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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CIV. No. 1:19-cv-01334-CJB

-----x

MIDWEST ENERGY EMISSIONS CORP.
and MES INC.,

Plaintiffs,

-against-

ARTHUR J. GALLAGHER & CO., et al.,

Defendants.

-----x

August 24, 2022
8:56 a.m. CST

- [REDACTED] -

- [REDACTED] [REDACTED] R-

VIDEOTAPED ZOOM DEPOSITION of
MICHAEL HOLMES, the Witness in the
above-entitled action, held via Zoom
videoconference, taken before Dawn
Matera, a Certified Shorthand Reporter
and Notary Public of the State of New
York.

* * *

Page 2

1 APPEARANCES :

2

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8

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22

23

24

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Page 3

1 APPEARANCES : (Continued)

2

3 Also Present:

4

5 KRAIG HILDAHL, Videographer

6 CHELSEA GILCHRIST, Concierge

7 INA KOSOVA, Law Clerk, Gibson Dunn
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Page 4

1 THE VIDEOGRAPHER: We are going
2 on the record at 8:56 a.m. Central
3 Time on August 24th, 2022. This is
4 media unit number 1 of the
5 video-recorded deposition of Michael
6 v. Holmes taken in the matter of
7 Midwest Energy Emissions Corporation
8 and MES Incorporated v. Arthur J.
9 Gallagher, et al., in the U.S.
10 District Court for the District of
11 Delaware, case number
12 1:19-CV-01334-CJB.

13 The location of this deposition
14 is Grand Fork, North Dakota. This is
15 Kraig Hildahl from Veritext Legal
16 Solutions, I am the videographer. The
17 court reporter today is Dawn Matera,
18 also of Veritext.

19 Will counsel please introduce
20 themselves for the record.

21 MR. NEMUNAITIS: Justin
22 Nemunaitis for the plaintiffs and the
23 witness.

24 MR. GLANDORF: David Glandorf of
25 Gibson Dunn for the defendants, and

Page 5

1 with me is Joseph Evall of Gibson
2 Dunn.

3 MR. SYKES: Paul Sykes for the
4 CERT defendants.

5 MICHAEL HOLMES, the Witness
6 herein, having first been duly sworn by
7 the Notary Public, was examined and
8 testified as follows:

9 EXAMINATION BY

10 MR. GLANDORF:

11 Q. Good morning, Mr. Holmes.

12 A. Good morning.

13 Q. If you would just take a moment
14 and -- I know we already have done this,
15 but if you take a moment and state and
16 spell your name for the record?

17 A. My full name, sir?

18 Q. Yes.

19 A. Okay. My full name is Michael
20 Jerome Holmes, it's M-I-C-H-A-E-L, and
21 Jerome is spelled J-E-R-O-M-E, and Holmes
22 is H-O-L-M-E-S.

23 Q. What is your address,
24 Mr. Holmes?

25 A. My address is 2144S for south,

Page 6

1 38th Street, Grand Forks, North Dakota
2 58201.
3 Q. Have you ever been deposed
4 before?
5 A. Yes.
6 Q. How many times?
7 A. One.
8 Q. And was that deposition in
9 relation to mercury control technology?
10 A. No, sir.
11 Q. Was that deposition in your
12 professional capacity?
13 A. Yes.
14 Q. What was the issue, what was at
15 issue in that deposition?
16 A. So the issue, the way I
17 understood it, was I did atomizer
18 evaluations early in my career. And one
19 of the atomizers that I did particle size
20 measurements, velocity, that type of
21 thing. We had to evaluate. There was a,
22 a customer was being, I guess, accused of
23 over -- my understanding is they were
24 being accused of overselling the
25 capabilities and making and utilizing

Page 7

1 part of the report that I had created.
2 So a lot of the questions related to
3 performance of the atomizer.
4 Q. Roughly when was that
5 deposition?
6 A. Oh, wow, roughly 1990, plus or
7 minus a couple of years.
8 Q. Fair enough. So it's been a
9 little while. I am going to take a few
10 moments, if it's okay, and just outline
11 some of kind of the ground rules and the
12 expectations here.
13 So you are under oath. You are
14 under oath?
15 A. Yes.
16 Q. I will be asking you questions
17 today and you are obligated to provide
18 true and accurate and complete answers to
19 the best of your ability; do you
20 understand that?
21 A. Yes.
22 Q. The court reporter will record
23 my questions and your answers and the
24 videographer will be recording you. Do
25 you understand that?

Page 8

1 A. Yes.
2 Q. Even though we are being
3 videoed, the court reporter is recording
4 only words, so it's important that you
5 answer in words rather than gestures or
6 nods; do you understand that?
7 A. Yes.
8 Q. And it's a little awkward over
9 Zoom, but I will do my best to let you
10 finish answering a question and I ask
11 that you let me finish asking before you
12 provide your answer; is that okay?
13 A. Yes.
14 Q. If at any time you do not
15 understand a question, please ask and I
16 will do my best to clarify. Do you
17 understand that?
18 A. Yes, thank you.
19 MR. NEMUNAITIS: David, can I
20 interrupt for one second and just ask
21 you, can everybody hear everything
22 okay still?
23 THE REPORTER: I can.
24 MR. GLANDORF: I can.
25 (Off the record.)

Page 9

1 BY MR. GLANDORF:
2 Q. We will take periodic breaks,
3 please let me know if you need a break at
4 any time. I would just ask that you
5 would finish answering any pending
6 question; is that okay?
7 A. Yes.
8 Q. Are you planning to offer
9 testimony at trial in this matter?
10 A. No.
11 Q. Are you being compensated for
12 this deposition?
13 A. No.
14 MR. GLANDORF: So at this time I
15 am going to introduce our first
16 exhibit, we will see how this goes.
17 (Holmes Exhibit 1, Document
18 Bates stamped ME2C-RC-00163545, was so
19 marked for identification, as of this
20 date.)
21 A. Is it going to come up on my
22 screen or do I need to pull something up?
23 Q. I believe it will come up. But
24 it's still thinking about it here.
25 (Off the record.)

3 (Pages 6 - 9)

Page 10

1 BY MR. GLANDORF:
2 A. Okay, my resumé came up.
3 Q. Excellent. All right. This is
4 going to work.
5 Mr. Holmes, do you see Exhibit
6 1?
7 A. Yes, I see the resumé. It says
8 Exhibit 1, I see that.
9 Q. And are you able to scroll
10 around and see the whole document?
11 A. Let me try here. Yes.
12 Q. Do you recognize Exhibit 1?
13 A. Yes.
14 Q. What is Exhibit 1?
15 A. It's my -- you were looking for
16 a long resumé, so it was my resumé before
17 I left EERC to take on my new job, so in
18 my new job I don't have a long resumé.
19 So I provided this.
20 Q. Who prepared this document?
21 A. I think executive assistant.
22 Administrative assistant.
23 Q. An administrative assistant at
24 EERC?
25 A. Yes.

Page 11

1 Q. And what does EERC stand for?
2 A. Energy and Environmental
3 Research Center.
4 Q. Are you currently employed at
5 EERC?
6 A. No.
7 Q. Where is your current place of
8 employment?
9 A. I work kind of a hybrid job
10 where I work under a North Dakota
11 industrial commission as a technical
12 advisor. And then I work under the
13 Lignite Energy Council as the executive
14 vice president for R&D. My focus is on
15 lignite coal and it's focused on the
16 State's R&D program. And I believe
17 there, I believe it was December of 2016.
18 Q. So is this resumé updated as of
19 December of 2016?
20 A. Yeah. So it would be the
21 resumé I would use before I left and
22 officially and basically through the
23 calendar year 2016.
24 Q. Let's step back now to the
25 beginning. I want to spend a little bit

Page 12

1 of time walking through your employment
2 and educational background, if we could.
3 A. Yes.
4 Q. Could you start by telling us
5 your -- where you went to college and
6 what you studied?
7 A. Yes. I started my college at a
8 college in North Dakota called Mayville,
9 M-A-Y-V-I-L-L-E, State University. And I
10 got two bachelor's degrees at Mayville
11 State, one in chemistry, and one in
12 mathematics. And as part of that, I
13 decided engineering was the route for me
14 because I liked the more math-driven
15 chemistry.
16 So I ended up getting a Master
17 of Science degree in chemical engineering
18 at the University of North Dakota. And
19 so that was roughly a two-year to finish
20 all the course work.
21 And then I later defended my
22 thesis and I can't remember the exact
23 year I went and defended my thesis. But
24 I was employed as of September, I guess
25 it was August of 1986.

Page 13

1 Q. And at a high level -- sorry to
2 interrupt. At a high level, what was
3 your thesis, what was the subject of your
4 thesis?
5 A. Oh, my thesis subject was on
6 basically, it was related to coal
7 liquefaction. And there are two types of
8 coal liquefaction. Mine was focused on
9 direct liquefaction.
10 Q. Can you define liquefaction for
11 us?
12 A. Yes, turning coal into a liquid
13 fuel, primarily fuel.
14 Q. Where did you go after
15 graduating?
16 A. After graduating I took a job
17 at Babcock & Wilcox's research and
18 development division in Alliance, Ohio.
19 Q. And how long were you there?
20 A. 15 years.
21 Q. And what was your position
22 while you were -- I assume it changed
23 over time?
24 A. Yeah, it changed over time. I
25 believe when I left it was titled

4 (Pages 10 - 13)

Page 14

1 principal engineer 2. It might have been
2 principal research engineer 2. But it
3 was a nondescript title, you know.
4 They had a bunch of researchers
5 working together on projects. So I would
6 manage different projects.
7 Q. You were managing research
8 projects; is that right?
9 A. Yes.
10 Q. All related to coal combustion?
11 A. No. No. R&D related to
12 energy. So coal combustion was certainly
13 in the mix.
14 I did -- stop me if I am going
15 off track -- but I did particle size
16 measurements. Gas velocity using laser
17 technologies like laser Doppler
18 velocimetry, Malvern particle sizing.
19 Atomizers. I did a lot of work on SO2
20 emissions from different facilities.
21 Fuel processing. Some for the fuel cell
22 industry to prepare and process fuels to
23 provide hydrogen mixtures for fuel cells.
24 And economic evaluations.
25 I'll stop there and wait for a

Page 15

1 more direct question, because I could use
2 up all your time talking about the
3 various projects.
4 Q. Fair enough. Let me ask a
5 couple of more targeted questions.
6 Was a portion of your work
7 during this time related to mercury
8 control from emissions?
9 A. Yes.
10 Q. And was your work tied to any
11 particular location, any particular
12 energy plants or systems?
13 A. My work, the biggest and last
14 project I did was tied to, it had partial
15 funding from the Ohio Coal Development
16 office. And also we had a suite of fuel
17 that happened to be representative of a
18 subbituminous coal.
19 Q. Can you give us a description
20 of the type of work you did related to
21 mercury during that time?
22 A. There was a lot of variety in
23 that project. But it was everything from
24 which analyzers worked and how and when
25 they work. Because with mercury, you're

Page 16

1 trying to measure and capture one part
2 per billion.
3 I guess I will wait for a more
4 specific question, but I will say that a
5 lion's share of that project was focused
6 on wet scrubbers. Because Babcock &
7 Wilcox, at the time, a lot of their
8 business was in wet scrubbers.
9 Q. Okay. We will come back to
10 those, I believe, as we go along here.
11 At some point then you
12 transitioned to EERC; is that correct?
13 A. Yes.
14 Q. And why did you make that
15 change?
16 A. Family health reasons from
17 North Dakota and Minnesota made me want
18 to look at moving back closer to be near
19 specifically my mother.
20 Q. And what position were you
21 hired to at EERC?
22 A. I can't remember the initial
23 title. I think it was -- sorry, it was a
24 long time ago. It was August of 2001.
25 And my title was senior research advisor,

Page 17

1 I am pretty sure. And I apologize, I
2 never really focused heavily on title.
3 Q. That's fair. Was your work
4 during your time at EERC in this 2001 to
5 2004 time period -- let me start again.
6 During the 2001 to 2004 time
7 period at EERC, was your work focused on
8 mercury control?
9 A. In R&D, your work ends up being
10 diverse because you got a lot of
11 opportunity, a lot of challenges facing
12 the industry and a lot of contracts. But
13 it is fair to say a majority of my work
14 at that time was focused on mercury.
15 Q. During that time, was the focus
16 still on wet scrubbers or were there dry
17 scrubbing techniques as well?
18 A. The focus during that time was
19 more diverse than wet scrubbers. And wet
20 scrubbers were a very, I guess I am
21 remembering a very small portion of what
22 I was focused on. It was some, but it
23 wasn't the main focus.
24 Q. What was the main focus?
25 A. Well, the main focus was -- let

5 (Pages 14 - 17)



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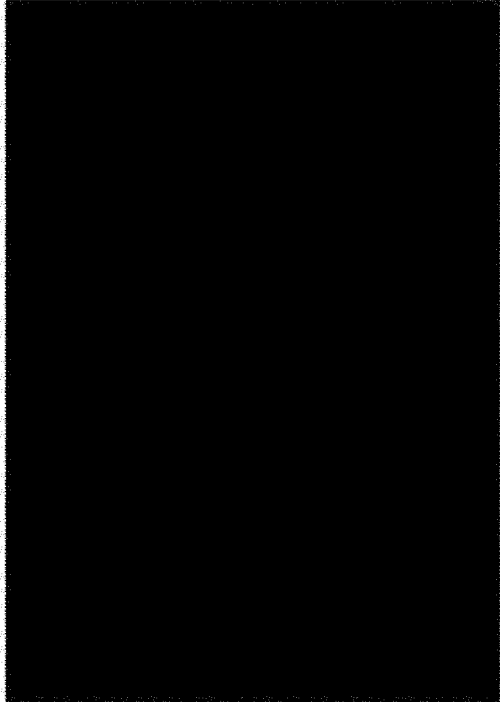
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Page 41

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5 Q. Prior to implementation of the
6 regulations, was activated carbon the
7 most commonly studied sorbent for mercury
8 control?
9 A. Yes, I believe so.
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11 (Pages 38 - 41)

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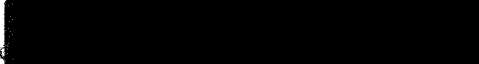
Q. For mercury control, where in the system do you typically add activated carbon?
A. I am trying to think how varied

A. Well, I would have to talk to power plants and make sure that I am not wrong, but I would say that's right unless you've got a second particulate collection system, you're going to fail your capacity requirements at the power plant if you aren't upstream of your particulate collection.
Q. And you want to be downstream of any area where the temperatures are high enough to destroy the carbon; is that right?
A. That would be my belief, yeah.
Q. You would not want to inject an activated carbon sorbent into the combustion zone; is that fair?
A. I wouldn't.
Q. Let's introduce a new exhibit here, if we can. It's going to be a pair of exhibits. And so maybe --
A. Can I go back to that --
Q. Oh, sure.
A. -- question slightly?
I am not saying that someone else hasn't found some magic way to

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it is, but the simple answer is upstream of the particulate capture system and I guess I would work with an activated carbon chemist.
And again, my problem with this is I haven't done any of the commercial work on this so I don't know where they add it. But you would want to be downstream enough not to destroy the carbon properties. And upstream enough to get that in-flight benefit as well as any benefit in the particulate capture system. So upstream of your particulate collection. Downstream of any detrimental temperatures.
Q. Thank you, that's helpful.
I am just trying to define a range here. Because I understand that there is some variety within that range of location.
So just to clarify, you would not want to add the activated carbon after the particulate collection system, because then you wouldn't be able to remove those particulates; is that right?

activate a sorbent in the combustion zone. I am just saying unrelated to my knowledge of, you know, the patents or anything else, it strikes me as an engineer you wouldn't want to throw something in a combustion zone that might be destroyed. But I could see maybe some sorbents being activated, possibly. I don't know.
Q. You would expect a carbon-based sorbent to combust in the combustion zone; is that right?
A. If you're in with the coal and it gets all of that mixing that the coal gets, I would expect that it would be reactive.
Now, activated carbon is a little less reactive than coal, because it's already been charred and steam activated. But again, that's where I think you would have a, get a better answer than I can give from a carbon chemist.



Page 82

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Page 84

1 they did, yes. But not completely
 2 familiar with anything either of them
 3 did.
 4 Q. In your experience with Sharon
 5 Sjostrom, did you find her work to be of
 6 good reputation?
 7 A. I would primarily see the
 8 results. I thought she was a researcher.
 9 Q. I'm sorry, I didn't catch that
 10 word, what was -- you thought she was?
 11 A. I thought she was one of the, I
 12 think you use the word "good reputation."
 13 I had no reason to doubt her reputation
 14 in the field.
 15 [REDACTED]
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Page 83

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 12 [REDACTED]
 13 Q. And who is that?
 14 A. Sharon Sjostrom, from my memory
 15 of her, worked for a company called ADA.
 16 Q. Both of these individuals were
 17 involved in the study of mercury control;
 18 is that right?
 19 A. I'm not sure of the level of
 20 involvement of Kilgrove. He obviously was
 21 at the conference. But Sharon I remember
 22 working a lot with different projects.
 23 Q. Were you more familiar with
 24 Sharon Sjostrom than Kilgrove?
 25 A. Yes. As far as what activity

Page 85

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Do you have an understanding of
the word "char"?

A. Though, in working with
researchers over the decades, char is
defined differently by some people that
are in the same area as me, but, yeah, I

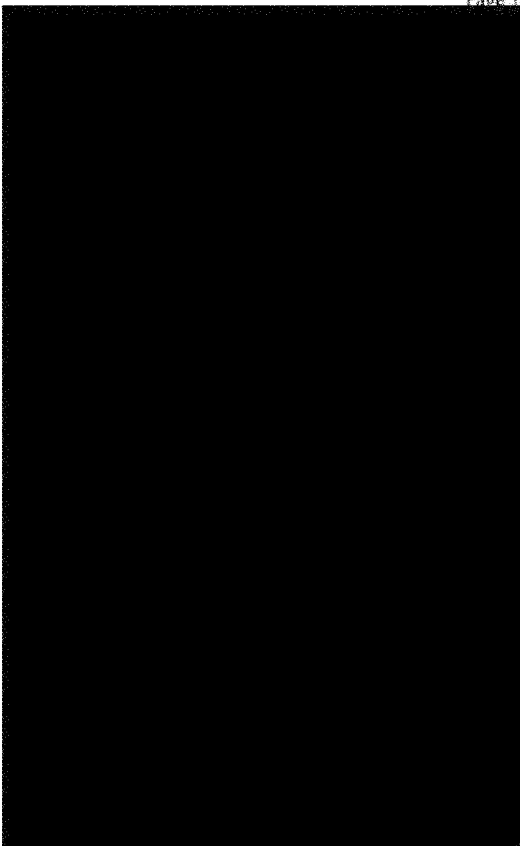
30 (Pages 114 - 117)



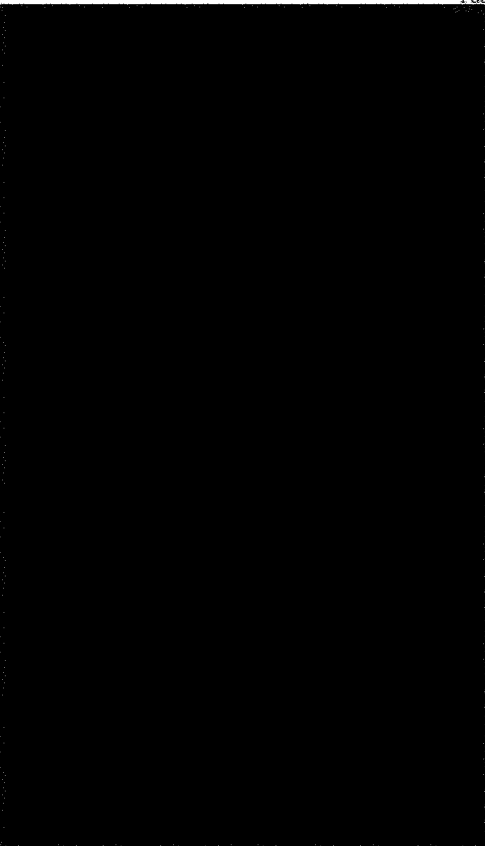
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1 understand what the definition of char to
 2 be.
 3 Q. I would ask you, if you could,
 4 to give me the definition of char that
 5 you feel is appropriate for the coal-
 6 fired power plant context?
 7 A. A quick answer is char is coal
 8 or carbonous material that hasn't been
 9 completely burnt.
 10 Q. Do you have an understanding of
 11 the term "pyrolysis"?
 12 A. Yes, but again, pyrolysis is
 13 one of those words, it's an extent of a
 14 decomposition of a carbon fuel. So I
 15 would have to look at the context to
 16 where someone is talking about pyrolysis
 17 to understand exactly what another person
 18 means.
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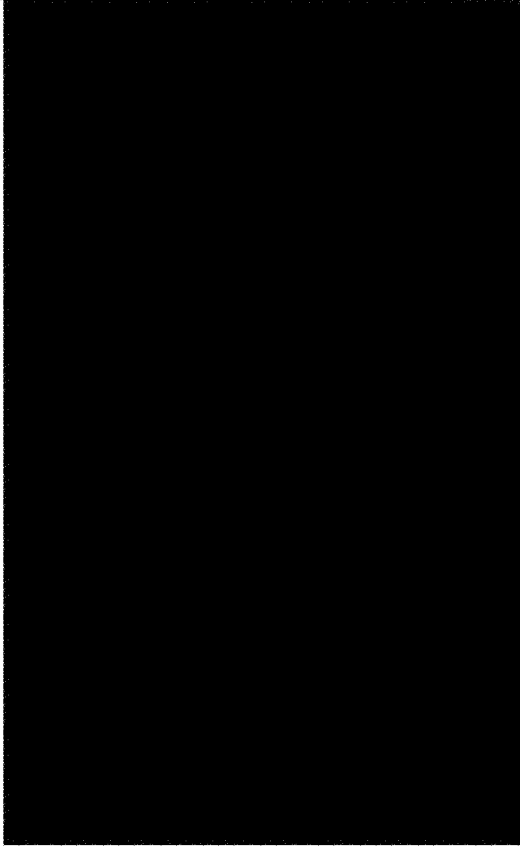
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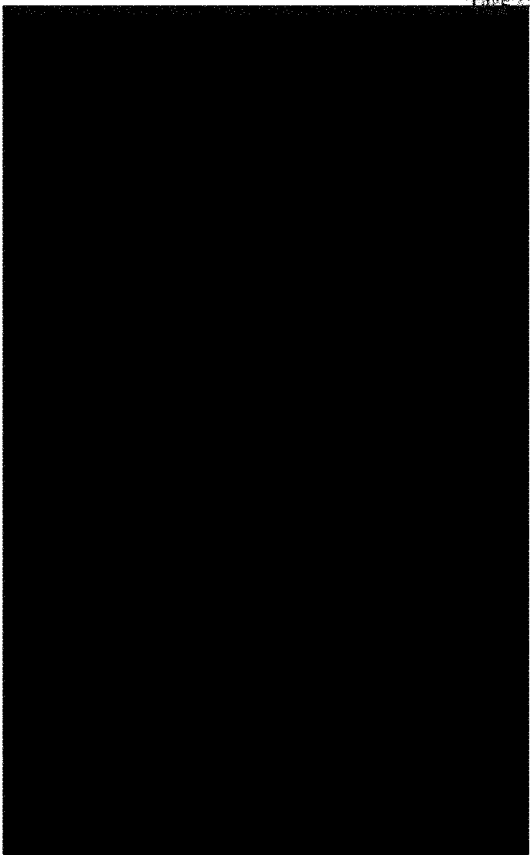
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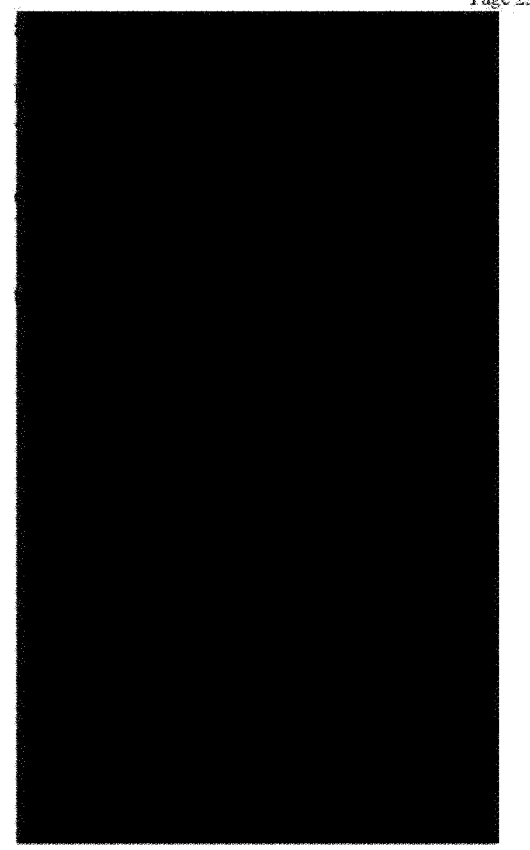


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MR. NEMUNAITIS: Just to be safe, yes, let's designate that under the protective order for now and the witness would also like to read and sign.

THE VIDEOGRAPHER: We are going off the record at 4:18 p.m.
(Time noted: 4:18 p.m.)

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ACKNOWLEDGMENT OF DEPONENT

I have read the foregoing transcript of my deposition and except for any corrections or changes noted on the errata sheet, I hereby subscribe to the transcript as an accurate record of the statements made by me.

MICHAEL HOLMES

SUBSCRIBED AND SWORN before

and to me this _____ day of _____, 2022.

NOTARY PUBLIC

My Commission Expires:

1
2 CERTIFICATION
3
4 I, DAWN MATERA, a Notary Public for
5 and within the State of New York, do hereby
6 certify:
7 That the witness whose testimony as
8 herein set forth, was duly sworn by me; and
9 that the within transcript is a true record of
10 the testimony given by said witness.
11 I further certify that I am not
12 related to any of the parties to this action
13 by blood or marriage, and that I am in no way
14 interested in the outcome of this matter.
15 IN WITNESS WHEREOF, I have hereunto
16 set my hand this 25th day of August, 2022.
17
18 *Dawn Matera*
19 DAWN MATERA
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1 ERRATA SHEET
2 VERITEXT
3 CASE NAME: Midwest Energy Emissions Corp
4 v Arthur J. Gallagher & Co
5 DATE OF DEPOSITION: August 24, 2022
6 WITNESS'S NAME: MICHAEL HOLMES
7 PAGE/LINE(s) CHANGE REASON
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19 MICHAEL HOLMES
20
21 Subscribed and Sworn To
22 Before Me This _____ Day
23 of _____, 2022.
24
25 Notary Public
My Commission Expires _____

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14 Exhibit 7 Document Bates stamped 76
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and
(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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