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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DALE M. SPURLIN, )  
 ) No. 19-CV-02049-AJB-AHG  
Plaintiff, )  
 )  
v. ) August 26, 2022  
 )  
FOSTER WHEELER ENERGY )  
CORPORATION, ET AL., )  
 ) Courtroom 4A  
Defendants. )  
 ) San Diego, California

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TRANSCRIPT OF PROCEEDINGS  
(Jury Trial - Day - 9 - Jury Notes and Verdict)

BEFORE THE HONORABLE ANTHONY J. BATTAGLIA, DISTRICT JUDGE

COURT REPORTER: AMANDA M. LeGORE  
RDR, CRR, CRC, FCRR, CACSR  
U.S. District Court  
333 West Broadway, Suite 420  
San Diego, CA 92101  
amanda\_legore@casd.uscourts.gov

1 APPEARANCES:

2 FOR THE PLAINTIFF:

SCOTT FROST  
ANDREW SEITZ  
PAUL COOK  
Frost Law Firm, PC  
273 West 7th Street  
San Pedro, CA 90731  
(866)353-6376  
scott@frostlawfirm.com  
andrew@frostlawfirm.com  
paul@frostlawfirm.com

7

8

9 FOR DEFENDANT FOSTER  
10 WHEELER:

EDWARD ROGER HUGO  
BINA GHANAAT  
Hugo Parker, LLP  
135 Main Street, 20th Floor  
San Francisco, CA 94105  
(415)808-0300  
ehugo@hugoparker.com  
bghanaat@hugoparker.com

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1 (Friday, August 26, 2022; 9:30 a.m.)

2  
3 P R O C E E D I N G S

4  
5 THE CLERK: Counsel, are you still there?

6 THE ATTORNEYS: Yes.

7 THE COURT: Great. Well, good morning. Judge  
8 Battaglia here. We're on the record in Spurlin versus Foster  
9 Wheeler.

10 And by -- with the consent of counsel, we're starting  
11 the discussion here by phone concerning note number -- court --  
12 that's now Court's Exhibit number 3.

13 I -- I'll read you the note and its relatedness to  
14 the jury form and the instructions. And then we can talk about  
15 what -- how to respond.

16 So the note at the top -- and you will get copies of  
17 this -- Exhibit 3 has, "re," colon, "Q8," which I assume is  
18 question eight of the verdict form.

19 And then, in quotes:

20 "Was likely to be dangerous," underlined, "for its  
21 intended use."

22 And then the question continues:

23 "Any and all dangers, such as heat and burns, or just  
24 danger as related to this harm, asbestos?" Question mark.

25 And I can read that again, if anybody wants.

1 ATTORNEY HUGO: No.

2 THE COURT: No?

3 Okay. So question 8 is from the verdict form, the  
4 special verdict form. It is part of the duty to warn  
5 questions. The DeVries claim.

6 The question in its entirety reads:

7 "Did the defendant know or have reason to know  
8 that the use of the integrated product was likely  
9 to be dangerous for its intended use?"

10 Question mark.

11 And the instruction that relates here is the 7.13.

12 And it is the second prong.

13 "The defendant knew or had reason to know that the  
14 integrated product was likely to be dangerous for  
15 its intended use."

16 The special verdict and the jury instruction are  
17 identical.

18 So I think the -- these are -- my observation is the  
19 jury's being quite careful and thorough in everything. But my  
20 suggestion, subject to your comment, would be essentially that  
21 we tell them it is the danger as related to the harm in this  
22 case, the asbestos.

23 Because there is no claim for either heat exposure or  
24 burns that would relate, if you go through questions 9 and 10,  
25 to make any sense; that they would even consider that.

1           So I don't know if I'm making myself clear here. But  
2 I think we -- I would propose we tell them just the danger as  
3 related to this harm, comma, asbestos, period. And say nothing  
4 further.

5           So let me start with the plaintiff. And is that you,  
6 Mr. Frost? Or Mr. Cook? Or both?

7           ATTORNEY FROST: Yes, your Honor. It is me.

8           THE COURT: Okay. So, Mr. Frost, your take? Your  
9 comments? What do you think?

10          ATTORNEY FROST: Your Honor, I have no disagreement  
11 with the Court.

12          I -- it's probably the most appropriate response.

13          THE COURT: Okay. And then Mr. Hugo, Ms. Ghanaat?  
14 Are you both there?

15          ATTORNEY HUGO: It's just Mr. Hugo.

16          THE COURT: Okay. So Mr. Hugo, what say you?

17          ATTORNEY HUGO: I say that you're right. And maybe  
18 just shifting it a little bit differently. The integrated  
19 product is the asbestos.

20          So it's the harm from the integrated product. It's  
21 asbestos. The way you worded it is fine. I'm just telling you  
22 I agree.

23          THE COURT: Okay. Well, to be precise -- going back  
24 to you, Mr. Frost, if I said somewhat of a truncated answer  
25 just: Danger as related to the -- to the harm of the

1 integrated product, comma, asbestos, is that equally good? Or  
2 should I stick with, in your mind, just danger as related to  
3 this harm, asbestos; the actual question asked?

4 ATTORNEY FROST: I don't have a problem with the  
5 former or with the second rendition, your Honor. It may help  
6 them later on.

7 THE COURT: Okay. So I'm going to say -- I'm going  
8 to write on their note -- and you'll get a copy of this when we  
9 next meet in person -- just danger as related to -- what did  
10 you say, Mr. Hugo?

11 I was going to use -- I might as well use your  
12 version here. Just danger as related to --

13 ATTORNEY HUGO: To asbestos. That's fine.

14 THE COURT: Oh, to asbestos. Okay.

15 ATTORNEY HUGO: Well, it was the integrated product  
16 as asbestos.

17 ATTORNEY HUGO: That's fine, too. Either one.

18 THE COURT: Okay. Danger as related to the  
19 integrated product, comma, asbestos? Or --

20 ATTORNEY HUGO: Yes.

21 ATTORNEY FROST: -- your Honor.

22 THE COURT: I'm sorry?

23 ATTORNEY FROST: I believe that's fine.

24 THE COURT: Okay. As -- so I'm going to write that  
25 in my -- in longhand. Sign it and date it. And then we'll

1 send it back to the jury. Just the note. I won't be meeting  
2 with them or reading it to them. They'll just get the note  
3 back and then can return to work. So that, with everyone's  
4 consensus, will be the disposition of jurors' note 3 and  
5 Court's Exhibit 3.

6 So thank you for your help and for doing this quickly  
7 this way. And we'll put them back to work and await their next  
8 request or notice.

9 So anything else -- anything else before I let you  
10 go?

11 ATTORNEY FROST: No, your Honor.

12 ATTORNEY HUGO: No.

13 THE COURT: Okay. Thank you. Stay tuned. We'll be  
14 back in touch with you when we know something. So take care.

15 Bye-bye. We're off the record.

16 (Proceedings adjourned at 9:37 a.m.)

17 (Resuming at 12:00 p.m.)

18 THE COURT: All right. Hi, Judge Battaglia here.  
19 I've got a couple more questions, and we emailed them to you  
20 moments ago.

21 Do you each have those?

22 ATTORNEY FROST: Yes, your Honor.

23 ATTORNEY HUGO: Yes.

24 THE COURT: Okay. So both sides have them.

25 And we'll just identify the issues and see if you



1 feel this is something we can deal with telephonically or you  
2 want to come down.

3 The questions implicate question 11 of the special  
4 verdict and the jury instruction on superseding cause.

5 And taking the Court's now Exhibit 4, the question  
6 posed is in the form of Q11.

7 And the question is:

8 "Is harm defined as the cancer? Or is harm the  
9 exposure to asbestos, the increased potential to  
10 get the mesothelioma?"

11 And then they cite the jury instructions, which talk  
12 about the injury. And ask:

13 "Is injury to" -- is injury -- well, it literally  
14 says:

15 "Is injury to the mesothelioma? Or is injury the  
16 exposure to asbestos and increased potential to  
17 get mesothelioma?"

18 So we've got to deal with that.

19 The second question, which is question number 5,  
20 deals with the same topic of superseding cause and the question  
21 reads:

22 "Also in the jury instructions," quote, "a later  
23 cause of independent origin," close quote.

24 The question is:

25 "What is the time frame for later cause. And what

1 is independent origin? Independent of Foster  
2 Wheeler? Of the Navy? Or other," slash,  
3 "additional?"  
4 Question mark.

5 So unlike earlier questions, these are a little more  
6 complicated.

7 So just in terms of talking through this, without  
8 getting into the substance, as -- are both sides comfortable  
9 with this telephonic format? Do you want to do this in person?

10 I want to give you every option.

11 (Indiscernible.)

12 THE COURT: Mr. Frost? Was that you?

13 ATTORNEY FROST: Telephonic.

14 THE COURT: Telephonic.

15 Okay. Mr. Hugo?

16 ATTORNEY HUGO: Yes.

17 THE COURT: Okay. Let's turn to the first one.

18 And I -- I'll give you what I've been thinking about,  
19 and then open it up for discussion.

20 The question 11 in the verdict form is:

21 "Was the conduct of the United States Navy a  
22 superseding cause of Mr. Spurlin's harm."

23 And when we get to their question, as to the  
24 definition of harm -- and realizing that we don't know if  
25 they're going sequentially through the questions or through the

1 evidence, what they've decided or not. I'm -- you know, in my  
2 mind, there's a -- there's a -- sort of a conflating of two  
3 concepts. One, the knowledge, as it goes to the liability,  
4 certainly would be the increased potential to get mesothelioma  
5 as it relates to warning, defect, and so forth.

6           Then when we get down to harm, we're talking  
7 causation. And I think what is allegedly caused here is the  
8 mesothelioma.

9           With that said -- and you don't have to agree with  
10 me. I'm just telling you what I'm thinking. I'm wondering if  
11 we should not say something along the lines of harm for  
12 question 11 is the alleged injury, mesothelioma.

13           And I'm not sold on that. It's just a starting  
14 point.

15           So in turn here, starting with you, Mr. Frost,  
16 thoughts about how we deal with this issue?

17           ATTORNEY FROST: Your Honor, I agree with the Court.  
18 I think that that's the proper instruction to give the jury.

19           THE COURT: Okay. What about you, Mr. Hugo?

20           ATTORNEY HUGO: Same.

21           THE COURT: Okay. So that -- that, we'll write up.  
22 I'll handwrite the answer. That "Harm for question 11 is the  
23 injury alleged," comma, "the mesothelioma."

24           And then we'll return that to them.

25           And then let's move to the later cause of independent

1 origin. That's question number 5.

2 Well, I can't tell them, at this point, what the time  
3 frame is.

4 What I thought about, here, was essentially to tell  
5 them to, you know, undefined -- well, to use the -- the terms  
6 in the -- well, one of two things. I -- sorry for not being so  
7 definite on this. But there -- we have -- later cause is what  
8 the instruction says, and superseding cause is what the verdict  
9 form says.

10 So we could tell them, later and superseding mean the  
11 same thing for this instruction or for this issue in the case;  
12 and work with that with all of the evidence and all of the  
13 instructions. And I could specifically say, you know -- well,  
14 I don't know if I should say anything more than that. So I'm  
15 struggling with this one, gentlemen.

16 So, Mr. Frost, how would you see us solving this  
17 problem?

18 ATTORNEY FROST: Your Honor, as I read the question,  
19 it says -- also in jury instructions -- quote, a later cause of  
20 independent origin, close quote. And then it says, "What is  
21 the time frame for later cause?" I think that one can be  
22 simply answered, you know, later, after. Because I think  
23 that's the simple answer. And the instruction includes later,  
24 so I don't think we're instructing anything else.

25 And then it seems there's a second question, which is

1 what is the -- what is the independent origin? Independent of  
2 Foster Wheeler, the Navy, or other additional. I think the  
3 answer is that it's independent of Foster Wheeler. But I don't  
4 know. I mean, I think those are the right answers. I'm not  
5 sure --

6 THE BAILIFF: I'll retire them for their lunch.

7 THE COURT: Sorry. We just got buzzed by them.

8 They're probably going to go to lunch, so we have all the time  
9 time we need here.

10 Well, yeah, I will say -- and it's not in arguing  
11 your proposal. The superseding cause, question 11 itself says:

12 "Was the United States Navy a superseding cause of  
13 Mr. Spurlin's harm?"

14 So this idea -- so it may be enough to say follow  
15 question 11, literally. But I -- again, I -- I throw that on  
16 the table as part of the yin and yang here.

17 What about you, Mr. Hugo? How do you feel about this  
18 issue? Or what would you suggest?

19 ATTORNEY HUGO: Again, Mr. Frost and I are oddly  
20 united on this. Going from last to first, I believe that we  
21 should define "independent" as "independent of Foster Wheeler."

22 And the rest is self-explanatory, because it says the  
23 conduct of the United States Navy.

24 THE COURT: Right.

25 ATTORNEY HUGO: And with regard to "later," I don't

1 think that that can be defined more than the jury instructions  
2 did. And I understand what they're saying -- or, you know,  
3 they're looking for something greater in definition than I  
4 think we can provide them.

5 THE COURT: Yeah. So would you be comfortable with  
6 my writing back, and saying use the word "later," in the  
7 common -- in its common sense? Or use "later" in the common  
8 sense of the word? Or just say, "later" means "later"?

9 ATTORNEY HUGO: I would say later, as defined in the  
10 jury instructions; for the first portion of the question. And  
11 the second portion, the independent origin is independent of  
12 Foster Wheeler.

13 THE COURT: Okay. I think we're all on board on that  
14 second part. Independent of Foster Wheeler.

15 But on "later," we don't really define later in the  
16 jury instruction. We just use the word.

17 The sentence, in its entirety reads:

18 "Even if you find defendant acted negligently, the  
19 defendant's not liable for plaintiff's injuries  
20 and damages if it proves that the injury was  
21 actually brought about by a later cause of  
22 independent origin that was not foreseeable."

23 It almost begs something like later means later. Or  
24 later -- you know, later means what it means in the common  
25 sense of the word.

1           ATTORNEY HUGO: That's fine. I can live with that.

2           THE COURT: What do you think, Mr. Frost?

3           ATTORNEY FROST: Your Honor, I agree with the Court.

4 I think you can do it either way.

5           I mean, my -- my only concern is that I -- I do think  
6 independent origin has to be separate from -- I mean, it has to  
7 be separate from Foster Wheeler.

8           I do think the Court should -- you know, the problem  
9 is -- is that the question that they're supposed to answer is  
10 the conduct of the Navy. And I'm concerned that it could end  
11 up -- you know, the focus needs to be -- the only question they  
12 had is, is it something the Navy acted with superseding cause.

13           So that's my only concern. And I'm not really sure  
14 how we get around it, to be honest.

15           THE COURT: Okay. Going to their question 5 -- we're  
16 still on question 5. The second part of question 5 we talked  
17 about saying, "Independent of Foster Wheeler," is the response.

18           If we leave it just like that, will both sides -- do  
19 both sides find that acceptable?

20           ATTORNEY FROST: Yes, your Honor.

21           THE COURT: And, Mr. Hugo?

22           ATTORNEY HUGO: Yes.

23           THE COURT: Okay. So I will write in this question  
24 an answer, in blue ink. And we'll send you copies of this. I  
25 hadn't thought about doing that for the other questions. We'll

1 make sure you get them all.

2 "Independent of Foster Wheeler" is how the response  
3 reads.

4 Later of independent origin.

5 Well, they kind of get to the independent origin  
6 later.

7 On the later -- and I really want to be sure we're  
8 all on board. I think we're at later as understood in the  
9 common sense of the word.

10 ATTORNEY FROST: I think that's sufficient, your  
11 Honor.

12 THE COURT: What do you think, Mr. Hugo?

13 ATTORNEY HUGO: That's fine.

14 THE COURT: Okay. So I'm going to write simply this,  
15 quote:

16 "Later," in quotes, "as understood in the common  
17 sense of the word."

18 Now, let me stop there for a second.

19 Did they go off to lunch?

20 THE BAILIFF: Yes.

21 THE COURT: Okay. So they're off to lunch. And so  
22 what I'm going to do is when they come back, have these notes  
23 returned to them.

24 And in the interim, we'll fax them -- or email them  
25 to you. And if you see any -- if you see that I did not write



1 down what we've agreed to, call us back.

2 And, otherwise, these will be waiting for them to  
3 continue their deliberations.

4 Fair enough?

5 ATTORNEY FROST: Yes, your Honor.

6 THE COURT: So that's Mr. Foster. And then -- or  
7 Mr. Frost.

8 And then, Mr. Hugo?

9 ATTORNEY HUGO: Yes.

10 THE COURT: Okay. All right. So thank you, again,  
11 for your attention to these details. And we will send it out  
12 to you now, and then await further inquiry or notice from the  
13 panel.

14 So take care, and we'll be in touch.

15 We'll be -- we'll close the record at this point, and  
16 recess the proceeding. Talk to you whenever.

17 Bye-bye.

18 ATTORNEY HUGO: Thank you.

19 (Proceedings adjourned at 12:16 p.m.)

20 (Resuming at 2:06 p.m.)

21 THE CLERK: Calling matter 1, 19-CV-2049, Spurlin  
22 versus Foster Wheeler Energy Corporation, et al., for jury  
23 trial, day 9.

24 Counsel please state your appearances for the record.

25 ATTORNEY FROST: Scott Frost and Paul Cook on behalf

1 of the Spurlins.

2 THE COURT: Okay. Good afternoon.

3 ATTORNEY HUGO: Good afternoon. Edward Hugo and Bina  
4 Ghanaat for Foster Wheeler.

5 THE COURT: Great.

6 And, Lindsey, have we gotten copies of the various  
7 notes for counsel?

8 THE CLERK: I have copies of the ones they did not  
9 receive. And I believe Susie emailed them out.

10 THE COURT: Emailed the other ones.

11 Okay. So just so you're all up to date, there have  
12 been no more notes. Just word to the bailiff that a verdict  
13 has been reached. But I want to make sure you have copies of  
14 the notes that weren't already emailed to you, just to complete  
15 your files.

16 And the jury has indicated that they have reached a  
17 verdict, so let's have the bailiffs bring the jury forward.  
18 And we'll find out what they say.

19 (Jurors enter courtroom.)

20 THE COURT: All right. Good afternoon, folks.

21 THE JURORS: Good afternoon.

22 THE COURT: I see we have you all present and  
23 accounted for. I've assembled the lawyers on word that a  
24 verdict has been reached.

25 So let me ask of your members, who's the presiding

1 juror or foreperson?

2 JUROR NUMBER 5: (Raised hand.)

3 THE COURT: Juror number 5. And, Juror number 5, has  
4 this jury reached a verdict on the issues presented to you in  
5 in the special verdict form?

6 THE JUROR: Yes, we have, your Honor.

7 THE COURT: Would you please hand that to the clerk,  
8 and I'll examine it for completeness before we have the verdict  
9 read.

10 (Judge handed document.)

11 THE COURT: All right. The jury appears to have  
12 answered the questions presented to them, pursuant to the  
13 instructions that were given.

14 And so we'll have the clerk read the verdict.

15 THE CLERK: United States District Court, Southern  
16 District of California. Dale M. Spurlin, plaintiff, versus  
17 Foster Wheeler, defendants. Case Number 3:19-CV-02049-AJB-AHG.  
18 Special verdict form.

19 We, the jury in the above -- in the above-captioned  
20 action, do hereby swear that we have answered the questions  
21 submitted to us as follows:

22 Negligent. One, was the defendant Foster Wheeler  
23 negligent? No.

24 Strict liability. Design defect, consumer  
25 expectation. Did Foster Wheeler's product fail to perform as

1 safely as an ordinary consumer would have expected when used in  
2 a reasonably foreseeable manner? No.

3 Strict liability. Design defect, risk benefit.

4 Five, was the -- was the design of any product sold by the  
5 defendant a substantial factor in increasing Dale M. Spurlin's  
6 harm? No.

7 Duty to warn, DeVries. Seven, did the defendant  
8 manufacture a product that required the incorporation of a part  
9 for the integrated product to function as intended? Yes.

10 Eight, did the defendant know or have reason to know  
11 that the use of the integrated product was likely to be  
12 dangerous for its intended use? No.

13 Nine, did the defendant have reason to believe that  
14 the product's user would realize that danger? Yes.

15 Did the dangerous condition of defendant's product  
16 cause foreseeable injury to the plaintiff? No.

17 Superseding cause. Eleven. Was the conduct of the  
18 United States Navy a superseding cause of Mr. Spurlin's harm?  
19 Yes.

20 Dated August 26th, 2022, signed presiding juror.

21 Ladies and gentlemen of the jury -- of the jury, is  
22 this your verdict as presented and read, the verdict of each of  
23 you, so say you all?

24 THE JURORS: Yes.

25 THE COURT: Let's individually inquire as to each

1 member of the jury.

2 THE CLERK: Juror number 1, is this your verdict as  
3 presented and read?

4 THE JUROR: Yes.

5 THE CLERK: Juror number 2, is this your verdict as  
6 presented and read?

7 THE JUROR: Yes.

8 THE CLERK: Juror number 3, is this your verdict as  
9 presented and read?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: Juror number 4, is this your verdict as  
12 presented and read?

13 THE JUROR: Yes.

14 THE CLERK: Juror number 5, is this your verdict as  
15 presented and read?

16 THE JUROR: Yes.

17 THE CLERK: Juror number 6, is this your verdict as  
18 presented and read?

19 THE JUROR: Yes.

20 THE CLERK: Juror number 7, is this your verdict as  
21 presented and read?

22 THE JUROR: Yes.

23 THE CLERK: Juror number 8, is this your verdict as  
24 presented and read?

25 THE JUROR: Yes.

1           THE COURT: Very well. The jury is unanimous on the  
2 questions presented to them. The jury verdict was properly  
3 filled out pursuant to the decisions made. And we'll record  
4 the verdict.

5           With that, ladies and gentlemen, your service in this  
6 case is complete; as is your jury service in general for this  
7 go-around, as we say. You may be called back in a few years.

8           And I want to thank you, again, on behalf of the  
9 Court. I'm sure the parties agree. You are the most attentive  
10 and diligent in your efforts in the case, whether all sides  
11 agree with you or not is another matter. But you worked very  
12 hard, were very patient with us, and observed a lot of  
13 information, and dealt with some -- a number of legal issues.

14           This is why our system is lauded around the world as  
15 being the best. Because you are the citizens of our country  
16 and make the decisions on disputed issues of magnitude. This  
17 was a serious case, obviously. And we put that in the hands of  
18 the people, because we're a government of and by and for the  
19 people.

20           So I hope you'll take this experience as a good one.  
21 Go tell others that jury service is a valuable effort. Doesn't  
22 hurt. And that we -- we do thank you.

23           I thank you, as well, if you filled out the survey  
24 forms that we gave you about the logistics of service, and  
25 whatnot. That's useful because we do take your suggestions to

1 heart. And a lot of the suggestions have actually turned into  
2 changes, court-wide, on the -- we'll call it the care and  
3 feeding of jurors. Make your experience positive.

4           You're now released from the admonition of being  
5 silent and not researching and not talking, not becoming  
6 friends with everyone. You can do whatever you would like from  
7 this point forward. You're free to speak about the process at  
8 your decision. You're also free to maintain your privacy.

9           If you don't want to talk about it and want to just  
10 go on about your regular life and business, you may.

11           But you may see the lawyers in the hall and be asked,  
12 and you're free to talk with them. Now they can talk with you,  
13 you can talk with them. As we joked a little bit mid-term, you  
14 can have a beer if you want or not.

15           And, certainly, you may tell your family and friends.  
16 You can now research this all, if you want. All of those rules  
17 are gone. You're back to your -- your lives and your freedom  
18 of speech. And -- and your freedom to Google to your heart's  
19 content.

20           I have certificates for each of you to commemorate  
21 your service. It's a small thank you. To just say we  
22 appreciate your time and contribution to the administration of  
23 justice.

24           So as you're excused, the clerk will hand these to  
25 you, and you may take them with you.

1           Leave all of the notes, jury instructions, the extra  
2 verdict forms, the surveys on your chair; if you didn't already  
3 leave them in the back.

4           We take all of your notes and materials and shred  
5 them. No one will actually touch them besides the courtroom  
6 deputy and bailiffs taking them from here to the shredder. And  
7 so -- so please help us by complying on that.

8           If you have any questions about the process, at this  
9 point, and want to ask before I send you home, you may ask them  
10 now.

11           Yeah, Juror number 2.

12           JUROR NO. 2: Can I say something, your Honor?

13           THE COURT: Yeah.

14           JUROR NO. 2: It was an honor to serve as a jury  
15 member in your courtroom.

16           THE COURT: Well, thank you.

17           THE JUROR: I just want to be honest about that. I'm  
18 speaking from my heart too. I'm speaking from my heart.

19           THE COURT: I enjoyed having you all here. As I  
20 said, you were quite attentative and diligent. You were on  
21 time, you were following instructions, and we appreciate that.

22           Any other actual questions about the process?

23           If not --

24           Yes, sir. Juror number 3.

25           JUROR NO. 3: Your Honor, can you explain why this



1 was in a federal courtroom, as opposed to the state court?

2 THE COURT: The state court?

3 Yeah. It was filed for two reasons. One, under  
4 maritime law, the injury, the exposure that was the focus of  
5 the litigation took place on a naval ship, on navigable waters.  
6 That makes it a federal matter. But also the -- Mr. Spurlin  
7 lives in Oregon. The defendants were back east. And it's what  
8 we call diversity of citizenship. And so, as a result, the  
9 federal court has the ability to hear and determine the cases.

10 You're quite right. We have two systems. The state  
11 court deals with the state matters. Federal court deals with  
12 matters of national law, national importance, or disputes  
13 between parties between the states.

14 JUROR NO. 2: I see.

15 THE COURT: So it was properly filed in this court,  
16 on -- on those bases.

17 JUROR NO. 3: Thank you.

18 THE COURT: And so that's what federal judges do.  
19 They handle both federal claims, in the first instance, and  
20 then sometimes state-related claims, like the strict liability  
21 claim, in part, that comes out of state law because of the  
22 diversity of citizenship of the parties.

23 Good question.

24 Anyone else have any question?

25 Yeah, juror number eight.

1 JUROR NO. 8: Your Honor, I was wondering, the number  
2 of jurors that were chosen was eight.

3 THE COURT: Yeah.

4 THE JUROR: I always thought it was 12. Can you --

5 THE COURT: Yeah. Let me explain that to you.

6 In the criminal cases, both state and federal, 12  
7 unanimous is now the rule. It's always been the rule in  
8 federal. Some states vary.

9 And you have 12 jurors that make decisions. Often  
10 courts will seek alternates. Some of you have gone through  
11 jury duty have heard about alternates. So that, at the end of  
12 the day, there's still 12 people to render a verdict.

13 In federal court, the criminal calls for 12 jurors.  
14 In civil, only six at a minimum and 12 at a maximum.

15 And so the Court and the parties discuss. And the  
16 Court often decides to do more than six, in case we lose  
17 someone -- COVID, other unanticipated reasons -- so there's six  
18 left standing at the end of the case, to decide it. The  
19 difference is, no alternates.

20 If I sit eight -- seat eight for the case, all eight  
21 of you decide it. We don't send two of you home.

22 If it were a criminal case and we had 14 sitting  
23 here, we send two home to wait until 12, the magic number,  
24 deliberate and determine the case.

25 So it's a function of the federal rules and how we go

1 about -- about things. With it being, like I say, minimum six,  
2 maximum 12.

3 I picked eight because we were -- and I will  
4 compliment the lawyers on putting the case in quickly, because  
5 we anticipated we might need you here through the 2nd of  
6 September. Right? A whole 'nother week.

7 And so I -- I basically figured with one week, we  
8 could do six; with two weeks, seven; with three weeks, eight.  
9 Because we do recognize the pandemic and other issues still are  
10 out there and can -- we could lose jurors, as a result. So  
11 it's a little bit of, that's kind of how we make sausage. It's  
12 not a pretty process, but that's the reason.

13 JUROR NO. 8: Thank you.

14 THE COURT: Other questions, folks?

15 Well, you've been wonderful public, community  
16 servants to this public institution. I'm going to excuse you  
17 now with the wish of a great evening, wonderful weekend, a  
18 wonderful life. Maybe you'll be back for another case someday.  
19 Or not. You never know.

20 (Laughter.)

21 THE COURT: So you're excused. Thank you very much.

22 Oh, and leave your badges down on the table on the  
23 first floor.

24 You don't have to go back to the jury department.  
25 You're done. You can go home and forget about it.

1 (Jurors exit.)

2 THE COURT: So the jury is on its way home.

3 We'll release the exhibits that -- that were in  
4 evidence. The thumb drive. And ask the plaintiff to maintain  
5 that until the matter becomes final.

6 I believe you were all working on a disk of the  
7 entirety of the exhibits marked for identification or  
8 otherwise. Was that completed? Does somebody have that?

9 Does the clerk have it? Oh, she's outside.

10 We'll -- we can entrust that to you as well,  
11 Mr. Frost, if you wish, so that you have the entire record  
12 electronically for purposes of post-trial motion, appeal, and  
13 so forth?

14 ATTORNEY FROST: Yes, your Honor.

15 THE COURT: To do that.

16 And then it seems to me, in light of the verdict,  
17 that the Rule 50 motion's been rendered moot. And I would -- I  
18 thank you very much for the advocacy and the work on these. I  
19 don't know that there's anything more -- I don't think it's  
20 ripe to resolve any more. Any objection to my denying it as  
21 moot?

22 ATTORNEY FROST: No, your Honor.

23 THE COURT: Mr. Hugo, Ms. Ghanaat?

24 ATTORNEY GHANAAT: No objection, your Honor.

25 THE COURT: Okay. And so make sure you get your

1 copies of the notes.

2           Lindsey, do we have a disk now with all of the  
3 exhibits -- or a thumb drive, yet, with all of the exhibits in  
4 and otherwise marked?

5           THE CLERK: No.

6           THE COURT: They were working on it still?

7           THE CLERK: You guys had it, last I heard, that had  
8 been marked and -- I don't -- no, I do not have it.

9           ATTORNEY GHANAAT: Let me clarify.

10           So we've been working with two thumb drives. One  
11 that went to the jury with just the admitted exhibits. And  
12 then there was a thumb drive marked for ID only. I put the  
13 defendant's additions to that, and returned it to plaintiff's  
14 counsel for final review. But I'm not aware of a third USB  
15 with both the admitted and the ID.

16           THE COURT: I may have misspoke. What we want to  
17 make sure is that we preserve what's in evidence for the jury  
18 and what was marked and otherwise discussed, rejected or  
19 whatnot. So that the appeal -- if there's appeal, it can be --  
20 the record's preserved.

21           Do you have the disk they handed back for your  
22 approval, Mr. Frost?

23           ATTORNEY FROST: I believe we do have it, your Honor.

24           THE COURT: Okay. And so you would maintain that,  
25 then?

1           ATTORNEY FROST:  Yes, your Honor.

2           THE COURT:  Until the case is final?

3           Okay.  So with the motion 330 denied as moot and the  
4 exhibits clarified, the copies of the notes for you, I would  
5 say you may retrieve your exhibits or other materials.

6           And then we'll enter judgment based on the verdict,  
7 and that will allow the time to open for whatever post-trial  
8 work or post-trial proceedings any party wants to pursue.

9           Anything else we should address before we excuse you  
10 for the day?

11          ATTORNEY COOK:  Your Honor, just to be clear?

12          THE COURT:  Yes.

13          ATTORNEY COOK:  On the -- the judgment, did the Court  
14 want us to propose anything?  Or is the Court going to take  
15 care of that?

16          THE COURT:  We'll do that.  We'll just have a  
17 judgment that will be in favor of the defendant, Foster  
18 Wheeler, and against plaintiff on all counts.  It will be a  
19 fairly simplistic statement of finality.  The verdict form will  
20 be filed in its entirety that explains that.

21          Anything else on the plaintiff's side?

22          ATTORNEY FROST:  No, your Honor.

23          THE COURT:  How about on the defense?

24          ATTORNEY HUGO:  Thank you.

25          THE COURT:  Okay.  Well --

1           ATTORNEY HUGO: On my behalf, Ms. Ghanaat's behalf,  
2 Foster Wheeler's behalf, it's been a pleasure to try the case  
3 in front of you. And enjoyed your staff, court reporters,  
4 everybody very much.

5           THE COURT: Well, I appreciate it.

6           As I told the jury -- and I mean it -- you were  
7 expeditious in getting it to them. And so good luck with  
8 wherever this goes from here. All right?

9           ATTORNEY FROST: Thank you, your Honor.

10          ATTORNEY HUGO: Thank you.

11          THE COURT: Thank you.

12          (Conclusion of proceedings at 2:25 p.m.)

13                           --oOo--

14 I certify, by signing below, that the foregoing is a correct  
15 stenographic transcript of the oral proceedings had in the  
16 above-entitled matter this 26th day of August, 2022. A  
17 transcript without an original signature or conformed signature  
18 is not certified. I further certify that the transcript fees  
19 and format comply with those prescribed by the Court and the  
20 Judicial Conference of the United States.

21                           /S/ Amanda M. LeGore  
22                           \_\_\_\_\_

23                           AMANDA M. LeGORE, RDR, CRR, CRC, FCRR, CACSR 14290  
24  
25