

State of South Carolina ) In The Court of Common Pleas  
 ) Sixteenth Judicial Circuit  
County of York ) 2015-CP-46-3456

Timothy W. Howe, as Personal )  
Representative of the Estate )  
of Wayne Ervin Howe, deceased, )  
and Jeanette Howe, surviving )  
spouse, )

Plaintiffs, )

vs. )

Air & Liquid Systems )  
Corporation, et al., )

Defendants. )

Transcript of Record

January 24, 2018  
Columbia, South Carolina

B E F O R E:

The Honorable Jean Hoefer Toal, Judge

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

Jessica M. Dean Esquire  
Jonathan M. Holder, Esquire  
Theile B. McVey, Esquire

William P. Early, Esquire  
Thomas M. Kennaday, Esquire  
Moffatt G. McDonald, Esquire  
Yancey A. McLeod, Jr., Esquire  
Robert O. Meriwether, Esquire  
G. Mark Phillips, Esquire  
T. David Rheney, Esquire  
Andrew S. Rogers, Esquire  
Kurt M. Rozelsky, Esquire  
Jennifer M. Techman, Esquire  
Joseph E. Thoensen, Esquire  
Daniel B. White, Esquire

Elizabeth B. Harris, CVR-M-CM  
Circuit Court Reporter

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NO EXHIBITS INTRODUCED.

1           THE COURT: All right, ladies and gentlemen, we have a  
2 whole lot going on here today, and I'm going to tell you  
3 what I think we've got going on, and then you all let me  
4 know before we get started how you want to proceed.

5           I have got a notebook from Kassel McVey that outlines  
6 the various motions in their various cases that have been  
7 requested to be heard, and those cases are *Howe, Smith,*  
8 *Sizemore,* and *Glenn* and of course *Smith* involves Roxanne  
9 Falls, who's the PR for Smith. In addition to that, I see  
10 lawyers with plenty of other cases on the docket, and if  
11 there other matters that need to be attended to,  
12 particularly those that involve our *Stewart* case -- you're  
13 shaking your head no, Mr. Early.

14           MR. EARLY: Your Honor, Will Early for the defendant  
15 in *Stewart*. We don't have anything before the court right  
16 now. I told you on the phone last week if we do, I'd bring  
17 it to your attention, but we don't have anything right now.

18           THE COURT: Good. Good. Well, I've been up there  
19 yesterday. Spent a good deal of time up in York checking  
20 on all the arrangements, and they are ready for us. That  
21 commercial company that makes money filming these asbestos  
22 cases will again be filming this one, and I think I've got  
23 -- they are peaceful with it if I am and, you know, the  
24 usual things. Don't take pictures of the jury, and cut it  
25 off when we're doing something that's off the record, but I

1 think they are all in place.

2 MR. EARLY: Okay.

3 THE COURT: They have done something about the  
4 acoustics at York. We'll just have to find out whether  
5 it's enough, but even to somebody as deaf as I am, it  
6 sounded a lot better when we tested it out. So, that's  
7 what I know about York.

8 Now, are there other things, Mr. Meriwether, besides  
9 the cases I have listed that we are going to be covering  
10 this morning by way of motions and other things?

11 MR. MERIWETHER: Your Honor, from my -- well, my name  
12 is Meriwether. From my client's perspective, I think that  
13 you've covered the cases that we have.

14 THE COURT: Well, let's just march down those, then,  
15 *Howe, Smith, Falls* by whatever name now known, *Sizemore,*  
16 and *Glenn*, and we will try to arrange these in such a way  
17 that our court reporter, Ms. Harris, understands which case  
18 we're on, and so, Madame Court Reporter, we are going to  
19 begin with motions relative to the *Howe* case. This is *Howe*  
20 *as PR against Air Liquid* and many others. It's  
21 2015-CP-46-3456. It's a York County case currently,  
22 tentatively scheduled for March.

23 Am I right, Ms. McVey?

24 MS. McVEY: Yes, ma'am.

25 THE COURT: And we'll start with you. There are

1 plenty of things that have been filed with me, but we'll  
2 start with matters upon which you are the moving party.

3 MS. McVEY: Thank you, Your Honor. Just briefly,  
4 Theile McVey for the plaintiff in this trial block in  
5 March. With me is Jessica Dean.

6 THE COURT: Ms. Dean, nice to have you with us.

7 MS. McVEY: And Mr. Holder, Jonathan Holder.

8 THE COURT: Mr. Holder, nice to have you with us.

9 MR. HOLDER: Thank you, Your Honor.

10 MS. McVEY: Your Honor, just as a preliminary matter,  
11 I wanted to start with Bowater documents. Both in the  
12 *Howe, Smith, and Sizemore* cases, Bowater, they worked at  
13 the Bowater premises. Bowater has produced to us  
14 defendants documents under a confidentiality provision.  
15 Other defendants have asked us for those documents, and we  
16 think they are discoverable and they ought to be produced.  
17 So, I would like the court to order me to produce the  
18 Bowater documents to everyone for litigation purposes so  
19 that we can -- I don't want to foul up a confidentiality  
20 provision.

21 MR. PHILLIPS: I'll join in the motion.

22 MR. EARLY: Your Honor, Will early.

23 THE COURT: Now wait a minute, Mr. Phillips, you know  
24 the rules. You get up, the first thing you say ---

25 MR. PHILLIPS: Please excuse me, Your Honor.

1 THE COURT: --- is Mark Phillips.

2 MR. PHILLIPS: Mark Phillips.

3 THE COURT: Bowater. Bowater.

4 MR. PHILLIPS: Yeah, for Bowater.

5 THE COURT: Right.

6 MR. PHILLIPS: Precisely. Mark Phillips, *Howe* case.

7 UNIDENTIFIED MAN: You don't represent ---

8 SECOND UNIDENTIFIED MAN: No, you don't represent  
9 Bowater.

10 MR. PHILLIPS: I've got a party defendant, Your Honor,  
11 never mind. I'd like to get those documents, though.

12 THE COURT: Now, Mr. Early, are you for Bowater?

13 MR. EARLY: I am not, Your Honor, but I am a signatory  
14 to the confidentiality order that Theile just brought up.  
15 I would like the court to order likewise.

16 THE COURT: And I see someone standing in the  
17 audience. Yes, sir. Say your name.

18 MR. KENNADAY: Tom Kennaday.

19 THE COURT: Say your name, of course.

20 MR. KENNADAY: Tom Kennaday for Resolute or Primex,  
21 formerly known as Bowater.

22 THE COURT: Very good. What's your position?

23 MR. KENNADAY: Our -- my position is a little bit  
24 complicated because my national counsel's father-in-law  
25 passed away and he's making arrangements, and I haven't

1     been able to talk to him. There's some confusion about  
2     what we're waiving and what we're not. There are ---

3           THE COURT: Well, why don't you do this, Mr. Kennaday?  
4     This obviously is going to have a little substance to it.  
5     Come on down here to the counsel table so that we can  
6     easily pick up what you say.

7           MR. KENNADAY: Certainly.

8           THE COURT: For our court reporter.

9           MR. KENNADAY: So, Your Honor, we produced documents  
10    in response to a subpoena from Mr. Early's firm, and  
11    there's a confidentiality order entered. We then produced  
12    many more documents and withheld a few, and under that same  
13    confidentiality order, although we've waived some them, and  
14    I, I think we may be waiving a good bit more, but I said I  
15    can't get in touch with my national counsel on that. A  
16    little bit of confusion on that. A day or two and I could  
17    have that cleared up.

18           Plus, there are some documents that we haven't  
19    produced because there are pictures of a paper machine and  
20    blueprints of a paper machine that are still commercially  
21    sensitive trade secret documents. I don't think there's a  
22    dispute over that, and that's not what they're trying to  
23    produce now because they don't have them.

24           And then there's a set of documents, and I'd like  
25    everybody, if they have received these documents already,

1 take note of this. We produced a workers' comp file that  
2 we later realized the judge had sealed and I've got the  
3 numbers for. That's labeled RFP00369 to 000423 -- well,  
4 actually to 430, all the way to 430. So, if those -- if  
5 anybody's got those, please destroy them, delete them.

6 I'm afraid I can't consent to your order today, Your  
7 Honor, to, to produce all the documents.

8 THE COURT: All right.

9 MR. KENNADAY: But they don't have any of the trade  
10 secret documents, so I'm not worried about those.

11 THE COURT: All right. So, what we've got is a group  
12 of documents that are trade secrets, but they've been  
13 produced for plaintiff, and now plaintiff wants to order  
14 that those documents be produced to other defendants who  
15 want them, right?

16 MR. KENNADAY: No.

17 THE COURT: All right.

18 MR. KENNADAY: The ones that are trade secret have not  
19 been produced.

20 THE COURT: All right, you have not produced trade  
21 secrets, machine blueprints, and you have produced a comp  
22 file but you wish you hadn't.

23 MR. KENNADAY: One of those, yeah. We produced  
24 several comp files, one of them we wish we hadn't.

25 THE COURT: All right.



1 MR. KENNADAY: And then other documents are just  
2 business confidential. We may be waive -- we've waived  
3 some of that. We may be waiving all of it. I'm not sure  
4 because I can't get in touch with my national counsel, and  
5 this just came up Saturday.

6 THE COURT: All right, let me turn back to -- you stay  
7 right where you are, and let me turn back to Ms. McVey and  
8 see what you've got to say about it.

9 MS. McVEY: Your Honor, we don't have the documents  
10 they've labeled as trade secrets. We would like to the  
11 ability to assess those documents, and I think we can work  
12 that out between us.

13 The other documents I would argue, and I think  
14 everyone would agree, are not trade secret documents and  
15 that they should be produced. The issue is this is time  
16 sensitive obviously since we're all getting ready for  
17 trial, and these defendants, part of their motions against  
18 us are that they want these documents, and so I want them  
19 to have them. I think they are discoverable, and I think  
20 if you order us to do that, it would be reasonable.

21 MR. KENNADAY: Your Honor.

22 MS. McVEY: To keep things moving.

23 THE COURT: Well, let me -- hold for a minute, Mr.  
24 Kennaday.

25 With regard to the business confidential documents, I

1 understand what you're saying. You want all those orders  
2 to be disclosed. They were disclosed to you, but while we  
3 are here, the trade secret documents you haven't seen and  
4 you don't know exactly what they are, but you'd like a  
5 chance to examine them.

6 I've got to tell you that the second and third  
7 category of things, machine blueprints and the comp file,  
8 is discoverable in my view. The comp file, I presume, is  
9 of the injured worker or deceased worked. Am I right?

10 MR. KENNADAY: The comp file issue is that Judge  
11 Childs, when she was the ---

12 THE COURT: I get that.

13 MR. KENNADAY: --- trial -- she ordered that it can't  
14 be used by anybody for any purpose and that we're not  
15 supposed to disclose it.

16 THE COURT: I get that. She was operating as a  
17 circuit court judge, and of course I have to look at this  
18 thing now as a circuit court judge in a different set of  
19 circumstances and decide. She obviously used it and then  
20 sealed it.

21 MR. KENNADAY: And I don't think they're disputing  
22 that those should be filed back.

23 MR. HOLDER: Wait, are you talking about Wayne Howe's?

24 MR. KENNADAY: No, I'm talking about the English.

25 There was one of the files ---

1 MR. HOLDER: Right, but not, not this case.

2 MS. McVEY: We don't -- it's not ---

3 THE COURT: It's not *Howe*. Okay.

4 MR. KENNADAY: It's not *Howe*.

5 THE COURT: Well, let's strike that from consideration  
6 and give it back to them. All right, then we've got  
7 machine blueprints. I can't -- is this the machine that  
8 allegedly injured the worker?

9 MR. KENNADAY: No.

10 THE COURT: They're going to get the ---

11 MR. KENNADAY: No, it's not. It's a paper machine.

12 THE COURT: Well, it's a paper machine used in  
13 Bowater, the plant he was in, and it at least allegedly  
14 contributes to having those big felt things that put out  
15 dust, and they allege causing them to get mesothelioma.

16 MR. KENNADAY: Your Honor, again, I don't think we  
17 have a dispute over this. There's no motion to compel us  
18 to produce them. The only thing they're talking about is  
19 an order on the other documents.

20 THE COURT: How about it, Ms. McVey?

21 MS. McVEY: Well, I would like to look at those.

22 MR. KENNADAY: And we don't have a problem with that.

23 THE COURT: All right. Well, then here's what we do.  
24 Ms. McVey, prepare an order that says as follows. First of  
25 all, that all the business confidential documents, you're

1 going to be ordered to produce to defendants under whatever  
2 kind of protective arrangement Mr. Kennaday's general  
3 counsel wants to have in regard to that. Number two, with  
4 respect to trade secrets and machine blueprints, you are  
5 going to be allowed to look at those and then bring to the  
6 court such issues as you and Mr. Kennaday cannot resolve  
7 about those.

8 Prepare an order like that. Send it to Mr. Kennaday.  
9 Then when his general counsel is available, which I hope  
10 would be in the next couple of days since we are kind of  
11 time sensitive on *Howe*, you all put your heads together and  
12 see if you can agree upon something and send it to me, and  
13 I'll sign it.

14 MR. KENNADAY: Thank you, Your Honor.

15 THE COURT: Is that fair enough?

16 MR. KENNADAY: That's fine, Your Honor. Thank you  
17 very much.

18 THE COURT: Okay. Very good.

19 MS. McVEY: Thank you, Your Honor.

20 THE COURT: All right, that's the first thing, which  
21 is the Bowater's documents. All right, so we've got that  
22 dealt with. I'm just going to say order drafted by  
23 McVey/Kennaday because the rest of counsel don't really  
24 care as long as they get the ones they want.

25 MR. PHILLIPS: Your Honor, excuse me. Mark Phillips

1 in this case for Buffalo Pumps. We are interested in these  
2 documents. I know a lot of the motions -- the discovery  
3 motion was literally filed a day or two ago. The one you  
4 just dictated, the order you actually said produce to the  
5 defendants, which is fine for me, we'd like to get them,  
6 and it would be a heck of a lot easier to get them now than  
7 to have to request between now and trial and then ---

8 MS. McVEY: I think she said you're getting them.

9 THE COURT: I, I ---

10 MR. PHILLIPS: That's good. That's good.

11 THE COURT: My order is going to give you those  
12 documents. I'm just going ---

13 MR. PHILLIPS: That's good. I just want to make sure  
14 it's clear.

15 THE COURT: I'm just going to have Kennaday and McVey  
16 consult ---

17 MR. PHILLIPS: Your Honor, that's good.

18 THE COURT: --- because they are the main people that  
19 need to give me input on this thing, particularly since Mr.  
20 Kennaday is the source of the documents, but yeah, it's  
21 going to be an order that produces them to all the  
22 defendants.

23 MR. PHILLIPS: Good. Thank you.

24 THE COURT: Very good. So, we got that.

25 MS. McVEY: Fabulous.

1 THE COURT: Number two.

2 MS. McVEY: Number two is -- I'm going to let Ms. Dean  
3 address the motion to compel for the plaintiffs.

4 THE COURT: Yes.

5 MS. McVEY: Which will also overlap with some of the  
6 defendants' motions for protective order, and I'll let Ms.  
7 Dean and Mr. Holder explain, but we have been able to  
8 resolve a number of these. So with that, I will let Ms.  
9 Dean address the court.

10 THE COURT: Very good. Ms. Dean.

11 MS. DEAN: Good morning. Jessica Dean for the Howe  
12 family. We have a notebook where we have each of our  
13 motions, and I've also just X'd out the ones we've  
14 resolved. Is that helpful to hand to the court?

15 THE COURT: Well, yeah. I've got the notebook. I've  
16 added a lot of stuff to it because defendants have sent me  
17 a lot of stuff, but you tell me what you think is resolved.

18 MS. DEAN: That may be easier if you already have  
19 identical, but for the *Howe* motion, if we just want to  
20 limit it to that for now, we have been able to work out a  
21 resolution with Asten Johnson.

22 THE COURT: What now?

23 MS. DEAN: If you look to number two in our *Howe*  
24 motion to compel, one of the ---

25 THE COURT: Wait a minute. They're not numbered that

1 way. What you did was to give me a tab that has 1 is all  
2 the *Howe* stuff, 2 is Roxanne Falls against CBS. I thought  
3 the notebook I got was a little slim, but maybe you have  
4 another one that I don't have.

5 MS. DEAN: It should be slim, a group of tab 1 with  
6 *Howe*.

7 THE COURT: Yeah, and what is it entitled?

8 MS. DEAN: And page 3 of that, number 2 we list out  
9 what we are seeking from individual parties.

10 THE COURT: Ms. Dean, I haven't got that. Bring,  
11 bring what you're talking about and show it to me.

12 MS. DEAN: Okay. Sorry. This is the *Howe*.

13 THE COURT: Oh, okay. Wait a minute. I have got it.  
14 All right.

15 MS. DEAN: And on the third page of that, we can, we  
16 list out ---

17 THE COURT: Oh, okay. Very good.

18 MS. DEAN: And in number 1 at the last line of that,  
19 which is at the top of page 3, we can cross out SPX.

20 THE COURT: All right.

21 MS. DEAN: For number 2 we can cross out Asten  
22 Johnson, which is ---

23 THE COURT: All right.

24 MS. DEAN: And then add SPX. They kind of went to a  
25 different group.

1 THE COURT: SPX?

2 MS. DEAN: Yes, ma'am. Yes, Your Honor.

3 THE COURT: All right.

4 MS. DEAN: And then that's the only changes.

5 THE COURT: Okay. Very good. You may proceed.

6 MS. DEAN: Is it better here or back here?

7 THE COURT: However it suits you and however it suits  
8 Ms. Harris.

9 Is it better for her to be there?

10 COURT REPORTER: There.

11 THE COURT: Very good.

12 MR. MERIWETHER: Your Honor, Robert Meriwether. Did,  
13 did, did I just hear that SPX was resolved or wasn't?

14 MS. DEAN: It was ---

15 THE COURT: It goes to a different category. If you  
16 will look at plaintiff's motion to compel defendant, and if  
17 you will look at page 3 of that document.

18 MR. MERIWETHER: I'm with you, Your Honor.

19 THE COURT: All right, page, the first item:

20 Plaintiffs do not have complete responses.

21 Broadly, these companies fall in three

22 categories. Category number one is defendants  
23 who have provided deposition date but have not  
24 provided responsive documents.

25 They X SPX out of that. Apparently SPX has provided



1 the documents. Then in number 2:

2 Defendants who have provided responsive documents  
3 but have not provided deposition date.

4 They X'd out Asten Johnson and they added SPX to that.  
5 So, that's what happened with SPX.

6 MR. MERIWETHER: Thank you, Your Honor.

7 THE COURT: Now before Ms. Dean commences, how about  
8 some of you husky, younger lawyers in here get that podium  
9 for Ms. Dean and bring it up here to the ---

10 MR. EARLY: I'll get it, Judge. I'm a husky, young  
11 lawyer. I'm not a young lawyer. I'm a husky lawyer.

12 (A PAUSE.)

13 THE COURT: There we go. Now we're cooking. All  
14 right, Ms. Dean. Yes, ma'am.

15 MS. DEAN: So again this is Jessica Dean. First just  
16 to explain kind of the structure of our motion is we had  
17 certain defendants that provided us a deposition date but  
18 have not provided us the documents. And sometimes they  
19 promise they or they provided us some, but at the end of  
20 the day, a good chunk of documents that we have asked for  
21 timely, the time that they are supposed to be produced has  
22 come and passed, and we don't have them. So, where we have  
23 a deposition but no documents are the first group.

24 In the second group, we have been produced documents.  
25 We believe that we have all responsive documents. I kind

1 of put that kind of limitation in there because some of  
2 them were produced yesterday; some of them were produced  
3 four days ago. We are basing it on representations. If  
4 there's problems down the road, I just am alerting the  
5 court we haven't been able to verify. But for what we care  
6 about today is that we asked for a deposition. It was  
7 properly noticed under the rules. They didn't give us a  
8 date.

9 And then the third category is where we're lacking  
10 both and for different defendants, there are wildly  
11 different reasons. Some defendants have genuinely ignored  
12 us for two months and just not provided us the dates we  
13 need until this hearing got set. The power of just having  
14 this hearing has caused a lot of work to be done in the  
15 last five days, I mean, and even some resolutions. So, I  
16 don't want to minimize that almost, I think, everyone in  
17 this room has really worked with us in the last week. But  
18 we did have for many defendants a lot of silence for a long  
19 time despite clear rules that you have thirty days and you  
20 need to do this, and despite clear communication from Mr.  
21 Holder while we unilaterally noticed these -- and in one  
22 case we accidentally did it on a Sunday -- we are willing  
23 to change the date, the location, the time. We're willing  
24 to consolidate them if that helps them in cases where there  
25 are multiple things. We just need you to get your clients

1 to talk to us.

2 And so the good news is that I think the breadth of  
3 the problems with the vast majority of these have reduced,  
4 but we're still in a position where a huge amount of  
5 information that was sought overwhelmingly back in November  
6 -- they were noticed in November. We needed to get it  
7 before Christmas in December. Still hasn't been provided.

8 THE COURT: Okay. Well, now in your categories, then,  
9 category one is provided the deposition dates but no  
10 documents, and that is Aurora and Yuba?

11 MS. DEAN: Yes.

12 THE COURT: All right. Well, let's stop you right  
13 there and find out from Aurora and Yuba.

14 MS. DEAN: Okay.

15 THE COURT: Mr. Meriwether.

16 MR. MERIWETHER: Yes, Your Honor, Robert Meriwether on  
17 behalf of Aurora and Yuba.

18 THE COURT: All right, what's going on?

19 MR. MERIWETHER: The -- Aurora, of course, is a  
20 long-standing defendant in this litigation and Ms. Dean  
21 and, and all the folks on the plaintiffs' side of the bar  
22 are thoroughly familiar ---

23 THE COURT: All I need to know now is why there are no  
24 documents.

25 MR. MERIWETHER: Well, Your Honor, Aurora has never

1 had the ability to search for documents by anything other  
2 than serial number. The other way we can find out -- we  
3 can either give you the keys to the warehouse, but, I mean,  
4 it's a bunch of microfilm or something like that, but I, I  
5 won't swear to that, but it's, it's all kept by serial  
6 number, by pump serial number.

7 THE COURT: That's not acceptable. They're going to  
8 have to find out some way to decipher that. We're not just  
9 going to make them go to a big warehouse with numbers and  
10 have to look at it, Mr. Meriwether. They're going to have  
11 to make some better response than that.

12 MR. MERIWETHER: Well, I understand that, Your Honor.  
13 The -- we -- this has been the fact of the matter for  
14 Aurora for a long time.

15 THE COURT: Well, in this court it's not going to do,  
16 and the sanctions will be severe if they don't get these  
17 documents to us.

18 MR. MERIWETHER: Well, we'll, we will -- I will  
19 certainly let them know that ---

20 THE COURT: It's not your fault; I'm not fussing with  
21 you.

22 MR. MERIWETHER: I understand. I understand.

23 THE COURT: But deliberately having a system that  
24 makes it impossible to access anything you've stored is not  
25 going to cut it with me.

1           MR. MERIWETHER: Well, I understand that, Your Honor,  
2 but I want to be careful about the deliberate part because  
3 this is, this is the way that this company has kept  
4 records, you know, fifty years.

5           THE COURT: Well, they officially have some ability to  
6 decode it if they need documents. So, they are going to  
7 have to decode it to give the documents in a lawsuit that's  
8 been legitimately filed in which they have been a party  
9 forever. They're going to have to -- they know about this  
10 problem. They've been knowing about this problem. I'm  
11 sure as thorough as you and your staff are you have advised  
12 them from the beginning that these requests were made.  
13 They're going to have to do something about this, and we  
14 can talk here for a minute about what kind of timeframe  
15 we're talking about. But that's just not going to cut it.

16           MR. MERIWETHER: Well, Your Honor, I think that as far  
17 as timeframe goes, I think Ms. Dean may be mistaken about  
18 the deposition. They, they said that ---

19           THE COURT: You mean they haven't agreed to deposition  
20 dates either?

21           MR. MERIWETHER: No. We've got deposition dates. I  
22 was thinking she was saying we had.

23           THE COURT: No. She says you're in the category, the  
24 first category. You've set deposition dates, but she's  
25 received no documents. That, that really is beyond any

1 kind of understanding.

2 MR. MERIWETHER: Well, that, that -- believe me. We  
3 will have a telephone conference this afternoon with  
4 Aurora.

5 THE COURT: Okay. Well, the case is scheduled for  
6 March. When is this deposition scheduled?

7 MR. MERIWETHER: February the 8th, I believe.

8 THE COURT: All right, and today is January the 24th.

9 (A PAUSE.)

10 THE COURT: You tell them that these documents are  
11 going to have to be produced by January 29th, which is next  
12 Monday, and if not, sanctions will be forthcoming. I will  
13 of course have a hearing on those, but I have to tell you  
14 that there's certainly a precedent for striking pleadings  
15 when no documents are produced and when the production  
16 request is of a long-standing and the trial date and the  
17 depositions are set. And that's not your fault at all.

18 MR. MERIWETHER: I understand, Your Honor.

19 THE COURT: But they've got to get with the program.  
20 They can't just say what you just said, and it's the only  
21 thing they've given you to say. So, it's again not your  
22 fault at all, Mr. Meriwether, and I'm not trying to be  
23 harsh, but they've got to produce some documents.

24 MR. MERIWETHER: I believe that we will have an  
25 interesting chat this afternoon.

1           THE COURT: Very good. Get me an order, Ms. Dean.  
2 Just make notes now as we go along because there are going  
3 to have to be separate orders on these issues because they  
4 will go to different parties and folks, but this would be  
5 an order directed to Aurora. All documents requested must  
6 be produced by January the 29th.

7           MS. DEAN: Yes, Your Honor.

8           THE COURT: All right.

9           MR. MERIWETHER: Yuba, I think, was the next one that  
10 I needed to speak to.

11          THE COURT: Yes.

12          MR. MERIWETHER: Yuba is, Yuba is in an interesting  
13 position in this lawsuit. Yuba was not a party to this  
14 lawsuit when Mr. Howe was deposed. I know his deposition  
15 never finished, and it was incomplete when he passed away  
16 untimely, but Yuba was not a defendant. The only  
17 deposition which -- of a fact witness that Yuba was in the  
18 case for was Gilbert Small, I believe, the coworker at  
19 Bowater.

20           Yuba did an asset transfer where they, they  
21 essentially sold their company but they kept the  
22 liabilities, and so all the documents went with them. They  
23 have -- they've got to go to somebody else to ask them to  
24 search their own documents and say please as a favor, we  
25 need you to look for the stuff. They've done that.

1 I told them when we got the request that if they could  
2 get the purchaser of the company to go and look for  
3 records, they needed to focus on Bowater because it's the  
4 only site that we've had a coworker in.

5 THE COURT: That makes sense.

6 MR. MERIWETHER: And so they did. They got in touch.  
7 Bless their hearts, the, the people that we sold the  
8 company to did do the work of looking through it all, and  
9 they let me know last night and I let Ms. Dean know this  
10 morning that there are no new ---

11 THE COURT: There are no new Bowater documents?

12 MR. MERIWETHER: Exactly. There's nothing -- we, we  
13 searched for Bowater, for paper mill, for Catawba, for Rock  
14 Hill, for whatever the Resolute FPUS name that they are  
15 now, we searched all those critters and we got nothing.  
16 So, we would -- right now it would be most helpful if we,  
17 we could get a dismissal because we're not at Bowater, and  
18 I feel it would be -- it's somewhat onerous to have to put  
19 up a corporate rep. We'll, we'll do it if we have to, but  
20 if we can get an affidavit that just says, you know, we've  
21 had these searches run and we're not there.

22 THE COURT: Okay. All right. Here's what we need to  
23 do there.

24 MS. DEAN: If I may just explain two things quickly?

25 THE COURT: Yes, ma'am.



1 MS. DEAN: I'm sorry to interrupt.

2 THE COURT: No, ma'am. That's all right.

3 MS. DEAN: The first is that the implications of the  
4 lack of records means very different things for very  
5 different companies. Durco testified -- Duriron, a  
6 defendant I know well -- that they have incredibly complete  
7 records and if they're not there, that means we don't  
8 believe it happened. Yuba has not made that clear at all.

9 One of the things our document request asked for is  
10 their document retention. Are they claiming that our  
11 witness was wrong that it was a Yuba heat exchanger because  
12 their records didn't bear it out? Or are they saying they  
13 just don't know internally? Either way, all the other  
14 elements of proof that I have to prove -- because I have  
15 testimony that those Yuba heat exchangers are there. What  
16 do they know, where is the asbestos, when did they know it,  
17 were there alternatives are still things that I have to  
18 prove in the case. I have a very triable case.

19 So, the first premise is when I found out this morning  
20 for the first time that, despite asking for months about  
21 these records, they don't have them -- and, I mean, Robert  
22 told -- Mr. Meriwether told me the moment he knew. My  
23 follow-up question is what does that mean? He doesn't know  
24 yet.

25 The second thing, and this is the one that's going to

1     come up a lot, and that's why I wanted to pause on it. Mr.  
2     Meriwether said we -- despite the notice asking for each  
3     location where Wayne Howe worked, which included Celanese,  
4     not just Bowater, we only looked at Bowater because that's  
5     the only place where a coworker said the name Yuba. And  
6     Yuba responded by saying okay, that makes sense.

7             I respectfully disagree and it's a big disagreement  
8     and want to spend a moment on it. Examples help me. In  
9     the Pete Bumgardner case, I was in this courtroom. Pete  
10    Bumgardner testified he worked in Celanese boiler drives by  
11    crawling around in them, but he had no idea who made them,  
12    none. Cleaver Brooks knew. They have records that said  
13    every single one of them was their boilers. They didn't  
14    give me any of those records, and Judge Hill at first did  
15    not push them to until I found a coworker that said those  
16    are Cleaver Brooks, and then it turned out that what they  
17    knew for fourteen months and I didn't is that every one of  
18    their boilers were their boilers.

19            My point is this. Often people don't remember certain  
20    things. They could work on something every day and not  
21    remember the name plate that says Foster Wheeler or Cleaver  
22    Brooks or Yuba when we know that they are working on the  
23    boilers. Where these heat exchangers are at Celanese, if  
24    they have records that say those are ours, the first step  
25    -- and, and it's literally question number one in the

1 standing order of discovery is is your equipment there. I  
2 don't know the answer to that. And so when I talked to Mr.  
3 Meriwether, he said, well, I only questioned them on  
4 Bowater.

5 I get why that's the first place to push because they  
6 know we've got them there despite what their records say.  
7 But it doesn't limit that we have both in the standing  
8 order of discovery and in the notice a reasonable request  
9 that they've had, according to the rules, was sufficient  
10 time to tell us so that if they're at Celanese and they're  
11 sitting on that, I still don't know.

12 THE COURT: Okay, here's what we're going to do.

13 MR. MERIWETHER: Your Honor, might I correct a few  
14 misstatements because I think it's very important. Number  
15 one, number one, we're not identified in here as, as  
16 Bowater. The only thing that I say ---

17 THE COURT: Well, what she said ---

18 MR. MERIWETHER: I thought she did.

19 THE COURT: --- is that she has other witnesses that  
20 may identify you with Bowater, but she definitely has  
21 witnesses that identify Yuba at Celanese, which is another  
22 place he worked. That's what I understood.

23 MR. MERIWETHER: Your Honor, I don't think she's got a  
24 witness that identifies Yuba anywhere in the case.

25 MS. DEAN: Let me, let me -- we have him working

1 around boilers, which is where the heat exchangers are. We  
2 don't at Celanese know who made it. That's kind of my  
3 point. If I can figure out who made them, I have  
4 sufficient testimony I believe ---

5 THE COURT: Well, let me get this straight. They said  
6 their information is that they don't have any heat  
7 exchangers at Bowater, okay? That's what they looked for,  
8 and they couldn't find any heat exchangers at Bowater.

9 MS. DEAN: That's my understanding.

10 THE COURT: Do you have any information contrary to  
11 that?

12 MS. DEAN: No.

13 THE COURT: All right. Next we go to Celanese,  
14 another place he worked. They haven't looked for that,  
15 right?

16 MS. DEAN: That's my understanding.

17 THE COURT: Are there other places besides Celanese  
18 that will be involved in this thing that you think might  
19 lead to information about a Yuba heat exchanger?

20 MS. DEAN: Yes. There, there is, and we've listed  
21 them out in our notice so it will be clear. Five locations  
22 at issue: American Enka, Crown Cork and Seal, two Celanese  
23 locations -- one in Narrows and one in Rock Hill -- and  
24 Bowater. So, my point is at Bowater where they say they  
25 don't have records, I want to know what that means. And in

1 the other four locations, given that we have testimony --  
2 and Celanese is where we have the strongest testimony that  
3 he worked in the vicinity of the heat exchangers -- they  
4 need to tell us if those are theirs, if they know.

5 THE COURT: All right.

6 MR. MERIWETHER: Your Honor, I respectfully must  
7 correct the record. There is no indication from any  
8 witness available to be used against Yuba that he worked  
9 anywhere but Bowater.

10 Here's the point. They took Mr. Howe's deposition  
11 without suing Yuba. He talked about where he worked. Mr.  
12 Howe died. They then amended it and put in a coworker. He  
13 happens to be a coworker only from Bowater. The only place  
14 that Yuba is in this case is Bowater because the only  
15 witness available to be used against them, the only witness  
16 who has been -- fact witness who has been taken since Yuba  
17 was added to the case is a Bowater witness. That's why I  
18 had them search for it.

19 THE COURT: Well, here's what we're going to do;  
20 here's what we're going to do. First of all, you want the  
21 now controller of the records at Yuba, which is the company  
22 they sold to, we want them to be -- am I right here?

23 MR. MERIWETHER: No, Your Honor. Yuba's got no  
24 records left. Yuba goes ---

25 THE COURT: That's exactly what I said, Mr.

1 Meriwether.

2 MR. MERIWETHER: Oh, I'm sorry.

3 THE COURT: I said we've got a company to which Yuba  
4 sold ---

5 MR. MERIWETHER: Right.

6 THE COURT: --- that now controls the records.

7 MR. MERIWETHER: Correct.

8 THE COURT: That's who you made the inquiries of.

9 MR. MERIWETHER: Exactly.

10 THE COURT: What Ms. Dean wants to know -- and they  
11 were all targeted to Bowater. She wants to know what it  
12 means to say that there are no documents relative to  
13 Bowater. She wants some kind of more definitive statement  
14 about whether there is any information that Yuba supplied  
15 any equipment at Bowater.

16 MR. MERIWETHER: Right.

17 THE COURT: And she doesn't want to play nice games  
18 about whether they have a document to that effect or some  
19 other kind of information to that effect. She wants to  
20 know whether Yuba had any equipment at Bowater.

21 MR. MERIWETHER: Right.

22 THE COURT: So, that needs to be asked to the people  
23 to whom -- that needs to be asked to the Yuba people  
24 because they certainly would know that, whether or not  
25 they've got the documents not. And second of all, that

1 needs to be asked to the people who now have their records.

2 MR. MERIWETHER: Right, Your Honor.

3 THE COURT: So, that's the first thing. The second  
4 thing is she's got four other, as I recollect it, that you  
5 haven't asked about.

6 MR. MERIWETHER: Correct.

7 THE COURT: She wants you to ask them whether they  
8 have any records relative to those other four companies,  
9 and I am going to require that that be asked to them, and  
10 get an answer to her by Monday the 29th, January the 29th,  
11 and then we'll see where we go from there.

12 MR. MERIWETHER: All right, Your Honor. Thank you so  
13 much.

14 THE COURT: All right, and it doesn't obligate you.  
15 It doesn't put you on the hook for anything. We just have  
16 to see what they produce, if anything. They might not  
17 produce anything, but that I think is at least a reasonable  
18 request to make.

19 And, Ms. Dean ---

20 MR. MERIWETHER: And we -- I'll make it to them.  
21 They'll make it to their, their buyer ---

22 THE COURT: Exactly, but ---

23 MR. MERIWETHER: And we'll get it back.

24 THE COURT: I think you need to, also need to  
25 emphasize to your client at Yuba who are still controlling

1 -- the new company is not controlling this. Your client is  
2 Yuba, as I understand it.

3 MR. MERIWETHER: Correct. They still have the  
4 liabilities.

5 THE COURT: Right, and they're going to have to be  
6 asked whether there's any other information they have  
7 besides the records that now are at their purchasing  
8 company that ---

9 MR. MERIWETHER: They -- absolutely, Your Honor.

10 THE COURT: --- that indicate that they have any  
11 equipment or had any equipment at the these locations,  
12 Bowater and the other four.

13 MR. MERIWETHER: Absolutely.

14 THE COURT: And, you know ---

15 MR. MERIWETHER: We understand. I believe that Yuba  
16 has nothing left whatsoever about that.

17 THE COURT: It's not a question of what they have  
18 left. They have some people that worked and ran the Yuba  
19 corporation. They need to be asked ---

20 MR. MERIWETHER: Your Honor, I believe they went with  
21 the sale.

22 THE COURT: Well, some kind of way those people have  
23 got to be asked what they know about whether there was any  
24 equipment at these various locations.

25 MR. MERIWETHER: Understood.



1 THE COURT: Okay. Very good.

2 And, Ms. Dean, you'll get up some kind of order to  
3 that effect.

4 MS. DEAN: Yes, Your Honor.

5 THE COURT: I can't do anything more than that. I  
6 mean, Mr. Meriwether is as honest as they make them. He's  
7 going to ask them what we have said they need to be asked,  
8 and we'll see what they produce.

9 MS. DEAN: Yes, Your Honor.

10 THE COURT: Very good. All right, that's Yuba. All  
11 right.

12 MS. DEAN: The next group.

13 THE COURT: Item A or item 1, we know where we're  
14 going. On Aurora and on Yuba, you're going to get up  
15 orders and they got to produce the things by January the  
16 29th, right?

17 MS. DEAN: Yes.

18 THE COURT: Now we go to the second category and the  
19 second category is they're produced documents, but there's  
20 no date for depositions.

21 MS. DEAN: Yes, and first one on this is Daniel where  
22 -- just at least a little context with how many moving  
23 parts that are here. We first sought these depositions in  
24 November to occur in December, then amended to January, and  
25 we're now in a position where your scheduling order

1 indicates these are to be completed by the 9th.

2 One just kind of procedural thing I'd like to take up,  
3 and it may be at an odd time, is if the parties agreed to  
4 do it after the 9th, is that agreeable to the court?

5 THE COURT: Oh, you know it is, yeah.

6 MS. DEAN: Okay.

7 THE COURT: If the parties agree to do it later,  
8 that's perfectly fine. But I am a little tired of Daniel  
9 and Union Carbide going back to the beginning of time and  
10 saying, you know ---

11 MR. McDONALD: Sure.

12 THE COURT: --- this is all. We can't do anything  
13 because this is -- we don't have enough time and so forth.  
14 This is an old case, and they've been knowing about it for  
15 a long time. Whether they've been parties or not, this  
16 isn't any new mystery that's just come up upon the horizon  
17 to these two defendants.

18 MR. McDONALD: Sure. This ---

19 THE COURT: I want them to get with the program and  
20 quit filing all these motions that talk about wanting to  
21 get out of the case and ---

22 MR. McDONALD: Okay.

23 THE COURT: --- have the trial delayed. I'm not going  
24 to do that.

25 MR. McDONALD: Well, let's put Union Carbide to the

1 side. That a different -- we're talking about Daniel, if  
2 you don't mind.

3 THE COURT: All right.

4 MR. McDONALD: And Daniel has produced the documents  
5 in *Howe*. We objected to the deposition notice as being  
6 incredibly overly broad. You're familiar with the Colleton  
7 case. We felt like, you know, if we pushed it all the way  
8 we could get stricken, but Mr. Holder and I spent two hours  
9 on Saturday ---

10 MR. HOLDER: Saturday night.

11 MR. McDONALD: Saturday night, I mean, really, and we  
12 greatly -- we agreed to the basic outline of the scope of  
13 an appropriate deposition against Daniel, that Daniel would  
14 give, and that would be really *Howe*, *Sizemore*. *Smith*  
15 really is a big one for Daniel coming up, okay?

16 THE COURT: Is that at a 30(b)(6) deposition?

17 MR. McDONALD: That's right, Your Honor.

18 THE COURT: Let me tell you something. I am not going  
19 to get in these wrangles. 30(b)(6) ought to be done, and  
20 it ought never have any kind of ---

21 MR. McDONALD: Well.

22 THE COURT: --- contention about it.

23 MR. McDONALD: I just suggest to you, Judge, and we're  
24 not -- we've agreed. So, we've got an outline, but there  
25 are times when a 30(b)(6) is overly broad. I'll ---

1 THE COURT: Rare as hen's teeth.

2 MR. McDONALD: Well, you'd have to ---

3 THE COURT: Rare as hen's teeth.

4 MR. McDONALD: These are, these are very broad, and I  
5 just hope you'll have an open mind about that.

6 THE COURT: All right.

7 MR. McDONALD: But we're agreed ---

8 THE COURT: But you've agreed on Daniel.

9 MR. McDONALD: That's right.

10 THE COURT: True, Ms. Dean?

11 MR. McDONALD: Well, I'll -- let me just finish. So,  
12 they needed dates and so I offered the Tuesday or Thursday  
13 before the 9th and, in fact, probably any time that week I  
14 could get the witness available to work that. So, I've  
15 offered a date and we have produced all of our documents at  
16 Bowater. Mr. Holder came and reviewed the documents.

17 MS. DEAN: Your Honor, there's two, two issues, and I  
18 -- this, this isn't a Daniel-specific issue.

19 THE COURT: That's what I'm trying to resolve right  
20 now is Daniel, where there's been a lot of back and forth,  
21 and now we're down to either Tuesday or Thursday before the  
22 9th or some other date that we -- can we get that resolved?

23 MS. DEAN: Here's why it's harder to resolve. By all  
24 of the -- by this not being isolated to Daniel, but Daniel  
25 definitely fits in the problem. What we are getting is an

1 influx of documents. In the last forty-eight hours, I was  
2 able to review Cleaver Brooks's documents that I didn't get  
3 for fourteen months and I believe I should have that shows  
4 that Daniels was involved with installing their boiler at  
5 Bowater. This morning I find out from Mr. Meriwether that  
6 one of the cooling towers at Bowater which our client  
7 describes working with was put in by Fluor. I don't even  
8 know of Moff knows that. I found that out as I'm walking  
9 in here.

10 By defendants ignoring properly noticed depositions  
11 that should have happened last year, if we get into a  
12 situation where all these deposition -- because you're  
13 hearing it the first time right now. We'll get it before  
14 the depo date. I'll get before the 8th. There's now  
15 twenty people that are going to say same thing. We are  
16 good and we are efficient, but our lawyers can't go through  
17 10,000 documents from twenty different parties and depose  
18 people in a nine-day period.

19 THE COURT: Well, that's not before me right now.  
20 What is before me right now is just trying to get these  
21 deposition dates set. That, that ---

22 MS. DEAN: That is why.

23 THE COURT: You know, if you are going to have them  
24 set in any kind of a framework that allows the case to be  
25 tried in March, which Ms. McVey has very, very strongly

1 insisted upon -- that's that reason why it finally got set.  
2 It's an old case. That's what happens in these things.  
3 I'm as sympathetic as I can be about that. I used to deal  
4 with document dumps all the time by these folks. But  
5 you've got the documents, and you're going to make your  
6 best effort at it, but right now all I'm talking about is  
7 setting the depositions.

8 MS. DEAN: So, that's why we have request number 3  
9 which is listed on page 4 of our motion, and that is even  
10 if they give us our documents after we requested them, even  
11 if they give us a depo date, because we have asked for well  
12 over thirty days -- we're talking more than double -- the  
13 notion that we should lose our trial date is rewarding  
14 them. What should happen is that we should have more time  
15 the entire month of February to get this done, which can't  
16 occur if summary adjudication happens on the 26th.

17 And sure, we're saying for people that know what you  
18 want -- you were very clear; Fluor Daniels, Daniel, UCC,  
19 get with the program -- and have caused this delay  
20 shouldn't be rewarded for putting plaintiff in a pinch and,  
21 therefore, they can still have directed verdicts heard,  
22 they can still have motions heard, but we shouldn't have to  
23 be pushed in this two-week timeframe. So, part of our  
24 request is not only do we confirm the date, which is very  
25 helpful so that everybody knows what's happening in the

1 next two weeks, but that as we confirm these dates.

2 If we sit down and it turns out there are four  
3 depositions on the 8th -- and I think that's a reality --  
4 we can then look at the entire month of February on working  
5 this out with everybody because summary adjudication isn't  
6 occurring because discovery wasn't completed. And the only  
7 reason it wasn't completed is because they did not respond  
8 to a request that they should have. And I think given that  
9 those are the clear facts, that is a fair request. So ---

10 THE COURT: Well, let me say this. I have no  
11 hesitation about having sanctions hearings on people that  
12 don't produce documents when they're supposed to, but I'm  
13 not going to sanction them by saying they can't pursue  
14 their motion for summary judgment. I don't know why they  
15 pursue all these motions for summary judgment; that's  
16 another hen's teeth proposition. They are rarely granted,  
17 but the deck is going to have to be cleared on that if they  
18 stay in the case or don't settle the case before we try the  
19 case. So, and I'm not -- I would not be prepared to just  
20 simply say they can't pursue their motion for summary  
21 judgment. So, I'm not going to do that, Ms. Dean.

22 MS. DEAN: Okay.

23 THE COURT: Okay.

24 MS. DEAN: Okay, and so we made that request for  
25 everybody in this category, the third. I hear you saying

1 no, so ---

2 THE COURT: Okay. Very good.

3 MR. McDONALD: Could I ---

4 MS. DEAN: --- in that case, we will figure out a way  
5 to make the 8th work.

6 THE COURT: All right. Very good.

7 MR. McDONALD: Can I just add one more thing, Your  
8 Honor?

9 THE COURT: You just won, so what are you fussing  
10 about?

11 MR. McDONALD: I, I want Your Honor to understand  
12 something about Daniel's responses to discovery, all right,  
13 and this hold true for every case, all right? When we  
14 respond to the initial discovery, we say -- I mean, we  
15 don't -- we're out of business now, all right? Our --  
16 whatever project records are left are in warehouses in  
17 Greenville. We will run a search and we will pull them  
18 together and you can review them. And there have been  
19 responses from Daniel to the plaintiffs a couple of years  
20 old, and the ---

21 THE COURT: You don't need to get into that because  
22 ---

23 MR. McDONALD: Well, that's right, but ---

24 THE COURT: --- because this was ---

25 MR. McDONALD: --- when they complain about the lack



1 of production ---

2 THE COURT: This was not a squabble about production.

3 MR. McDONALD: Well, she tried to make it one.

4 THE COURT: Well, and I didn't allow that.

5 MR. McDONALD: Sure.

6 THE COURT: So I don't need to go into that.

7 MR. McDONALD: Okay. I just wanted you to understand.

8 Anybody that wants to come see our documents, call us.

9 THE COURT: Noted.

10 MR. McDONALD: Okay.

11 THE COURT: Okay, Union Carbide.

12 MR. McDONALD: Oh, yes, sir -- yes, ma'am, Your Honor.

13 THE COURT: Let her speak first.

14 MR. McDONALD: Okay.

15 THE COURT: Ms. Dean.

16 MS. DEAN: Union Carbide and Mr. McDonald is okay with

17 this. This is -- this parallels three of the cases, I

18 believe, that are before the court. It's in *Howe, Smith...*

19 MR. McDONALD: *Howe and Smith.*

20 MS. DEAN: Just *Howe and Smith.*

21 MR. McDONALD: Just *Howe and Smith.*

22 MS. DEAN: Okay, but that the arguments are the same,  
23 and so I think efficiency wise we might want to tackle them

24 ---

25 THE COURT: Sure.

1 MS. DEAN: --- in the same manner. But we are seeking  
2 their corporate representative depositions. I know him and  
3 Mr. Holder have been trying to discuss a resolution to  
4 that. We are even willing to consolidate the two if that  
5 is something they want. But we believe that given that we  
6 have confirmed that there was the sale of millions of  
7 pounds of asbestos insulation to Bowater where our client  
8 worked -- in the case of Ms. Smith during the time that her  
9 husband was there and in the case of Mr. Howe in locations  
10 where we believe he works -- and we need to figure out how  
11 long the asbestos would have remained because there is a  
12 gap in time that -- it's the same place, same location. We  
13 just need a date and to be able to find out.

14 And I know Union Carbide fairly well, and I think Mr.  
15 McDonald would say the same thing in the context of  
16 supplying asbestos for joint compound. This is my first  
17 case and our firm's first case where they supplied the same  
18 raw material, asbestos, put in a paper mill. And so we've  
19 been eager to get this deposition because unlike a lot of  
20 asbestos litigation, this is something that's at least new  
21 to me, and so learning how pellet sized versus powder  
22 asbestos worked, where it was in the plant, how it worked  
23 is really important to us understanding how we're going to  
24 prove this case and how, how quick the case is.

25 MR. McDONALD: If I could respond, Your Honor?

1 THE COURT: Again, just so I understand, documents  
2 have been exchanged. This is all about ---

3 MR. McDONALD: A deposition.

4 THE COURT: --- setting a deposition ---

5 MR. McDONALD: That's right, Your Honor.

6 THE COURT: A 30(b)(6) deposition ---

7 MR. McDONALD: Right, Your Honor.

8 THE COURT: --- by Union Carbide people to answer  
9 questions like she talked about.

10 MR. McDONALD: That right, Your Honor, and let's just,  
11 let's just walk through it.

12 THE COURT: All right.

13 MR. McDONALD: And I know you understand. A 30(b)(6)  
14 deposition is expensive and burdensome for the, for the  
15 defendant and, of course, it's up to the court to balance  
16 the need and the relevance, et cetera, all right?

17 Now, here's the situation in the case. We're talking  
18 about the *Howe* case, all right? Mr. Howe, Mr. Grant, Mr.  
19 Newland, Mr. Small all deposed. No testimony about any  
20 exposure to a Union Carbide product, all right? Put that  
21 aside. Union Carbide did provide the raw asbestos fiber,  
22 not insulation, but fibers. They had a line to Bowater,  
23 all right? So that's what they're sued about. Union  
24 Carbide responded here are our sales records to Bowater.  
25 They're all between 1965 and 1967, all right? Mr. Howe did

1 not arrive at Bowater until 1978, all right?

2 Bowater -- now, Union Carbide, it's a little bit of a  
3 mystery to them what was done with the fiber at Bowater.  
4 So, in June we served discovery on the plaintiff: what  
5 information do you have about exposure to our product?  
6 Plaintiffs did not respond to that discovery. We sent new  
7 discovery in November specifically asking what information  
8 do you have about the use of calidria at Bowater. That  
9 discovery has been ignored; plaintiffs have not responded  
10 to it. Union Carbide has moved to compel. What do you  
11 have? Do you have Bowater depositions, information? What  
12 do you have?

13 Bowater has now produced documents. In the document  
14 production they made this week are sworn affidavits and  
15 sworn testimony in Madison County, Illinois, that the  
16 calidria was used in the process to remove some kind of  
17 byproduct, and it was used from 19 -- sometime '66, '67,  
18 but it ended in December of 1968s. Mr. Howe did not arrive  
19 at Bowater until 1978. So, why is Union Carbide having to  
20 answer any other questions about it? There's no possible  
21 link between that fiber and Mr. Howe.

22 It gets slightly more complicated in the *Smith* case,  
23 slightly, but only slightly. *Smith* is a claimed take-home  
24 exposure. Ms. Smith's former husband, Lewis Childers,  
25 worked at the Bowater plant in the second half of 1968, but

1 he worked as an insulator employed by Daniel Construction  
2 in the construction of paper machine number 3, all right?  
3 The production was over on paper machine number 1, the  
4 Bowater documents show.

5 Now, just so -- we talk a lot about paper machines. A  
6 paper machine is an entire plant, all right? They are  
7 giant things, cost hundreds of millions of dollars, a  
8 thousand people in the sixties to construct. Giant  
9 construction project. Their witness in the *Howe* case, Mr.  
10 Small, said it's a separate plant, a separate building.  
11 During construction they put a fence around it. That was  
12 it. So, there's no way Childers is ever involved over  
13 there in the production in unit number 1 and involved with  
14 calidria. So, that is why we oppose.

15 Plaintiffs have not provided -- responded to our  
16 discovery and when you put together what's in the case,  
17 there's no way to tie back to Union Carbide. It's quite  
18 burdensome for Union Carbide to have to prepare a witness  
19 to respond to this point.

20 THE COURT: All right, Ms. Dean.

21 MS. DEAN: Briefly, twofold. The discovery requests  
22 and October request, I respectfully disagree with Mr.  
23 McDonald's depiction that we didn't respond. I've seen  
24 emails from Mr. Holder's. He explicitly and directly and  
25 quickly responded that ---

1 THE COURT: Well, what was the response?

2 MS. DEAN: We don't have documents, and December is  
3 when we first obtained the Bowater documents, and we have  
4 been very clear that we think that they are relevant. I  
5 understand Mr. McDonald has them, but there are other  
6 people like Moose that are still looking to get them. But  
7 there is nothing that we have that is discoverable that  
8 hasn't been produced.

9 We understood Union Carbide's fibers were sold to  
10 paper mills, including Bowater, from attorneys telling us  
11 that. That's why we included them in the suit, and we have  
12 been eager from day one to say please verify whether that's  
13 so. And so when Mr. McDonald asked, hey, how do you know  
14 that ---

15 MR. McDONALD: Well.

16 MS. DEAN: --- we did respond. We don't have  
17 documents. We just have been told you were here.

18 MR. McDONALD: And we ---

19 MS. DEAN: So ---

20 THE COURT: Wait a minute. Wait a minute. Whoa,  
21 whoa, whoa. No. We're not ---

22 MR. McDONALD: Okay.

23 THE COURT: --- going to do it that way. Ms. Dean is  
24 going to complete, and of course I will always come back to  
25 you, Mr. McDonald.

1           Go ahead, Ms. Dean.

2           MS. DEAN: There are a lot of balls in the air. There  
3 are going to be times when I come to this court and say you  
4 know what? They asked and we didn't answer. I'm just  
5 telling you this time, that's not what happened.  
6 Everything we had, as, as forthcoming as we could be about  
7 this issue, we have.

8           So then the second issue he has is that we just can't  
9 connect the dots. Yes, they sold millions of pounds of raw  
10 asbestos to his work site, but we can't connect the dots.  
11 Your Honor, while the sales records suggest that the sales  
12 stopped in '68, that doesn't mean the use stopped in '68.  
13 We already have information that it went into further  
14 years.

15           More importantly, whether -- one of the biggest  
16 characteristics of asbestos, particularly in raw form, is  
17 that it doesn't go away. If it's in an enclosed space  
18 that's shut off and you don't have abatement efforts, it's  
19 still there, particularly in raw form. So, what I want to  
20 know in Mr. Howe's case is, is the time gap too long? And  
21 I don't think that question can be answered by a lawyer's  
22 belief. I think I get to ask questions.

23           Similarly in *Smith*, I think that's much cleaner. He  
24 references the Small testimony that is in a separate  
25 location, but they ignore Harley Newland's testimony. Ms.

1 McVey took that deposition, Mr. Newland's, and he said  
2 look, I was there and the reason we were there -- and they  
3 both worked for Daniels, being at that site at that time --  
4 was to insulate pipes and boilers and in turbines and that  
5 they were throughout the plant. They also worked on  
6 precipitators and duct work.

7 And so again this is not a case where I feel  
8 comfortable telling the court I know for sure that these  
9 millions of pounds of asbestos would have been at the right  
10 place or the right time, but that's why an investigation is  
11 done. And that's all the more reason why ignoring the  
12 request and for us to ask those questions is -- isn't  
13 acceptable.

14 THE COURT: All right, Mr. McDonald.

15 MR. McDONALD: Well, Judge, quickly respond. I mean,  
16 we did provide all of our sales records, and here are the  
17 sworn statements in the -- if you would like them, in the  
18 Bowater documents that they produced in Madison County  
19 litigation explaining that the production use of the  
20 calidria ended in December of 1968 at this site.

21 THE COURT: All right. Very good. Let me first do a  
22 little bit of housekeeping here. I will first make a  
23 ruling with respect to the case that's captioned Howe as PR  
24 against Air Liquid and others, and that's 15-CP-46-03456.  
25 I will then make a ruling in what we've been calling the



1     *Smith* case but is actually Roxanne Falls as PR of the  
2     Estate of Charlotte Gaye *Smith* against CBS Corporation and  
3     many others, and that is 2015-CP-46-02155. In each case,  
4     we are dealing with response to a 30(b)(6) deposition by  
5     Union Carbide, represented Mr. Moff McDonald, and in each  
6     of those cases, I will sign an order which you need to  
7     prepare for me, Ms. Dean, that requires that Union Carbide  
8     respond to a 30(b)(6) deposition in both of these matters.

9             I do it for this reason, Mr. McDonald. I understand  
10     your sales records and sworn statements, and you produced  
11     what you're supposed to produce, and you say they don't  
12     connect the dots. I don't believe this is the moment in  
13     time to say you can't take a 30(b)(6) because you haven't  
14     contacted the dots. I believe they are entitled to go  
15     forward on the basis of the representations Ms. Dean has  
16     made and take those 30(b)(6)s. So, I will require that  
17     Union Carbide respond to 30(b)(6)s in each of those cases.

18             MR. McDONALD: Certainly.

19             THE COURT: Very good. And when I say order by Ms.  
20     Dean, I always mean share first with opposing counsel, and  
21     then if they got objections, both of you can submit and  
22     submit objections, or hopefully you can agree about at  
23     least the contours. Not whether they reserve all their  
24     rights with respect to whether they can be required to give  
25     the deposition, for example, in this case, but the wording

1 of it, hopefully y'all can agree upon.

2 MR. McDONALD: Sure. Thank you, Your Honor.

3 THE COURT: Very good. All right. Now, that gets ---

4 MS. DEAN: Can I get one clarification, Your Honor?

5 THE COURT: Yes, ma'am.

6 MS. DEAN: Can we just request that they provide us  
7 the dates of availability by Friday on or before the  
8 scheduling order deadline so that we can all have a  
9 timeframe to schedule this?

10 THE COURT: Can you do that, Mr. McDonald?

11 MR. McDONALD: I'll do my very best. I mean, my  
12 intent would be to move -- get you a deposition before the  
13 9th, and then we would be prepared to move for summary  
14 judgment, but I just got to talk to people, you know.

15 THE COURT: He's going to make his best efforts.

16 MS. DEAN: I'll take it.

17 THE COURT: I think that's -- I take his -- he is a  
18 man of his word, and I take him at that. So, I think you  
19 will probably have something there. Very good.

20 Now, the final one we have on this particular issue,  
21 which is they've given documents but no dates, is SPX.

22 MS. DEAN: Yes. The circumstances of this, I've kind  
23 of flipped categories on this. We were provided the date  
24 to go forward on January 31st, and then when I talked to  
25 Mr. Meriwether yesterday, he indicated that date is no

1 longer available and was working on another date. He also  
2 informed me that this is one of those scenarios where I  
3 come to court and say we messed up in the following way.

4 When we sent out notices for the parties that we  
5 believed we had a case against back in November, SPX's  
6 notices didn't go out; everybody else's did, but for some  
7 reason that one didn't. When we sent out the first amended  
8 one, they got it but it references the document request in  
9 the notice that they didn't get. So, they've known since  
10 December what topics we want to talk about.

11 The 30(b)(6) rule indicates that you need to be  
12 prepared what's -- with what's reasonably available to you  
13 to talk about those topics. Our document request doesn't  
14 include anything that's not in our topic, but we failed to  
15 get them the document request. And so I, I agree with Mr.  
16 Meriwether that if they don't know what documents we're  
17 requesting, we have a glitch. And so he tells me he will  
18 work with us to get the documents if we will work with him  
19 on the date.

20 My position is, is I'm really concerned about getting  
21 all this done by SJ, but I've already lost that with this  
22 court, and so I think the main thing we need is a timeframe  
23 in which to get these depositions done.

24 THE COURT: Mr. Meriwether.

25 MR. MERIWETHER: Your Honor, she's correct. We didn't

1 get the document request. We -- when I got the amended  
2 notice to a notice that I had never gotten, I put the -- I  
3 twigged my guys and said, hey, we're going to need to start  
4 looking for documents. So, they've been looking. We've  
5 got a bunch lined up. I should be able -- they've been  
6 pouring in on emails, individual emails and I, I got to  
7 figure out how to get into whatever file transfer thing  
8 you've got to do with it.

9 THE COURT: Sure.

10 MR. MERIWETHER: I can get it to them probably this  
11 afternoon. My corporate rep from SPX is getting needles  
12 put into her eyeballs at Duke Medical Center for some  
13 reason. It sounds horrible but some sort of minor  
14 procedure that she's up in, in -- at Duke Medical for. She  
15 will let me know as soon as -- I, I hope, I would hope by  
16 tomorrow or the next day when she's got -- and we'll make  
17 sure we've done all the records searches and get that stuff  
18 to plaintiffs, and we'll just give them a date as soon as  
19 we can.

20 THE COURT: Well, why don't we just say this to kind  
21 of complete the loop. By Friday, you will advise Ms. Dean,  
22 unless your counsel continues to be hospitalized. You'll  
23 advise Ms. Dean about proposed dates, as well as get the  
24 documents to her.

25 MR. MERIWETHER: Works for me, Your Honor.

1 THE COURT: Very good. That's this coming Friday.

2 MS. DEAN: Yes.

3 THE COURT: Which is the 26th. Very good. I don't  
4 think we need an order on that, Ms. Dean. I think Mr.  
5 Meriwether will comply with that, I feel quite sure.

6 MR. MERIWETHER: Yes, Your Honor.

7 THE COURT: Very good. All right, now that completes  
8 the second category of matters, which is want the date,  
9 have the documents, and we now move to the third category  
10 of matters, which is you don't have any either one, and  
11 that is a whole bunch of people: Cleaver Brooks, Covil,  
12 Dezurik, Flowserve, Foster Wheeler, Ingersoll Rand,  
13 Marculex, Sterling, and Gorman Rupp.

14 MR. MERIWETHER: I believe I can deal with one real  
15 easy, Your Honor.

16 THE COURT: All right.

17 MR. MERIWETHER: For Dezurik, they noticed a  
18 deposition for February the 28th. We'll have a witness up  
19 in St. Paul on that date. It's all good. We got it  
20 resolved because we tendered that date, and they noticed  
21 it.

22 THE COURT: And it's what date?

23 MR. MERIWETHER: February 28th.

24 MS. DEAN: Your Honor.

25 MR. MERIWETHER: In St. Paul, Minnesota.

1 THE COURT: And how about documents?

2 MR. MERIWETHER: Records? I -- we got them. We --  
3 this is a weird company. They literally have cans of old  
4 microfilm and a microfilm reader, but we've 200 pages  
5 related to relevant job sites from microfiche and as soon  
6 as they're copied, I'm getting them to you.

7 THE COURT: All right.

8 MR. MERIWETHER: I mean, they're -- it just -- this  
9 is, this is some antediluvian system of keeping records,  
10 but literally they go back to the thirties.

11 THE COURT: Well, can you get the documents to her by  
12 the end of next week?

13 MR. MERIWETHER: Yes.

14 THE COURT: All right. That would be the 5th?

15 MS. DEAN: The 5th is a week from Monday. Yeah, the  
16 2nd.

17 THE COURT: The end of next week is the 2nd, February  
18 the 2nd.

19 MR. MERIWETHER: Sure, Your Honor.

20 THE COURT: Could you get them, get them by February  
21 2nd, Mr. Meriwether?

22 MR. MERIWETHER: I feel sure that we can get them  
23 printed out.

24 THE COURT: Very good. So, Dezurik is one company  
25 that's depo is February the 8th. Docs are coming on

1 February 2nd. How about that?

2 MS. DEAN: The problem with that, and it's limited to  
3 this, is we agree to the 28th if there is not a motion for  
4 summary judgment going forward, but if there is not ---

5 THE COURT: I'm not going to do it that way, Ms. Dean.  
6 I'm not going to deprive people of their right to move for  
7 summary judgment.

8 MS. DEAN: I agree. I'm not, I'm not -- I disagree  
9 but I lost.

10 THE COURT: Yes.

11 MS. DEAN: And that's clear and I'm not trying to  
12 refight it.

13 THE COURT: Okay.

14 MS. DEAN: The problem is is I can't agree to the 28th  
15 if my summary judgments are due on the 26th. They need to  
16 provide me a date by the 9th like everybody else, and we  
17 might even be able to work on the week of the 16th, but I'd  
18 probably be able to get that transcript back and respond to  
19 their motion for summary judgment by the 26th.

20 THE COURT: How about that, Mr. Meriwether?

21 MR. MERIWETHER: Your Honor, I'll check with him, but  
22 I thought it was settled when they noticed it for the 28th.

23 MS. DEAN: We may -- at least...

24 THE COURT: They noticed it, but with this caveat that  
25 they didn't want you to make any motion for summary

1 judgment, but that's not by the boards. I'm not doing it  
2 that way. So, can you get them something before that that,  
3 therefore, allows them to have adequate time to ---

4 MR. MERIWETHER: I will, I will ---

5 THE COURT: --- respond because you're going to make a  
6 motion for summary judgement as soon as the 30(b)(6)s are  
7 over, aren't you?

8 MR. MERIWETHER: Your Honor, I think that particularly  
9 ---

10 THE COURT: Unless the world turns on its axis ---

11 MR. MERIWETHER: --- particularly this client ---

12 THE COURT: --- the other way.

13 MR. MERIWETHER: --- whose name did not escape the  
14 lips of any witness in the case, I would likely to move.

15 THE COURT: Yes. Well, then we need to set a date  
16 that's not the 28th if the motion is going to be heard the  
17 26th, or if they're due to be served by the 26th.

18 MR. MERIWETHER: I will talk to my folks this  
19 afternoon and see if we can get an earlier date.

20 THE COURT: Okay, let's do that. All right, earlier  
21 date.

22 MR. McDONALD: Ms. Dean, can we go ahead and address  
23 Sterling?

24 THE COURT: Well, I'm just not going to ---

25 MR. McDONALD: Oh, oh -- okay.



1           THE COURT: --- jump hither, thither, and yon. I'll  
2 let Meriwether do that, probably ill advisedly, because  
3 none of these things end up being as simple as people say  
4 they are.

5           Cleaver Brooks is the first one.

6           MS. DEAN: Your Honor, this one we've gotten a large  
7 way towards resolution, but we asked whether they sold  
8 products. No one knew Cleaver boilers, but we had several  
9 people saying that he worked -- this is in terms of Bowater  
10 location. He worked on all the boilers in the powerhouse.  
11 I learned in January on of the boilers sold to Bowater was  
12 Cleaver Brooks. They've agreed now to give me all the  
13 documents.

14           They've also indicated that *Sizemore* and *Smith*  
15 parallel the same issue, that they've confirmed they don't  
16 have boilers in any other location but this one and that  
17 they'd like to consolidate the three. I just wanted to get  
18 that -- my understanding of that agreement on the record.

19           The main thing we then need are the documents and to  
20 be able to get a date for all three so that we can discuss  
21 with them what they did to confirm that they're not at the  
22 other location and learn about this asbestos-containing  
23 boiler that was at the place where my guy worked.

24           THE COURT: All right. Now, who represents Cleaver  
25 Brooks?

1 MR. THOENSEN: Your Honor, Joe Thoensen with  
2 Richardson, Plowden, and Robinson. I'm here for Cleaver  
3 Brooks.

4 Ms. Dean is correct. We have largely resolved the  
5 issue. Cleaver Brooks searched their records and they did  
6 determine that they shipped a boiler to the Bowater  
7 Papermill in Catawba, South Carolina. It is a very small  
8 boiler and our information, based on several other things  
9 that are not up for dispute today but just for some  
10 context, is that that boiler was never in the powerhouse at  
11 Bowater.

12 THE COURT: That's a connect-the-dot deal.

13 MR. THOENSEN: Exactly.

14 THE COURT: We're just talking about 30(b)(6).

15 MR. THOENSEN: Correct. That, that was part of the  
16 reason why we went back and forth a couple of different  
17 times. We produced a collection of documents, and we did  
18 have a deposition date set for earlier this month. Ms.  
19 Dean came back and said I think I need more documents than  
20 that, and I said okay. We'll go and get them but if we go  
21 and get them, the 19th is not going to work because we also  
22 have a microfilm process that is extremely tedious and  
23 time-consuming.

24 Our documents that she now is seeking have been  
25 collected; they have been organized, and they were sent to

1 me late yesterday. They will be produced to Ms. Dean and  
2 her cocounsel as soon as I get back to my office following  
3 this hearing.

4 And we did -- as you may imagine, there have been a  
5 flurry of emails and things get missed, and I understand  
6 that. We offered our witness for February 1st. I  
7 understand there's going to be a lot of scheduling concerns  
8 for, for a lot of people. We did offer him for February  
9 1st; he's still available for February 1st. If that is  
10 just impossible for the plaintiffs, we'll work on  
11 something.

12 But in terms of document production and a deposition  
13 date for a 30(b)(6) witness, this is all in compliance with  
14 this court's scheduling order for this trial block that  
15 came in on January 11th. We are producing documents before  
16 the dates set forth in that order, and we're making the  
17 witness available before the date set forth in that, in  
18 that order as well. So, with the production of our  
19 documents to occur today, we don't believe there is a  
20 dispute.

21 THE COURT: Very good.

22 What do you say to that, Ms. Dean?

23 MS. DEAN: I think the issues have been resolved. I  
24 do think telling us the day before we have a flight to do  
25 their deposition that they didn't give us records that we

1 didn't just ask for the first time ---

2 THE COURT: Well, we're past that now.

3 MS. DEAN: But, yeah, there's a lot of frustration  
4 that it takes having a hearing ---

5 THE COURT: Sure.

6 MS. DEAN: --- here to get there, but we're there.

7 THE COURT: Well, we're past that.

8 MS. DEAN: Yeah.

9 THE COURT: So respectfully, Cleaver Brooks, that's  
10 okay and that's on -- you say Bowater. That means on the  
11 *Howe* case, and then you made some mention of *Sizemore* and  
12 *Falls PR for Smith*. Same issue there, or are there no --  
13 they say nothing in the plants they worked in. Is that  
14 true or not true?

15 MS. DEAN: Given that they have indicated they'll get  
16 us all responsive documents today, we will notice the  
17 deposition in all three cases February 1st, and I don't  
18 think you have anything further to rule on.

19 THE COURT: Very good, and just for the record, then,  
20 the three cases we are discussing at this time, Ms. Harris,  
21 are the *Howe* case, *Falls PR for Smith against CBS*  
22 *Corporation*. That's 2015-CP-46-02155. And *Sizemore as PR*  
23 *of the Estate of Sizemore against Bowater Papermill*.  
24 That's 2016-25-0440. And these matters will proceed on  
25 with 30(b)(6)s and exchange documents along the lines that

1 the counsels have discussed, with no need for a further  
2 order at this time.

3 MS. DEAN: Yes, Your Honor.

4 THE COURT: Very good. All right, that does Cleaver  
5 Brooks. Now we go to Covil.

6 MS. DEAN: Covil is another scenario where I know  
7 we're talking about the *Howe* case, but we are also seeking  
8 a deposition in *Smith* and in *Sizemore*, and I should say  
9 Falls, the PR. But we had a deposition notice in November.  
10 We'd been asking for months. They gave us a date of the  
11 31st. I was planning on going out and getting ready for  
12 the 31st. They now claim that because their main witness  
13 had to go from a part time to a full-time job in January,  
14 that they need more time.

15 Again, I believe that the hardship for not planning  
16 for something where you've gotten more than the thirty days  
17 that the rule requires -- sixty days -- shouldn't fall on  
18 the plaintiffs and should proceed on the 31st.

19 The second part of their motion has just been why do  
20 we have to do this over and over again. We are happy to do  
21 them in a, in a group if that is better for their people.  
22 And then their final thing they say is look. Our corporate  
23 representative now didn't start with the company until  
24 1974. He's the son of the person that owned and started  
25 the company who was deposed at length. I think it's 498

1 pages back in 1977. Can't you just use that, and which --  
2 this communication just started this last -- within the  
3 last week. They got me the deposition but not the  
4 exhibits. They promised they'll do that today.

5 I, I'm just putting on the record so they have comfort  
6 in this. I have no interest in reinventing the wheel when  
7 I already have the evidence, but I am confident that if  
8 they have a person that worked there in the years when our  
9 guys say they were working with Covil, and that is his son,  
10 and this deposition was in '77 when these particular sites  
11 weren't of the target, then I'm going to have follow-up  
12 questions.

13 So, I committed to reading that deposition, to not  
14 asking the questions that have already been asked, but I am  
15 confident that there are still things I need to learn about  
16 Covil's responsibility. And then broadly, the subject of  
17 their insurance is something that's critical. It's been  
18 represented to Mr. Holder and to Ms. McVey and to others  
19 that they are uninsured. We sought those policies. It  
20 turns out that during the relevant years they do have  
21 insurance, and we need to better understand that so that we  
22 can evaluate the case.

23 And so our request is to order that the date they gave  
24 us, the 31st, go forward and that any responsive documents  
25 they haven't produced -- I don't know if that's limited to

1 the exhibits to that 1977 deposition, but what they have be  
2 produced to us by week's end so that we have time to  
3 prepare for the deposition.

4 THE COURT: All right, and Mr. Rheney for Covil.

5 MR. RHENEY: Thank you, Your Honor, David Rheney for  
6 Covil. I guess I need to explain a little bit how things  
7 have changed in the last three weeks or so, but let me, I  
8 guess -- first, though, we are in the category of not  
9 having produced documents and not having given a date. I  
10 don't think we belong in either category.

11 The documents, Covil documents -- as you know, I, I  
12 suspect you know, Covil has been out of business, defunct  
13 since 1991. We have the documents. We have offered since  
14 October for them to come to our office and take a look at  
15 whatever they want to take a look at. So, that has been,  
16 that's been offered long ago.

17 Covil has been a defendant in many of these cases, and  
18 Covil has responded to discovery. Now as far as some of  
19 these specific cases, I will tell the court responding to  
20 these specific cases, that's going to be done in the next  
21 day or so. I know those have been worked up. Mr. White  
22 has to take a look at them, to put them in a file, and get  
23 them out. However, this is the same information that Covil  
24 has produced in every other cases. So, there's not going  
25 to be any different response now than what has been done *ad*

1     *nauseam* over the last number of years. It's the same  
2     documents from the same company; nothing new has happened  
3     since 1991, so nothing has changed. We have offered to let  
4     them come to our office and take a look at what we have.  
5     So, I don't think we belong in the we-haven't-produced-  
6     documents category.

7             As for the day, Ms. Dean mentioned that she was  
8     willing to work with people to, to work on dates at  
9     different times and consolidating, but that hasn't been the  
10    case with Covil. They've insisted on January the 31st, and  
11    we have asked for February the 7th or 8th. I believe I saw  
12    an email from Mr. White to Ms. Dean from last week. We  
13    were told that could not be done. I understand why they  
14    want to proceed as soon as possible, but we asked for a  
15    single week.

16            There's a reason for that, Your Honor. Jimmy Covil is  
17    sixty-five years old, and so we're talking about ---

18            THE COURT: Mere child.

19            MR. RHENEY: I'm close enough to that that I'm not  
20    making fun of that, but to the extent we're talking about  
21    people with the company, they're gone. There, there's  
22    certainly conceivably people alive who worked for the  
23    company back in the seventies. They're in their eighties,  
24    nineties, or more. We don't know where they are, so Jimmy  
25    Covil is only person we've got available.



1 Jimmy worked for the company beginning in 1974. His  
2 father, Palmer, owned the company and testified in 1977,  
3 and I'll get to that in just a second. Jimmy still does  
4 work for -- in loss prevention or loss control for  
5 Hamrick's. He worked part time and was available to be  
6 prepped to be ready for a deposition, but his supervisor  
7 blew out his knee shortly after Christmas, and Jimmy is now  
8 working full time and will be until March when his  
9 supervisor comes back. His schedule is erratic. We  
10 provided an affidavit. It's not the same every day, but  
11 he's working a full-time job and doesn't have days upon  
12 days to devote to this.

13 We're glad to put him up, but the Covil 30(b)(6)  
14 deposition was noticed four separate times in the next two  
15 weeks. The 25th, twice on the 30th, one -- and I will add  
16 one of those is a North Carolina case called *Finch*, but  
17 it's the same law firm that had noticed the deposition --  
18 as well as January the 30th or 31st, whatever it is. We  
19 think one time is sufficient, particularly on general  
20 matters.

21 THE COURT: Well, why cannot the one time be the 31st  
22 as opposed to the 8th?

23 MR. RHENEY: Because we can't have Jimmy Covil ready  
24 by then. He is coming to sit down and talk with us as it  
25 fits his schedule, and need a little bit more time.

1           We would also point out that -- I'll go back to the  
2 beginning. We don't think the deposition should be taken.  
3 Palmer Covil testified in June of 1977 when he was still  
4 the owner and CEO of the company. I may not have the title  
5 quite right, but he's the man in charge. He was  
6 cross-examined by some of the best lawyers in the history  
7 of this state on both the defense side and the plaintiffs'  
8 side. He was thoroughly questioned over several days and  
9 500 pages worth of deposition at the ---

10           THE COURT: Mr. Rheney, I'm not going to forbid them  
11 from taking a 30(b)(6) of the person that is still around  
12 to be deposed, the son.

13           MR. RHENEY: Well, and then ---

14           THE COURT: I'm not going to do that. What we're  
15 talking about now if when we can do it.

16           MR. RHENEY: Well, Your Honor, I guess I, I do  
17 understand that, just so you know, and I'm not arguing with  
18 you. Please understand. What Jimmy Covil knows is going  
19 to be a regurgitation of what Palmer testified to.

20           THE COURT: Well, that may be.

21           MR. RHENEY: Palmer testified to. That I know.

22           THE COURT: But we're going to have the time. We've  
23 got a bunch of cases in which they want to depose him.

24           MR. RHENEY: Well, the week ---

25           THE COURT: They're going to depose him one time. At

1 least they're ready to do that. I think that's reasonable.  
2 I think it's very reasonable for you to say (a) he doesn't  
3 know anything and (b) if he's going to be deposed, it all  
4 ought to be just one time.

5 MR. RHENEY: Well, we just ask for one more week. I  
6 think Mr. White put in his email last week they wanted the  
7 7th or 8th to give us enough time to get Jimmy Covil ready  
8 because again his 30 ---

9 THE COURT: All right, let's see what -- Ms. Dean,  
10 can't we do it the 7th or the 8th?

11 MS. DEAN: The problem is, is, as you, I think, know  
12 firsthand now, is that literally that's what everyone's  
13 asking for. And when they say they need more time, they've  
14 had since November. And their guy's excuse is -- a guy who  
15 works forty hours a week who found out in December that  
16 that's the first time he's going to have to work forty  
17 hours a week -- that he's going to be deposed on January  
18 31st.

19 And there was a characterization there, and I don't  
20 know if it was intended, that we're insisting on. That  
21 couldn't be farther from the truth. Mr. Holder sent out  
22 something in November that says I'll give you any day and  
23 any time. He did it again in January. The date on the  
24 31st came from them. We know he's available that date.

25 And so what I'm requesting is that if they have

1 documents -- and I hear him say is that Mr. White is  
2 finalizing them. Get them to us by Friday and let us go  
3 forward with the deposition the date they told us their  
4 witness is available. If he -- if we have a hiccup on that  
5 day and he didn't think of something or he forgot something  
6 through -- I've worked with these lawyers for a long time.  
7 We'll work it out, but we have a date that their witness is  
8 available. Their best excuse under the law is he wants  
9 more time to prepare. That's not unduly burdensome. The  
10 law anticipates thirty days. They've had eighty.

11 THE COURT: Okay.

12 MR. RHENEY: Your Honor, just to add to that, Mr.  
13 Covil was not aware he was going to be a full-time employee  
14 until December 31st.

15 THE COURT: Well, that's fine. I don't think you have  
16 any difference in facts. I don't think we need to go over  
17 that again, but one thing she adds to it is that you agreed  
18 to the 31st. He agreed to be available on the 31st. Now  
19 he's saying no.

20 MR. RHENEY: Because of the change of circumstances  
21 three weeks ago that -- we were going to spend time with  
22 him throughout January getting him ready. That has not  
23 been available to us or him because of his changed  
24 situation from having to go from a part-time employee to a  
25 full-time employee. He hasn't been able to devote the time

1 needed to this.

2 THE COURT: All right, here's what's going to be done.  
3 The documents need to be to them by Friday. That's the  
4 26th, and this deposition is going to take place February  
5 the 7th.

6 MR. RHENEY: Thank you, Your Honor.

7 THE COURT: Now, get me an order to that effect, Mr.  
8 Rheney.

9 MR. RHENEY: Yes, ma'am.

10 THE COURT: All right.

11 MS. DEAN: And, Your Honor, is that in all three  
12 cases?

13 THE COURT: That's in all the cases, right, and I  
14 believe, Ms. Harris, we have those numbers, been recited  
15 into the record several times, but it's *Howe, Falls*, and  
16 *Sizemore*. Very good.

17 (A PAUSE.)

18 THE COURT: We're going to take a break. Let's be  
19 back in ten minutes.

20 (OFF THE RECORD.)

21 THE COURT: All right, are we ready to go? The next I  
22 have on my list is Flowserve.

23 MS. DEAN: Yes, Your Honor.

24 THE COURT: For Durco. All right, Ms. Dean.

25 MS. DEAN: Your Honor, Durco or Duriron made pumps.

1 We produced discovery a long time ago, the standing order  
2 of discovery asking about what pumps they had on there.  
3 Over a year has passed. Yesterday they responded by saying  
4 yes, our records do, in fact, show that those pumps were at  
5 Celanese, and then there's a series of objections. So,  
6 it's absolutely unclear whether they don't have records at  
7 the other locations or whether they're standing on their  
8 objections.

9 We also have a witness who identified Durco pumps at  
10 Bowater. So, we have a witness who says the pumps are  
11 there in one location, and I learned last night that they  
12 have pumps at Celanese as well.

13 So, we want a complete set of records. I don't -- we  
14 did get discovery saying our two pumps are there, but we  
15 don't have the actual underlying records we've requested,  
16 and we ask that we get those by Monday and a deposition  
17 date before the scheduling order deadline.

18 THE COURT: When is the deposition? Has the  
19 deposition been scheduled?

20 MS. DEAN: My understanding is no.

21 THE COURT: Okay.

22 MS. DEAN: Although there has been a lot of emails  
23 going between all three of us, and so I could be wrong,  
24 whether that's changed recently.

25 MR. RHENEY: Your Honor, David Rheney.

1 THE COURT: Yes, sir, Mr. Rheney.

2 MR. RHENEY: The -- I think I saw a deposition notice  
3 of January 28th. I've, I've been out of state for the last  
4 couple of days. I don't know about the discussion back and  
5 forth about another date, but we can -- it's either -- if  
6 y'all talked another date, we're fine with another date. I  
7 think it was January 28th. That ---

8 MR. HOLDER: I think it's a placeholder. I, I don't  
9 remember ---

10 MR. RHENEY: Okay.

11 MR. HOLDER: --- being provided that. I apologize.

12 MR. RHENEY: But we can certainly, we can reach a  
13 date, Your Honor. Our -- I know that some discovery  
14 responses were sent yesterday, and I do apologize for not  
15 being up to speed. I've been out of state. I don't know  
16 what was said yesterday, but to the extent that there is  
17 any more, then yes, ma'am, we'll get that there, and I'll  
18 check on that soon as I get back to Greenville today.

19 Our opposition, Your Honor, the motion was the witness  
20 has testified that he recalled a Durco pump, but Duriron, I  
21 think, is the defendant in this matter. I may be mistaken,  
22 but he specifically said I don't know anything about  
23 Duriron. I don't know about Covil. So, we're being asked  
24 to do a 30(b)(6) deposition on a product that nobody has  
25 identified as being in the Bowater plant where Mr. Howe

1 was.

2 THE COURT: Well, that's one of those connect the dots  
3 things.

4 MR. RHENEY: I understand.

5 THE COURT: Your client needs to understand a 30(b)(6)  
6 is going to be taken.

7 MR. RHENEY: Yes, ma'am.

8 THE COURT: It's going to be January the 29th. Monday  
9 is when Ms. Dean asks that complete files for all of these  
10 locations and their supply of pumps to these locations be  
11 provided, and then you all will work on a deposition date.  
12 And it sounds like you and Mr. Holder can figure that out.  
13 The biggest thing we need to do is we need to get those  
14 documents by next Monday.

15 MR. RHENEY: I understand. I'm not saying they  
16 haven't been sent. I honestly don't know. I know some  
17 things have been put together.

18 THE COURT: She says she's kind of getting things in,  
19 and a lot of them belie the representations that have been  
20 made that, no, we didn't have anything to do with that.

21 MR. RHENEY: Well, Your Honor, let me go flag back for  
22 one second. I did speak to Ms. Dean during the break about  
23 producing in the other case, cases we've been talking  
24 about. Instead of Friday, producing the documents on  
25 Monday, and she said that would be sufficient.



1 THE COURT: Yeah, but ---

2 MR. RHENEY: We'll try to get it before then.

3 THE COURT: --- it's Monday for all cases in which you  
4 are involved, all documents.

5 MS. DEAN: I want to be real clear what we're talking  
6 about. After the break, it was told to me that it creates  
7 a lot of logistical problems to follow your order as it  
8 relates to Covil and all three cases to get me the  
9 documents by Friday. What I said is given I have so many  
10 other documents coming from other defendants on Friday, if  
11 it helps them, we can revise that by agreement until  
12 Monday.

13 THE COURT: All right, that's fine on Covil?

14 MR. RHENEY: Yes.

15 THE COURT: And let me make my notation and Danny  
16 White, your cocounsel, is standing, wanting to be heard.  
17 I'm going to do that in just a minute, Mr. White. Let me  
18 kind of get myself straight here.

19 The documents by the January 29th in Covil and in this  
20 case, and then the deposition in this case, timing is going  
21 to be worked out. Am I right?

22 MS. DEAN: I only want to make clear that if they  
23 intend to file a summary judgement, the 28th won't work.  
24 We'll need to stand by the deadline of the scheduling order  
25 for the 9th. Just let me know and ---

1 THE COURT: Yeah, and I agree with that. You know,  
2 it's just not fair, and let me tell you. As the night  
3 follows the day, they're going to file motions for summary  
4 judgment. So, the depositions need to take place earlier  
5 so you can have time to deal with that.

6 Mr. White, welcome.

7 MR. WHITE: Good morning, Your Honor, Danny White.

8 THE COURT: Danny White for Flowserve by whatever ---

9 MR. WHITE: Yes, Your Honor.

10 THE COURT: --- name now know.

11 MR. WHITE: Just want to clarify because some plurals  
12 were used there. Duriron is only in the *Howe* case. As I  
13 understand it, the only work site involved is the Bowater  
14 paper plant.

15 THE COURT: No.

16 MS. DEAN: No. So, here's -- we have gone through  
17 this. There are five locations. I actually know Durco  
18 incredibly well, and I disagree with Mr. Rheney's  
19 assessment that because people didn't know Flowserve or  
20 Duriron, that they didn't know Durco. That is normal.  
21 That is exactly what happened in the *Bumgardner* case. The  
22 name that was on the equipment was Durco. Duriron is a  
23 different name. So, we have actual ID from a witness of  
24 Durco pumps, which are the pumps that Flowserve and Duriron  
25 are responsible for at Bowater. And then I learned

1 yesterday from discovery that they should have responded to  
2 fourteen months ago that they also have records that their  
3 Mark II pumps, which have multiple asbestos gaskets in it,  
4 are at Celanese, and my guy worked at Celanese in a variety  
5 of locations, and so ---

6 THE COURT: So, it's Bowater and Celanese, and that  
7 covers five different locations?

8 MS. DEAN: There's two Celanese locations. There's  
9 the Bowater location. There's American Enka, and there's  
10 the Crown Cork and Seal location. Their discovery  
11 indicated that they had a hit, for a lack of a better word,  
12 verifying their pumps where at one location. I don't know  
13 what their records show from the other four because their  
14 answers aren't clear as to that. I do know I have ID of  
15 Durco pumps at Bowater.

16 THE COURT: Okay, here's what's going to happen, Mr.  
17 White. It is clear you're going to need to provide  
18 documents and 30(b)(6) witness that can speak to whether or  
19 not Durco, and if so in what timeframe, Durco had pumps at  
20 Bowater, two Celanese -- American Enka, Crown Cork and Seal  
21 -- and so that makes it real clear what they've got to  
22 provide. The documents will be provided by January the  
23 29th, and you all will work on a date for the deposition.  
24 But it needs to be earlier in February so that at the end  
25 of February the motions for summary judgment can filed like

1 they're supposed to be.

2 MR. WHITE: Thank you, Your Honor.

3 THE COURT: Okay. Very good. We've got  
4 Flowserve/Durco resolved, I think.

5 MR. WHITE: I believe so.

6 THE COURT: Ms. Techman.

7 MS. TECHMAN: Your Honor, I think I wasn't fast enough  
8 at the break to catch up with my colleagues. Would the  
9 court give me just a minutes to talk with them regarding  
10 Foster and Ingersoll Rand in an effort to see if we have an  
11 understanding that might work short of court intervention?

12 THE COURT: Okay, it's Foster Wheeler and Ingersoll  
13 Rand that you want to yack about?

14 MS. TECHMAN: Correct.

15 THE COURT: All right. Well, let me ask you this.  
16 Can I go to Marculex and Sterling for Gorman Rupp while  
17 you're talking with your colleagues about -- are you  
18 wanting to talk to them or to your colleagues?

19 MS. TECHMAN: I'd like to talk with the plaintiffs. I  
20 can handle the ---

21 THE COURT: Well, y'all had ten minutes to do all this  
22 when I took a break.

23 MS. TECHMAN: Understood, Judge.

24 THE COURT: I've got three other cases I've got to  
25 hear today.

1 MS. DEAN: We can multi-task. Jonathan can talk to  
2 Jennifer, and I can keep going.

3 THE COURT: Okay. Good.

4 MS. TECHMAN: That's certainly acceptable to me.  
5 Thank you for the indulgence.

6 THE COURT: Perfect. Perfect. I need to quit being  
7 so antsy myself. Pardon me, Ms. Techman.

8 All right, Ms. Dean.

9 MS. DEAN: That puts us -- the next, the Marsulex, and  
10 I talked to counsel on the break and believe we have an  
11 agreement that we just will state on the record that they  
12 will produce responsive documents by the 9th and a  
13 deposition date the week of the 12th, and given that  
14 agreement, as long as they can confirm. I understood it  
15 correctly, this motion -- is that fair?

16 THE COURT: Who is representing Marsulex?

17 MR. ROZELSKY: Your Honor, Kurt Rozelsky for Marsulex.

18 THE COURT: All right, Mr. Rozelsky.

19 MR. ROZELSKY: I have to apologize, Your Honor.

20 THE COURT: Mr. Rozelsky.

21 MR. ROZELSKY: I thought I ---

22 THE COURT: Mr., Mr. Rozelsky.

23 MR. ROZELSKY: Yes, ma'am.

24 THE COURT: For the benefit of Ms. Harris ---

25 MR. ROZELSKY: R-o-z ---

1 THE COURT: --- spell your name.

2 MR. ROZELSKY: R-o-z-e-l-s-k-y.

3 THE COURT: Very good.

4 MR. ROZELSKY: Only one in South Carolina.

5 THE COURT: Yes, sir.

6 MR. ROZELSKY: Your Honor, I thought I was coming as a  
7 note taker, and then we got this motion. So, apparently I  
8 became an argument maker, so I apologize. I've been  
9 texting with my partners, Tim Peck and Stephanie Flynn, to  
10 work this out and, and we do have an agreement. We've  
11 produced an asset purchase agreement. This is an issue  
12 about successor liability, but we will produce whatever  
13 documents that we have by February the 9th, and we will  
14 work on a date for the week of the 12th. I even offered to  
15 spend Valentine's Day with Ms. Dean.

16 THE COURT: All right, all right. So, Marsulex is on  
17 the record. Mr. Rozelsky indicates, Ms. Dean, that you  
18 correctly recited your agreement. So, that deals with  
19 Marsulex. Thank you very much.

20 MR. ROZELSKY: Thank you, Your Honor.

21 THE COURT: All right, now we've got Sterling.

22 MS. DEAN: Your Honor, Sterling is in this case as it  
23 relates to liability for Peerless Pumps during certain  
24 years. Again, if Mr. McDonald is okay with this, they are  
25 in both the *Smith* case, or the *Falls* case, and the *Howe*

1 case. We have a request to find out about what equipment  
2 they had at the various facilities where Ms. Charlotte  
3 Smith's husband worked and in the case of Mr. Howe, where  
4 he worked, and are seeking to get the documents and a  
5 deposition taken.

6 MR. McDONALD: Sure. The -- I thought we had a  
7 discussion yesterday. Ms. Dean's firm is taking Sterling's  
8 deposition next Tuesday.

9 THE COURT: Which is the 30th.

10 MR. McDONALD: In the case in North Carolina. We're  
11 just going to combine the depositions. In the last two or  
12 three weeks, we've redoubled efforts to try -- we answered  
13 discovery in May of 2016 about our research on these sites.  
14 We redoubled efforts and will provide anything, you know,  
15 prior to the deposition. Our goal was by this Friday,  
16 anything new that we come up with.

17 Now, I'm not sure. Are they -- are you sure they're  
18 in the *Smith* case? I have them down in *Howe*, but we can  
19 clarify that.

20 MS. DEAN: You know what? Mr. McDonald's right. I  
21 pulled from the *Smith* case the Union Carbide deposition  
22 notice, so that's my mistake. So just to be sure we're on  
23 the same page, if, if ---

24 THE COURT: It's *Howe* and the North Carolina case,  
25 right?

1 MS. DEAN: Yes. We can cross notice in *Howe* the  
2 deposition of Sterling on the 30th, and -- if we have the  
3 documents by Friday. We need to at least have a couple  
4 business days to review to have a meaningful time when we  
5 take the deposition.

6 THE COURT: I think Mr. McDonald is saying he can do  
7 that.

8 MR. McDONALD: That's what -- I'm trying to do that,  
9 Judge. I'm not the person looking.

10 THE COURT: Sure. I understand. All lawyers can do  
11 is say you'll try to do it.

12 MR. McDONALD: That's right.

13 THE COURT: Absolutely. Very good. Then Sterling is  
14 resolved.

15 MS. DEAN: That leaves us on our list -- and I think  
16 the good news before I do go with this is I think in  
17 handling this, we've also inadvertently dealt with a lot of  
18 motions for protection, but if we ---

19 THE COURT: How about Gorman Rupp?

20 MS. DEAN: Gorman Rupp, that is a pump company. We  
21 have been seeking from Mr. McDonald or his client to let us  
22 know whether that equipment were at any of the locations  
23 where Mr. Howe worked and have not been able to agree to a  
24 date or to get records.

25 MR. McDONALD: Sure, Your Honor, and I come before you



1 -- Gorman Rupp will produce a witness. If the court tells  
2 us to produce a witness, we'll do it immediately, all  
3 right, but let me just -- I'm dis-serving my client if I  
4 don't tell you about the situation, all right?

5 Gorman Rupp's main wheelhouse pump is a water pump, a  
6 wastewater pump that plants would use. It has rubber  
7 gaskets, rubber packing. Has nothing to do with asbestos,  
8 all right, but in all honesty, in their discovery responses  
9 they did at times sell some pumps with asbestos, okay?

10 All right, the testimony in this case, Mr. Howe never  
11 mentioned working around a Gorman Rupp pump. Coworker  
12 Newland, no testimony working around a Gorman Rupp pump.  
13 Testimony from Wayne Grant, no working around a Gorman Rupp  
14 pump. Testimony from Gilbert Small, no Gorman Rupp pump  
15 that he recalls, and he was the millwright that worked on  
16 the pumps at the Bowater plant.

17 Gorman Rupp has responded. They have provided -- I  
18 mean, long time ago verified responses to discovery. We  
19 have researched our records, and we have no record of any  
20 pump with asbestos-containing components to any of the job  
21 sites where Mr. Howe worked, all right?

22 Now the last two or three weeks, I have redoubled  
23 efforts. Let's double check. Let's dig into our records,  
24 and they're doing that and we may be able to just provide  
25 some model numbers and things like that to satisfy them. I

1 think we definitely had sales to Bowater, but they are  
2 pumps without asbestos components. I have provided a  
3 transcript of a very thorough deposition of Gorman Rupp  
4 that explains their history and the kind of pumps they  
5 made, and I have provided that to Mr. Holder in hopes that  
6 he wouldn't have to take their deposition in this situation  
7 on that evidence. It seems like a waste of time.

8 THE COURT: Well, it sounds to me you would be well  
9 able to say all docs I haven't provided I can provide by  
10 Friday, and then you will get together with Mr. Holder and  
11 decide whether or not you need to take a deposition, all  
12 right?

13 MR. McDONALD: That's fair. Okay.

14 THE COURT: That resolve that, Ms. Dean?

15 MS. DEAN: Yes, and I've known -- I've worked with Mr.  
16 McDonald for a decade. We have no desire to tread on  
17 somebody that doesn't have asbestos, but we just need to  
18 look for ourselves.

19 THE COURT: Sure. That's just a due diligence thing.

20 MR. McDONALD: Sure.

21 THE COURT: And it sounds like y'all are well on the  
22 way to seeing where you are.

23 Now, that means that the only thing we've got left is  
24 Ingersoll Rand and Foster Wheeler, and are we still  
25 involved in discussions?

1 MS. McVEY: They are still discussing. Do you want to  
2 move on to the next case, or do I need to go grab them?

3 THE COURT: Go grab them.

4 MS. DEAN: I'm likely prepared to do that, if the  
5 court doesn't mind, but we can also grab them if that's  
6 better.

7 THE COURT: You think it's going to take much longer,  
8 or can you go on and grab them?

9 MS. McVEY: Let me go check.

10 THE COURT: Okay. Let's just be at ease for a minute.

11 (OFF THE RECORD.)

12 THE COURT: Okay, we have Ms. Techman and Mr. Holder  
13 available, so we're now on Foster Wheeler. All right, and,  
14 Ms. Techman, do y'all have an agreement?

15 MS. TECHMAN: Well, wish I could tell you that we did,  
16 Judge.

17 THE COURT: Well, you don't have agreement then.

18 MS. TECHMAN: That's right.

19 THE COURT: Let them go forward.

20 MS. TECHMAN: Sure.

21 THE COURT: And say what's on their mind, and then you  
22 can respond.

23 Go ahead, Ms. Dean.

24 MS. DEAN: Foster Wheeler is in the *Howe* case as a  
25 manufacturer of boilers. We have five, five locations

1 wherein our kind of lengthy experience with Foster Wheeler,  
2 they have records of whether they're there or not and where  
3 we have some ID that we obtained from coworkers or  
4 codefendants that we want to talk to them. And we're  
5 struggling to get a concrete date for documents and  
6 deposition.

7 THE COURT: All right, Ms. Techman.

8 MS. TECHMAN: Sure. Jennifer Techman for Foster  
9 Wheeler. There is no evidence, as you've heard from some  
10 of my colleagues, in this case from any witness who puts  
11 Foster Wheeler products at issue. I say that with the  
12 benefit of having heard what the court has said to my  
13 colleagues about that position. But I also say that to  
14 provide context: that it was only recently that we got  
15 direct communication from the plaintiffs' team that they  
16 were interested in at least one particular site with regard  
17 to Foster Wheeler. There may now be two sites.

18 Be that as it may, whether there was one or two, I  
19 have been in constant communication with the client to  
20 determine if they have documents regarding the site.  
21 Sometimes you have the site come up again and again, and on  
22 the defense side you have the good fortune that the  
23 documents have been produced before and you can pretty  
24 quickly turn them around.

25 I'm sorry to tell you that is, unfortunately, not my

1 good fortune. So, there, there is a site at issue,  
2 Celanese, that is -- has not been what I would call  
3 previously produced. Foster Wheeler will need time find  
4 documents. I understand from having heard Your Honor this  
5 morning that you will require them to do that, and I have  
6 told that to the client and it is underway, and they  
7 understand the speed with which it needs to happen. But  
8 there are only twenty-four hours in a day, and so they will  
9 expedite it as much as possible, as I have explained to Mr.  
10 Holder.

11 But I am not in a position to tell the court, for  
12 example, it can be done by a date certain. I can tell you  
13 it will be done as expeditiously as possible and, you know,  
14 with full knowledge of the deadlines in the case, and in  
15 particular the summary judgment. So, that's where we are  
16 with regard to documents.

17 With regard to deposition, again there are prior  
18 depositions taken by probably even Ms. Dean herself. So,  
19 there is prior testimony from the client, and that will  
20 help us because it will narrow the issues. I don't think  
21 they want to take yet another deposition on quite a number  
22 of issues that are already covered because they'll rely on  
23 existing testimony.

24 To the extent they want to talk with a designee with  
25 regard to the site, we have to get the documents before we

1 can put up the witness.

2 THE COURT: All right.

3 MS. TECHMAN: And again, they will do that as  
4 expeditiously as possible, and I have explicitly told them  
5 about the deadline of February 9th, that they will make all  
6 best efforts to do that.

7 THE COURT: All right, here's what going to happen.  
8 By January 29th, next Monday, they're going to produce  
9 documents. They've got to do that, and sometime the week  
10 that includes February the 8th, depositions are going to be  
11 scheduled. Can y'all work with that general order?

12 MS. DEAN: Yes. I would like to make clear, because  
13 of what was stated on the record, that they believe it's  
14 only two locations. They may and probably very well do  
15 know more than I do, but there are five locations at issue,  
16 and we want to know ---

17 THE COURT: They're going to have to respond to a  
18 document request for all five locations, and they're going  
19 to have to be deposed on the 30(b)(6) about those  
20 locations.

21 MS. TECHMAN: May I respond to that point, and it may  
22 be helpful. I know Ms. Dean has got a lot going on, so she  
23 simply might not remember this. When Foster Wheeler  
24 receives a new case and understands the work sites at  
25 issue, all five here, in their discovery -- so, months and

1 months and months ago -- this case was filed in maybe 2015  
2 or 2016. They set out in their discovery what they have  
3 been able to determine with regard to all the work sites.  
4 So, that has been done.

5 THE COURT: Good. They just need to ---

6 MS. TECHMAN: So, that's in the discovery.

7 THE COURT: --- revisit and reverify that because  
8 again, it's going to be a representation made as of January  
9 29th that all documents, all locations have been given.  
10 They need to look at that again, and then they need to have  
11 a deposition witness available the week that includes  
12 February the 8th to be deposed on these matters.

13 MS. TECHMAN: Your Honor, if I, if I cannot comply  
14 with the court's order, I would appreciate the opportunity  
15 to maybe have a joint phone call with you to keep the court  
16 apprized. I simply don't want to leave the proceedings  
17 today giving opposing counsel or the court what may be the  
18 mistaken impression that it can be accomplished.

19 THE COURT: It can be accomplished. Now, Foster  
20 Wheeler can comply with this, Ms. Techman. It's not your  
21 fault, but they've got to understand we're down to the  
22 crunch because they're going to want you to make a motion  
23 for summary judgment, unless the sun doesn't rise, and  
24 that's going to necessitate getting this information and  
25 the deposition done in time for them to do that by

1 complying with the February 28th day. So, that's where we  
2 are.

3 MS. TECHMAN: All right. So I understand Your Honor's  
4 ruling, you are ordering the documents be produced by the  
5 28th.

6 THE COURT: By the 29th.

7 MS. TECHMAN: By the 29th.

8 THE COURT: Which is next Monday, and that a  
9 deposition be conducted in this case, 30(b)(6), for Foster  
10 Wheeler sometime the week that includes the date February  
11 the 8th.

12 MS. TECHMAN: Okay, and is this preceding Your Honor's  
13 ruling on the merits of any defendant's motion for  
14 protection?

15 THE COURT: What kind of protection are they asking  
16 for?

17 MS. TECHMAN: Foster Wheeler and also Ingersoll Rand  
18 have filed a motion for protection with regard to the scope  
19 of the 30 ---

20 THE COURT: No, I'm absolutely not going to do that.  
21 That's a connect-the-dots issue. That's just another way  
22 of delaying these proceedings. They're going to answer  
23 what they can answer.

24 MS. TECHMAN: Sure.

25 THE COURT: And if they go far afield, you're going to



1 instruct them not to answer and I'll deal with that, but I  
2 hope that won't happen.

3 These companies need to understand we've now -- this  
4 is an old case. It's been around since 2015. They need to  
5 go on and get with the program, and they can get with the  
6 program.

7 MS. TECHMAN: Sure. Just, just for purposes of the  
8 record, Your Honor, I want it to be clear. Foster Wheeler  
9 has a pending motion for protection, and that preceded the  
10 motion to compel that was filed yesterday, and it seems  
11 like the motion to compel is what we're hearing today. I'm  
12 simply asking for clarification.

13 THE COURT: I can tell you that I am not going to  
14 refuse to allow a 30(b)(6) deposition to go on the grounds  
15 that have been recited in the Ingersoll Rand and then  
16 Foster Wheeler, if they file one, and they just say it's  
17 overbroad, vague and overbroad. Well, that's a vague and  
18 overbroad reason, as far as I'm concerned, and I'm not  
19 going to do it that way, as I've indicated previously to  
20 someone that I respect as much as I do you, which is Mr.  
21 McDonald and his clients.

22 MS. TECHMAN: Understood.

23 THE COURT: We're just not going to do it that way.  
24 They don't specify anything other than it's vague and  
25 overbroad. That's just not enough.

1 MS. TECHMAN: Well, now, in fairness to my client,  
2 their motion actually makes a proportionality argument.

3 THE COURT: I know and I'm not impressed by that.  
4 That is not enough to prevent a 30(b)(6) deposition from  
5 going forward. The rules specify the circumstances under  
6 which that goes. That goes to relevance and weight and a  
7 whole bunch of things that don't -- that are not a part of  
8 the ball game until much later on.

9 MS. TECHMAN: Understood. Foster Wheeler's view of  
10 the case was simply since there had been no testimony from  
11 Mr. Howe ---

12 THE COURT: I get that ---

13 MS. TECHMAN: --- or any of his coworkers ---

14 THE COURT: I get that. That, that comes up all the  
15 time. These people work around machines, and they don't  
16 know which ones they are.

17 MS. TECHMAN: Sure.

18 THE COURT: And it has to be identified in other ways  
19 by invoices, by 30(b)(6) depositions, and the like. But on  
20 the front end, we don't simply chop it off and say, oh,  
21 that's vague and overbroad because you haven't connected  
22 the dots. That's what I mean by that, but it's not --  
23 that's said with great respect. You are a great lawyer,  
24 Ms. Techman. You're doing a great job for your client, but  
25 that's just a wheel spinning thing in my humble estimation.

1 My betters will correct me if I'm wrong.

2 MS. TECHMAN: If I could just make one more point?  
3 That's Foster Wheeler's view of this case after all the  
4 evidence has come in. So, after the personal deposition of  
5 Mr. Howe, which my clients have moved to exclude because  
6 they did not have an opportunity to cross-examine him, and  
7 after the deposition of the coworkers, there was no one,  
8 there is no one in this case who ---

9 THE COURT: I've read.

10 MS. TECHMAN: --- will identify ---

11 THE COURT: I'm aware and ---

12 MS. TECHMAN: --- as to -- understood.

13 THE COURT: I will not grant such. Thank you.

14 MS. TECHMAN: Thank you, Judge.

15 THE COURT: All right. Now, Ms. Dean, I think we've  
16 got Foster Wheeler taken care of.

17 MS. DEAN: Foster Wheeler has mirror arguments in the  
18 Charlotte Smith case, and so we'd ask for an order in that  
19 case as well.

20 THE COURT: And it will be granted. Again, Foster  
21 Wheeler is going to produce things by the 29th, and they're  
22 going to set a date. The parties will get together on a  
23 date that is sometime the week that includes the date  
24 February the 8th. Prepare an order to the effect so Ms.  
25 Techman can be protected with respect to her client. And

1 if Ms. Techman wants a ruling on the vague and overbroad  
2 and so forth and so on, we'll do that as well, but ---

3 MS. TECHMAN: Can I be heard briefly -- pardon, Your  
4 Honor -- on *Smith*?

5 THE COURT: Is this going to be the same thing all  
6 over again?

7 MS. TECHMAN: No.

8 THE COURT: All right.

9 MS. TECHMAN: With all due respect. If, if I might  
10 make a suggestion, and it might fail miserably, but let me  
11 make it. Typically we reach one case for trial, and I  
12 think we have all been heavily focused on Mr. Howe's case.  
13 Would you allow Ms. Dean and I to reach an agreement of  
14 counsel, if we can, with regard to documents or deposition  
15 in any of the other trailing cases on this document if she  
16 is amenable to it? And here is why I make that suggestion.

17 I am very reluctant to leave the court or Ms. Dean  
18 with the mistaken impression that I can satisfy fully my  
19 client's document production or deposition.

20 THE COURT: Ms. Techman, this is great for the client,  
21 but of course if y'all reach some agreement that is  
22 different from the order, that's fine and dandy if the both  
23 of you agree.

24 MS. TECHMAN: Sure.

25 THE COURT: But this order will say what it's going to

1 say, which is January the 29th and the week that includes  
2 the date February 8th. If the parties agree otherwise,  
3 then I don't won't have to get involved in it anymore.

4 MS. TECHMAN: Understood. For example, I anticipate  
5 she'll -- she might bring up *Sizemore*, and I think there  
6 are sixty work sites in *Sizemore*, and we've had quite a bit  
7 of conversation ---

8 THE COURT: These are orders ---

9 MS. TECHMAN: Sure.

10 THE COURT: --- with respect to every one of these  
11 cases, *Howe*, *Sizemore*, *Falls on behalf of Smith*. The only  
12 case we haven't talked about yet is *Glenn*, but these are  
13 orders that affect all of these cases. They're all set  
14 back to back, and they're all going to be treated the same  
15 way.

16 Everybody understand where we are? Very good.

17 MS. DEAN: Yes, Your Honor.

18 THE COURT: Ms. Dean, you'll prepare an order to that  
19 effect.

20 MS. DEAN: Yes, Your Honor.

21 THE COURT: Very good. Ms. Techman, anything else?

22 MS. TECHMAN: No, Your Honor.

23 THE COURT: Thank you, ma'am.

24 All right, now we got *Ingersoll Rand*.

25 MS. DEAN: *Ingersoll Rand* is a manufacturer of

1 compressors and pumps where we have been seeking what  
2 identification they have of that equipment at five  
3 locations and want an order that just requires them to give  
4 us what documents they have, if any, by Monday and a  
5 deposition by the scheduling order deadline.

6 THE COURT: Same issues you had in the previous one.  
7 Any problems other than protecting you on your motion that  
8 it's vague and overbroad and ought not to be taken at all,  
9 et cetera?

10 MS. TECHMAN: I would simply note for the record that  
11 Ingersoll Rand has moved for protection on grounds  
12 including overbreadth and others. And with regard to  
13 Ingersoll Rand, we have been working, as we have with  
14 Foster Wheeler, with the folks that do know more. I would  
15 say our communication lines are pretty open and typically  
16 have been.

17 We think we have identified a date. It may be  
18 slightly outside of the February 9th deadline, and we'll  
19 either figure out if that is doable -- you're going to have  
20 a lot going on before that date. Maybe you'll be amenable  
21 to taking it slightly outside the deadline. If you're not,  
22 we'll revisit it.

23 Ingersoll Rand historically doesn't have the ability  
24 to go search for records at any site, as Ms. Dean knows.  
25 They have documents from cases, maybe just a year ago in

1 the Carolinas, so they do have some documents. We will  
2 continue to look, but I believe we've been very candid in  
3 telling them that we do not have the ability, and so we  
4 don't have responsive documents. If you wanted the  
5 documents for, say, American Enka, I do not think the  
6 client can fairly represent to you these are the documents  
7 about American Enka, but I think we're on the same page  
8 about that. And they do -- plaintiffs' counsel does have  
9 Ingersoll Rand documents, and we'll certainly -- we can  
10 discuss that as often as we need to. And if they feel they  
11 need more, we are amenable to that.

12 THE COURT: Very good. Does that resolve it, Ms.  
13 Dean?

14 MS. DEAN: I believe so. We're not asking ---

15 THE COURT: February 9th, the week of February the 8th  
16 unless you all agree otherwise?

17 MS. DEAN: Yes.

18 THE COURT: Very good. All right, that's Ingersoll  
19 Rand. Now, that competes everything I've got on list for  
20 your motions to compel.

21 MS. DEAN: The next case that we had a motion for,  
22 which is in the next tab, was for *Smith*, but I don't even  
23 have to turn to that because the requests related the  
24 Cleaver Brooks, Covil, Daniel, Foster Wheeler, and Union  
25 Carbide, and we have already dealt with all of those while

1 discussing the *Howe* case.

2 THE COURT: Exactly. Now the sites, of course, are  
3 different. They are spelled out in the *Falls on behalf of*  
4 *Smith* motion, and they are paper mills, Bowater Papermill  
5 in '68 forward and four separate Celanese plants:  
6 Spartanburg, Greenville, Darlington, and Salisbury; Cannon  
7 Mills of Kannapolis; Cone Mills, Concord, North Carolina;  
8 Milliken Cypress, Blacksburg; Milligan in Pendleton; along  
9 with ten separate Duke Power.

10 Now, that was the testimony of Childers, right?

11 MS. DEAN: Yes.

12 THE COURT: All right. Is there any -- is that the  
13 universe that we're talking about?

14 MS. DEAN: We're not looking at any, any locations  
15 beyond those, and some of them but not all overlap  
16 locations where Wayne Howe worked.

17 THE COURT: Very good. So, what we've already done so  
18 far adequately describes what needs to be done with respect  
19 to the motion to compel in *Falls on behalf of Smith*?

20 MS. DEAN: Yes, Your Honor.

21 THE COURT: Which is 2015-CP-46-2155, and the orders  
22 that are filed will reflect. Now, anything else on that  
23 one?

24 MS. DEAN: Not, not that I'm aware of.

25 THE COURT: All right, we've got, of course, with all



1 of these voluminous motions on behalf of all kind of folks  
2 to quash the 30(b)(6) depositions and for protective  
3 orders. I think we have dealt with these, but if anybody,  
4 any counsel feel like anything needs to be dealt with that  
5 had not been dealt with, I'll be glad to do it.

6 I do not regard these motions for protective order or  
7 for quashing as dealing with anything other than the  
8 plaintiffs' failure to connect the dots to this defendant.  
9 That is what it seems to me is the heart and soul of this.  
10 Am I right about that?

11 MS. DEAN: Yes. I mean, there are, there are some  
12 discrete issues like we don't want to go on a Sunday, but  
13 they've all been dealt with.

14 THE COURT: Right. Okay. So, does anything else need  
15 to be done? I'm just trying to protect the defendants  
16 really primarily, being sure that their record is  
17 protected, that their motions for the quashing and for a  
18 protective order with respect to the 30(b)(6)s that we've  
19 just spent a lot of time discussing in terms of exchange of  
20 documents and dates for depositions, that those matters  
21 have been dealt with.

22 Mr. Rheney.

23 MR. RHENEY: Yes, ma'am. You asked if that fully  
24 encompassed it. I would simply add that in the case of  
25 Covil, we had the additional ground of Palmer Covil's

1 previous deposition.

2 THE COURT: Right, and I think you dealt with that,  
3 that you're going to supply it. I'm going to require that  
4 Jim Covil's deposition be taken.

5 MR. RHENEY: Yes, ma'am.

6 THE COURT: And we've set the dates accommodating your  
7 request for a little bit later.

8 MR. RHENEY: Yes, ma'am. I was simply saying that was  
9 an additional ground for our motion for ---

10 THE COURT: Sure.

11 MR. RHENEY: --- protective order.

12 THE COURT: Understood.

13 MR. RHENEY: Thank you.

14 THE COURT: Everything else good?

15 All right, where are we now, Ms. Dean?

16 MS. DEAN: The next tab is for the *Sizemore* case, and  
17 on page 2 of our motion we list out defendants. The good  
18 news is I believe most of these have been handled with --  
19 handled for Cleaver Brooks, Daniels. I believe we've  
20 handled those in your other orders. For Riley, Scapa, and  
21 Waste Management of South Carolina we resolved that before  
22 coming. So, my records show that the only thing that's  
23 left to be discussed is the CBS Corp, which is  
24 Westinghouse. Relates to Westinghouse equipment.

25 THE COURT: Okay. All right. So, go forward. You're

1 into *Sizemore* now. Do we need to have any arguments for  
2 CBS Corp?

3 MS. DEAN: I am not *pro hac* in either *Sizemore* or  
4 *Glenn*, and so I'd like to maybe gave up on the podium.

5 THE COURT: Very good.

6 Mr. Holder, you going to handle that or Ms. McVey?

7 MS. McVEY: Just one second, Your Honor. Y'all keep  
8 going. Let me resolve SCANA.

9 THE COURT: All right.

10 So, Mr. Holder, you're going to deal with CBS Corp?

11 MS. DEAN: And I misspoke. I was confusing Scapa with  
12 SCANA. That was me being...

13 THE COURT: Yes, you struck fear into my heart. I'm  
14 dealing with Scapa next Monday in York.

15 MS. DEAN: We still do need to talk that SCANA. I'm  
16 sorry. I said SCANA and CBS.

17 THE COURT: All right.

18 MS. DEAN: I'm going to let someone who is...

19 THE COURT: All right, Mr. Holder.

20 MR. HOLDER: Thank you, Your Honor. Jonathan Holder.

21 THE COURT: Jonathan Holder, and we're now in *Jane*  
22 *Coleman Sizemore as the personal representative against*  
23 *Bowater Papermill*. This is 2016-CP-25-0440.

24 MR. HOLDER: Okay. As she said, Jonathan Holder for  
25 the *Sizemore* family.

1           Your Honor, looks like we have CBS Corp as the first  
2 one up. I'm, I'm -- they've given us documents in *Smith*  
3 and *Howe* and, and provided deposition date of tomorrow. So  
4 for *Smith* and *Howe*, there was no issue. We just haven't  
5 gotten a date and documents for *Sizemore*.

6           THE COURT: All right, who's representing CBS?

7           MR. ROGERS: Andy Rogers on behalf of CBS Corporation  
8 in the *Sizemore* case. We, we are working on getting a date  
9 and getting the documents. There, as you have heard, there  
10 are numerous sites at issue in the *Sizemore* case, and CBS  
11 has documents that they can produce in probably close to  
12 twenty of those sites. And a few of those have not  
13 previously been collected, so they are working on that  
14 right now, and also working on identifying a deposition  
15 date.

16           THE COURT: All right. Can we get those documents by  
17 January the 28th -- I mean, the 29th?

18           MR. ROGERS: I, I will certainly convey that to the  
19 client. In all honesty, I, I think it will be very  
20 difficult, but I will convey that to the client.

21           THE COURT: Well, this is another one that's ancient  
22 of days, and it's in Hampton County now because you made  
23 them file the case in South Carolina. Why that was done, I  
24 don't know, but defense has caused this thing where it was  
25 originally -- where was it, New Orleans or some place like

1 that?

2 MR. HOLDER: Yes, Your Honor.

3 THE COURT: Now it's in Hampton County because y'all  
4 insisted they bring it in South Carolina. It's been  
5 hanging around for a very long time. CBS needs to go on,  
6 step up, and provide these documents.

7 MR. ROGERS: Yes, Your Honor.

8 THE COURT: So, it's going to be January the 29th,  
9 2018, and a deposition the week that we previously gave,  
10 February the 8th. Mr. Rogers?

11 MR. ROGERS: Nothing further.

12 THE COURT: Understood?

13 MR. ROGERS: Yes.

14 THE COURT: Very good.

15 Mr. Holder, anything else that needs to be said?

16 MR. HOLDER: Nothing, not on CBS. Thank you, Your  
17 Honor.

18 THE COURT: Provide me with an order on this one.

19 MR. HOLDER: Yes, Your Honor. Also generally on  
20 *Sizemore*, I just want to let everyone know. Thank you,  
21 Your Honor, for signing the order granting leave to amend  
22 for the wrongful death pleading. I'm going to get that on  
23 file today, and that will officially amend the caption to  
24 have it as the PR, and I will go ahead -- I already have  
25 the South Carolina standing discovery responses, finish

1 adapting the exact information from the Louisiana discovery  
2 responses that y'all all have, but they will be on the  
3 South Carolina with the new, with the new caption.

4 MR. McDONALD: Only thing I would add, Your Honor,  
5 this will now turn into a wrongful death case. I read Mr.  
6 *Sizemore's* obituary. He has four children, according to  
7 the obituary. So, we'll want to take the depositions of  
8 those four children and would appreciate their addresses.

9 THE COURT: I'm sure you can provide that, can't you,  
10 Mr. Holder?

11 MR. HOLDER: Yes, Your Honor.

12 THE COURT: Very good. They'll do that.

13 MR. HOLDER: Absolutely.

14 THE COURT: As soon as you can.

15 MR. HOLDER: I'll, I'll send that out with the amended  
16 complaint, sure.

17 Okay, and then the last one, I guess, is SCANA. SCANA  
18 is ---

19 MS. McVEY: I can address it if you want me to.

20 MR. HOLDER: Yes. Switch with me.

21 MS. McVEY: Good morning. Theile McVey.

22 THE COURT: All right, come up to the podium, Ms.  
23 McVey. It helps Ms. Harris.

24 MS. McVEY: Ms. Harris, who's the superhero over  
25 there.

1 I have reached an agreement with Ms. Walker, who  
2 represents SCANA. She is going to provide date to produce  
3 documents and a deposition on Monday.

4 THE COURT: Very good. Thank you very much, Ms.  
5 Walker, and there is no need for the court do anything with  
6 respect to an order because you two counsel have reached  
7 agreement.

8 MS. WALKER: Yes, Your Honor. Thank you, Your Honor.

9 THE COURT: All right, does that complete *Sizemore*?

10 MR. HOLDER: Yes, Your Honor.

11 THE COURT: Very good.

12 MR. HOLDER: That has been resolved.

13 THE COURT: All right, so we're done with *Sizemore*.  
14 Now, we still have got *Glenn*.

15 MR. HOLDER: Yes, Your Honor.

16 THE COURT: *Glenn against 3M*. Who's going to do that,  
17 you or Ms. Dean?

18 MR. HOLDER: I am. That's Jonathan Holder for the  
19 Glenn family.

20 THE COURT: Very good. Now *Glenn against* -- this is  
21 *Rita Joyce Glenn, individually and as Personal*  
22 *Representative of the Estate of Thomas Harrell Glenn,*  
23 *G-l-e-n-n, against 3M Company* and many others. It's a  
24 Tenth Circuit case. It's 2015-CP-4-0107. You may proceed.

25 MR. HOLDER: Thank you. Thank you, Your Honor. The

1     *Glenn* case is another wrongful death case pending in  
2     Anderson County. Several of the defendants we've been able  
3     to resolve our issues with, and so I'm just going to tick  
4     through the ones we haven't. And some of these are  
5     individual -- have individual circumstances, and I'll try  
6     to be brief.

7             Air and Liquid Systems for Buffalo Pumps, I spoke to,  
8     I spoke to Mr. Phillips this morning in the hall, and he  
9     had sent me an email that I hadn't seen yet and brought me  
10    a hard copy. They had already provided a date in, in  
11    another case for February 7th which shared a lot of the  
12    work sites with *Glenn*. So, they said that we are --  
13    they're happy to provide the deposition for the day for all  
14    the cases. So, we're happy with that, and said that they  
15    are working on docs. I don't have those yet, and so I just  
16    wanted to include them.

17            MR. PHILLIPS: Your notice that you gave me yesterday  
18    indicates the docs, you wanted them, I think, a week before  
19    and I would work to do that. I think I can accomplish it  
20    this afternoon.

21            MR. HOLDER: Okay.

22            MR. PHILLIPS: That would be, I think, January 31st,  
23    whatever one week is before the 7th.

24            MR. HOLDER: Okay, and that was just in the original  
25    notice. I asked for docs one week before the dep, but I



1 would like to just keep in line with the rest of the  
2 orders, the docs by the 29th.

3 THE COURT: All right, documents by the ---

4 MR. PHILLIPS: Your Honor, may I respond to that,  
5 please? So polite and so wonderful and so eloquent -- I'm  
6 Mark Phillips, by the way, for Buffalo Pumps.

7 THE COURT: Yeah, come up to the podium or get to the  
8 microphone.

9 MR. PHILLIPS: Yeah. I just want to give you some  
10 communication we discussed. Thank you.

11 THE COURT: Oh. Just a small, little thirty-five page  
12 document.

13 MR. PHILLIPS: Well, that's why it's got tabs on it.  
14 It just makes it easier for you.

15 You know what? They just told me that January 31st  
16 works. I will make every human effort to accomplish that,  
17 Your Honor. The bottom line is these folks withdrew this  
18 deposition notice last week. I know it was inadvertent. I  
19 know -- Jonathan I sent me a note late Monday night. I  
20 responded early yesterday morning and said, look, we're  
21 going to work with you. We offered this deposition last  
22 summer for *Taylor, Jolly, Glenn*, and then those cases went  
23 away, at least as to Buffalo, except for *Glenn*. And we're  
24 glad to resuscitate it and all that, and we have the  
25 Louisiana case that will be a perfect match. It's just a

1 matter of us getting the documents together.

2 MR. HOLDER: And they've agreed to produce them in  
3 *Howe*, too.

4 MR. PHILLIPS: Yeah. Yeah.

5 THE COURT: Okay. So, the bottom line is thank you  
6 very much.

7 MR. PHILLIPS: I intend to produce them -- how does  
8 that sound -- by January 31st. Again, I think the  
9 deposition is February 7th, subject to final confirmation.

10 THE COURT: January 31st, the documents will be  
11 produced and the deposition will be taken February the 7th.  
12 That sounds great.

13 MR. PHILLIPS: That is the plan.

14 THE COURT: Very good. Thank you so much.

15 Mr. Holder, that deals with Air Liquid/Buffalo?

16 MR. HOLDER: Yes, Your Honor.

17 MR. PHILLIPS: You got it.

18 THE COURT: All right.

19 MR. HOLDER: Aurora is one we've already discussed  
20 actually. I'm happy to move on if, if all the same  
21 arguments still apply.

22 MR. MERIWETHER: Yes. Your Honor, just for the sake  
23 of the record, it's Robert Meriwether for Aurora. Aurora  
24 has not ever had the capacity to search our job site, but I  
25 am going to let them know they got to jolly well figure

1 something out. Heretofore, they have been only able to  
2 search by serial number. I suppose there will be some  
3 people pouring through the files this weekend.

4 THE COURT: Thank you, sir.

5 MR. MERIWETHER: So, we have already got a date, I  
6 think, for that dep, and we're going to see what we can do  
7 to come up with some documents.

8 THE COURT: All right. So, that one is resolved,  
9 correct, Mr. Holder?

10 MR. HOLDER: I, I think so, as they're ---

11 THE COURT: January 29th they're going to supply the  
12 documents, and then they are going to reconvene with you  
13 about a deposition which obviously is going to take place  
14 in that week in February.

15 MR. HOLDER: I believe the 28th, right?

16 MR. MERIWETHER: Yes.

17 MR. HOLDER: Right, it's the same for *Howe*. Okay, as  
18 long as y'all are fine with the same date as *Howe*.

19 THE COURT: Right. All right.

20 MR. HOLDER: Thank you, Your Honor.

21 THE COURT: Now we've got BW/IP.

22 MR. HOLDER: Yes, Your Honor, for Byron Jackson Pumps.  
23 They -- we've not -- we would seek documents by the 29th  
24 and a deposition the week of the 8th.

25 THE COURT: Who is that counsel for BW/IP?

1 MR. HOLDER: I think Mr. Rheney, correct?

2 THE COURT: No one's claiming them.

3 MR. WHITE: Yes.

4 THE COURT: Mr. White.

5 MR. WHITE: It's Byron Jackson. I'm sorry. We  
6 produced the documents that our client has for the various  
7 Duke facilities. The David Taylor case last summer was a  
8 gentleman who worked at Oconee, and Mr. Glenn is among the  
9 group of people who worked at various Duke sites. We  
10 produce the Byron Jackson documents for the Duke sites  
11 involved in those cases last summer. If there are  
12 additional ones ---

13 MR. HOLDER: Right.

14 MR. WHITE: --- we will ---

15 MR. HOLDER: Right.

16 MR. WHITE: --- produce them.

17 MR. HOLDER: And the only additional in *Glenn* is Duke  
18 Marshall Steam Station. So, if ---

19 MR. WHITE: Could you clarify, give us all the Duke  
20 sites you're looking for so we won't ---

21 MR. HOLDER: For *Glenn* the sites at issue are the  
22 three nuclear sites that we've been dealing in the others.

23 MR. WHITE: Oconee, McGuire.

24 MS. McVEY: Oconee, McGuire, and Catawba and for *Glenn*  
25 there was the fourth site. It's a steam station, Marshall

1 Steam Station. It's Duke.

2 MR. WHITE: Your Honor, we'll have those documents by

3 ---

4 UNIDENTIFIED MAN: Where's Marshall? Do you know  
5 where it is?

6 MR. HOLDER: Not off the top of my head.

7 MR. WHITE: --- by Monday.

8 THE COURT: Yes, January, by January 29th you would  
9 produce ---

10 MR. HOLDER: Thank you.

11 MR. WHITE: And we'll work with Jonathan ---

12 THE COURT: --- BW/IP would produce the documents.

13 MR. WHITE: --- on a date for a video -- by video.

14 THE COURT: Right.

15 MR. HOLDER: With video.

16 THE COURT: Okay, so that's resolved, Mr. Holder,  
17 correct?

18 MR. HOLDER: Yes. If they're going to get -- if  
19 they're willing to get a date the week of the 8th, it  
20 sounds like it, Your Honor.

21 THE COURT: Very good. All right.

22 MR. HOLDER: Next up is Carboline and the same. We've  
23 not received records from Carboline or, or a date. So, we  
24 would ask the docs by the 29th and ---

25 MR. MERIWETHER: Your Honor.

1 MR. HOLDER: --- deposition by the 8th.

2 MR. MERIWETHER: Robert Meriwether on behalf of  
3 Carboline. We have been in touch with them. Frankly, with  
4 all the attention on the *Howe* case, we have been focusing  
5 on those clients who are in *Howe* as well as *Glenn*, and  
6 Carboline is only in *Glenn*. I am delighted to know the job  
7 sites at issue: *Oconee*, *McGuire*, *Catawba*, and *Marshall* if I  
8 just wrote that down correctly.

9 THE COURT: So, it sounds like y'all can resolve it,  
10 correct, Mr. Meriwether?

11 MR. MERIWETHER: I think we're going to be able to  
12 resolve the -- we frankly just have not had time to focus  
13 on ---

14 THE COURT: Sure.

15 MR. MERIWETHER: --- *Glenn* only because of the,  
16 the ---

17 MR. HOLDER: *Howe*.

18 THE COURT: *Howe* stuff. Yeah, I understand.

19 MR. MERIWETHER: *Howe* case.

20 MR. HOLDER: On these -- and, and I completely  
21 understand. I don't mean to interrupt anybody. For these  
22 where I absolutely know y'all are working and I appreciate  
23 that, but for the people that are working to get us the  
24 docs, do we include them in the order or include them in an  
25 order? I just don't want to have to come back.

1 THE COURT: So far they're saying yes, they can do it.

2 MR. HOLDER: Yeah.

3 THE COURT: If they were going to tell me no, then  
4 we'll do it, but yes.

5 MR. HOLDER: Okay. Great. I think we're on the same  
6 page.

7 THE COURT: That's Carboline. I think they would want  
8 that, too. I mean, the defense wants to have something in  
9 their file saying, hey, I didn't want to do this, but they  
10 made me do it.

11 CBS.

12 MR. HOLDER: CBS, I think it's -- we're just saying  
13 same story, I'm imagining.

14 THE COURT: Mr. Rogers.

15 MR. HOLDER: It would only be additionally to Marshall  
16 because I believe CBS previously provided documents in  
17 *Taylor and Jolly*. Is that correct?

18 MR. ROGERS: Andy Rogers on behalf of CBS. Just to  
19 address that, Jonathan, I believe all of the Duke sites are  
20 at issue, in the Falls case, and the extent ---

21 MR. HOLDER: Correct.

22 MR. ROGERS: --- CBS had records for any of the Duke  
23 sites, they would have produced in the *Falls* case. So, I  
24 don't think Marshall -- I, I can double check but the  
25 other, the other sites -- in short, I believe CBS has

1 produced all the docs it has, the documents it has.

2 THE COURT: And just inquire of them as to Marshall is  
3 what it sounds like.

4 MR. ROGERS: I will, I will, I will double check, but  
5 I believe it's ---

6 MR. HOLDER: And, and because of the crossover of  
7 sites, I am happy to do *Glenn* along side *Smith* or *Sizemore*.

8 MR. ROGERS: Okay.

9 MR. HOLDER: Or all three.

10 MR. ROGERS: That's noticed for tomorrow.

11 MR. HOLDER: Actually *Smith*, you're right. I, I guess  
12 I can't give everyone notice for that. So, I'll double up  
13 with whether -- whatever additional date for *Sizemore* for  
14 CBS.

15 MR. ROGERS: We will, we will, we will get a date on  
16 that.

17 THE COURT: Great. All right, and so we next have  
18 Crosby Valve.

19 MS. DEAN: Your Honor, this is Jessica Dean. I'm not  
20 in the *Sizemore* case, but I did know that we were able to  
21 resolve that issue, and I don't even know if I told Mr.  
22 Holder, so I didn't want to waste anyone's time.

23 THE COURT: Okay. We're now at Crosby Valve.

24 MR. HOLDER: Could I have one moment?

25 MS. DEAN: I want to make sure.



1 (A PAUSE.)

2 MR. HOLDER: I think I'm, think I'm mistaken. I don't

3 ---

4 MS. DEAN: I was wrong. He was correcting me.

5 MR. HOLDER: Yeah. I don't think that we did reach --  
6 I mean, Yancey is working on us a date. He, you know, same  
7 counsel as Crosby and Fisher had last time. They -- the  
8 only additional thing that I've pointed out is I don't need  
9 any more docs for Crosby from '80 on because I have those  
10 in *Jolly*. I, what I do need is the -- Glenn started  
11 working at Duke in '69, so I need the years '69 to '79 for  
12 the three nuclear sites, as well as Marshall, but for  
13 Marshall I'll need docs for the entire period for both  
14 Crosby and Fisher as well.

15 THE COURT: Yancey.

16 MR. McLEOD: Happy to respond, Your Honor. My name is  
17 Yancey McLeod, and I'm here on behalf of Crosby Valve, LLC;  
18 Fisher and Fisher Controls International, LLC.; and JR  
19 Clarkson, Kunkle Valve.

20 As far as the documents concerned -- are concerned, JR  
21 Clarkson Kunkle Valve has done a search. They have no  
22 documents for any of these sites, the Duke facilities.  
23 Your Honor, as you're aware, the, the *Glenn* case is really  
24 a companion case to the *Jolly* case. These are all the same  
25 witnesses, and JR Clarkson has not been named by any of

1 these witnesses, nor has JR Clarkson turned up any  
2 documents. So, you know, we are hoping that we didn't even  
3 need to have a 30(b)(6).

4 I understand the whole connecting the dot thing, but  
5 with all due respect, I'm not sure how these dots are going  
6 to get connected when we didn't turn up any documents in  
7 either *Freeman, Simpson, Taylor, Jolly*, any of these  
8 witnesses subject to this case have mentioned talking  
9 about. So, we are hoping to resolve that. However, we're  
10 trying to work with, with the plaintiffs on this, and we're  
11 trying to provide dates. We have no documents after the  
12 search.

13 As far as Crosby documents go, they have everything.  
14 My understanding is that from the *Jolly* case, those  
15 searches that were done would have included all the sites,  
16 including the years. I'll double check. I've been told  
17 ---

18 THE COURT: Including Marshall?

19 MR. McLEOD: Yes, Your Honor.

20 THE COURT: All right, and how about Fisher?

21 MR. McLEOD: Now Fisher is a different story, and I  
22 want to be clear. We have produced -- they have all the  
23 documents, and I'm including the years. I mean, I know the  
24 dates are a little different, but my understanding was  
25 Fisher had already produced all of the documents with the

1 exception of Marshall. And, and just so the record is  
2 clear, we were responding to discovery responses. Our  
3 response were based on the plaintiffs' responses, which did  
4 not include Marshall as a site, and that's why we haven't  
5 -- for Fisher we haven't done that search. They're doing  
6 it even right now as I speak because the first time we  
7 realized that Marshall was subject to the case was when  
8 Jonathan was ---

9 MR. HOLDER: The deposition was ---

10 MR. McLEOD: When I ---

11 THE COURT: The bottom line is it's been done.

12 MR. McLEOD: We're, we're doing it, and so to the  
13 extent that Fisher has documents for Marshall, we will of  
14 course produce them ASAP.

15 THE COURT: Okay.

16 MR. McLEOD: I'm working with the plaintiffs on, on  
17 the 30(b)(6) deposition.

18 THE COURT: Right. Well, then let's just zero in on  
19 one thing. JR Clarkson, in or out?

20 MR. HOLDER: Your Honor, if -- I am happy to do a very  
21 abbreviated deposition if they're saying they have -- can  
22 verify that their records are complete, that the  
23 nonexistent stuff -- a record in there is dispositive of  
24 that their equipment wasn't at that site. We had a  
25 good-faith belief for including them specifically in the

1 Glenn matter and so, you know, I'm not -- I don't want to  
2 -- I'm asking for full ---

3 THE COURT: So there's no order required at this time.  
4 You and Yancey are going to work together to verify whether  
5 Clarkson is in or out, right?

6 MR. McLEOD: I'm happy to work with him on Clarkson.

7 MR. HOLDER: Absolutely.

8 MR. McLEOD: But for Crosby and Fisher ---

9 THE COURT: Crosby, Fisher are going to be the same  
10 dates we've been talking about, and Mr. McLeod indicates he  
11 can deal with that.

12 MR. McLEOD: No problem working with them on dates.

13 THE COURT: Exactly.

14 MR. McLEOD: And I think we're going to come up with  
15 some agreement, yes, Your Honor.

16 THE COURT: Nothing I ---

17 MR. HOLDER: And we'll, we'll discuss that. Yeah,  
18 sure.

19 THE COURT: Okay, that's deals with Fisher, Crosby  
20 Valve, and JR Clarkson. Okay, now I'm at ---

21 MR. HOLDER: And just so I'm clear, I can draft an  
22 order for Fisher, Crosby. I'm working it out on Clarkson.

23 THE COURT: Okay, how about Daniel, and that's the  
24 next one on my list.

25 MR. McDONALD: We've been so focused on the other

1 cases, Judge, we really haven't talked about doing it, but  
2 we'll do the same things, Your Honor. I mean, obviously  
3 we'll get you the documents.

4 MR. HOLDER: Right, and, and the same date will be  
5 fine because it's the same sites.

6 THE COURT: All right. So, McDonald will deal with  
7 that, and that's Daniel.

8 Foster Wheeler. I'm not going to let Ms. Techman not  
9 say anything, and then we go back ten minutes later and get  
10 into this. What's the deal, Ms. Techman? Foster Wheeler.

11 MS. TECHMAN: Your Honor, I thought that we addressed  
12 that previously.

13 THE COURT: I thought we had, too, but I just want to  
14 make sure everybody is on the same page about that.

15 MS. TECHMAN: All I can add is that my client has  
16 further confirmed that they do not believe that even if  
17 they worked nonstop that they could produce documents with  
18 regard to these sites that have not been previously  
19 produced. They, they do -- they tell me they cannot do  
20 that by the 29th. I certainly don't want to ---

21 THE COURT: Well, they'd sure better respond saying I  
22 can't do it by the 29th but I can do it by the 30th. I  
23 mean, it's not going to be adequate to say I cannot do it.  
24 That's not going to cut it.

25 MS. TECHMAN: Sure. I, I just -- in an effort to keep

1 opposing counsel and the court informed, I have received  
2 confirmation that even if they move it to the top of the  
3 list and expedite the investigation, pulling all the  
4 contracts, it, it, cannot be completed in that timeframe.  
5 But they understand urgency and they will use all best  
6 efforts, and we will, you know, keep opposing counsel  
7 informed.

8 THE COURT: Very good.  
9 Grinnell.

10 MR. HOLDER: Your Honor, we have resolved with  
11 Grinnell.

12 THE COURT: All right.

13 MR. HOLDER: And ITT.

14 THE COURT: Great. Ingersoll.

15 MR. HOLDER: Ingersoll Rand, same, same issues as the  
16 other cases.

17 THE COURT: Same as Foster Wheeler? Are they also  
18 saying they can't possibly under any circumstances, or is  
19 that limited to Foster Wheeler?

20 MS. TECHMAN: No, Judge. I think to the extent -- you  
21 were talking about Thomas Glenn?

22 MR. HOLDER: Yes.

23 MS. TECHMAN: *Glenn*, I believe you already have the  
24 documents in that case from the *McSwain* action. If you  
25 would confirm if you need another copy, just let us know.

1 MR. HOLDER: Oh, yeah, that, that -- McSwain never  
2 worked at Marshall. So, for the Marshall Steam.

3 MS. TECHMAN: So, supplement as to Marshall.

4 MR. HOLDER: Absolutely, that weren't -- and as long  
5 as it -- yes.

6 MS. TECHMAN: So, Your Honor for purposes of the  
7 record -- sorry, Jennifer Techman for Ingersoll Rand -- we  
8 will speak directly with the client. We will ask if they  
9 have any ability to look for records with regard to  
10 Marshall, and we will let opposing counsel know if, if they  
11 can or cannot. And if they can, we will keep opposing  
12 counsel informed with regard to how quickly we could  
13 produce any documents to the extent it might be possible to  
14 identify them.

15 THE COURT: Great.

16 MS. TECHMAN: I should caution. Typically in most  
17 cases they are not able to search by site, but we will make  
18 the request.

19 THE COURT: Very good.

20 MR. HOLDER: I plan to include an order.

21 THE COURT: All right, next on the list is Trane US.

22 MR. HOLDER: Yes, yes. Trane US is for American  
23 Standard. Same thing. Records of, of whether they had  
24 boilers, and again I know that they've searched before in  
25 other cases for the nuclear sites, and specifically I'm

1 really wanting Marshall.

2 THE COURT: Who represents American Standard or Trane?

3 MS. TECHMAN: Jennifer Techman for Trane. We are glad  
4 to talk with opposing counsel. However, they are, they are  
5 not, as a general proposition, able to search by site. We  
6 have done some investigation trying to identify boilers at  
7 the sites; we'd be glad to share to results of our  
8 investigation with you. We can identify the BMW boilers,  
9 the Combustion Engineering boilers, and some other boiler  
10 manufacturers at these sites, and that might provide some  
11 insight into what boilers were there.

12 MR. HOLDER: There was a, there was a document I think  
13 I remember that actually listed off -- oh, but I'm thinking  
14 about the Celanese, but, I mean, I'm happy to -- obviously  
15 I'll accept anything that your client can provide me, but,  
16 you know, I still think we need an order to try and make  
17 them find the documents by the 29th.

18 THE COURT: Yeah, I agree.

19 MR. HOLDER: And a deposition by the ---

20 MS. TECHMAN: If I could respond, Your Honor?

21 THE COURT: Yes, ma'am.

22 MS. TECHMAN: They are similar to Foster Wheeler. At  
23 the outset of the case, they, they will comply with Rule  
24 11. They will understand the allegations in the complaint,  
25 and they will timely supplement discovery. All of my



1 clients would do that. We have not withheld or failed to  
2 disclose anything here. To the extent we can identify  
3 equipment at a site for any of my equipment manufacture  
4 clients, we do that, Your Honor.

5 THE COURT: Ms. Techman, you're just trying to qualify  
6 that they don't have any ability to do it, and you're  
7 reserving all your rights to say they don't have any  
8 ability to do it. That's not good enough.

9 MS. TECHMAN: I wasn't ---

10 THE COURT: We've got to go on. These people got some  
11 ways and means of getting these documents when they need  
12 them. So, they've got to do it for this litigation.

13 MS. TECHMAN: I wanted to be sure the court doesn't  
14 have a mistaken impression that the client can prove a  
15 negative.

16 THE COURT: Oh, I get that completely. You can't  
17 prove a negative. All I'm asking is don't throw in the  
18 thing of we can't even search for it because we're not set  
19 up to search that way. That ---

20 MS. TECHMAN: Sure.

21 THE COURT: --- is not going to cut it.

22 MS. TECHMAN: Sure.

23 THE COURT: But we've searched to the best of our  
24 ability and targeted in on these areas that we needed to  
25 target in on and we don't have anything, that's fine.

1 MS. TECHMAN: And I think there's some more discovery  
2 responses make that assertion, but we understand and we  
3 will follow up and ask again if they can think of any  
4 further way.

5 THE COURT: Exactly.

6 MS. TECHMAN: Yeah, and I trust that plaintiffs have  
7 done the same thing. In the course of, you know, the  
8 outset of the case, I'm sure they have made an effort to  
9 determine who ought to be in the case and what equipment is  
10 at what site, so they have ---

11 THE COURT: Those good-faith bases are explored very  
12 fully when you try the case.

13 MS. TECHMAN: Right. Thank you, Judge.

14 THE COURT: United Conveyor Corporation.

15 MR. HOLDER: I think we skipped over Sepco.

16 THE COURT: Yes, we did. All right.

17 MR. HOLDER: Same position as the others.

18 THE COURT: Who represents Sepco? Mr. Holder, who you  
19 been dealing with?

20 MR. HOLDER: No one had responded back from them,  
21 so ---

22 MS. TECHMAN: Are they not in bankruptcy?

23 (COUNSELORS CONFER.)

24 MS. TECHMAN: I think they're in bankruptcy. They're  
25 not my client, but I think they're probably protected by an

1 automatic stay in bankruptcy, if I'm not mistaken.

2 THE COURT: All right, determine that and I want to  
3 supplement the record to include that, Mr. Holder.

4 MR. HOLDER: Sure.

5 THE COURT: Bankruptcy.

6 MR. HOLDER: I will confirm that, so for right now we  
7 don't need an order.

8 THE COURT: All right, now United Conveyor.

9 MR. HOLDER: United Conveyor, yes, same thing.  
10 Looking for docs for these sites as well as a deposition  
11 February the 8th.

12 THE COURT: All right.

13 MR. ROZELSKY: Your Honor, Kurt Rozelsky. You've got  
14 the spelling this time. We will go back and search for the  
15 Marshall Steam. We believe we've produced all the other  
16 documents in prior cases for the nuclear sites. And to the  
17 extent that a deposition is necessary -- they just took a  
18 30(b)(6) in the *Hess* case that probably relates to most, if  
19 not all, of these sites. We will work with counsel.

20 THE COURT: Perfect.

21 MR. ROZELSKY: Take care of that.

22 THE COURT: Perfect.

23 MR. ROZELSKY: Same for the next client, Velan.

24 THE COURT: Velan Valves, right, same? Same thing?

25 MR. ROZELSKY: Same thing, Your Honor.

1 MR. HOLDER: Right, and I, I would just note that I'm  
2 not sure we had documents on the -- previously from Velan  
3 because they didn't hang around the case as long. So, just  
4 FYI.

5 THE COURT: Mr. Rozelsky knows what the dates are, and  
6 he's going to comply with them. He indicates he can and is  
7 going to search specifically for Marshall, but if he has to  
8 provide the rest of the documents, he knows that's got to  
9 be provided.

10 MR. ROZELSKY: To quote Ms. Techman, I'm going to make  
11 every human effort possible.

12 THE COURT: Great.

13 MR. ROZELSKY: Thank you.

14 THE COURT: I just don't want these to be weasel words  
15 that come back and bite me.

16 MR. ROZELSKY: Thank you, Your Honor.

17 THE COURT: Union Carbide.

18 MR. HOLDER: And I believe that's been already been  
19 discussed and agreed. I had it marked out on mine as  
20 already ---

21 MR. McDONALD: Yeah. I wasn't too worried it.

22 MR. HOLDER: Yeah.

23 THE COURT: Mr. McDonald.

24 All right. Now, that complete *Sizemore*.

25 MR. HOLDER: And I, I am -- and that -- *Glenn*, that

1 completes *Glenn*.

2 THE COURT: *Glenn*, excuse me.

3 MR. HOLDER: With the only caveat, and I did mention  
4 it once, but for, for the sites that he had only provided  
5 documents in, in *Taylor, Jolly*, you know, from '77 on or  
6 '79 on, I would just ask that you verify that y'all  
7 provided all the documents back to '69 in the *Glenn* matter.  
8 Other than that, that's everything for *Glenn* and *Sizemore*.  
9 Thank you, Your Honor.

10 THE COURT: Okay. Now, what else? I'll turn to you  
11 in just one moment, Mr. Rozelsky.

12 MR. ROZELSKY: Yes, Your Honor.

13 THE COURT: Just looking at plaintiff first.  
14 Plaintiffs?

15 MS. DEAN: Your Honor, that concludes everything that  
16 we were aware of.

17 THE COURT: Very good.

18 And now, Mr. Rozelsky.

19 MR. ROZELSKY: Yes, Your Honor. We're the only  
20 defendant in this case. We represent Tile Council of North  
21 America. We're the only defendant in the *Swap* case.

22 Ms. McVey and I spoke. We were talking about whether  
23 we were going to be able to argue the motion to strike this  
24 from the March docket today. She had to leave. She agreed  
25 that if we cannot resolve that in some fashion, that we may

1 ask the court to reconvene telephonically sometime next  
2 week to argue that motion. The lawyers that are primarily  
3 involved in that motion are with Mr. Branham today in  
4 Boston taking a 30(b)(6) in that case, but we've briefed  
5 that and have the summary judgment motion outstanding.

6 THE COURT: Tell me once again the caption of that  
7 case.

8 MR. ROZELSKY: *Swap, S-w-a-p*. It is 2017-CP-04-1156.

9 THE COURT: And it's *Swap against The Tile Council*?

10 MR. ROZELSKY: Yes, Your Honor.

11 THE COURT: It's going to be very interesting to be  
12 educated as to how the Tile Council -- what I guess must be  
13 some industry organization.

14 MR. ROZELSKY: Your Honor, I'm just as interested to  
15 hear it, too.

16 THE COURT: Yes. I reserved judgment.

17 MR. ROZELSKY: Thank you, Your Honor.

18 THE COURT: But that's very creative.

19 Okay, just letting y'all know in terms of having  
20 telephonic resolution of these things, glad to do it. What  
21 you will want to do is get in touch with Jamie Rutkoski, my  
22 law clerk for this present moment in time, thank the Lord.

23 Jamie, tell them once again your email address.

24 MS. RUTKOSKI: My email address is  
25 GCooperLC@sccourts.org.

1 THE COURT: And your cell number is.

2 MS. RUTKOSKI: And my cell number is 727-946-0804.

3 THE COURT: And y'all already have my contact  
4 information, including my cell phone number which is  
5 803-530-0457, and the normal email address that you're all  
6 using, JToal@sccourts.org.

7 We will be together trying the *Steward* case in York  
8 next week unless, one always hopes, they can settle it.  
9 So, that's where we'll be, and if you send text or email or  
10 anything to either Jamie or myself, we'll try to get back  
11 to you quickly if there's some need to have some kind of  
12 conference in the matter we're talking about right now with  
13 Mr. Rozelsky or anything else we're talking about here that  
14 relates to discovery matters, any of the things we've  
15 covered today.

16 Now, anything else from any other defendant? Mr.  
17 McLeod.

18 MR. McLEOD: Hey, Justice Toal, Yancey McLeod here on  
19 behalf of several defendants. The plaintiffs -- and I  
20 don't have a motion to this effect. I just want to bring  
21 it to the court's and the plaintiffs' attention, and I have  
22 not spoken to them about this, and I don't mean to be a  
23 surprise to them. Could be wrong.

24 Last week, I believe they tendered an expert in the  
25 *Glenn* case for the plaintiffs, and I was looking back to

1 see who the experts for the *Glenn* case were going to be. I  
2 couldn't find where any expert or fact disclosures in the  
3 *Glenn* case had -- and I could have missed it. I couldn't  
4 find it anywhere, and I talked to some other people,  
5 defendants in the case. We can't seem to find the fact or  
6 expert witnesses in discovery.

7 THE COURT: The time has passed to have identified  
8 them, has it not?

9 MR. McLEOD: Yeah. Oh, but they ---

10 THE COURT: Who are the experts in the *Glenn* case, Mr.  
11 Holder?

12 MR. HOLDER: Mr. Ewing.

13 MR. McLEOD: That's the one that was tendered.

14 MR. HOLDER: Tendered.

15 MR. McLEOD: That, that was the first we heard of it.

16 MR. HOLDER: And I am not turning up experts, so ---

17 MR. McLEOD: I thought this was ---

18 MR. HOLDER: It surprised me just a little ----

19 MR. McLEOD: I thought this was a good time to ---

20 THE COURT: Yeah.

21 MR. McLEOD: I just want to know.

22 THE COURT: I mean, exactly. They're entitled to  
23 them. They were entitled to them ---

24 MR. HOLDER: Absolutely.

25 THE COURT: --- for a long time. You've got to give



1 it to them.

2 MR. McLEOD: What's he tendered for, by the way?

3 MR. HOLDER: I, I, I don't remember.

4 Can I work this out? I'm just hearing about it for  
5 the first time.

6 THE COURT: Yeah. I mean, obviously they need to have  
7 that *qua prenom*.

8 MR. HOLDER: Absolutely, and I think, I think I did in  
9 the confusion, but I want to work it out.

10 THE COURT: Very good.

11 MR. McLEOD: I imagine they're similar to the *Jolly*  
12 case.

13 THE COURT: That's what I'm guessing, too.

14 MR. McLEOD: Yeah. I just need to know.

15 THE COURT: But anyway, you all -- but Ewing is new.  
16 I don't know anything about Ewing.

17 MR. HOLDER: He's a nice guy. He's another hygienist.

18 THE COURT: Well, Mr. McLeod, just let me know if  
19 there's some problem here. Otherwise, I think Jonathan  
20 will look and see exactly what the scoop is and get that to  
21 you quickly.

22 MR. McLEOD: Thank you, Your Honor. We'll work hard  
23 to get the case ready.

24 THE COURT: Anything else we got going?

25 MS. TECHMAN: Your Honor, Jennifer Techman.

1 THE COURT: Yes, ma'am.

2 MS. TECHMAN: Several of my clients in the Wayne Howe  
3 case have filed a fairly standard motion to exclude Mr.  
4 Howe's partial transcript on the grounds that they had no  
5 opportunity to cross-examine him before he passed. Is  
6 there a time when the court wants to hear the merits of  
7 that motion?

8 THE COURT: *Howe* is scheduled for March. Y'all had  
9 filed a motion on that, right?

10 MS. TECHMAN: That's right, Judge.

11 THE COURT: And what have y'all done, Ms. Dean?

12 MS. DEAN: Your Honor, I saw that motion and that it  
13 hadn't been set. I think that motion actually comes up  
14 either in the context of a motion for summary judgment if  
15 our sole connection is Mr. Howe's testimony, or a motion *in*  
16 *limine* if it's something that we realize they have other  
17 ways to get here, but we don't think they should be able to  
18 talk about Howe's testimony.

19 THE COURT: Of course the reason they're pushing it  
20 now is that might upset the apple cart considerably in the  
21 *Howe* case, depending on how I rule and, therefore, they  
22 want to know sooner rather than later I think is what  
23 they're saying.

24 MS. TECHMAN: Partly, partly, Your Honor. My concern  
25 is, is that my clients, to the extent they have moved, take

1 the position that any partial testimony of Mr. Howe should  
2 not be before the court.

3 THE COURT: I get that. That's been dealt with many,  
4 many times.

5 MS. TECHMAN: Right.

6 THE COURT: In many different contexts.

7 MS. TECHMAN: That's right, Judge. It's fairly  
8 standard black-letter law.

9 THE COURT: It's a pretty standard thing.

10 MS. TECHMAN: Yes.

11 THE COURT: But ---

12 MS. DEAN: If I may? Just that we'd like to get a  
13 response on file. It is an evidentiary ruling which is  
14 usually in the context of motions *in limine*.

15 THE COURT: Yes, although I'll be honest with you. I  
16 try to get them done beforehand to the greatest extent  
17 possible so that we can march on forward, and particularly  
18 if it's something that has implications for summary  
19 judgment motions, as this obviously would.

20 MS. DEAN: So, I think that's clearly helpful to have  
21 here, and I think there's some case law we'd like to get in  
22 front of you. And I also think it's a defendant-specific  
23 inquiry because you're looking at motive and opportunity,  
24 which in some cases is going to be parallel for some  
25 defendants.

1 THE COURT: All right, the deadline for summary  
2 judgment motions to get in on that case is February the  
3 28th?

4 MS. DEAN: 26th.

5 THE COURT: All right. So, why don't we get, both  
6 sides get everything they want me to consider about this  
7 issue on that same day.

8 MS. TECHMAN: Your Honor, if I may? The filing date  
9 is February 9th unless we're going to revise that a little  
10 bit after these proceedings, but I believe the filing date  
11 for summary judgment is the 9th. Ms. Dean is probably  
12 thinking of her response deadline.

13 MS. DEAN: I am.

14 MS. TECHMAN: Right. Fairly so.

15 THE COURT: So, when is your response deadline on the  
16 February 9th?

17 MS. DEAN: February 9th motions are to be filed and  
18 26th were to respond, and so I was thinking about when I  
19 have to respond.

20 THE COURT: Well, let me ask you this.

21 MS. DEAN: Yes, ma'am.

22 THE COURT: How about the 26th for a time for both  
23 sides to file with me information about the status of Mr.  
24 Howe's partial testimony, or you want it heard earlier than  
25 that?

1 MS. TECHMAN: It would streamline summary judgment,  
2 Your Honor. I feel ---

3 THE COURT: Summary judgement, the filings are due by  
4 y'all on February the 9th.

5 MS. TECHMAN: Correct, Your Honor.

6 THE COURT: Their filing are due on February the 26th.

7 MS. TECHMAN: And if, and if the defendant's position  
8 as stated in my motion, and I think some others, is  
9 accurate, consistent with black-letter law, we take the  
10 position that the partial testimony of Mr. Howe is not  
11 before the court, should not be considered.

12 THE COURT: I get all that.

13 MS. TECHMAN: For summary judgment.

14 THE COURT: Yeah.

15 MS. TECHMAN: Right. So, we're going to file motions  
16 with that position in mind.

17 THE COURT: Well, that's fine.

18 MS. TECHMAN: So, we may need to take it up earlier.

19 THE COURT: Take up the actual hearing of the motion?

20 I hate to -- I got so dadgummed much to do, one little old  
21 judge who works part time. I ain't got time to stretch  
22 this thing out to the fare thee well. Y'all ---

23 MS. TECHMAN: We just tried to say, and you told us we  
24 had to do it. I say that with all affection.

25 THE COURT: Yeah.

1 MR. KENNADAY: Your Honor, Your Honor, Tom Kennaday  
2 for several defendants. We might have filed a similar  
3 motion. I was assuming that we would file, I believe, a  
4 summary judgment motion and that you would hear both the  
5 summary judgment and the motion at the same time.

6 THE COURT: That's what I want to do. That's what I  
7 want to do. Just go on and file the motions by February  
8 the 9th, and you file your summary judgement motion.

9 MR. KENNADAY: Sure.

10 THE COURT: And she's going to have to respond to them  
11 by February the 26th, and we're going to try to hear them  
12 shortly thereafter.

13 MS. TECHMAN: Thank you, Judge.

14 THE COURT: Probably the 28th.

15 MS. TECHMAN: Thank you.

16 THE COURT: Does that work?

17 MS. DEAN: Yes, Your Honor.

18 THE COURT: Good. Let's just do that and be done with  
19 it. Please understand this. I make no prejudgment about  
20 this. It's been years since I got into these partial  
21 testimony things, and they are pretty case specific. At  
22 least the cases I can remember looking at are pretty case  
23 specific. So, I don't know what twists and turns this  
24 thing takes, but anyway that's how we'll do it.

25 MS. TECHMAN: Thank you, Judge.

1           THE COURT: Okay, what else? All right. Thank you  
2 very much, ladies and gentlemen, and I will expect orders  
3 that have primarily been directed towards Ms. McVey, Ms.  
4 Dean, and Mr. Rheney to be forthcoming.

5           **--- END OF TRANSCRIPT OF RECORD ---**

**CERTIFICATE**

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON THE 24TH DAY OF JANUARY, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

*/s/ELIZABETH B. HARRIS, CVR-M-CM*

COLUMBIA, SOUTH CAROLINA

FEBRUARY 22ND, 2018