you held the title of

1 service manager from 1992 to 1995, is that correct?

1 A Roughly that time frame yes.

1 Q Okay. As an assistant service manager and as a
1 service manager, were you still going out in the field fixing,
1 troubleshooting, servicing Cleaver-Brooks boilers?

2 A Yes.

2 Q Now, you were headquartered in Wisconsin at that
2 point?

2 A Yes.

2 Q Okay. Were you only servicing boilers in Wisconsin or
2 were you traveling nationwide wherever Cleaver-Brooks boilers
2 may have been installed?

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F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

A Wherever I needed to go around the country, yes.

Q Did you ever come to New York?

A New York State, yes. I don't believe I've ever been
working on boilers in New York City.

Q Fair enough. Can you approximate for me,
Mr. Tornetta, during the time period that you were a field
technician through the time that you were a service manager,
how many different locations you went out and encountered a
Cleaver-Brooks boiler?

A Wow, that's -- I travel a good bit. It would be at
least in the hundreds.

Q Hundreds. And if I were to ask you today to list all
of those locations, the various places you've been, how many
names of specific locations would you be able to give me?

A Certainly not all of them. I couldn't guess at how
many.

Q Half of them?

A I doubt it would be half.

Q A hundred?

A I might be able to come up with a hundred. That would
be a stretch, though.

Q Okay. Do you remember being asked that exact question
back in July when you testified in this courthouse, how many
you'd be able to recall, and giving an answer of about 25 or
so?

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F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

MR. O'CONNELL: Objection, your Honor. There is
a procedure --

THE COURT: Overruled.

A No. I don't remember testifying to that.

Q Okay. I actually have your trial testimony from that
case.

MR. KRAFT: And I'd like to hand up a copy, if I
may, your Honor.

THE COURT: Yes.

Q I'm going to be asking you questions today and we're
going to be referring to this transcript at times.

13 A Okay.

14 Q So let me hand up the transcript.

15 Have you had a chance to review your testimony from
16 that trial case?

17 A No, I did not.

18 Q Okay. I direct you to page 4718 of the trial
19 transcript. Just let me know when you're there. It's at the
20 very end.

21 A Okay. I'm there.

22 Q Okay. Do you recall being asked the following
23 questions and giving the following answers:

24 "Question: When you were a service technician,

25 Mr. Tornetta, do you remember every site you ever went to?

26 "Answer: No.

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 "Question: How many sites do you think you went
3 to over the years between 1985 and 2000 as a service
4 technician?

5 "Answer: It would be a pure guess. Fifty-two
6 weeks in a year, it's possible it's well into the hundreds.

7 "Question: Hundreds. How many do you think you
8 can name off the top of your head right now? Just give me
9 a number.

10 "Answer: Probably 25 or so."

11 Do you recall being asked those questions and giving
12 those answers?

13 A I didn't recall a couple of minutes ago. Certainly I
14 did give those answers, yes.

15 Q Is it fair to say of the hundreds or so locations if
16 we asked you to list, you'd be able to give about 25 or so
17 locations?

18 A Off the top of my head, that would probably be a
19 closer number. If I sat down and figured it out and thought
20 about the different places, I might be able to come up with
21 more.

22 Q All right. I'm not going to ask you to list all the
23 places that you worked.

24 A Thank you.

25 Q Okay. All right. In 1996 you were promoted again, is
26 that correct?

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 A Yeah. It was in that time frame, I believe.

3 Q You can set that to the side.

4 And you were promoted to what was called assistant
5 training manager, is that correct?

6 A Correct.

7 Q And what you did was you did technical training for
8 internal Cleaver-Brooks employees but you also trained outside
9 non-Cleaver-Brooks employees how to operate, service, repair,
10 install Cleaver-Brooks boilers, is that accurate?

1 A Correct. I'm not sure I got into the installing of
1 the Cleaver-Brooks boilers but certainly to operate and
1 maintain them.

1 Q Okay. Any of the training that you ever did either
1 for Cleaver-Brooks employees or people outside of
1 Cleaver-Brooks ever deal with asbestos issues?

1 A No.

1 Q All right. You never held any training where you have
1 trained people outside of Cleaver-Brooks about the fact that
2 your boilers contained asbestos, did you?

2 A No, I did not.

2 Q And you're not aware of that training ever occurring
2 for either Cleaver-Brooks personnel or people outside of the
2 company, are you?

2 A No, I'm not.

2 Q Okay. And you held that title of assistant training

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft
2 manager from 1996 until approximately 2000?

3 A Correct.

4 Q You took a year off where you went someplace else, is
5 that right?

6 A Yes.

7 Q And then in April of 2001 you went back to
8 Cleaver-Brooks as manager of technical services, is that right?

9 A Correct.

10 Q And you've held that position until today presently.

11 A Correct.

12 Q All right. When you went back in April of 2001 as
13 manager of technical services, you were working with a man by
14 the name of George Provance, is that correct?

15 A Yes, it is.

16 Q Mr. Provance had worked at Cleaver-Brooks since the
17 mid-1960s, is that accurate?

18 A Yes.

19 Q And at that time in 2001 he was the person most
20 knowledgeable at Cleaver-Brooks and he actually testified on
21 behalf of Cleaver-Brooks in asbestos litigation, is that fair?

22 A Yes, he did.

23 Q All right. Mr. Provance is retired, correct?

24 A Correct.

25 Q Still alive however?

26 A Yes, he is.

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 Q Enjoying his retirement, right?

3 A I would hope so.

4 Q He no longer testifies in these types of cases, right?

5 A Correct.

6 Q Okay. He retired in approximately when?

7 A It was just after I started in 2001.

8 Q Okay. You've had conversations with Mr. Provance

9 about issues that I'm going to be asking you about today, is
10 that right?

11 A Correct.

12 (Continued on following page.)

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q You've never taken a single note memorializing any of
3 your conversations with Mr. Provance, right?

4 A No. I guess I didn't, no.

5 Q Okay. As a matter of fact, you've never documented
6 any conversation you've ever had with anybody pertaining to the
7 issues that I'm going to question you about today; is that
8 right?

9 A In the form of notes, no. I certainly, you know, in
10 the conversations with Mr. Provance, I worked with him in
11 responding to interrogatories, so I guess that's documentation
12 of it.

13 Q Fair enough. No personal notes that you took down
14 other than legal documents, right?

15 A Correct.

16 Q Okay. We're going to talk about interrogatories in a
17 little bit.

18 As manager of technical services, you handled
19 litigation issues for Cleaver-Brooks, right?

20 A I'm not sure what you mean by handled the litigation
21 issues. I certainly am involved in the litigation from a
22 technical perspective with our attorneys.

23 Q Fair enough. You consult with Cleaver-Brooks lawyers
24 on product liability matters, correct?

25 A Yeah. I guess I narrow that down to the technical
26 perspective of it, yes.

37 13

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q You consult with them about asbestos cases; is that
3 correct?

4 A Yes.

5 Q You answer discovery requests that you receive from
6 plaintiffs' law firms throughout the country; is that right?

7 A Correct.

8 Q You testify at depositions as the person most
9 knowledgeable, the corporate representative of Cleaver-Brooks;
10 is that right?

11 A Correct.

12 Q And you're the only person who does that, right?

13 A Yes.

14 Q And you have a staff of one, Ms. Anderson. Does she
15 still work for you?

16 A Yes, she does.

17 Q Could you tell the jury how many pending litigation
18 matters there are against Cleaver-Brooks right now?

19 MR. O'CONNELL: Objection, your Honor.

20 THE COURT: Sustained.

21 Q Do you have anybody else to help you beside
22 Ms. Anderson?

23 A I guess I'd broaden it out to our attorneys around the
24 country.

25 Q Not your attorneys.

26 A Oh.

37 44

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q Anybody that works in Milwaukee, in your office, on a
3 day-to-day-basis that assists you in the performance of your
4 job?

5 MR. O'CONNELL: Objection, your Honor.

6 A No -- I'm sorry.

7 THE COURT: Overruled.

8 A No, I don't.

9 Q Now, you understand, Mr. Tornetta, that I, on behalf
10 of Mr. and Mrs. McCloskey, have called you to testify in the
11 plaintiffs' case, right?

12 A Yes, I do.

13 Q And you actually know, I believe, that I subpoenaed
14 you to be here today; is that right?

15 A Yes.

16 MR. KRAFT: Your Honor, at this time I'd like to
17 have marked as Tornetta 1 a copy of the subpoena that we
18 sent to Cleaver-Brooks' lawyers.

19 Can I approach the witness?

20 THE COURT: Yes.

21 Q (Handing) I'd ask you to take a look at that,
22 Mr. Tornetta. Have you seen that before?

23 A I don't believe I actually saw the subpoena. I know
24 the contents of it, but I don't believe I actually saw the
25 subpoena.

26 Q Fair enough. We asked Cleaver-Brooks to designate the
37 45

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 individual who was their person most knowledgeable/corporate
3 representative pertaining to the issues on trial in this
4 matter, is that fair?

5 A Yes.

6 Q And are you in fact that person, the person most
7 knowledgeable and Cleaver-Brooks' corporate representative?

8 A Yes.

9 Q Okay. When you give testimony today, it's as if
10 Cleaver-Brooks, the company, is testifying. You understand
11 that, right?

12 MR. O'CONNELL: Objection.

13 MR. BLAKELY: Objection to the form.

14 THE COURT: Sustained.

15 Q You understand you're giving testimony as the company,
16 correct?

17 MR. O'CONNELL: Objection.

18 MR. BLAKELY: Objection.

19 THE COURT: Sustained.

20 Q Well, is anybody else from the company coming to
21 testify other than you?

22 MR. O'CONNELL: Objection, your Honor.

23 THE COURT: Sustained.

24 Q Are you here testifying as a fact witness in this
25 case, to the best of your knowledge?

26 MR. O'CONNELL: Objection, your Honor.

37 6

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 THE COURT: Sustained.

3 Let's move on, Mr. Kraft.

4 Q Have you brought any documents with you, Mr. Tornetta,
5 that you're going to rely upon in giving your testimony to this
6 jury?

7 A Yes.

8 Q Have you previously provided those to your lawyers?

9 A Yes.

10 MR. KRAFT: I call for production of those.

11 I'd like to take a look at what he brought, your
12 Honor?

13 MR. O'CONNELL: Your Honor, he's got them.

14 THE COURT: Pardon?

15 MR. O'CONNELL: The witness has them.

16 THE COURT: Okay.

17 MR. KRAFT: Can we mark these as Tornetta 2, your
18 Honor?

19 THE COURT: For I.D.?

20 MR. KRAFT: For identification.

21 (Plaintiffs' Exhibit 2 marked for
22 identification.)

23 Q Is it fair to say, Mr. Tornetta, what you brought, the
24 only thing you brought with you is the Chart A from the
25 interrogatories of Mr. McCloskey; is that correct?

26 A Along with my notes on the side of it related to

37 7

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 boiler shipments or not.

Q Fair enough. What I'm trying to say, it's one document, it's the Chart A pertaining to Patrick McCloskey, and then on the right-hand side you make notes; is that right?

A Correct.

Q Did you bring any other documents or things that you're going to be relying upon to testify in this matter?

A No, I didn't.

Q Fair enough. Is it fair to say, Mr. Tornetta, that many of the issues we're going to discuss today pertain to matters that occurred prior to 1985 when you first started at Cleaver-Brooks?

MR. O'CONNELL: Objection, your Honor.

THE COURT: Overruled.

Q You understand that, right?

A Well, I guess I assume that. I guess it depends on what you ask.

Q And since you weren't at Cleaver-Brooks before 1985, the sole basis of your knowledge for anything that occurred prior to 1985 is either talking to somebody or reviewing documents from that time period, is that fair?

A Yes, I believe so.

Q I'd like you to take a look at what I'm going to mark as Tornetta 3 for identification.

3:48

F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
(Plaintiffs' Exhibit 3 marked for identification.)

MR. KRAFT: May I approach the witness, your Honor?

MR. O'CONNELL: Hold on, hold on. Is this on your exhibit list?

MR. KRAFT: Yes, it's in your answer to interrogatories.

THE COURT: So it's 3, 4 and 5.

MR. KRAFT: This is Tornetta 3.

MR. O'CONNELL: May we approach, your Honor?

THE COURT: Sure.

(The following sidebar was held outside presence of jury:)

THE COURT: I haven't seen this.

MR. O'CONNELL: Here you go.

MR. KRAFT: It's an organizational chart of the company.

MR. O'CONNELL: The problem is it's not the company anymore. That's not part of the company anymore. The distillers are not part of this case.

MR. KRAFT: I'm not talking about distillers.

This was provided to us as the only organizational chart that Cleaver-Brooks had in 2003. He started in 2001. I'm going to ask which of these people he spoke to to glean

3:49

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 information relevant to his testimony and he's going to say
3 no. I'm not going to even mention that.
4 MR. O'CONNELL: Okay. All right.
5 (In open court:)
6 THE COURT: Is the objection withdrawn?
7 MR. O'CONNELL: Objection is withdrawn.
8 THE COURT: Thank you.
9 BY MR. KRAFT:
10 Q Mr. Tornetta, you recognize generally what I've just
11 handed to you that's marked as Tornetta 3?
12 A Generally, yes.
13 Q And you'd agree it's an organizational chart for the
14 company that you worked for around the time period of 2003 or
15 so?
16 A I'm not sure I can specifically date it to 2003, but
17 that would probably be close based on the CEO at the time, yes.
18 Q Fair enough. You would agree that this is a
19 several-page document, right?
20 A Yes.
21 Q And it lists people who were employed at the time by
22 your company; is that right?
23 A Yes.
24 Q And, in fact, on the last page, your name is listed as
25 John Tornetta, assistant manager in the technical services
26 division, under George Provance; is that right?
27 10

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 A Yes.
3 Q I would like you to take a look at this and tell me
4 the people on here that you sought out when you became the
5 corporate representative of Cleaver-Brooks to talk to about
6 things that happened before you got there in 1985?
7 A At that time I sought out Mr. Provance and talked with
8 him.
9 Q All the people listed on here besides Mr. Provance,
10 you never sought them out to discuss what happened at the
11 company before you got there in 1985, is that accurate?
12 MR. BLAKELY: Objection.
13 THE COURT: Sustained.
14 Q Well, is there anybody on here you talked to other
15 than Mr. Provance?
16 A About what happened with the company over the years?
17 In that general of a term, probably, yes.
18 Q Could you tell me some names?
19 A Well, I talked to people all over the place. I guess
20 I can't narrow it down to -- I can broaden it to what happened
21 in the company. I was answering before in relation to
22 asbestos.
23 Q How many people have you spoken to who were employees
24 of Cleaver-Brooks from the '40s, '50s, '60s and '70s and before
25 you in the '80s about asbestos litigation?

MR. O'CONNELL: Objection.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 THE COURT: Overruled.

3 A The only one I could specifically come up with is
4 Mr. Provance.

5 Q Have you had a chance prior to testifying here today
6 to review the deposition testimony of Mr. McCloskey?

7 A Yes.

8 Q Can you tell the jury when you reviewed that
9 testimony?

10 A I believe I initially reviewed it back in early
11 December and then I've reviewed it within the last week.

12 Q When you say you reviewed his deposition testimony,
13 can you tell the jury how many volumes of deposition testimony
14 you reviewed?

15 A All of them. I think it was five, possibly six.
16 There was a short volume at the back. I can never remember if
17 that's --

18 Q Six volumes.

19 A Yeah.

20 Q Did you review every word or were there parts that
21 were selected for you to review.

22 A I reviewed every word. I read every word.

23 Q Have you had a chance to review the portions of that
24 deposition testimony that were read into evidence for this jury
25 prior to you testifying here today?

26 A I assume I did since I read every word, but I don't

3 152

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 know what those portions were that were read in.

3 Q You understand that we didn't read all six volumes
4 word for word to this jury, right?

5 A I didn't know that one way or the other. So no, I
6 don't.

7 Q Prior to testifying here today, have you received the
8 selected portions of testimony that were read to this jury? Do
9 you know one way or the other?

10 A No.

11 Q You never worked with Mr. McCloskey; is that right?

12 A That would be correct. I did not.

13 Q You never talked to him?

14 A No.

15 Q You never met him?

16 A Correct.

17 Q You never worked at any of the job sites that
18 Mr. McCloskey ever worked at, is that fair?

19 A I don't believe I did, no.

20 Q Well, you had a chance to review his deposition
21 testimony and he listed the sites where he worked, would you
22 agree with that?

23 A Yes.

24 Q Have you ever worked at any of the sites listed by
25 Mr. McCloskey?

26 A No, I don't believe I did.

37 53

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q Mr. McCloskey, you would agree, worked as a
3 steamfitter from about 1962 forward until he retired in the
4 2000s; is that right?

5 A Yes.

6 Q You never performed work as a steamfitter anywhere in
7 your life; is that right?

8 A Correct.

9 Q Because you didn't work with Mr. McCloskey at the
10 places he described working at, factually you can't dispute
11 anything that he said about the work that he did, where he
12 worked and how he performed that work, will you agree?

13 MR. O'CONNELL: Objection, your Honor.

14 MR. CZEREPAK: Objection.

15 THE COURT: Sustained.

16 Q Well, can you tell this jury factually anything from
17 your own observations about what Mr. McCloskey did?

18 MR. CZEREPAK: Objection.

19 MR. O'CONNELL: Objection, your Honor.

20 THE COURT: Overruled.

21 A I never saw Mr. McCloskey work, so I wouldn't be able
22 to tell them what I observed him do.

23 Q Right. And because you didn't observe him working,
24 you can't tell this jury that what he told this jury he did was
25 right or wrong, right? You just don't know, you weren't there?

26 MR. CZEREPAK: Objection, your Honor.

37 54

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 MR. O'CONNELL: Objection.

3 THE COURT: Overruled.

4 A I can only go by what his testimony says.

5 Q Are you, Mr. Tornetta, the person most knowledgeable
6 about the corporate history of Cleaver-Brooks?

7 MR. BLAKELY: Objection. Relevance.

8 THE COURT: Sustained.

9 Q Well, is there anybody else at the company who
10 typically testifies about the corporate history of
11 Cleaver-Brooks?

12 MR. O'CONNELL: Objection.

13 THE COURT: Overruled.

14 A No, there isn't.

15 Q Do you feel comfortable discussing the corporate
16 history of Cleaver-Brooks with this jury?

17 MR. CZEREPAK: Objection.

18 MR. O'CONNELL: Objection.

19 THE COURT: Sustained.

20 MR. KRAFT: Well, let's do it this way.

21 I'd like to hand to the witness what is marked --

24 Q Have you ever worked at any of the sites listed by
25 Mr. McCloskey?

26 A No, I don't believe I did.

37 3

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q Mr. McCloskey, you would agree, worked as a
3 steamfitter from about 1962 forward until he retired in the
4 2000s; is that right?

5 A Yes.

6 Q You never performed work as a steamfitter anywhere in
7 your life; is that right?

8 A Correct.

9 Q Because you didn't work with Mr. McCloskey at the
10 places he described working at, factually you can't dispute
11 anything that he said about the work that he did, where he
12 worked and how he performed that work, will you agree?

13 MR. O'CONNELL: Objection, your Honor.

14 MR. CZEREPAK: Objection.

15 THE COURT: Sustained.

16 Q Well, can you tell this jury factually anything from
17 your own observations about what Mr. McCloskey did?

18 MR. CZEREPAK: Objection.

19 MR. O'CONNELL: Objection, your Honor.

20 THE COURT: Overruled.

21 A I never saw Mr. McCloskey work, so I wouldn't be able
22 to tell them what I observed him do.

23 Q Right. And because you didn't observe him working,
24 you can't tell this jury that what he told this jury he did was
25 right or wrong, right? You just don't know, you weren't there?

26 MR. CZEREPAK: Objection, your Honor.

37 4

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 MR. O'CONNELL: Objection.

3 THE COURT: Overruled.

4 A I can only go by what his testimony says.

5 Q Are you, Mr. Tornetta, the person most knowledgeable
6 about the corporate history of Cleaver-Brooks?

7 MR. BLAKELY: Objection. Relevance.

8 THE COURT: Sustained.

9 Q Well, is there anybody else at the company who
10 typically testifies about the corporate history of
11 Cleaver-Brooks?

12 MR. O'CONNELL: Objection.

13 THE COURT: Overruled.

14 A No, there isn't.

15 Q Do you feel comfortable discussing the corporate
16 history of Cleaver-Brooks with this jury?

17 MR. CZEREPAK: Objection.

18 MR. O'CONNELL: Objection.

19 THE COURT: Sustained.

20 MR. KRAFT: Well, let's do it this way.

21 I'd like to hand to the witness what is marked --

1 I'm going to mark as Tornetta 4.

2 May I approach the witness, your Honor?

2 THE COURT: Yes.

2 Q (Hanging.)

2 A Thank you.

3 55

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q You're welcome.

3 You've seen that document before, right, Mr. Tornetta?

4 A Yes, I have.

5 Q And this is actually a Cleaver-Brooks company
6 document, right?

7 A Yes.

8 Q And this document discusses the corporate history of
9 Cleaver-Brooks, right?

10 A Yes. I guess I can call highlights of it, yes.

11 Q Highlights.

12 And, in fact, you when you testify sometimes refer to
13 this for dates when things occurred in the history of
14 Cleaver-Brooks, is that fair?

15 A I'm not sure I ever actually used it for that purpose,
16 but it's been referred to or used in some depositions and
17 trials for that reason from plaintiffs.

18 Q Do you have every significant date in the history of
19 Cleaver-Brooks memorized?

20 MR. O'CONNELL: Objection, your Honor.

21 THE COURT: Overruled.

22 A I guess I wouldn't know what you mean by "significant
23 date," but I have a lot of them in my head, yes.

24 Q Would this aid you in offering testimony about
25 significant dates in the history of Cleaver-Brooks?

26 A It may.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q This is a business record, something that was created
3 by Cleaver-Brooks, kept in the regular course of business by
4 Cleaver-Brooks, correct?

5 MR. O'CONNELL: Objection.

6 THE COURT: Overruled.

7 A Yes, I believe so.

8 MR. KRAFT: I seek to introduce it as Tornetta 4
9 in evidence, your Honor.

10 MR. O'CONNELL: No objection.

11 THE COURT: Very well. It is Tornetta 4. Let's
12 mark it, please.

13 MR. KRAFT: Okay. I'm going to put it up on the
14 board.

15 (Plaintiffs' Exhibit 4 marked and received into
16 evidence.)

17 Q When did John Cleaver start Cleaver-Brooks, what would
18 eventually become known as Cleaver-Brooks?

19 MR. CZEREPAK: Objection, your Honor.

20 THE COURT: Overruled.

21 A The end of 1931.

22 Q Okay. If you could just read to the jury, please,
23 what the first paragraph -- let's show the jury the first page.

24 Cleaver-Brooks: "Innovation that Fires the Future."

25 And the symbol "Cleaver" with something in the middle, that's
26 an older symbol of Cleaver-Brooks, right?

37 7

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A Yes.

3 Q That symbol has since changed; is that right?

4 A Somewhat, yes.

5 Q It's now hands holding a fire or a flame; is that
6 right?

7 A That is in there as well. However, it's surrounded by
8 a globe and things orbiting the globe. So it's a little messy
9 in what you see there, but there is a hand and fire inside
10 that.

11 Q The current logo for Cleaver-Brooks doesn't have the
12 globe with stuff circling it, right?

13 A Correct.

14 Q You just told this jury that John Cleaver started the
15 company that would eventually become Cleaver-Brooks in 1931, is
16 that what you told them?

17 A No. I said he started Cleaver-Brooks in 1931.

18 Q In fact, Mr. Cleaver, who became part of
19 Cleaver-Brooks, had started a boiler company in 1929; is that
20 right?

21 A On his own, yes.

22 Q And then he met a man by the name of -- is it James or
23 John Brooks from New York?

24 A I thought Raymond Brooks.

25 Q Raymond Brooks from New York?

26 A Yes, I believe so.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q And they got together and then formed a company called
3 Cleaver-Brooks in about 1931; is that right?

4 A The end of 1931, yes.

5 Q And in 1931, production of the boilers, their packaged
6 boilers, was 40. They had made 40 boilers by the end of 1931;
7 is that right?

8 A That's what it says there. I'm -- not Cleaver-Brooks
9 boilers. They may have been John C. Cleaver Company boilers,
10 but Cleaver-Brooks boilers -- cleaver-Brooks wasn't
11 incorporated until December of '31, so I don't believe there
12 were 40 boilers made in 1931 by Cleaver-Brooks.

13 Q Okay. How many boilers were made by Cleaver-Brooks in
14 1931?

15 A I don't believe any. The articles of incorporation, I
16 believe, are like December 29th or something of 1931.

17 Q When did manufacturing of Cleaver-Brooks boilers

18 begin?

19 A I've never narrowed it down to a specific date, but I
20 would say it was 1931.

21 Q And the manufacturing facility in 1932 was in
22 Milwaukee, Wisconsin; is that right?

23 A Yes.

24 Q That was the only manufacturing facility at the time?

25 A Correct.

26 Q By 1949, Mr. Tornetta, do you know from memory how

37 19

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 many boilers Cleaver-Brooks had manufactured?

3 A No, not from memory.

4 Q This document helps with that, right?

5 A It may.

6 Yes, it does.

7 Q It says, "By 1949, Cleaver-Brooks had sold more than

8 8,000 packaged boilers," is that accurate?

9 A Sounds like it could be, yes. I can't say I've ever
10 gone in and counted them, but that wouldn't be unusual.

11 Q Do you know and can you tell this jury when
12 Cleaver-Brooks first introduced an asbestos-containing
13 component into a Cleaver-Brooks boiler?

14 A No, I don't have a way to say that.

15 Q Do you know whether it was in 1932, '35, '40, '45,
16 '50? Do you have any idea?

17 A I don't have a way to tell for certain, no.

18 Q Can you tell this jury whether any of those 8,000
19 boilers that were manufactured from 1932 to 1949 contained
20 asbestos of any kind, do you know?

21 MR. O'CONNELL: Objection, your Honor.

22 THE COURT: Overruled.

23 A I don't know that I've looked that close at any
24 boilers prior to '49, so I can't say for certain.

25 Q From 1932 until 1955, there was one manufacturing
26 facility making Cleaver-Brooks boilers and that was in

37 50

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Milwaukee, Wisconsin; correct?

3 A Yes.

4 Q In 1956, as this document indicates, Cleaver-Brooks
5 built a new, fully automatic boiler facility in Lebanon,
6 Pennsylvania; is that correct?

7 A Yes. And I'd just like to clarify a bit about the
8 Milwaukee. I believe there was actually more than one facility
9 in Milwaukee possibly making them, but they were all built in
10 Milwaukee.

11 Q In 1956, Cleaver-Brooks built a facility in Lebanon,
12 Pennsylvania?

13 A Yes.

14 Q Began making Cleaver-Brooks boilers in Lebanon,
15 Pennsylvania; is that correct?

16 A Yes. I'm not certain they made them starting in '56,
17 but that was when the facility was built.

18 Q In 1964, something called the Cleaver-Brooks Boiler
19 House in Lebanon, Pennsylvania opened, right?

20 A Yes, that sounds right.

21 Q And that exists till today, is that right, in Lebanon?

22 A No, it doesn't.

23 Q It doesn't.

24 The purpose of that Cleaver-Brooks Boiler House was to
25 train all of Cleaver-Brooks' customers, representatives and
26 employees, just as it says in the document, right?

37 1

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A Yes, that was one of the purposes.

3 Q Well, that's the purpose that's indicated in this
4 Cleaver-Brooks document, right?

5 A Yes.

6 MR. O'CONNELL: Objection, your Honor.

7 THE COURT: Overruled.

8 Q On the last page of the document, Mr. Tornetta, it
9 lists products and we're going to talk about boilers here
10 today. You understand that boilers are the only thing at issue
11 in the McCloskey matter, right?

12 A Yes.

13 Q Cleaver-Brooks made other things throughout its
14 history, but the only thing relevant to your testimony here
15 today is boilers, you'd agree with that?

16 A I believe so, yes.

17 Q And this document lists the type of boilers that
18 Cleaver-Brooks made, including fire-tube boilers, commercial
19 water-tube boilers, electric boilers, solid fuel-fired boilers,
20 industrial water-tube boilers and waste heat boilers; is that
21 right?

22 A Yes. At the time this was produced we did that.

23 Q Do you know when this document was produced?

24 A No, I don't specifically. I never -- I don't think
25 there's a date on it, but I believe it was the early '90s based
26 on some of those products.

37 2

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q I want to discuss the manufacturing facilities that
3 Cleaver-Brooks has had historically.

4 Well, is Cleaver-Brooks still manufacturing boilers
5 today?

6 A Yes.

7 Q In Milwaukee, Wisconsin?

8 A No.

9 Q There was a time when there were multiple
10 manufacturing facilities in Milwaukee, right?

11 A Yes.

12 Q The Lebanon, Pennsylvania plant started in 1956,
13 correct?

14 A Roughly '56, yes.
15 Q Is that plant still in operation today?
16 A No, it is not.
17 Q Do you know when that plant closed?
18 A 1994, I believe is the date.
19 Q You had a boiler manufacturing facility in Stratford,
20 Ontario, Canada; is that right?
21 A Correct.
22 Q And that operated for the first time late 1950s, early
23 1960s; is that correct?
24 A Yes.
25 Q Is that plant still in existence today making
26 Cleaver-Brooks boilers?

37 | 3

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 A Yes, it is.
3 Q There was a plant in Greenville, Mississippi that
4 opened its doors mid to late 1960s, correct?
5 A Yes, I believe so.
6 Q Is that plant still operating today?
7 A No, it's not.
8 Q There was a plant in Thomasville, Georgia that
9 Cleaver-Brooks acquired in 1992; is that right?
10 A Correct.
11 Q There's one in Lincoln, Nebraska that opened its doors
12 in 1997, right?
13 A Roughly '97, yes.
14 Q And there's a facility in Mexico City, Mexico, right?
15 A Correct.
16 Q Have I covered all of the historical manufacturing
17 facilities where Cleaver-Brooks boilers have ever been
18 manufactured?
19 A Yes, I believe so. I think I caught them all in
20 there, yes.
21 Q In 1952 you would agree that Cleaver-Brooks had
22 representatives in 30 states and three foreign countries,
23 correct?
24 A I don't know the specific numbers, but that wouldn't
25 surprise me, no. I would say that's probably correct.
26 Q That sounds about right in 1952?

37 | 4

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 A Sure, '52, that wouldn't surprise me.
3 Q You understand that that's about ten years prior to
4 Mr. McCloskey first working as a steamfitter, right?
5 A I believe so, yes.
6 Q Now, what I want to do for the next topic area is
7 discuss the categories of boilers that Cleaver-Brooks has
8 manufactured historically, okay?
9 A Sure.
10 Q And I believe, based upon reading your testimony,
11 there were three general, broad classifications of boilers:

12 fire-tube, commercial water-tube and industrial water-tube.

13 Those are the three general, broad categories?

14 A Very broad, yes.

15 Q I'm trying to paint big and I'm going to hone down.

16 A Sure.

17 Q All of those boilers fall under the category of

18 packaged boilers; is that correct?

19 A Correct.

20 Q Could you explain to the jury briefly what a packaged
21 boiler is?

22 A A packaged boiler is a boiler that is manufactured
23 completely in our plant, or anyone else's plant if they're
24 making packaged boilers, so it's not built on-site, it's
25 completely built in the factory and ready for, when it's
26 delivered, a connection to the building service's steam or
37 5

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 fuel, flue gas, things of that sort.

3 Basically a boiler would have to be -- size wise it
4 would have to be something we could ship on either a truck or
5 rail car or, in some cases, in a container going overseas.

6 Q And under the general category of packaged boilers and
7 the three broad categories is something called a fire-tube
8 boiler; is that right?

9 A Correct.

10 Q Can you explain to the jury generally what that means,
11 what a fire-tube boiler is?

12 A A fire-tube boiler, we're transferring heat from fire,
13 basically burning a fuel to steam or hot water to water to make
14 steam or hot water. In a fire-tube boiler, the heat or the
15 flame is inside tubes and the water surrounds the tubes.
16 That's probably the biggest distinction between that and any
17 other type of boiler.

18 Q And you would agree that throughout history there have
19 been various makes and models of fire-tube boilers manufactured
20 by Cleaver-Brooks?

21 MR. O'CONNELL: Objection.

22 THE COURT: Overruled.

23 A I would say models. I'm not quite sure what you mean
24 by "makes," but certainly models.

25 Q When I say "make," like I've seen the Monitor boiler.
26 Is the Monitor a fire-tube boiler?

37 6

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A Yes, it is.

3 Q And you would agree that that is a -- you would say
4 that's a model of boiler?

5 A I would probably call that a model versus a make.

6 Q Let's do models.

7 A Okay.

8 Q You would agree that there have been various models of
9 Cleaver-Brooks fire-tube boilers throughout history; is that

10 right?

11 A Yes.

12 Q And then within any given model, there are various
13 sizes within that model, correct?

14 A Correct.

15 Q Can you tell this jury the various models of fire-tube
16 boilers that have been manufactured by Cleaver-Brooks from its
17 inception in '32 up through 1985?

18 A I'll try.

19 Q Okay.

20 A The first model back going to the '30s would have been
21 the model OB. It was just the letters OB.

22 Q And that stood for oil burning?

23 A Oil built is what it stood for.

24 Q Now, within the oil-built model there were various
25 sizes?

26 A Correct, and fuel series and some other things that
37 17

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 would affect what we would broadly call the model number.

3 Q Other than oil built, what other models?

4 A There's the LR model.

5 Q What does LR stand for?

6 A Low furnace rotary cup.

7 Q And within the LR model there were various sizes and
8 horsepower, correct?

9 A Correct.

10 Q The next model?

11 A Actually I flipped them. I think LF was actually
12 prior to the LR, but they overlapped a good bit. The other one
13 is LF.

14 Q LF. And what does LF stand for?

15 A Low furnace.

16 Q And within the low-furnace models there were various
17 sizes and horsepower?

18 A Correct.

19 Q Any other models within the fire-tube boilers?

20 A The CB model.

21 Q The CB model standing for Cleaver-Brooks model, right?

22 A Correct.

23 Q Came out in 1955 or so?

24 A It was phased in over time, but I think the earlier
25 ones -- some of the first ones for the mid-'50s.

26 Q Any other model -- well, within the Cleaver-Brooks
37 18

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 model, various sizes and horsepower?

3 A Yes.

4 Q Any other models?

5 A The one you mentioned was the Monitor, I believe.

6 Q Okay.

7 A That's sort of the subset of the CB model but not

8 completely.

9 Q Okay.

10 A Then there's also the Progress.

11 Q Okay. Progress is a later model boiler, post-1970s?

12 A No.

13 Q No. When did they come out?

14 A That would have been the mid-'50s as well, maybe late
15 '50s for some of the first ones.

16 Q Okay.

17 A There's a CBH.

18 Q What does CBH stand for?

19 A It was Cleaver-Brooks Highlander. I have no idea what
20 Highlander means or was for.

21 Q Okay.

22 A Over the years since I've been there, there's been a
23 CBW.

24 Q That's post 1985.

25 A Yes, it is.

26 Q Just pre-1985.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A Pre-1985, I can't think of any other fire-tube models
3 right at this moment.

4 Q You would agree that from 1932 till 1985, every one of
5 those model fire-tube boilers, during the time period 1932 to
6 1985, contained some type of asbestos component, correct?

7 A Every one of the models? I'm not sure I can say that
8 for certain. I don't know that I could say they certainly did
9 not, but I'm not sure I could, you know, testify that they
10 definitely did.

11 Q You don't know one way or the other, do you?

12 A To that -- for every model, no, I don't.

13 Q Would you agree that the fire-tube boilers
14 historically have come in sizes ranging from 15 horsepower to
15 1500 horse power?

16 A Not through '85, 1500 horsepower, but 1500 horsepower
17 is more recent.

18 Q Through 1985, the highest horsepower?

19 A 800.

20 Q Fifteen horsepower, fire-tubed Cleaver-Brooks boiler
21 is about 3 feet tall, 3 feet wide and 10 feet long, would you
22 agree with that?

23 A That sounds like a good estimation of it, yes.

24 Q The 1500 horsepower is 10 to 12 feet tall, 10 to
25 12 feet wide and 25 feet long approximately?

26 A That sounds about right.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q It was your approximation, so I don't want to say that
3 it's me doing it. Do you agree with that?

4 A Yes.

5 Q Okay. Within the fire-tube models there were hot

6 water boilers and there were steam type boilers; is that
7 correct?

8 A Correct.

9 Q You agree that both the hot water and steam type
10 boilers from 1932 till the mid-1980s contained asbestos
11 component parts, you agree with that?

12 A Well, I think we get back to what we discussed a
13 little earlier. I couldn't say it for certain with all models.

14 Q You don't know one way or the other?

15 A Not that I could say for certain, no, I don't.

16 Q We're done talking about fire-tube, right?

17 A I guess so, if you want to be. I'm not sure.

18 Q Are there any models that we haven't talked about?

19 A Oh, as far as other models, yes. I don't have any
20 others that I can think of.

21 Q The water-tube boilers are broken into commercial and
22 industrial water-tube; is that right?

23 A Yes.

24 Q Are there various models of commercial and industrial
25 water-tube boilers?

26 A Yes, within those there are, yes.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q The Beaver model, the Model 3 and the Model 4, those
3 are all models of water-tube boilers; is that right?

4 A Yeah. We would classify those as commercial. It
5 doesn't necessarily mean they're only commercially used, but
6 that's the way we would classify them, yes.

7 Q Would you agree that every model water-tube boiler
8 from 1932 until 1985 contained some asbestos component?

9 A Again, I don't think I can say that for certain.

10 Q Do you know one way the other?

11 A Not, you know, to say absolutely it does or absolutely
12 it does not, no.

13 Q From inception in the 1930s, when Cleaver-Brooks
14 started making boilers, until the mid-1980s, let's say 1985,
15 how many boilers did Cleaver-Brooks manufacture?

16 A It was probably in the area of a hundred thousand at
17 that point, maybe 120.

18 Q Okay. And today Cleaver-Brooks has sold about 150,000
19 boilers; is that right?

20 MR. O'CONNELL: Objection, your Honor.

21 THE COURT: Overruled.

22 A At least that, I would say.

23 Q Would you agree that on every single boiler that
24 Cleaver-Brooks has ever sold, there has been a nameplate of
25 some sort saying "Cleaver-Brooks" on the boiler?

26 A Yes. I think we've always put our name on the boiler

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 and said the name of the company.

3 MR. KRAFT: Your Honor, I'd like to have these

4 two objects marked as -- deemed marked as Tornetta 5-A and
5 5-B for identification purposes at this time.

6 THE COURT: Yes.

7 MR. KRAFT: May I approach the witness?

8 THE COURT: Have you shown it to Mr. O'Connell?

9 MR. KRAFT: Yes.

10 (Plaintiffs' Exhibit 5-A and 5-B marked for
11 identification.)

12 Q Do you recognize these, Mr. Tornetta?

13 A Yes.

14 Q Can you tell the jury what those two objects are?

15 A Different versions of the nameplate for Cleaver-Brooks
16 boiler.

17 Q If you could just show them, please.

18 A Both of them or just the one?

19 Q Yeah, both. That's fine.

20 MR. O'CONNELL: Objection, your Honor.

21 THE COURT: Yes. They're not in evidence yet.

22 MR. KRAFT: Fair enough.

23 I seek to introduce them into evidence at this
24 time.

25 THE COURT: Any objection?

26 MR. O'CONNELL: No objection, your Honor.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 (Plaintiffs' Exhibit 5-A and 5-B marked and
3 received into evidence.)

4 Q Can you show them to the jury, just to be formal?

5 (Witness Displays Exhibit 5-A and 5-B to the jury.)

6 Q Thank you.

7 You would agree that those are representative examples
8 of nameplates that have been on Cleaver-Brooks boilers
9 throughout history, correct?

10 MR. O'CONNELL: Objection.

11 THE COURT: Can you rephrase it?

12 Q Well, what are those?

13 A They are nameplates we've used. I'm not sure they're
14 representative of all history, but they've changed over the
15 years.

16 Q Okay. Every boiler has the name "Cleaver-Brooks" on
17 it, right?

18 A Somewhere, yes.

19 MR. KRAFT: I'm sorry. Could I have the answer
20 read back?

21 (The testimony as requested was read by the
22 reporter.)

23 MR. KRAFT: Somewhere, not some were.

24 Q And Cleaver-Brooks, when you manufactured the boilers
25 in your facility, decided to put the Cleaver-Brooks name on the
26 boiler, right?

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A Yes, I suppose we did.
3 Q And you were proud of it, right? It was a
4 Cleaver-Brooks piece of equipment, right?
5 A Yes.
6 Q And you proudly displayed your name on that boiler,
7 right?
8 A I guess I'm not sure what you mean by "proudly," but,
9 yes, we weren't ashamed that it was a Cleaver-Brooks boiler.
10 Q I'm not saying you should have been.
11 Cleaver-Brooks could have put anything they wanted in
12 terms of identification markers, plates, logos, labels,
13 anything they wanted on their boilers, right?
14 MR. O'CONNELL: Objection.
15 THE COURT: Overruled.
16 A I'm not sure I could answer to anything we wanted, but
17 you know, from reasonably, yes.
18 (Continued on following page.)
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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft
2 Q The answer is yes?
3 A In a reasonable manner, yes. I wouldn't want to sit
4 here and try to figure out what would be unreasonable.
5 Q You could have put symbols, pictures, plates, logos,
6 those types of things on your boiler?
7 MR. O'CONNELL: Objection, your Honor. Asked and
8 answered.
9 THE COURT: Overruled.
10 Q We just saw the Cleaver-Brooks made and sold 8,000
11 boilers between 1932 and 1949. Can you tell me how many
12 boilers Cleaver-Brooks made and sold in the 1950s?
13 A Off the top of my head, no, I can't.
14 Q How many boilers did they make and sell in the 1960s?
15 A Again, off the top of my head, I don't have those
16 numbers.
17 Q How many did they make and sell in the 1970s?
18 A It would have to be the same. Off the top of my head,
19 I don't have that number.
20 Q Okay. How many did they sell from 1980 to 1985?
21 A I don't know off the top of my head.
22 Q All right. You just told this jury that there were
23 100,000 or so boilers sold from 1932 to 1985, right?
24 A That is an estimate, yes.
25 Q Okay. So if you subtract 18,000 from 100,000, that's
26 82,000 boilers, is that right?

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 A Yes. I'm not sure why I am subtracting 18,000.

3 Q Because you made 18,000 from 1932 to 1949, right? I'm

4 sorry. 8,000.

5 A 8,000.

6 Q So 92,000?

7 A Yes.

8 Q Let's try the math again. I'm not a math wiz.

9 From 1949 until 1985, you made approximately 92,000

10 boilers and sold approximately 92,000 boilers?

11 A Yes. And, again, that's a very broad approximation

12 100,000 number.

13 Q Okay. Can you tell this jury whether any or all of
14 those boilers contained asbestos?

15 MR. O'CONNELL: Objection, your Honor. We've
16 gone through this.

17 THE COURT: Sustained.

18 Q Well, you don't know that any of them contained
19 asbestos?

20 MR. O'CONNELL: Objection, your Honor.

21 THE COURT: Sustained.

22 Q Did Cleaver-Brooks boilers ever contain asbestos,
23 Mr. Tornetta?

24 MR. O'CONNELL: Objection, your Honor.

25 THE COURT: Overruled.

26 A Yes.

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 Q Now, from 1932 until 1985 how did Cleaver-Brooks track
3 the boilers that they made and sold?

4 A I'm not quite certain I quite understand what you mean
5 by "track."

6 Q Well, did you track where the boilers eventually were
7 installed, where they were sold?

8 A Oh, yes. I wasn't sure what you meant by "track" at
9 first there.

10 We actually have a system of index cards where we
11 would put on the index card the name of the facility where a
12 boiler was installed and the model and unit number.

13 Q Okay. And is it fair to say that there are presently
14 about 120,000 index cards in Cleaver-Brooks' file cabinets?

15 A No. I don't believe there would be 120,000.

16 Q How many index cards exist today?

17 A I think the number is closer to 90-something thousand.

18 Q Okay. 90,000 index cards. And the reason there are
19 less index cards than boilers sold is because if a person at a
20 particular site bought more than one boiler, those would both
21 go on the same index card, right?

22 A Correct, or multiple, whatever the number would be,
23 yes.

24 Q In the mid-1980s Cleaver-Brooks changed over to a

25 computer system that would track any boilers sold from 1985 to
26 present, is that right?

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 A The two overlapped, and I'm not sure the computer
3 system was the tracking, but the computer system was available.
4 A main frame system was available to look at what those
5 shipments were.

6 Q Okay. Cleaver-Brooks until today has never gone back
7 and computerized the index cards that exist, correct?

8 A Correct.

9 Q So you can't go back to your office and type in a
10 particular location that Mr. McCloskey describes and look on a
11 computer to find out whether there was a boiler there, right?

12 MR. O'CONNELL: Objection, your Honor.

13 THE COURT: Overruled.

14 A No, I can't. I'd look through the index cards.

15 Q Is it fair to say that Cleaver-Brooks computerized
16 their system after asbestos was taken out of their boilers?

17 MR. O'CONNELL: Objection, your Honor.

18 THE COURT: Overruled.

19 A I don't think I've ever looked at it in relation to
20 each other. Computerization was -- and I wouldn't call it
21 computerization. It's when the main frame system in our
22 company started to be used for entry was probably in the late
23 '80s. I was there when we didn't have it, I guess I'd say. So
24 that was '85.

25 Q Okay. You would agree that boilers that are made,
26 manufactured, and sold by Cleaver-Brooks have a lifespan of 20,

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 30, 40, up to 50 years, right?

3 A It depends so much on how many somebody treats it, but
4 people will throw the 20, 25, maybe even 30 year number at it.

5 Q Have you previously given an answer up to 40?

6 A I've certainly seen boilers that were 40 years old.

7 Q Okay. So a boiler sold, manufactured, installed in
8 1940, theoretically, if treated well, could be in operation at
9 someone's plant in 1980, right?

10 MR. O'CONNELL: Objection, your Honor.

11 THE COURT: If you know.

12 A It could be. I can't say I've seen that particular
13 instance, but certainly I have seen boilers that were older
14 than 30 years.

15 Q Okay. Mr. Tornetta, have you looked at every single
16 index card for Cleaver-Brooks boilers manufactured in the '40s,
17 50s, 60s, and '70s?

18 A Looked at every single index card individually?

19 Q Yes.

20 A No, I don't believe I have.

21 Q Okay. And just so the jury understands what we're
22 talking about, the index card gives you the name of a site or a

23 location where the boiler was installed to, right?

24 A Yes. The -- I don't want to use the term "end user"
25 but where the boiler actually ended up.

26 Q Fair enough.

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 A It may have shipped somewhere else, but the index card
3 is based on where the boiler ended up, not who we sold it to or
4 where it was shipped to.

5 Q If we purchased a boiler from Cleaver-Brooks and
6 wanted it shipped here, there would be an index card for what
7 location?

8 A If it was going to be installed here, it would be for
9 this courthouse, whatever we call the courthouse here.

10 Q Okay. Would it have an address to the courthouse?

11 A Somewhere it would be -- there would be an address for
12 it. That wouldn't necessarily be the name of it, though.

13 Q Okay. The index cards are arranged alphabetically by
14 name of the location, is that correct?

15 A Correct.

16 Q So it would say "courthouse," not necessarily 60
17 Centre Street, right?

18 A Correct. It would probably say "New York City
19 Courthouse" or "New York Supreme Courthouse," whatever it is.

20 Q So if somebody at a deposition identified working on a
21 boiler at 60 Centre Street and you went to your index card
22 system, you might not find a record of that because it would be
23 indexed under "New York City Courthouse" or "Courthouse,"
24 right?

25 A Our normal practice would have been to list it on
26 whatever the building or facility's name is.

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft

2 Q Okay.

3 A So if the facility's name was 60 Centre Street, yes,
4 it would. If it was New York County Courthouse, no, it
5 wouldn't.

6 Q Okay. And you understand the buildings in New York
7 City have changed names over the course of history, right?

8 A I would assume that, yes.

9 Q So if somebody worked in a building that was
10 originally called Building A but they knew it as Building B and
11 they described it as Building B and you went back to your index
12 card system looking for "Building B," you might not find it
13 because it's under "Building A," right?

14 A I might not. I may if someone told us the facility
15 name changed, but I may not.

16 Q You would agree that you cannot say to this jury that
17 Cleaver-Brooks has every single index card for every single
18 boiler ever made, right? You can't say that for certain one
19 way or another.

20 A For certain? I believe we have them, but I can't say

21 I've looked at every one. So I can't say for certain.

22 Q Okay. And when an individual like Mr. McCloskey says
23 they have a general recollection of working around
24 Cleaver-Brooks boilers, if he can't identify a particular site,
25 you can't search your index card system, right?

26 A Correct. If I don't have a place to search, I can't

37 2

1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft
2 search.

3 Q So, for instance, when you told this jury earlier that
4 you worked at hundreds of sites where Cleaver-Brooks boilers
5 were located, you would only be able to search the index system
6 for the sites that you specifically remember by name, right?

7 A Correct.

8 Q Now, the index card system leads you to another
9 category of documents called the commercial file or boiler
10 records, right?

11 A Correct.

12 Q Okay. And within the commercial file or boiler
13 records, that leads you to microfilm and microfiche for
14 drawings, specifications, engineering data, and the like, is
15 that correct?

16 A Well, the commercial records are as well on microfilm
17 and microfiche.

18 Q Okay.

19 A Actually, microfiche. But, yes, they meet the
20 manufacturing drawings.

21 Q It's a tedious process to conduct the investigation --
22 for instance, when someone mentions a site, from the time that
23 you begin your search for that location until the time that
24 you've copied all of the records, how long on average does that
25 take?

26 A The search itself, depending on the complexity of the

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft
2 name, I guess I'll say, can be a 45-minute process. The
3 commercial records, depending on their length, could be a
4 couple of hours printing from microfilm. And then the
5 gathering of records and drawings that may be relevant, in the
6 area of 40 hours per boiler.

7 Q Forty hours per boiler, right?

8 A Right.

9 Q The index cards tell you nothing about the internal
10 components of a boiler. Would you agree with that?

11 A Correct. It gives you a model number. So I know what
12 it looks like because I've worked with the boilers, but other
13 than that, no.

14 Q Okay. Is it fair to say you have not done that
15 process as you've just described for every boiler manufactured
16 by Cleaver-Brooks?

17 A Correct. I have not.

18 Q You said you started in 1985 at Cleaver-Brooks, right?

1 A Yes.

2 Q Was Cleaver-Brooks incorporating asbestos-containing
3 components into their boilers when you started in 1985?

2 MR. O'CONNELL: Objection, your Honor.

2 THE COURT: Overruled.

2 A I don't know that for certain. I just wouldn't
2 know -- I wouldn't have a way to know with our records.

2 Q Would you agree that it's approximately 1989 when you

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft
2 can assuredly say to this jury you know for certain there
3 weren't asbestos components in Cleaver-Brooks boilers?

4 MR. O'CONNELL: Objection.

5 THE COURT: Overruled.

6 A Yes.

7 Q Okay.

8 MR. KRAFT: I'd like to have two documents marked
9 as Tornetta 5 and 5A. 6 and 6A?

10 THE COURT: Tornetta 6 and 6A.

11 Q You would agree, Mr. Tornetta --

12 THE COURT: Mr. Kraft, we're going to take a
13 break right now.

14 MR. KRAFT: Okay.

15 THE COURT: We'll take a brief recess. Do not
16 discuss the case.

17 (Jurors exit courtroom.)

18 MR. KRAFT: I was asking questions of
19 Mr. Tornetta early on in my examination of him, asking
20 whether he was the person most knowledgeable and speaking
21 on behalf of Cleaver-Brooks, and there were objections
22 sustained. I'm asking the Court to reconsider. I think
23 this jury has to understand that he is Cleaver-Brooks for
24 purposes of his testimony today. That's the posture of the
25 case. And unless the Court is going to instruct the jury
26 of that, I believe that I should be able to inquire.

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1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft
2 Further, I think that I should be able to lay out
3 that he is the person most knowledgeable at Cleaver-Brooks
4 about all of the subject matter that I am going to be
5 inquiring about him today. Otherwise, the jury may be
6 wondering why isn't that person here today?

7 MR. O'CONNELL: I think he's asking him legal
8 questions. That's why I objected.

9 THE COURT: That's why I sustained it.

10 MR. KRAFT: Because he was the most
11 knowledgeable.

12 THE COURT: Thank you.

13 (Brief recess.)

14 THE COURT: Please be seated.

15 MR. O'CONNELL: Your Honor, may Mr. Kraft and I
16 approach?

17 THE COURT: Sure.

18 (Sidebar discussion held off the record.)

19 MR. KRAFT: May I inquire, your Honor?

20 THE COURT: Yes.

21 BY MR. KRAFT:

22 Q I just wanted to step back for one second. My
23 colleagues indicated I needed to clarify something.

24 When you said that the boilers in 1989, that's when
25 you can tell the jury that those boilers no longer contained
26 asbestos, those were new boilers that were being manufactured
37 6

1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft
2 for sale by Cleaver-Brooks in 1989, is that correct?

3 A Correct.

4 Q Okay. Sitting here today, you would agree that there
5 are boilers in service throughout this country, Cleaver-Brooks
6 boilers, that still contain asbestos-containing component
7 parts, correct?

8 A I don't know that I can say that for certain. I'm not
9 sure if the components have been changed over the years.

10 Q You don't know one way or the other, fair?

11 A That's probably a fair way to put it.

12 Q Okay. I want to show you what I have marked as
13 Tornetta 6 and 6A.

14 MR. KRAFT: May I approach the witness, your
15 Honor?

16 THE COURT: Six and 6A or 6A and 6B?

17 MR. KRAFT: Whatever you would like, 6A and 6B?

18 THE COURT: That's kind of what we've been doing.

19 MR. KRAFT: Okay 6A and 6B.

20 MR. O'CONNELL: Thank you.

21 MR. KRAFT: You're welcome.

22 Q Do you recognize those, Mr. Tornetta, generally what
23 they are?

24 A I recognize them as interrogatory responses, it looks
25 like or requests.

26 Q And interrogatories are questions that are posed by
37 8

1 F. Tornetta - By Plaintiff McCloskey - Direct/Kraft
2 plaintiffs to Cleaver-Brooks that Cleaver-Brooks as a company
3 answers, right?

4 A Yes.

5 Q Okay. 6A is in the Supreme Court of the State of New
6 York, County of Nassau. Do you agree with that?

7 A Yes, that's what it says.

8 Q And if you look at the last page of that document, you
9 would agree that this set of interrogatories was verified by
10 George Provance, your former boss, right?

11 A Yes.

12 Q And they were notarized on September 21, 1988, is that
13 right?

14 A Yes.

15 Q Cleaver-Brooks had first been sued in asbestos
16 litigation in the mid to late '80s, is that right?

17 A Yes.

18 Q And these were questions that were posed to
19 Cleaver-Brooks that Mr. Provance, as the person most
20 knowledgeable, was verifying the answers, is that correct?

21 MR. O'CONNELL: Objection.

22 MR. CZEREPAK: Objection to the form.

23 THE COURT: Sustained.

24 Q Mr. Provance at the time in 1988 was Cleaver-Brooks'
25 corporate representative for corporation litigation, is that
26 right?

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2 MR. O'CONNELL: Objection, your Honor.

3 THE COURT: Overruled.

4 A I believe so, yes.

5 Q And, in fact, at the time in 1988 he was the person
6 most knowledgeable about Cleaver-Brooks, about all things
7 related to asbestos litigation, do you agree with that?

8 MR. O'CONNELL: Objection.

9 MR. CZEREPAK: Objection.

10 THE COURT: Please read it back.

11 (Record read.)

12 THE COURT: Overruled.

13 A I guess I'm not certain I know the answer to that.
14 Certainly he verified these responses and was involved.
15 Whether he would be most knowledgeable, I wasn't working with
16 him closely at that time.

17 Q If you can turn to the third page, please. Do you see
18 in the answer to interrogatory number one, it indicates that
19 Mr. Provance not only verified the interrogatories but provided
20 the information used to answer them, right?

21 A You said interrogatory number one?

22 Q One.

23 A Okay.

24 Q On the third page of the document.

25 MR. KRAFT: May I approach?

26 A I can see it. I was just reading the response.

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2 Q Right. Mr. Provance actually provided the information
3 used to answer it, right?

4 A It says "were prepared in part based on information
5 obtained under the supervision of George Provance."

6 Q Okay. And in these interrogatories there was a
7 question about the first time that Cleaver-Brooks incorporated
8 asbestos into their boilers, is that correct? If you look at
9 the Interrogatory Number 5, would you agree with that?

10 A Give me one moment to read it. (Perusing.) Yes,
11 that's what he is saying.

12 Q I asked you when Cleaver-Brooks first incorporated

13 asbestos-containing components into boilers, and you said you
14 didn't know, is that correct?

15 A Correct.

16 Q Here Mr. Provance indicates that Cleaver-Brooks began
17 incorporating asbestos-containing components as component parts
18 of their boilers in approximately 1935, is that correct?

19 A That's what he says there.

20 Q All right. Do you have any information to dispute
21 that Cleaver-Brooks first began incorporating
22 asbestos-containing component parts into their boilers in
23 approximately 1935?

24 MR. CZEREPAK: Objection to the form.

25 THE COURT: Overruled.

26 A When I was dealing with Mr. Provance, we didn't

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2 discuss -- or we discussed it, but discussed the fact there was
3 not a date certain that he could say anymore.

4 MR. KRAFT: Your Honor, at this time I seek to
5 introduce the admission of Cleaver-Brooks by reading the
6 interrogatory and the response.

7 Interrogatory Number 5.

8 MR. O'CONNELL: Objection, your Honor.

9 THE COURT: Overruled.

10 Q "For each asbestos product mined, manufactured,
11 processed, refined, sold, or distributed by you since 1930
12 state; A, the date you commenced such activities; B, the
13 generic name of the asbestos product; C, the brand name of the
14 asbestos product; D, the trademark name of the asbestos
15 product; E, the asbestos content of such asbestos product; F,
16 the mineralogical and other constituents of such asbestos
17 product and the percentage by weight of each such constituent.

18 Response. "A, Approximately 1935 asbestos-containing
19 products were included as component parts of boilers
20 manufactured by Cleaver-Brooks; B, gaskets and refractories."

21 You would agree, Mr. Tornetta, that
22 asbestos-containing gaskets and refractories continued to be
23 incorporated into Cleaver-Brooks boilers from 1935 into the
24 mid-1980s.

25 A In some of them, yes.

26 Q And since you haven't looked at all of the boiler

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2 files, you can't tell this jury in most of them, in half of
3 them, in five percent of them, you have no idea, right?

4 MR. O'CONNELL: Object to the form.

5 THE COURT: Yes. Can you rephrase it.

6 Q Okay. Can you tell this jury of your personal
7 knowledge that asbestos-containing gaskets and refractories --
8 well, let's just say asbestos-containing gaskets weren't
9 incorporated into every single Cleaver-Brooks boiler from 1935
10 until the mid-1980s, can you tell the jury that?

11 A Without looking at every single boiler, no, I
12 couldn't.

13 Q Can you tell this jury that asbestos-containing
14 gaskets weren't incorporated into most Cleaver-Brooks boilers
15 during that time period?

16 A No. Again, I haven't looked at every single boiler,
17 so I wouldn't be able to quantify it either way.

18 Q Can you tell more than half?

19 MR. O'CONNELL: Objection, your Honor.

20 THE COURT: Overruled.

21 A I can't say I've looked at more than half either.

22 Q In fact, that brings up a good point. How many of
23 these boiler files have you looked at?

24 MR. O'CONNELL: Objection, your Honor, especially
25 to the opening statement.

26 THE COURT: I'm sorry?

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2 MR. O'CONNELL: Especially to the statement.

3 MR. KRAFT: I will strike the opening part of the
4 question.

5 Q How many of the boiler files have you looked at?

6 A I can't say I've ever sat and figured it out.
7 Hundreds at least, if not thousands. Thousands might be too
8 many.

9 Q One a day?

10 A No. It depends what we're talking about, to what
11 extent. I'm not sure I can quantify it.

12 Q Okay. Would one a day --

13 A A lot, I guess.

14 Q Would one a day be an overestimation? I want to
15 overestimate. One a day?

16 MR. O'CONNELL: Objection, your Honor. Asked and
17 answered.

18 THE COURT: Sustained.

19 Q Five a day?

20 MR. O'CONNELL: Same objection.

21 THE COURT: Sustained.

22 Q Have you looked at one percent of the boiler records,
23 five percent, 20 percent, 50 percent, 70 percent, 100 percent
24 of the boiler records? Can you tell the jury?

25 MR. O'CONNELL: Same objection, your Honor.

26 THE COURT: Sustained.

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2 Q Have you looked at more than one percent of the boiler
3 records?

4 MR. O'CONNELL: Same objection.

5 THE COURT: Sustained.

6 Q There are 100,000 boiler records or so?

7 A Probably more than that, yes.

8 Q And you've looked at hundreds or maybe thousands --

9 THE COURT: You've already been down this path,
10 Mr. Kraft.

11 Put the cell phone away.

12 Q. A hundred or a thousand?

13 A. I guess I've never sat and quantified it. I really
14 couldn't give you a number.

15 Q. Would you agree a thousand of more than 100,000
16 boiler --

17 THE COURT: Let's go to a new topic.

18 Q. Okay. Can you tell the jury all of the
19 asbestos-containing component parts that have been incorporated
20 in the Cleaver-Brooks boilers throughout the years?

21 MR. O'CONNELL: Objection, your Honor.
22 Relevance, foundation.

23 THE COURT: Overruled.

24 A. All of them?

25 Q. Yes.

26 A. No, I don't think I could.

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2 Q. Asbestos-containing gaskets have been incorporated,
3 correct?

4 A. I've come across gaskets.

5 Q. Asbestos rope?

6 A. Yes, I've come across rope.

7 Q. Asbestos cement?

8 A. And cement as well, yes.

9 Q. Asbestos insulation?

10 A. Yes, sir.

11 Q. Asbestos Vee-Block mix?

12 A. Yes.

13 Q. Asbestos tape?

14 A. Yeah. I think that's a term that's used once in a
15 while for a gasket, yes.

16 Q. Asbestos putty?

17 A. I think I've come across that as well.

18 Q. Asbestos furnace cement?

19 A. I guess I could qualify that or classify that as
20 cement as well, yes.

21 Q. Asbestos millboard?

22 A. Yes.

23 Q. Asbestos pulp?

24 A. Yes. Again, I think that probably falls under cement,
25 but yes.

26 Q. Asbestos block?

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2 A. I'm not sure I can say for certain asbestos block, but
3 probably yes.

4 Q. Asbestos brick?

5 A. Again, I'm not sure about brick.

6 Q. Asbestos tile?

A Or tile.

Q Can you tell the jury when all of those products were last used in Cleaver-Brooks boilers?

MR. O'CONNELL: Objection, your Honor. Asked and answered.

MR. CZEREPAK: Objection to the form.

THE COURT: Overruled. He can answer.

A No, I don't think I could.

Q Is it fair to say that all of those products were used during the time Mr. McCloskey was working as a steamfitter and incorporated in the Cleaver-Brooks boilers?

MR. O'CONNELL: Objection.

THE COURT: Sustained.

Q Well, do you know sitting here today, Mr. Tornetta, whether all of those asbestos-containing components were incorporated in the Cleaver-Brooks boilers during the time period Mr. McCloskey was working as a steamfitter?

MR. O'CONNELL: Objection.

THE COURT: Overruled.

A At one time or another I'm not sure I can put it

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directly within his time as a steamfitter, but at one time or another I've come across those.

Q So the answer was yes, at one time or another during the course of the time period Mr. McCloskey worked as a steamfitter, correct?

MR. O'CONNELL: Objection.

THE COURT: Overruled.

A I think I'd still have to qualify I'm not certain it overlaps his period specifically, but I am not certain either way.

Q When an asbestos-containing material like those that we just listed were incorporated into a Cleaver-Brooks boiler, they were specified by a Cleaver-Brooks engineer, correct?

MR. O'CONNELL: Object to the form.

MR. CZEREPAK: Objection to the form.

THE COURT: Overruled.

A They would have been shown on the drawings. So at one point, yes.

Q Okay. And can you tell this jury who was creating the drawings?

A Cleaver-Brooks would have created the drawings for the assembly that we'd be talking about.

Q Cleaver-Brooks engineers would have created the drawings which called for the incorporation of asbestos components into Cleaver-Brooks boilers, correct?

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A At times the components they call out might have been, yes.

Q Did anybody other than Cleaver-Brooks engineers ever

5 specify any component of a Cleaver-Brooks boiler?

6 A I'm trying to think. You know, I hate to throw this
7 out there, but there are times when a customer is specifying
8 certain things in a Cleaver-Brooks boiler. So in that broad
9 sense, yes.

10 Q Okay. When a Cleaver-Brooks engineer would draw up a
11 diagram, an engineering diagram, a drawing, and incorporate
12 asbestos-containing materials into a boiler, Cleaver-Brooks
13 would then have to go somewhere and buy those asbestos products
14 so that the people on the manufacturing floor could actually
15 build the boiler, is that correct?

16 A Actually, the drawing would call out a gasket and we'd
17 go somewhere and get a gasket that fit that particular
18 application.

19 Q And oftentimes the drawings would call out an asbestos
20 gasket, correct?

21 A In some cases, yes.

22 Q And you would have to go to a manufacturer who was
23 selling asbestos gaskets and buy them, right?

24 A If they fit the application, yes.

25 Q And then you'd bring them back to your manufacturing
26 facility and you would incorporate them into a boiler being
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2 built by Cleaver-Brooks personnel, correct?

3 A Ultimately, yes.

4 Q And then that boiler would be sold to someone who
5 purchased it from Cleaver-Brooks, right?

6 A Yes.

7 Q And those asbestos-containing materials that were
8 specified by the engineer purchased from other companies by
9 Cleaver-Brooks, built into the boiler by Cleaver-Brooks's
10 manufacturing facility, would be out in the world, correct?

11 MR. O'CONNELL: Objection.

12 THE COURT: Overruled.

13 A Ultimately, yes.

14 Q Okay. In the 1940s, '50s, '60s '70s, whose
15 responsibility was it at Cleaver-Brooks to purchase materials
16 from outside vendors?

17 A It would have been somebody within our purchasing
18 group, whatever they may have called it at that time frame.

19 Q Have you ever talked to anybody in your purchasing
20 group who was responsible for purchasing asbestos-containing
21 components that were eventually put into a Cleaver-Brooks
22 boiler?

23 A No.

24 Q All right. Who were the engineers in the '40s, '50s,
25 '60s, and '70s that drew the specifications that at some times
26 as you said called for asbestos gaskets to be used?
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2 A It would be various people. You'd have to look at the

3 particular drawing.

4 Q Have you ever spoken to any of those engineers, the
5 people who were specifying the asbestos-containing gaskets?

6 A I've certainly spoken to our engineers. I'm not sure
7 about specifying -- I don't believe I have, about specifying
8 any gaskets.

9 Q You've never asked them, "Hey, Mr. Engineer, why did
10 you specify an asbestos gasket?"

11 You've never done that, right?

12 A No.

13 Q No, I'm not right, or, no, you've never done that?

14 A No, I haven't had the opportunity to do that.

15 Q When you say you haven't had the opportunity to do
16 that, is there anybody preventing you from doing that,
17 Mr. Tornetta?

18 MR. O'CONNELL: Objection. Form.

19 THE COURT: Overruled.

20 A If we're talking about people from the '40s, I didn't
21 start until the '80s, so I wouldn't have the opportunity to
22 talk to somebody from the '40s.

23 Q Well, are there people from the '40s still alive?

24 A Possibly, yes.

25 Q Have you sought out any of these people to determine
26 whether they are alive and have any information?

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2 A No.

3 Q Are there people from the '50s alive? I bet there are
4 people in this courtroom from the '50s that are alive.

5 A Certainly.

6 Q Have you sought out any of those people?

7 A No.

8 Q Are there people from the '60s alive who were
9 specifying these asbestos gaskets?

10 A I don't know.

11 Q Have you sought out them to ask them why they were
12 specifying asbestos gaskets?

13 MR. CZERPAK: Objection to the form, your Honor.

14 THE COURT: Overruled.

15 A No, I haven't.

16 Q How about people from the '70s that were specifying
17 these gaskets? Are those people alive?

18 A I wouldn't know.

19 Q Have you done any search to determine that?

20 A No, I haven't.

21 Q Who at Cleaver-Brooks was responsible for ultimately
22 saying we're not going to use asbestos-containing components in
23 our boilers anymore?

24 MR. O'CONNELL: Objection.

25 THE COURT: Overruled.

26 A I don't believe anyone was specifically at

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Cleaver-Brooks.

Q Have you sought out anybody in management, a CEO, a president, an engineer, anybody, to ask that person why Cleaver-Brooks stopped using asbestos-containing components?

MR. CZEREPAK: Objection.

MR. O'CONNELL: Objection.

THE COURT: Overruled.

A My conversations about that were with Mr. Provance.

Q You had conversations with Mr. Provance about why they stopped using asbestos parts?

A Why they stopped or whether --

Q No. Why Cleaver-Brooks stopped.

A Specifically why they stopped, I'm not sure I can say for certain. I've certainly talked to him about asbestos-containing parts and components.

Q And did you ask him, "Hey, why isn't Cleaver-Brooks using asbestos components anymore?"

A I'm sure that came up in our conversation, sure.

Q Do you recall what he told you?

A The manufacturers of the products we purchased took asbestos out of the products.

Q If those manufacturers had still been making asbestos products, would Cleaver-Brooks still be using them?

MR. O'CONNELL: Objection, your Honor.

THE COURT: Sustained.

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Q Is that the only reason you took asbestos out of your boilers is because the manufacturers no longer made them? Is that your testimony?

MR. O'CONNELL: Objection, your Honor.

THE COURT: Overruled.

A I have never found another reason.

Q Have you ever sought out to ask anybody another reason?

A Again, I talked to Mr. Provance about it. He's the only one.

Q Mr. Provance is the only person you've ever talked to about anything pertaining to your testimony, is that right?

MR. O'CONNELL: Objection.

THE COURT: Overruled.

A No. I'm not sure I can say that for certain, no.

Q Who else would you talk to?

A Well, you said pertaining to my testimony. I've testified about all sorts of technical things. I've talked to people all over the company.

Q Okay. The things we're talking about right now, when Cleaver-Brooks incorporated asbestos products into their boilers, when they stopped putting them into their boilers, who else have you talked to besides Mr. Provance?

A It would be Mr. Provance.

26 Q Do you have the notes of those conversations that I

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2 could take a look at?

3 A I didn't take notes.

4 Q So the jury just has to believe you?

5 MR. O'CONNELL: Objection, your Honor.

6 THE COURT: Sustained.

7 Q Have you ever seen asbestos before, Mr. Tornetta?

8 A I guess it means -- what you mean by "seen," certainly

9 I've seen it on TV commercials. Have I had it in front of me?

10 I don't recall ever seeing that.

11 Q You can't tell this jury that you have ever

12 encountered an asbestos-containing component, right? You have

13 no idea?

14 A For certain, no, I don't think I could. I may have.

15 I just didn't know what the material was at the time.

16 Q As a matter of fact, you may have encountered asbestos

17 through your work on Cleaver-Brooks boilers. You just have no

18 way to know, right?

19 A I don't have a way to know that, no.

20 Q Mr. Tornetta, you've never taken any classes on how to

21 identify asbestos, have you?

22 A No.

23 Q No training courses on how to identify asbestos?

24 A No, I haven't.

25 Q Cleaver-Brooks hasn't given you training on how to

26 identify asbestos?

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2 A No.

3 Q If I showed you an asbestos product, you would have no

4 way one way or the other to know that it was or was not

5 asbestos-containing, correct?

6 A Not without the testing of that to tell you.

7 Q How about if an engineering drawing said asbestos

8 gaskets in the engineering drawing for Cleaver-Brooks, would

9 you then feel comfortable saying that gasket was asbestos?

10 A It would depend on what the supplier of that gasket

11 was using at the time.

12 Q Is it your testimony that even in the catalogs and

13 drawings that we're going to show this jury where it says

14 "asbestos gasket," they can't rely upon the fact that it was,

15 in fact, asbestos-containing?

16 A I don't believe you could. I guess it would depend,

17 but I'd have to look at the supplier of the product to see if

18 it was.

19 Q Cleaver-Brooks's engineers in real time were writing

20 asbestos gaskets into the drawings, right?

21 A Yes.

22 Q And Cleaver-Brooks's engineers or marketing people

23 were creating catalogs that said asbestos gaskets, right?

24 A Yes.

25 Q And there were people in purchasing that went out and
26 bought asbestos gaskets, right?

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1 A That, I don't know that I have the record to say that.

2 Q Do you have a record to say that it didn't happen?

3 A No.

4 Q Okay. Cleaver-Brooks has sent a manual with every
5 boiler they have ever sold, right?

6 A Yes, unless there was some type of mistake. But, yes,
7 we intended to.

8 Q And Cleaver-Brooks does not keep a master copy of all
9 those boilers, right? I'm sorry. Of all those catalogs,
10 excuse me.

11 A Correct. We don't have an archive, let's say, of
12 every manual we've ever sold.

13 Q You got a lot of them, though, right?

14 A I'm sorry.

15 Q You have many of them, not all of them, right?

16 A We have some that were dug up more recently, yes.

17 Q Okay. And in these boiler manuals you would agree
18 that there would be operation instructions, correct?

19 A Yes.

20 Q Service and maintenance instructions, correct?

21 A In some of them, yes.

22 Q And would you agree that the asbestos components that
23 were incorporated into Cleaver-Brooks boilers would have to be
24 serviced and maintained during the life of a Cleaver-Brooks
25 boiler if, in fact, they were asbestos. You would agree with
26 that?

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1 that?

2 A Some of them would, yes.

3 (Continued on following page.)
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Q And it was known to Cleaver-Brooks that when a service person was working on a Cleaver-Brooks boiler that contained asbestos components, that person may have to take out and replace the asbestos components that were in a Cleaver-Brooks boiler, right?

A In some cases, yes.

Q And then also in these manuals there were parts lists, right?

A In some of them, yes.

Q And ordering information for how customers could order replacement parts from Cleaver-Brooks, right?

A Yes.

Q And Cleaver-Brooks had a financial incentive on having their customers purchase replacement parts from Cleaver-Brooks, right?

MR. O'CONNELL: Objection.

THE COURT: Overruled.

A I guess if somebody buys something from you, there's a financial incentive, yes.

Q You make money if they purchase it from Cleaver-Brooks as opposed to some other place selling components, right?

A In some cases yes.

Q And Cleaver-Brooks in fact sold asbestos replacement parts to be used on their boilers, right?

A In some instances, yes.

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Q And they sold asbestos gaskets as replacement parts, right?

A In some cases, yes.

Q Asbestos rope as replacement parts?

A I've come across that, yes.

Q Asbestos cement as a replacement part?

A Yes.

Q All of the asbestos products that we mentioned, Cleaver-Brooks sold as a replacement part to be used on their boilers, correct?

A I believe when we talked -- we were on this topic before, I questioned the asbestos tile and whatever, but short of that, yes, I think I've come across this.

Q The one's that you don't question are asbestos-containing. Cleaver-Brooks sold all of those asbestos components as replacement parts, right?

A Potentially, yes.

Q And Cleaver-Brooks knew that somebody purchasing these

20 replacement parts was going to be incorporating them back into
21 a Cleaver-Brooks boiler, right?

22 A Yes.

23 Q Because when they order the parts, they wrote on the
24 sheet the make and model of the boiler that it was going into
25 and the part number that it was coming out of, right? That's
26 how it worked?

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2 A I'm not sure they wrote on a sheet, but one way or
3 another identified what they were using it, yes.

4 Q You understand, Mr. Tornetta, that Mr. McCloskey is
5 alleging in this case exposure to asbestos-containing gaskets
6 on the doors of Cleaver-Brooks boilers, do you understand that?

7 A Yes, that's what I read in his testimony.

8 Q And in fact Cleaver-Brooks boilers contained asbestos
9 gaskets in the place where Mr. McCloskey described, correct?

10 A Place on the boiler or place location? I'm not sure.

11 Q On the boiler, the door.

12 A On the boiler. Some of them did, yes.

13 Q And you can't tell this jury what percentage of
14 Cleaver-Brooks boilers during the time period that
15 Mr. McCloskey was describing did or did not contain asbestos
16 gaskets, right?

17 A No, I can't.

18 Q Isn't it a fact that it was all of them during that
19 time period contained asbestos gaskets?

20 A I'm not sure I could say that's a fact. I couldn't
21 say one way or the other for certain.

22 Q Do you agree that Cleaver-Brooks had specified the use
23 of asbestos-containing gaskets in their boilers in the '40s,
24 '50s, '60s and '70s?

25 MR. O'CONNELL: Object to the form, your Honor,
26 and also relevance. Which gaskets are we talking about?

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2 MR. KRAFT: Any type of gaskets.

3 MR. O'CONNELL: Well, then relevance.

4 THE COURT: Sustained.

5 Q Well, let's get more specific.

6 Do you agree that Cleaver-Brooks specified door
7 gaskets that were asbestos-containing in their boilers in the
8 '40s, '50s, '60s and '70s?

9 A In some of them, yes.

10 Q How many have you seen, Cleaver-Brooks boilers, that
11 don't specify asbestos-containing gaskets in the '40s, '50s,
12 '60s and '70s?

13 MR. O'CONNELL: Same objection to form and
14 relevance, your Honor.

15 THE COURT: Can you keep it to door gaskets?

16 MR. KRAFT: Sure.

17 Q Door gaskets.

18 A I don't think I can come up with a number. There's
19 many different types of boilers that don't have doors so...

20 Q Well, if Mr. McCloskey is describing seeing a door
21 opening, can we assume there was a door on the boiler?

22 A I suppose the door of the boiler he's describing, yes.

23 MR. KRAFT: What number are we on?

24 THE COURT: You're up to seven.

25 MR. KRAFT: I'd like to have this deemed marked
26 as Cleaver-Brooks 7.

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2 THE COURT: Cleaver-Brooks or Tornetta?

3 MR. KRAFT: Tornetta 7.

4 (Plaintiffs' Exhibit 7 marked for
5 identification.)

6 Q I'd like to show it to you, Mr. Tornetta.

7 THE COURT: For I.D.

8 MR. KRAFT: And I seek to introduce it into
9 evidence at this time.

10 THE COURT: Any objection?

11 MR. O'CONNELL: No.

12 THE COURT: Very well. It's Tornetta 7.

13 (Plaintiffs' Exhibit 7 marked and received into
14 evidence.)

15 Q You would agree that that is a model of a
16 Cleaver-Brooks boiler, right?

17 A Model as in miniature model, yes.

18 Q Right. That's not fueling or heating any building
19 anywhere except maybe my daughter's dollhouse, right?

20 A I would say yes.

21 Q So when I say "model," it's a scale one-fiftieth of a
22 Cleaver-Brooks boiler, something like that, right?

23 A Correct.

24 Q And you know that because on the front of the boiler
25 it says Cleaver-Brooks, right?

26 A Yes, it does.

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2 Q And that has a name tag where, in real life, if you
3 went into a boiler room you would see the Cleaver-Brooks sign,
4 right?

5 A In certain sizes, yes, it would look like that.

6 Q In fact, the sign on the miniature looks similar but
7 much smaller than the sign sitting right to your left, right?

8 A Similar, yes.

9 Q Could you show the jury how the door of that
10 Cleaver-Brooks boiler opens?

11 A Actually there's two doors on this. There's a front
12 door, this particular side is the front where the nameplate is,
13 and that door would swing up. In this particular --

14 Q Model?

15 A -- model would be a hinged door and that would swing

16 up.

17 Q Does it open?

18 A I don't know that it does and I don't want to break

19 it.

20 Q Okay. Could I approach?

21 A If you'd like to try to break it, go ahead.

22 Q I'm not going to break it.

23 A I think the back one does.

24 Q The back one opens, right? Maybe I will break it.

25 All right.

26 The front one on this model would swing open, right?

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2 A Yes.

3 Q And could you show the jury where the gasket would be
4 on the front door?

5 A It would be sandwiched between the flange of the door
6 and the flange -- the door gasket sandwiched between the flange
7 of the door and the flange of the boiler vessel.

8 Q It would run around the entire circumstance of the
9 door; is that right?

10 A Yes.

11 Q And that was an asbestos gasket, correct?

12 A In some instance, yes.

13 Q In most instances in the '40s, '50s, '60s and '70s,
14 that was an asbestos gasket, correct?

15 MR. O'CONNELL: Object to form. Misstates prior
16 testimony.

17 THE COURT: Overruled.

18 A I'm not sure I could say most because I haven't looked
19 at most.

20 Q Why can't you say most? How can you say not most?

21 MR. O'CONNELL: Objection, your Honor,
22 argumentative.

23 A Because I don't know.

24 THE COURT: Overruled.

25 Q Okay. Now, show the jury on the back door where there
26 would be an asbestos gasket?

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A Sorry. I closed it. I don't want to -- there would
3 also be a gasket around the outside circumference of this door
4 which sandwiched up against what we refer to as the tube sheet
5 on the vessel.

6 Q And that would most likely be an asbestos gasket in
7 the '40s, '50s, '60s and '70s when Mr. McCloskey was
8 encountering them, right?

9 MR. O'CONNELL: Objection.

10 THE COURT: Overruled.

11 A It could have been.

12 Q I'm going to show you catalogs here in a little bit.

13 Have you ever seen in a catalogue from the '40s, '50s,

14 '60s and '70s a door gasket being referred to as anything other
15 than asbestos-containing?

16 A No, I think I've seen them say asbestos-containing.

17 Q My question was have you ever seen any piece of
18 literature put out by Cleaver-Brooks that references a
19 non-asbestos gasket to be used on that door? Have you ever
20 seen that?

21 A I don't believe I have.

22 Q We're going to keep that up there for a second.

23 Now, the asbestos refractory material that
24 Cleaver-Brooks' engineers specified to be used in the boilers
25 would also be in the doors of the boiler; is that right?

26 A I guess I'm not sure what you mean by asbestos

38 15

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 refractory material.

3 Q Refractory material that contains asbestos.

4 A I'm not aware of what I would consider refractory
5 having asbestos, but I'm certainly not an expert on the
6 asbestos.

7 Q Okay. And you're not an expert about what anything
8 contains, whether it be asbestos or something else, right,
9 because you're not here testifying as an expert witness, you
10 agree?

11 MR. O'CONNELL: Objection, your Honor.

12 THE COURT: Sustained.

13 Q Well, are you here as an expert witness, sir?

14 MR. O'CONNELL: Objection, your Honor.

15 THE COURT: Sustained.

16 Q What qualifications do you have to say any material
17 contains or didn't contain asbestos?

18 MR. O'CONNELL: Objection, your Honor.

19 THE COURT: Overruled.

20 A My qualifications for that would be my work in this
21 area for the last ten years.

22 Q You've never seen it, right?

23 A I've never seen it in person in my hand, no.

24 Q You've never seen it on any Cleaver-Brooks boiler that
25 you've ever worked on, right?

26 A That I could say for certain, no, I haven't.

38 16

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q Because you've never worked on a boiler in the '50s,
3 '60s or '70s like those boilers Mr. McCloskey is describing,
4 correct?

5 A I certainly would have worked on boilers from the '70s
6 when I first started. It wouldn't surprise me, I guess.

7 Q I'm going to hand this up to you, Mr. Tornetta.

8 Do you recall testifying in the case of Koontz in
9 October 28th of 2002?

10 A No. I'm sorry. I can't recall that one.

11 THE COURT: We're marking this Tornetta 8 for

12 I.D.?

13 MR. KRAFT: No, Judge. This is just going to be
14 used to refresh his recollection about prior testimony.

15 Q I would ask you to go to page 54.

16 A Okay.

17 Q Do you have a specific recollection of ever working on
18 a boiler, Cleaver-Brooks boiler, from the '50s, '60s or '70s?

19 A As I sit here, I can't imagine I did not.

20 Q Okay.

21 A I know I've come across LR boilers. I can't say I
22 worked on them, but I certainly was around them and worked with
23 them.

24 Q Do you recall being asked the following questions and
25 giving the following answers in 2002 -- and I assume, sir, you
26 were under oath at that time, right?

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A Yes. From twelve years ago, yes, I'm sure I was.

3 Q Was your memory of what you did as a service
4 technician better in 2002 than it is now today in 2004, twelve
5 years later?

6 A Probably not. I don't think it would be.

7 Q You don't think your memory was better in 2002?

8 A Oh, I went the other direction. I'm sorry. It's --

9 Q Was your memory better in 2002, yes or no?

10 A Better about --

11 Q What you did as a field technician.

12 A Yes, it would have been.

13 Q Do you recall being asked the following questions and
14 giving the following answers:

15 "Question: Did you as a field service, as a
16 service tech. working in the field, did you ever work
17 on a boiler that had been installed in the '50s,
18 manufactured and installed in the '50s?

19 "Answer: I don't recall it, but I may have. I
20 just don't remember specifically looking at a boiler
21 from the '50s.

22 "Question: Do you ever recall looking at a
23 boiler that would have been installed or manufactured
24 in the 1960s?

25 "Answer: Again, not specifically, but I may
26 have.

38 8

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 "Question: Do you recall working on any that
3 would have been installed or manufactured in the '70s?

4 "Answer: I would have to say the same answer. I
5 may have, but don't recall specifically looking or
6 working on those types."

7 "Were you asked those questions and did you give that
8 testimony?

9 A It looks that way, yes.

10 Q Did I read it correctly?
11 A Yes, I believe so.
12 Q And this is your testimony, right?
13 A Yes.
14 Q Can you point to any document ever created by any
15 person at Cleaver-Brooks ever that says door gaskets on boilers
16 in the '40s, '50s '60s and '70s were not asbestos-containing?
17 A I don't think I could, no.
18 Q Now, these door gaskets, what kind of asbestos were
19 they made out of?
20 A The kind as in --
21 Q The type of asbestos.
22 A I don't know.
23 Q Have you ever heard the word chrysotile, amosite,
24 crocidolite, do you know as the corporate representative of
25 Cleaver-Brooks whether the gaskets your engineers specified
26 contained chrysotile, amosite or crocidolite?

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 MR. BLAKELY: Objection to the form.
3 THE COURT: Overruled.
4 A No, I don't.
5 Q What percentage of asbestos were the gaskets that
6 you -- when I say "you," I mean Cleaver-Brooks -- specified to
7 be used on the doors of your boilers?
8 A I wouldn't know that.
9 Q Ninety percent? A hundred percent? Ten percent?
10 Eight percent? Do you have any idea?
11 A I don't know.
12 MR. O'CONNELL: Objection, your Honor.
13 THE COURT: Overruled.
14 Q Have you ever done anything to try to figure that out,
15 Mr. Tornetta?
16 A No, I've never found anything in our records that
17 tells me that one way or the other.
18 Q Have you ever asked any engineer?
19 A No.
20 Q Have you ever asked anybody?
21 A No, I haven't.
22 Q Do you know, sir, what would happen to the air in the
23 immediate vicinity of a Cleaver-Brooks door being opened?
24 MR. O'CONNELL: Objection.
25 THE COURT: Sustained.
26 Q Do you know if dust would be released from the gaskets

38 0
1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 that were on the doors of Cleaver-Brooks boilers?
3 MR. O'CONNELL: Objection.
4 THE COURT: Overruled.
5 MR. O'CONNELL: He's a fact witness, not an
6 expert witness, your Honor.
7 MR. KRAFT: It goes directly to what

8 Cleaver-Brooks did or didn't do, Judge.

9 MR. O'CONNELL: Still object.

10 THE COURT: Did you observe?

11 THE WITNESS: Have I ever personally observed?

12 THE COURT: Yes.

13 THE WITNESS: A door being opened, yes, I have.

14 Q Have you spoken with any engineers about what would
15 happen with boilers manufactured when the rear door would open,
16 what would happen to the asbestos seal on the rear door?

17 A No, I can't say I've never spoken to an engineer about
18 that.

19 Q Have you ever spoken to anybody about what would
20 happen when the seal was broken on any door of a Cleaver-Brooks
21 boiler that contained asbestos in terms of asbestos being
22 released?

23 MR. O'CONNELL: Objection, your Honor.

24 A No, I haven't.

25 THE COURT: Overruled.

26 THE WITNESS: I'm sorry.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 THE COURT: Please wait for my ruling.

3 Q Cleaver-Brooks advertised so that they could sell
4 their boilers; is that right?

5 A Yes.

6 Q Did Cleaver-Brooks test the component parts and
7 research the component parts and buy the component parts from
8 reputable manufacturers that they eventually put into their
9 boilers?

10 MR. O'CONNELL: Object to form.

11 THE COURT: Sustained.

12 Q Did Cleaver-Brooks test the component parts that were
13 eventually incorporated into their boilers?

14 MR. O'CONNELL: Object as to form again.

15 THE COURT: Overruled.

16 A The component parts as their -- themselves, no. The
17 boiler itself was tested, test-fired before it's shipped to our
18 factory.

19 MR. KRAFT: Your Honor, at this time I seek to
20 have the following document marked as Tornetta 8.

21 (Plaintiffs' Exhibit 8 marked for
22 identification.)

23 Q So it's your testimony that Cleaver-Brooks --

24 MR. O'CONNELL: May I see it?

25 Q -- did not test the component parts; is that right?

26 A Not the individual components that I can think of,

3822

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 other than possibly some electrical controls for certain things
3 but the boiler itself was tested as a whole.

4 MR. KRAFT: Can I approach the witness?

5 THE COURT: Yes. This is Tornetta 8?

6 MR. KRAFT: Tornetta 8.

7 Q Do you recognize that, sir?

8 A I recognize it as -- looks like an advertisement.

9 Q From what company?

10 A The magazine company you mean?

11 Q Whose advertisement is it?

12 A Oh, I'm sorry.

13 There is a Cleaver-Brooks advertisement.

14 Q And from what periodical?

15 A Looks like Southern Power & Industry.

16 Q And you know, based upon your job, that Cleaver-Brooks

17 in fact advertised in Southern Power, right?

18 A Actually Southern Power I can't say -- I probably come

19 across this before, but I didn't note the Southern Power part

20 of it.

21 Q Do you know that Southern Power & Industry was a
22 magazine within your industry where boiler manufacturers would
23 advertise their products, right?

24 A I don't believe I've ever come across that. It
25 doesn't surprise me, but yes.

26 Q Is this a Cleaver-Brooks advertisement?

38 3

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A Yes.

3 Q Did Cleaver-Brooks have an advertising department?

4 A I'm not sure they called them the advertising
5 department, but they had marketing people and different things
6 over time, yes.

7 Q Were the marketing people responsible for advertising?

8 A Yes.

9 MR. KRAFT: I seek to introduce this into
10 evidence, your Honor, as Tornetta 8.

11 MR. O'CONNELL: Objection, your Honor. What's --

12 THE COURT: Step up.

13 (Sidebar outside the presence of the jury:)

14 THE COURT: State your objection.

15 MR. O'CONNELL: I'm objecting because I want to
16 know what's the relevance of this, because on the question
17 I don't see the relevance.

18 MR. KRAFT: They have a duty to test the
19 materials they put into their boiler especially when they
20 say that they're selling a safe product. This is a
21 Cleaver-Brooks advertisement.

22 THE COURT: I think it's quite relevant. The
23 objection is overruled.

24 (In open court:)

25 THE COURT: The objection is overruled.

26 Q Cleaver-Brooks personnel would create these

38 4

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 advertisements, right?

3 A Yes, I would assume so. This is from 1950, so I can't

4 say that for certain. They may have had an outside advertising
5 company as well.

6 Q Have you ever investigated who did the advertising?
7 Did you talk to anybody?

8 A Not specifically for this, no.

9 Q "Another reason why you get a greater return from your
10 investment in a Cleaver-Brooks steam boiler." And I want to
11 read it. "Cleaver-Brooks steam boiler quality is the sum of
12 many qualities. From the rolling-in of the first tube and
13 through every step to completion, the highest standard of
14 engineering, material and workmanship prevail."

15 You have an engineering department; is that correct?

16 A Yes.

17 Q "Every component" -- it says component, right?

18 A Yes, it does.

19 Q " -- is the tested product of a manufacturer of known
20 standing, carefully selected by Cleaver-Brooks engineers
21 through test and research."

22 Does it say that?

23 A Yes, it does.

24 Q Okay. Is it fair to say that Cleaver-Brooks tested
25 and researched what they were going to incorporate in their
26 products?

38 5

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 MR. O'CONNELL: Objection, your Honor. It
3 misstates what that says.

4 Q Did I read that wrong?

5 THE COURT: Overruled.

6 A I don't believe that's what that says but...

7 Q Okay. Did Cleaver-Brooks' engineers just willy-nilly
8 stick anything they wanted to in their boilers without figuring
9 out if it worked?

10 MR. O'CONNELL: Objection, your Honor.

11 THE COURT: Sustained.

12 MR. KRAFT: Is it the willy-nilly part, Judge?

13 Q Did Cleaver-Brooks just randomly select things to
14 stick into their boilers?

15 A No. They would have looked at the application and, if
16 it was something outside of what we manufactured, would have
17 talked to the supplier of those products to see what fit the
18 application.

19 Q Do you have any note, letter, document to suggest that
20 the very thing you just said happened happened?

21 MR. O'CONNELL: Objection, your Honor.

22 Can we approach on this?

23 THE COURT: Come up.

24 (Sidebar outside the presence of the jury:)

25 MR. O'CONNELL: The problem I have with this line
26 of questioning -- I just lost my train of thought. Give me

38 6

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

a moment.

MR. KRAFT: I asked does he have any note, document...

MR. O'CONNELL: They issued a company subpoena. He's done this several times. If you don't have a document, you know, you should have asked for it. For somebody to say that -- I mean, we've produced documents.

MR. KRAFT: They never produced those. If they did, they would be under an obligation to produce them under discovery.

THE COURT: It's not pertinent to our discussion at the bench. This is a not a discovery proceeding.

MR. KRAFT: It's referring to something outside of his own personal knowledge.

THE COURT: Who?

MR. KRAFT: Mr. Tornetta, he's referred to something.

THE COURT: So that doesn't mean he had to schlep it in here.

MR. KRAFT: I want to know if he's ever seen such a document.

THE COURT: That's a different question.

MR. KRAFT: I'll ask that question.

MR. O'CONNELL: But to keep asking, you know, did you bring a document, did you bring --

F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

MR. KRAFT: I didn't ask that.

MR. O'CONNELL: You've done it several times.

MR. KRAFT: I'll withdraw the question, Judge.

THE COURT: Thank you.

(In open court:)

THE COURT: The record reflects that the question is withdrawn.

MR. KRAFT: Withdrawn.

BY MR. KRAFT:

Q Have you ever seen such a document, a letter, a memo, a note, correspondence with any supplier indicating what you just told this jury?

A Yes. I believe I've come across documents talking about some testing that a refractory company was doing.

Q When?

A Boy, I thought it was -- I thought it was one of your firm's exhibits.

Q Sir, did you just make that up?

A No.

MR. O'CONNELL: Objection, your Honor.

THE COURT: Sustained.

Jurors, please disregard that.

Q Has Cleaver-Brooks ever tested any asbestos-containing component part that it incorporated into its boiler to determine when that part was installed whether it released

38 8

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 asbestos dust?

3 A Oh, no. That's not what I was answering before about
4 releasing asbestos dust.

5 Q No, I'm onto a different subject.

6 A Okay. I'm sorry. I just want to make sure I wasn't
7 confused with that.

8 No, they have not.

9 Q When I asked the objectionable question, I've moved
10 on.

11 A Okay.

12 Q Has Cleaver-Brooks ever tested any asbestos-containing
13 component part that they incorporated into their boiler to
14 determine if asbestos was released during its normal use?

15 A No.

16 Q Has Cleaver-Brooks ever tested any asbestos-containing
17 component part when that part is removed to determine whether
18 asbestos is released?

19 A No.

20 Q Has Cleaver-Brooks done any testing on asbestos
21 gaskets that would be on the doors of their boilers to
22 determine what amount of fibers are released when those doors
23 are opened?

24 A No, we haven't.

25 Q Cleaver-Brooks had a research and development
26 department; is that correct?

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A Yes. In some form or another, yes.

3 Q You had the capability to test things in your own
4 facilities, right?

5 A Certain things, yes.

6 Q I want to ask you some questions generally about
7 catalogs now.

8 You would agree Cleaver-Brooks sold
9 asbestos-containing component parts for profit?

10 A In some cases, yes.

11 Q Well, in the cases of asbestos gaskets?

12 A That's what I was answering to, I guess. Yes, we
13 offered gaskets and some of them contained asbestos.

14 Q When you sold those asbestos gaskets, did you ever put
15 a warning on the packaging saying, "Hey, these contain
16 asbestos; be careful"?

17 A No.

18 Q Did you ever put any type of caution, anything on the
19 asbestos gaskets that you sold?

20 A No.

21 Q Did you ever put any warning on any Cleaver-Brooks
22 boiler that has ever been sold saying, "This boiler contains
23 asbestos"?

24 A No, we didn't.

25 Q Any warning, note, anything on a Cleaver-Brooks boiler
26 suggesting that anyone working on it should take any type of
38 0

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 precaution when working around a Cleaver-Brooks boiler?

3 A In relation --

4 Q Pertaining to asbestos.

5 A Pertaining to asbestos, no.

6 Q As a matter of fact, we're going to see in a little
7 bit in your catalogs you put cautions and warnings in the
8 catalogs, correct?

9 A On certain things, yes.

10 Q And if Cleaver-Brooks had wanted to put a caution or a
11 warning on its boiler, on the door of the boiler, it had the
12 technological capability to do that, right?

13 A Yes, I suppose we did.

14 Q And if Cleaver-Brooks had wanted to put a warning or a
15 caution in its manuals about asbestos, it could have done that,
16 right?

17 A We could have put a warning in there if we were going
18 to, yes.

19 Q Cleaver-Brooks never warned or put any caution about
20 anything related to asbestos on any of their boilers or
21 products that they sold, would you agree with that?

22 A Yes.

23 Q And at all times they could have done that had they so
24 chosen, correct?

25 A We would have been able to.

26 MR. KRAFT: This should be quick, Judge. I'm

38 1

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 going to mark a number of exhibits. Tornetta 9, Tornetta
3 10, Tornetta 11, Tornetta 12, Tornetta 13.

4 Let's start with these.

5 (Plaintiffs' Exhibits 9, 10, 11, 12 and 13 marked
6 for identification.)

7 (Continued on following page.)
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38 2

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q I'd ask you to take a look at all of these,

3 Mr. Tornetta.

4 A Just a quick glance.

5 Q Just a quick glance.

6 The question I'm going to have is: You would agree
7 that these are documents that were made by Cleaver-Brooks, kept
8 in the regular course of business by Cleaver-Brooks, and they
9 are, in fact, Cleaver-Brooks documents.

10 A (Perusing.) I'm sorry. What was the question again?

11 Q You would agree those are Cleaver-Brooks documents.

12 A They appear to be. They certainly have
13 "Cleaver-Brooks" on them. I didn't read every page to make
14 sure nothing was stuck in, but they are Cleaver-Brooks.

15 Q That's fair. They are Bates stamped on the bottom
16 right-hand corner, is that correct?

17 A Those are -- I'm not certain about this one. Yes,
18 these are as well.

19 MR. KRAFT: Okay. I seek to introduce them all
20 into evidence at this time, your Honor.

21 MR. O'CONNELL: Objection, your Honor.

22 (Whereupon, a sidebar discussion is held on the
23 record, out of the presence of the jury.)

24 MR. KRAFT: They were selling boilers in New
25 York.

26 THE COURT: That's the reason. Do you have an

38 3

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 objection to that?

3 MR. O'CONNELL: That I don't have, but wait,
4 wait, the problem is that this is now put in in this case.
5 I have no problem with that at all.

6 THE COURT: Introduce them.

7 MR. KRAFT: I'll say it, no problem. On this one
8 it talks about cautions and warnings and right underneath
9 the cautions and warnings it discusses using asbestos
10 gaskets, but there is no caution or warning about asbestos
11 gaskets on the same page.

12 MR. O'CONNELL: That's fine. I have no
13 objection.

14 MR. KRAFT: It confirms all of the asbestos
15 components that we talked about being used.

16 MR. O'CONNELL: The problem is that this is the
17 contract. This is the boiler. It's not a boiler in this
18 case.

19 MR. KRAFT: I'm going to establish that these
20 were used. These products were used on all of

21 Cleaver-Brooks boilers. They didn't test any of their
22 products. That goes to why they are negligent, Judge, and
23 gaskets asbestos -- gaskets, how do we know it's not this
24 model? There is no testimony about what type of model.
25 It's a cylinder boiler, which this was, and it's a door
26 gasket.

38 4
1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 MR. O'CONNELL: Why don't you ask if it's that
3 type and let your client identify it.
4 THE COURT: Number 11, lay a foundation for it.
5 MR. KRAFT: Sure. I'll ask it. This is a
6 Cleaver-Brooks boiler manual. That lays out the exact type
7 of gasket. That's asbestos.
8 MR. O'CONNELL: But wait, wait.
9 THE COURT: What page are you on?
10 MR. KRAFT: Here's the thing, Judge.
11 Mr. O'Connell is attempting to say that we can't prove the
12 specific type of model. The point is, Judge, these gaskets
13 and products were used on every model. And the fact that
14 Mr. --

15 THE COURT: Lay that foundation, then, if you can
16 get from him that. But if you can't, you're going to have
17 a problem.

18 MR. KRAFT: I don't think I'm going to have a
19 problem. Asbestos gaskets. Head gaskets. How to remove
20 the gaskets. How to make the gaskets. Put the cement over
21 the gaskets.

22 THE COURT: While I have you here -- off the
23 record.

24 (Sidebar discussion held off the record.)

25 THE COURT: So.

26 MR. KRAFT: Tornetta 9, I believe there is no

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 objection to this one, is that correct?

3 MR. O'CONNELL: Correct.

4 Q Mr. Tornetta, I want to show you the last page of
5 Tornetta 9. It's something called Cleaver-Brooks -- has
6 Cleaver-Brooks logo on it. It's marked 29K. It has pictures
7 of various boilers.

8 Can we agree that, I'm not saying that the boilers
9 depicted on the front are or are not the boilers that
10 Mr. McCloskey worked on, this is only being used for what's on
11 the last page? Can we agree to that?

12 A Sure.

13 Q Now, in general, Mr. McCloskey described the
14 Cleaver-Brooks boilers as being cylindrical, right?

15 A Yes.

16 Q All right. Obviously, this boiler isn't cylindrical,
17 so it wouldn't be that boiler that he was talking about, right?

18 A Correct, in that description.

19 Q The other boilers on here are generally cylindrical,
20 is that right?

21 A Yes.

22 Q The boiler down at the bottom isn't cylindrical, so we
23 can agree Mr. McCloskey wasn't talking about that boiler,
24 right?

25 A Correct.

26 Q Okay. On the last page of this document it lists all
38 6

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 the places that Cleaver-Brooks has sales representatives and
3 locations, is that correct? At the top ones, it comes into
4 view, Cleaver-Brooks sales representatives and locations. Do
5 you see that at the very top?

6 A Yes. Oh, there you go.

7 Q Is that better?

8 A Yes.

9 Q And in New York it lists Cleaver-Brooks Company, 220
10 East 42nd Street, right?

11 A That's what it says, yes.

12 Q And you also had a sales representative office out in
13 Long Island, is that right? Hicksville?

14 A Hicksville, Long Island, then, yes.

15 Q Hicksville in Long Island. I don't know. Is it
16 Nassau County? Somewhere in New York, right? It's listed
17 under New York.

18 A Yes.

19 THE COURT: We can take judicial notice,
20 Mr. Kraft.

21 MR. KRAFT: Thank you, Judge. My geography is
22 failing me.

23 Q The next document, this is a good practices manual, a
24 manual outlining recommended good practices in the inspection,
25 maintenance, and operation of power and heating boilers in the
26 steam and hot water classifications, right?

38 7

1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 THE COURT: That's T10?

3 MR. KRAFT: T10, Tornetta 10.

4 A That's what it says, yes.

5 Q Okay. This applies to one model, various models, lots
6 of models, do you know?

7 A It looks like it would apply to anything, that
8 category of power and heating boilers, steam and hot water.

9 Q Clearly, the boiler described by Mr. McCloskey was a
10 power boiler in the steam and hot water generation subcategory,
11 right?

12 A I'm not -- I'm not sure I can say power boiler, in the
13 clarification we would call a power boiler. I know we talked
14 about powerhouse boilers, but I'm not certain. When they talk
15 about Cleaver-Brooks, they were power but they were heating.

16 Q This manual covers commercial boilers, correct?

17 A It could, yes.

18 Q And the boilers Mr. McCloskey described was a
19 commercial boiler, right, or commercial boilers, correct?

20 A In relation to Cleaver-Brooks?

21 Q Yes.

22 A I'm not certain that he said exactly that. He may
23 have called them commercial.

24 MR. KRAFT: Can I approach the witness and show
25 him Mr. McCloskey's testimony page 3088?

26 MS. HALBARDIER: What date of the trial?

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2 MR. KRAFT: Here you go.

3 MS. HALBARDIER: Thank you.

4 MR. KRAFT: You're welcome.

5 Can I approach the witness?

6 THE COURT: Yes.

7 Q Can we agree that I am about to read from page 3088 of
8 the trial transcript?

9 "Question: What did a commercial boiler look
10 like?

11 "Answer: A commercial boiler?

12 "Question: Did a commercial boiler look any
13 different than a residential boiler in your mind?

14 "Answer: Could I name the name of the boiler?

15 "Question: If you want.

16 "Answer: I remember Cleaver-Brooks. They were
17 cylindrical in shape. Riley Stoker, I believe, was another
18 cylindrical-shaped boiler.

19 "Question: And do you believe you were exposed
20 to asbestos in any way from these commercial boilers?

21 "Answer: Yes."

22 Does that refresh your recollection that
23 Mr. McCloskey described Cleaver-Brooks boilers as
24 commercial boilers?

25 A Yes, it does. Thank you.

26 Q You're welcome.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 And you would agree that this manual covers commercial
3 boilers, correct?

4 A Yes, they would be part of that topic.

5 Q I'm going to go to page 29 of this document. Do you
6 see 29 at the bottom, right?

7 A Yes.

8 Q There is a caution and it talks about dissolve
9 chemicals and then there is a note, "Extreme caution must be
10 used," and then in the very next paragraph 2-6, it says,
11 "Proceed to close manhole coverings. Use plain asbestos
12 gaskets for this service," right?

13 A Yes.

14 Q Cleaver-Brooks never put a caution or a note or a

15 warning in any of its catalogs like this pertaining to any
16 asbestos gaskets that were incorporated into its boilers,
17 correct?

18 MR. O'CONNELL: Objection, your Honor.
19 Relevance. Door gaskets?

20 THE COURT: Overruled.

21 Q Overruled.

22 A No, we didn't.

23 Q And you didn't put any warnings or cautions about door
24 gaskets that contained asbestos either, right?

25 A No.

26 Q No, I'm not right?

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A I'm sorry. No, we did not.

3 Q Thank you.

4 MR. KRAFT: I seek to introduce Tornetta 10 into
5 evidence, your Honor.

6 MR. O'CONNELL: No objection.

7 THE COURT: It is received as Exhibit
8 Tornetta 10.

9 Q Sitting here, do you know what boiler model made by
10 Cleaver-Brooks that Mr. McCloskey identified? Was it a fire
11 tube or water tube boiler?

12 A No. The cylindrical description leads me to a fire
13 tube boiler.

14 Q Right. And those are the boilers that include the CB
15 line, the LR line, and the LF line models, is that right?

16 A And progress monitor and the other ones I named, yes.

17 Q This document right here, Tornetta 11, since it's not
18 in evidence yet, pertains to an LRM model boiler, right, at the
19 top?

20 A Yes. That's what the first page says.

21 Q And that would be a fire tube cylindrical boiler,
22 right?

23 A Yes. The LR models we talked about earlier.

24 MR. KRAFT: I seek to introduce this into
25 evidence, your Honor.

26 MR. O'CONNELL: Same objection as noted at

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 sidebar, your Honor.

3 THE COURT: Sustained.

4 Q Would there be similar documentation for LF model
5 boilers?

6 A I don't know. That's a fairly specific one to a
7 specific boiler, so I'm not sure if that was asked for for a
8 specific reason or not.

9 Q Would there be similar paperwork like this for CB
10 model boilers?

11 A Again, I'm not sure. That's an odd format to me.

12 Q This document includes asbestos cement. You would

13 agree that asbestos cement would be used in every type of fire
14 tube boiler, right?

15 MR. O'CONNELL: Objection, your Honor.

16 THE COURT: Sustained.

17 Q Well, can't asbestos cement -- well, strike that.

18 Was asbestos cement used in the various models of fire
19 tube boilers during the time period Mr. McCloskey was
20 describing being exposed to Cleaver-Brooks boilers?

21 A In some of them, yes.

22 Q Okay. And were head gaskets and asbestos gaskets and
23 asbestos tape used in the fire tube Cleaver-Brooks boilers
24 during that same time period?

25 A I'm not sure about the asbestos tape, but certainly
26 head gaskets.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q When the gasket was placed on the outside
3 circumference of the doors, isn't it a fact that that would
4 often be sealed into place by asbestos fiber?

5 A Not in the front.

6 Q How about in the back?

7 A In the back, yes.

8 Q And asbestos pulp?

9 A In some cases, yes.

10 Q Okay. And if you look on the second page of this
11 document, there are general installation instructions, correct?

12 A That's what it says, yes.

13 Q And these general installation instructions would
14 apply not just to this LRM model but to all model fire tube
15 boilers, is that correct?

16 A No, I don't believe so.

17 Q Okay. And which model fire tube boiler wouldn't these
18 apply to?

19 A Actually, anything after the OB, LR, and LF.

20 Q So they wouldn't be in the CB model?

21 A Correct.

22 Q Okay. Can you say to this jury that those
23 installation instructions wouldn't be relevant to the boilers
24 Mr. McCloskey was describing?

25 A If it's the boiler we're talking about that we
26 identified at Indian Point, yes, I could.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 Q We're not talking about that. We're talking about a
3 commercial boiler that is cylindrical.

4 A If it's brought to that, not the specific site, no, I
5 couldn't.

6 Q Okay. So this would apply to the LR, the OB, and
7 other cylindrical models which may be the boilers Mr. McCloskey
8 was describing, correct?

9 MR. O'CONNELL: Objection to the form. Also
10 relevance?

11 THE COURT: Overruled.

12 A If he was talking about LR, LF, or OE, possibly, yes.

13 MR. KRAFT: Okay. I seek to introduce everything
14 except the first page of this document, your Honor, as
15 Tornetta 11.

16 MR. O'CONNELL: Same objection, your Honor.

17 THE COURT: Overruled.

18 MR. KRAFT: I'll make it Tornetta 11A.

19 THE COURT: Okay. Yes.

20 We're going to break for lunch now. Members of
21 the jury, don't discuss the case. See you at 2:15.

22 (Jurors exit courtroom.)

23 MR. CZEREPAK: I have brought up from the
24 ex parte part --

25 THE COURT: Would you give it to Mr. Casper?

26 MR. CZEREPAK: Yes, I wil. -- an order to show

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 cause for your review, consideration, and signature, your
3 Honor, and I would like to inform --

4 THE COURT: Give it to him. He'll do it and I'll
5 look at it.

6 MR. CZEREPAK: Thank you, your Honor.

7 (Luncheon recess.)

8 (Afternoon session.)

9 THE COURT: Mr. Kraft or Mr. Fanelli, whoever
10 wants to address this, I may have glossed over something
11 with respect to this, but the five subpoenaed people from
12 Con Ed, none of them -- none of them appear on your witness
13 list, is that true?

14 MR. KRAFT: Yes.

15 MR. FANELLI: Yes.

16 MR. CZEREPAK: There are six executives on that
17 witness list.

18 THE COURT: Right now we're down to five.

19 MR. CZEREPAK: No, no, the other ones.

20 THE COURT: We'll just talk to five. Tell me why
21 that's not a problem.

22 MR. KRAFT: It's not a problem because we have a
23 right to call the party whether or not we list them or not,
24 and since he won't tell us who the party is, which he
25 should have, which every other defendant does and we
26 briefed that --

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 THE COURT: It's not what this one did or that
3 one did.

4 MR. KRAFT: We submitted a brief. We're entitled
5 to call a party.

6 THE COURT: I am not so sure. Does the CMO say
7 that? Does the CMO say whoever you want to call you have
8 to put on the witness list? Is that what it says?

9 MR. KRAFT: No.

10 MR. CZEREPAK: Yes, it does.

11 THE COURT: That's what I thought.

12 MR. KRAFT: Show me what section of the CMO
13 you're talking about.

14 THE COURT: Show it to him.

15 MR. CZEREPAK: I don't know about the CMO itself,
16 but the discovery order does for sure.

17 THE COURT: Okay. It seems to me if you have to
18 put them on the witness stand, what's the point of the
19 witness list?

20 MR. CZEREPAK: If you don't have to put them on
21 the witness list --

22 MR. KRAFT: Because we're calling the party,
23 Judge.

24 THE COURT: You have authority for the
25 proposition that --

26 MR. KRAFT: We could call the party.

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2 THE COURT: -- that calling the party without
3 putting them on the witness list is outside the -- you have
4 authority for that proposition. That's all I care about
5 right now.

6 MR. KRAFT: Sitting here today I don't know if we
7 do.

8 THE COURT: It's either yes or no, and what I
9 want to do is I want to expedite this because he might be
10 right on that score, and if it had to be on the witness
11 list, then that's kapinsky for these subpoenas, then I will
12 grant his motion.

13 So I'm being very up front with you because I
14 want to resolve it quickly. If you are totally convinced
15 in your own head that you didn't have to put them on the
16 witness list, I want it very quickly, which you must have
17 authority for that proposition, period. That's what I
18 want. Then we can resolve this without having to go back
19 to the App. Div. or anything like that.

20 But I want that very firmly. And I ask the
21 questions, Mr. Kraft. You don't ask the questions of me.

22 MR. KRAFT: I'm not asking the question.

23 THE COURT: Well, you did. So that's what I
24 think should resolve this whole thing.

25 Isn't that true?

26 MR. CZEREPAK: I believe so.

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2 THE COURT: I believe so.

3 MR. CZEREPAK: And the law.

4 MR. KRAFT: Well, Judge --

5 THE COURT: It's a very simple issue. I want to
6 be sure with it.

7 MR. KRAFT: I understand it's a simple issue, and
8 we will look into the case law as you have requested and
9 you'll have an answer.

10 THE COURT: I want it by Thursday. It's very
11 simple. An email to Catherine with the cite, not a letter.
12 I just need a cite. I just need a cite and then we'll
13 resolve it.

14 MR. CZEREPAK: When he cites this, can I get
15 response to the cites?

16 THE COURT: You know what? You don't need to.
17 You already put your stuff in. I know what your position
18 is. Mr. Czerepak, I know your position.

19 MR. KRAFT: It's a very simple issue. We've been
20 telling them forever we've wanted to call the party. We've
21 placed them on notice. We'll get you case law.

22 THE COURT: Good. And I'm not going to sign
23 anything until it's been resolved.

24 MR. CZEREPAK: Until Thursday.

25 MR. KRAFT: Mr. Ferguson is not available
26 Thursday. He's available tomorrow at any time to meet with

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 anybody.

3 THE COURT: Okay. Mr. Gallagher, Ms. Halbardier,
4 Mr. Blakely, Mr. Ferguson is not available on Thursday. So
5 I'll put you guys off for another time.

6 But I want to see then Dana -- and is it Cutler
7 Hammer. Mr. Gunn, are you available tomorrow?

8 MR. GUNN: I'm sorry, your Honor. Somebody from
9 my office will be there with full authority. The carrier I
10 don't think is coming in, but they have whatever authority.

11 THE COURT: That's tomorrow. This is off the
12 record.

13 (Discussion held off the record.)

14 (Jurors enter courtroom.)

15 THE COURT: Good afternoon, everybody. You all
16 went outside? Guys, you have a lot of courage.

17 MR. KRAFT: We've marked during the break a
18 number of exhibits, Cleaver-Brooks 11 and 11A. And I
19 believe 11A has been admitted into evidence.

20 Excuse me, Tornetta, Tornetta 12, 13, 14, 16, 17,
21 18, 19, 20, 21, 22, and 23 and 24. We seek to introduce
22 all of those into evidence at this time.

23 MR. O'CONNELL: No objection, your Honor.

24 THE COURT: Very well. Tornetta 12 through 24 is
25 admitted.
26

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 BY MR. KRAFT:

3 Q Okay. I want to show you two of them, Mr. Tornetta,
4 and I apologize for having my back to you. I'm trying to speed .

5 this up.

6 This is a catalog or a pamphlet for a CB boiler that
7 includes 15 to 600-horsepower, right?

8 A Yes.

9 Q And you've seen this before, correct?

10 A Yes, I have.

11 Q Okay. It says "Cleaver-Brooks" down on the bottom
12 right? Down on the bottom, "Cleaver-Brooks."

13 A Yes.

14 Q I want to show you a page that I have marked. Would
15 you agree that under "CB design greatly simplifies
16 maintenance," it shows the doors, the front and the rear door,
17 right?

18 A Yes.

19 Q And I'm going to highlight a portion. And it says
20 "doors are sealed with preformed" -- "doors are sealed with
21 preformed asbestos gaskets," right?

22 A Yes.

23 Q Do you know the date of this document, sir?

24 A Not from here. Maybe there is a date on it. I'm not
25 sure.

26 Q (Handing.) There you are.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A (Perusing.) It looks like it may be December of 1960.

3 Q Okay. Next document I want to show you, you've seen
4 this before as well, right?

5 THE COURT: Which one is this?

6 MR. KRAFT: This is Tornetta 22.

7 A Yes, I have.

8 Q And this is another one for the CB model boilers?

9 A Yes.

10 Q Are you aware that this document also talks about the
11 doors being sealed with asbestos gaskets?

12 A I believe that I do remember seeing that in that one,
13 yes.

14 Q Okay. Do you know what year this document is from?

15 A Let me see if I can -- it looks like maybe August of
16 1960.

17 Q Okay. You've seen other derivations of catalogs like
18 this that both before and after 1960 discussed asbestos gaskets
19 being used on the doors of CB boilers, right?

20 A Yes.

21 Q I'm going to show you Tornetta 23. This is a boiler
22 operating manual for a monitor boiler, right?

23 A Yes.

24 Q That would also be in the line of fire tube boilers
25 that are cylindrical in shape, correct?

26 A Correct.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 THE COURT: And this is?

3 MR. KRAFT: Tornetta 23, your Honor.

4 THE COURT: Thank you.

5 Q And like in many of the catalogs there are parts
6 ordering instructions in the catalogs, right?

7 A Yes. That's the same manual or whatever you showed me
8 before I assume, right, yes.

9 Q And these manuals were drafted, designed, put out,
10 sent out by Cleaver-Brooks, right?

11 A Yes.

12 Q And these manuals include -- and this is
13 representative -- they all have chapters on service and
14 maintenance, right.

15 A Normally, they do, yes.

16 MR. KRAFT: I want to hand up Tornetta 24, if I
17 may, your Honor.

18 THE COURT: I'm sorry.

19 MR. KRAFT: Tornetta 24.

20 Q Can you tell the jury what I just handed you,
21 Mr. Tornetta?

22 A It appears to be a -- what I would refer to as a
23 tadpole gasket.

24 Q And can you tell the jury where the tadpole gasket
25 goes on that model that's in front of you?

26 A Oh, on the model. Given the size, the coil of this, I
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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 can't tell how big it is, but it's likely either the front or
3 rear door gasket where it seals between the door and the
4 pressure vessel.

5 Q Okay. There is a part number on that, right?

6 A Yes.

7 Q Do you recognize that to be a Cleaver-Brooks part
8 number, right?

9 A It appears to be, yes.

10 Q And that's a non-asbestos-containing gasket for the
11 doors of Cleaver-Brooks boilers, right?

12 A I don't know one way or the other what the material
13 is, but I'll assume so.

14 Q Okay. The part number 32-993, that's a new origin
15 part number, right? A relatively newer, i.e., late 1990s,
16 early 2000 part number?

17 A I'm not certain without looking up the drawing for
18 that.

19 Q Okay. The jury has heard about small gaskets, larger
20 gaskets. This gasket, it's hard to the touch, right?

21 A I'm sorry.

22 Q It's hard to the touch?

23 A It's flexible and the edges of it are flexible, yes.

24 Q And what you would do is you would take that and
25 stretch it out and you'd place it around the circumference of
26 the boiler door, right?
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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A Yes.

3 Q Usually after wetting it first, right?

4 A Wetting the gasket?

5 Q Yeah.

6 A No.

7 Q No. Okay. You would then cement it somehow to the
8 door?

9 A No. There are clips that hold it to the door.

10 Q Okay. That would then be in between the door portion
11 of the boiler and the actual steel of the boiler itself, right?

12 A Yes.

13 Q Okay. And then you'd close it, right?

14 A Yes.

15 Q And that would seal the boiler and prevent any leaks
16 from the boiler, right?

17 A Flue gas, yes.

18 Q And one of the ways you knew that flue gases were
19 leaking from the boiler is you would be able to see
20 discoloration of the front of the door of the boiler?

21 A The area around the flange. I'm not sure I'd call
22 that the front, but the area around the flange.

23 Q During the time period that Mr. McCloskey was working
24 on or around Cleaver-Brooks boilers, that tadpole gasket was an
25 asbestos-containing gasket, correct?

26 A In the boilers I looked at or the boiler I looked at

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft
2 that fit that, it's possible it was, yes.

3 Q Now, you keep saying "in the boiler that I looked at."
4 You were given a list of sites that Mr. McCloskey specifically
5 identified during this testimony, right?

6 A Yes.

7 Q And you actually brought the Chart A with you and you
8 made some notes. That's what we talked about, Tornetta 2,
9 earlier, right?

10 A Correct.

11 Q Okay. So what you did was you took all of the sites
12 that he listed, you went to your index card system, and you
13 attempted to find documents, right?

14 A Correct.

15 Q And in this case you were able to find -- I think my
16 numbering is off. What number are we on?

17 MS. ALVARADO: 25.

18 MR. KRAFT: Tornetta 25.

19 Q You were able to find records of Cleaver-Brooks
20 boilers at two of the sites where Mr. McCloskey worked, right?

21 A In relation to the time periods he testified or was on
22 the chart that he worked there, yes.

23 MR. KRAFT: I'm going to hand up to you what I
24 have marked as Tornetta 25. I'm going to seek to introduce
25 the entire set of documents into evidence at this time.

MR. O'CONNELL: No objection.

F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

THE COURT: Very well. It's Tornetta 25 in evidence.

Q Okay. So you took the sites that were listed by Mr. McCloskey, you went to your index, and you found two sites, right?

A Yes. Again, within those time periods.

Q Okay. Were there other sites that you found Cleaver-Brooks boilers at that were not within his time periods?

A Yes.

Q Did you bring those documents with you?

A No.

Q Did you produce those to your lawyer?

A No.

Q Okay. Do you know what other sites there were Cleaver-Brooks boilers at after Mr. McCloskey was there?

A That's the notes I put on the Chart A.

Q Okay. Fair enough.

Did you run different naming derivations of the sites that he was at?

A Yes.

Q Where did you get that information from?

A From the Chart A where it said "also known as" and things of that sort as well as his testimony.

Q Okay. Did anybody else provide you information to

F. Tornetta - by Plaintiff McCloskey - Direct/Kraft assist you in doing that?

A I was sent the sites from our corporate counsel, along with Chart A eventually.

Q Via email, right?

A Yes.

Q Do you have that email with you?

A No.

Q Okay. Two of the places you found boilers were at Shoreham, right?

A Yes.

Q And at Indian Point, correct?

A Correct.

Q Sitting here today, you have no idea one way or the other whether Mr. McCloskey even articulated exposure to boilers at those sites, right?

A Oh, I read his testimony. So I think I do have an idea.

Q He articulated exposure to the Cleaver-Brooks boilers at both of those sites?

A No, he did not.

Q But yet you provided records of which of your boilers were there, right?

24 A Correct.

25 Q You would agree that in both of the boilers that you
26 found -- and there were two, right?

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft

2 A Three total.

3 Q Three total. All three of them had
4 asbestos-containing components?

5 A Yes, I believe so.

6 Q All three of them had asbestos gaskets around the
7 doors?

8 A No.

9 Q Okay. If you look at the tabs on the side, I'll take
10 that from you. Are you sure all three of them didn't have
11 asbestos gaskets?

12 A The industrial water tubes don't have doors like we
13 were talking about. So, no.

14 Q Okay. So Mr. McCloskey couldn't have worked on
15 industrial water tubes. He never described working on a
16 Cleaver-Brooks boiler that didn't have a door, right?

17 A He described a cylindrical. So as we talked about
18 before, it's from the industrial water tube.

19 (Continued on following page.)

20

21

22

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft.

2 Q The industrial water-tube boiler had asbestos
3 components in it?

4 A Yes.

5 Q The two boilers that had doors that were cylindrical
6 both had asbestos gaskets around the doors, right?

7 A Yes. Actually it was only the one boiler. There's
8 only one fire-tube boiler. There are two boilers at Shoreham
9 and both are industrial water-tubes.

10 Q "Finished gasket to be made up of asbestos cloth
11 wrapped around asbestos rope to form radial, cemented tail and
12 then graphited cloth joint," right?

13 A Yes.

14 Q Union Asbestos & Rubber Company.

15 This is from Buchanan. Do you know what sites in
16 Buchanan, New York?

17 A That is the Indian Point.

18 Q Did that one have asbestos gaskets?

19 A Yes.

20 Q And the Indian Point boiler was which type of boiler?

21 A The fire-tube we talked about.

22 Q And even though Mr. McCloskey never talked about
23 working around boilers at those sites, you produced the record,
24 right?

25 MR. O'CONNELL: Objection, your Honor. Asked and
26 answered and argumentative.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft.

2 THE COURT: Sustained.

3 Q You're aware that he also indicated that he worked at
4 hundreds of other sites besides the ones that he could recall,
5 right?

6 A I don't specifically recall the term hundreds, but I
7 do remember him talking about sites that he couldn't recall,
8 yes.

9 Q I'd like to hand you his testimony.

10 MR. O'CONNELL: What page, please?

11 MR. KRAFT: I have a copy for you, Mr. O'Connell.
12 Here you go.

13 MR. O'CONNELL: Thank you.

14 Q You see on page 2522 of the transcript --

15 A Yes.

16 Q -- mr. McCloskey was asked to name all of the places
17 he worked, right?

18 A Yes.

19 Q Actually if you go to page 2521, the question was:

20 "Question: During the time that you worked out
21 of the union, do you recall any of the specific job
22 site that you worked at? When I'm asking for a
23 specific job site, I'm asking for an address or a
24 building name.

25 "Answer: Well, I started at 60 Broad Street in
26 Manhattan. There is over a hundred job sites."

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft.

2 Do you recall him testifying to that?

3 A Yes. As I said, I just didn't recall that off my
4 memory. I didn't memorize the whole thing.

5 Q Given the fact that he was only able to identify a
6 finite group of sites, you weren't able to search all of your
7 records to determine if Mr. McCloskey encountered other
8 Cleaver-Brooks boilers throughout his career, correct?

9 A Without a site, I wouldn't have anything to search
10 for.

11 Q Sir, one of the issues in this case is when
12 Cleaver-Brooks became aware of the hazards of asbestos. So I
13 want to ask you, can you tell this jury when Cleaver-Brooks as
14 a company became aware of the hazards of asbestos?

15 A Cleaver-Brooks itself -- I couldn't say "the company,"
16 When they became aware of it. Certainly employees of the
17 company would have become aware of it as they started to see it
18 in the general media.

19 Q I'm going to ask you personally, Mr. Tornetta, when

20 did you personally become aware that asbestos was hazardous?

21 A You know, I'm not sure I can narrow it down to a
22 certain year. I believe it was after I got out of school, out
23 of Williamson.

24 Q Do you recall being asked that question before and
25 giving the answer "late '80s, early '90s"?

26 A That's the time frame I would think of, yes.

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1 F. Tornetta - by Plaintiff McCloskey - Direct/Kraft.

2 Q Cleaver-Brooks was in operation in 1972 when the OSHA
3 regulations came out, right?

4 A Yes.

5 Q Did Cleaver-Brooks know at that time when OSHA came
6 out that asbestos, if inhaled, was hazardous potentially to
7 people's health?

8 MR. O'CONNELL: Objection, your Honor. Asked and
9 answered.

10 THE COURT: Overruled.

11 A I don't have anything telling that specifically, no.

12 Q Do you have anything telling you specifically they
13 didn't know?

14 A No.

15 Q When Cleaver-Brooks was founded in the 1930s, did
16 Cleaver-Brooks know in the 1930s that asbestos was hazardous?

17 A Again, I don't have anything specifically telling me
18 that, no.

19 Q Do you have anything specifically telling you, no,
20 they didn't know in the 1930s?

21 A No.

22 Q If I asked you the same questions for the '40s, '50s,
23 '60s, '70s and '80s, we can agree with each other that you
24 don't have information one way or the other, right?

25 A Correct.

26 Q Cleaver-Brooks was a member of the American Society of
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2 Mechanical Engineers -- let me rephrase that.

3 Cleaver-Brooks employees were members of the ASME,
4 American Society of Mechanic Engineers, correct?

5 A Some employees would have been, yes, or could have
6 been.

7 Q You could agree that a company can only obtain
8 knowledge through its employees, right?

9 MR. O'CONNELL: Objection.

10 MR. CZEREPAC: Objection.

11 THE COURT: Overruled.

12 A Yes. I don't know of any other way, but I'm thinking
13 right at this moment.

14 Q It's not a trick question. You agree with that,
15 right?

16 A I suppose so, yes.

17 Q This has already been in evidence through Dr. Rosner.

18 I'm now seeking to introduce the entire 1940 membership list of
19 the ASME in as Tornetta 26.

20 You've seen this before, right? And I think my
21 colleague, Mr. Blouin, showed this to you in July, right?

22 A Yes. I saw several of those. I'm not sure if it was
23 exactly that one but...

24 Q If you go to page 102. And Mr. Brooks, the district
25 manager of Cleaver-Brooks, was a member of the American Society
26 of Mechanical Engineers in the 1940s, right?

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2 A That's what it says, yes.

3 Q And it actually shows he joined in 1936, right?

4 A That's the way it looks, yes.

5 Q And another individual, a Mr. Resek, chief engineer at
6 Cleaver-Brooks, was also a member and he had joined in 1937,
7 right?

8 A That's what it says, yes.

9 Q Are you aware that the ASME put out a publication
10 entitled Mechanical Engineering?

11 A Entitled -- I'm sorry. What was it?

12 Q Mechanical Engineering.

13 A I'm not certain I'm completely aware of that, but I
14 assume so, yes.

15 Q Did you do anything to investigate what Cleaver-Brooks
16 would have known as a result of their employees being a member
17 of the ASME in the 1930s?

18 A Other than discussing with Mr. Provance, no.

19 Q You're aware that the ASME published articles about
20 the hazards of asbestos in the mid-1930s, are you not?

21 A Other than from previous testimony, no, I'm not.

22 Q But in previous testimony you've been shown that the
23 American Society of Mechanical Engineers published articles in
24 the 1930s talking about the hazards of asbestos, right?

25 A I've been shown pieces of those articles, I believe,
26 yes.

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2 Q By the way, you know, I've actually been to Milwaukee
3 so I know the answer to this question. But there are libraries
4 in Milwaukee just as there are libraries here in New York,
5 correct?

6 MR. CZEREPACK: Objection to form.

7 A Yes.

8 Q Did anybody from Cleaver-Brooks ever walk into the
9 library in Milwaukee, go to the shelves and investigate what
10 was known or knowable about the hazards of asbestos?

11 MR. O'CONNELL: Objection, your Honor.

12 THE COURT: If you know.

13 A I'm not aware of that, no.

14 MR. KRAFT: Tornetta 27 in evidence, I'd ask that
15 the book Heating, Ventilating and Air Conditioning from

1959 be deemed Tornetta 27-A and I have excerpts from that I'd ask to be entered into evidence as Tornetta 27.

MR. O'CONNELL: As long as the whole book goes in.

MR. KRAFT: The whole book is coming in.

Q You've seen this before?

THE COURT: I'm sorry?

MR. O'CONNELL: As long as the whole book goes in, no objection.

THE COURT: Yes.

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(Plaintiffs' Exhibit 27A marked and received into evidence.)

MR. KRAFT: Tornetta 28 is going to be the entire book from 1951.

MR. O'CONNELL: As long as the whole book is in, fine.

MR. KRAFT: No problem.

(Plaintiffs' Exhibit 28 marked and received into evidence.)

MR. KRAFT: And excerpts as Tornetta 28-A.

(Plaintiffs' Exhibit 28-A marked and received into evidence.)

BY MR. KRAFT:

Q You're aware that in 1951 and '59, Cleaver-Brooks advertised in this publication, Heating, Ventilating and Air Conditioning, right?

A I believe I've been shown that before, yes.

Q And you're aware that members of Cleaver-Brooks were members of this organization, correct?

A Of --

Q Heating, Ventilating and Air Conditioning, the American Society of Heating, Ventilating and Air Conditioning Engineers, ASHRAE?

A Members of -- I guess I wasn't aware there was a membership for that association. Certainly we've been involved

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in it.

Q You're aware that in those two years, '51 and '59, and throughout the '50s, there were articles that talked about the threshold limit value for asbestos being five million particles per cubic foot?

A I can't say I'm aware of those specifics of it, but I believe I've been shown parts of those articles in the past.

Q So you would agree that if Cleaver-Brooks is advertising in a document that's discussing the threshold limit values, that was at least accessible to Cleaver-Brooks in the 1950s, right?

A I guess it means -- it depends on what you mean by

14 accessible. Certainly the book --

15 Q Able to be gotten.

16 A The book was there.

17 Q What did Cleaver-Brooks do in the 1950s to determine
18 whether work on their boilers -- let's talk about doors --
19 whether work on their boilers, opening the doors, removing the
20 gaskets, caused dust to be greater than the threshold limit
21 value? Did Cleaver-Brooks do anything to investigate that?

22 MR. O'CONNELL: Objection, your Honor. This has
23 been asked and answered before lunch.

24 THE COURT: Overruled.

25 A I'm not aware of anything, no.

26 Q Cleaver-Brooks had a manufacturing facility in

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2 Lebanon, Pennsylvania in 1956; is that correct?

3 A Yes, around that time.

4 Q Are you aware that the State of Pennsylvania in 1939
5 set forth an Occupational Disease Act which made the disease
6 asbestosis compensable?

7 MR. O'CONNELL: Objection, your Honor.

8 This gets back to he's not an expert witness,
9 he's not a lawyer. He's a fact witness.

10 THE COURT: Sustained.

11 MR. KRAFT: Well, Judge, I ask the Court to take
12 judicial notice of the 1939 Occupational Disease Act from
13 the State of Pennsylvania and its derivation, the amendment
14 in 1956.

15 MR. O'CONNELL: Same objection that we had with
16 another witness about this.

17 MR. KRAFT: Can I approach briefly, Judge?

18 THE COURT: Yes.

19 (Sidebar held off the record.)

20 Q You would agree that a company like Cleaver-Brooks
21 would stay abreast of the statute and regulations that apply to
22 it in the locations they had a manufacturing facility, right?

23 MR. O'CONNELL: Objection, your Honor.

24 Again, it seeks a legal conclusion, legal
25 interpretation.

26 THE COURT: Try to keep away from that.

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2 Q There were people at Cleaver-Brooks who were in charge
3 of maintaining the fact that Cleaver-Brooks was in compliance
4 with regulations, right?

5 MR. O'CONNELL: Same objection.

6 THE COURT: Overruled.

7 A I'm sure we had people that looked at whether we
8 followed the laws of wherever we were.

9 Q And in order to follow the laws of wherever you were,
10 you would have to be aware of what those laws were, right?

11 MR. O'CONNELL: Objection.

THE COURT: Overruled.

A If they applied to us, yes. I suppose you would.

Q So if the State of Pennsylvania had a law on the books that made the disease asbestosis compensable, then arguably Cleaver-Brooks would have known of a disease called asbestosis, right?

A I'm not sure I could say what somebody would have known back in 1946.

Q I'm asking what Cleaver-Brooks would have known.

A I don't know.

Q Tell this jury what, if anything, Cleaver-Brooks did to stay abreast of the medical and scientific literature as it pertained to asbestos and asbestos-related disease. What did Cleaver-Brooks do?

MR. O'CONNELL: Objection, your Honor.

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THE COURT: Overruled.

A I'm not aware of anything we did in relation to that.

MR. KRAFT: May I have one moment, your Honor?

THE COURT: Yes.

(Short pause.)

MR. KRAFT: Mr. Tornetta, I want to thank you for your time.

I don't have any further questions at this time, your Honor.

THE WITNESS: Thank you.

MR. O'CONNELL: I don't want to keep anybody from going home in this blizzard. So no questions, your Honor.

THE COURT: No questions?

MR. BLAKELY: No questions.

MR. CZEREPAK: No questions.

THE COURT: No questions from anybody.

Thank you. You're excused.

(Witness excused.)

THE COURT: I will see counsel at sidebar.

(Sidebar held off the record.)

THE COURT: I have good news and I have good news. We're stopping for today. We're not working tomorrow anyway. I'll see you Thursday morning at 10 a.m., absent any weather issues, but if you don't hear from anybody, from Mr. Kasper, from Officer Alago or from me,

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we'll see you at 10 a.m. Don't discuss the case.

COURT OFFICER: All rise, jury exiting.

(The jury exited the courtroom and the following occurred:)

(Whereupon, the proceedings were adjourned to January 23, 2014, at 10 o'clock a.m.)

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