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[REDACTED] - JOHN PAVLISH - Vol. I
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE
-----X
MIDWEST ENERGY EMISSIONS CORP.
and MES INC.,
Plaintiffs, Case No.
1:19-cv-01334-CJB
v.
ARTHUR J. GALLAGHER & CO., ET AL.,
Defendants.
-----X

[REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

VOL. I
VIDEOTAPED DEPOSITION
VIA ZOOM VIDEOCONFERENCING
OF
JOHN PAVLISH
Thursday, August 25, 2022

REPORTED BY:
LINDA J. GREENSTEIN
JOB NO. 5407942

Page 2

1 [REDACTED] JOHN PAVLISH - Vol. I
2 August 25, 2022
3 8:36 A.M. CT
4
5
6
7 [REDACTED] Videotaped
8 Deposition held via Zoom
9 Videoconferencing of John Pavlish,
10 taken by Defendants, before Linda J.
11 Greenstein, a Certified Shorthand
12 Reporter and Notary Public of the
13 States of New York and New Jersey.
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Page 3

1 [REDACTED] - JOHN PAVLISH - Vol. I
2 APPEARANCES:
3 (All parties appearing via Zoom
4 Videoconferencing)
5 CALDWELL CASSADY & CURRY, LLP
6 Counsel for Plaintiffs & Witness
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13 ADRIENNE DELLINGER, ESQ.
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16 GIBSON DUNN & CRUTCHER, I.P.P
17 Counsel for Defendants
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19 New York, New York 10166-0193
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21 jevall@gibsondunn.com
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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 CONTINUED
3 APPEARANCES:
4
5 BRADLEY ARANT BOULT CUMMINGS, LLP
6 Counsel for CERT Defendants
7 1819 5th Avenue N
8 One Federal Place
9 Birmingham, Alabama 35203
10 BY: PAUL M. SYKES, ESQ.
11 psykes@bradley.com
12
13 BENN C. WILSON, ESQ.
14 bCwilson@bradley.com
15
16 Also Present:
17 Kraig Hildahl, Videographer
18 James Budkins, Veritext Concierge
19
20
21
22
23
24
25

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 THE VIDEOGRAPHER: We are going
3 on the record at 8:36 a.m. Central
4 Time on August 25, 2022.
5 This is Media Unit Number 1 of 09:36:50
6 the video-recorded deposition of John
7 Pavlish, taken in the Matter of
8 Midwest Energy Emissions Corporation
9 and MES Incorporated versus Arthur J.
10 Gallagher, et al., from the U.S. 09:37:09
11 District Court for the District of
12 Delaware, Case Number 1:19-CV-01334-CJB.
13 The location of this deposition
14 is Grand Forks, North Dakota.
15 My name is Kraig Hildahl from 09:37:41
16 Veritext Legal Solutions and I'm the
17 videographer.
18 The court reporter is Linda
19 Greenstein, also at Veritext.
20 Will counsel please introduce 09:37:57
21 themselves for the record.
22 MR. NEMUNAITIS: Justin
23 Nemunaitis for the plaintiffs and the
24 witness.
25 MR. EVALL: Joseph Evall for 09:38:05

2 (Pages 2 - 5)

Page 6

1 [REDACTED] - JOHN PAVLISH - Vol. I
2 certain defendants, and with me are my
3 colleagues, David Glandorf, Paul
4 Kremer and Ina Kosova.
5 MR. SYKES: Paul Sykes for the 09:38:21
6 CERT defendants, and with me is my
7 colleague, Doug Wilson.
8 THE VIDEOGRAPHER: Will the
9 court reporter please swear in the
10 witness. 09:38:37
11 JOHN PAVLISH,
12 having been first duly sworn/affirmed, was
13 examined and testified as follows:
14 EXAMINATION BY
15 MR. EVALL: 09:39:01
16 Q. Good morning, Mr. Pavlish.
17 A. Good morning.
18 Q. My name is Joseph Evall. I
19 represent many of the defendants in this
20 case and as you know I'm here to take your 09:39:12
21 deposition.
22 Could you please state and spell
23 your name for the record.
24 A. John Pavlish, first name John,
25 J-O-H-N. Last name Pavlish, P-A-V-L-I-S-H. 09:39:22

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1 [REDACTED] JOHN PAVLISH - Vol. I
2 Q. Thank you. And can you also
3 provide your address.
4 A. 42204 210th Street Southwest,
5 East Grand Forks, Minnesota 56721. 09:39:43
6 Q. Mr. Pavlish, the court reporter
7 put her hands up and that may have been
8 because there was a little bit of
9 interference in your answer; is that
10 correct? Yes, the court reporter is 09:39:57
11 nodding.
12 There may be some feedback, and
13 we're just trying to figure out the source
14 of that feedback, so as we proceed we'll
15 try to figure it out so that everything is 09:40:08
16 clear.
17 You understand that you are
18 providing testimony in this Court
19 proceeding today and that it is both in an
20 individual capacity and you have also been 09:40:18
21 designated as a witness on behalf of the
22 plaintiffs with respect to certain topics.
23 Do you understand that?
24 A. That's my understanding.
25 Q. Okay. Thank you. 09:40:33

Page 8

1 [REDACTED] - JOHN PAVLISH - Vol. I
2 Have you ever been deposed
3 before?
4 A. No.
5 Q. Have you ever testified in court 09:40:38
6 before?
7 A. No.
8 Q. So because of that, I will take
9 a couple of minutes reviewing just some of
10 the things about how this works. 09:40:52
11 The court reporter is recording
12 the proceedings today. She will record my
13 questions and your answers and any
14 objections that your counsel may make.
15 Because she is recording words, 09:41:07
16 it is important that all of the answers be
17 in words and nods and gestures and things
18 like that won't be recorded.
19 Do you understand that?
20 A. Yes. 09:41:19
21 Q. Okay. And in addition, it's
22 very important, because the court reporter
23 only has two hands, that we try not to --
24 that you wait until I've completed my
25 question before you begin your answer, and 09:41:34

Page 9

1 [REDACTED] - JOHN PAVLISH - Vol. I
2 I will make every effort not to interrupt
3 you and to let you finish your answers
4 before I begin my next question.
5 Okay? 09:41:42
6 A. Okay.
7 Q. Okay. We're going to take
8 regular breaks. If you need a break at any
9 time, please let me know and we will
10 arrange a break at the nearest possible 09:41:51
11 time; okay?
12 A. All right, thank you.
13 Q. If at any time you don't
14 understand a question, please ask and I
15 will do my best to clarify it; okay? 09:41:59
16 A. Okay.
17 Q. If at any time in the course of
18 the day, or the two days, you feel that you
19 need to correct or clarify an answer or
20 that you misspoke or that you need to 09:42:14
21 elaborate on something, please let me know
22 and I will set aside some time to allow you
23 to do that; okay?
24 A. All right. Thank you.
25 Q. Okay. Is there any reason that 09:42:30

3 (Pages 6 - 9)

Page 10

1 [REDACTED] - JOHN PAVLISH - Vol. I
2 you cannot testify honestly and accurately
3 today?
4 A. Not that I'm aware of.
5 Q. Okay. Are you planning on 09:42:43
6 providing testimony at trial?
7 A. Yes.
8 Q. Do you know the subject of that
9 testimony?
10 MR. NEMUNAITIS: I counsel the 09:42:56
11 witness not to disclose any
12 communications with attorneys.
13 If there's a way to answer that
14 question, you can answer it. But
15 otherwise don't disclose any 09:43:08
16 communications with attorneys or your
17 trial preparation materials.
18 So you can answer the question
19 if you believe that there is some
20 information you can give. But if you 09:43:26
21 think there's nothing you can give,
22 then just say "I can't answer."
23 A. Nothing I can provide at this
24 time?
25 Q. Okay. But you are planning on 09:43:32

Page 11

1 [REDACTED] - JOHN PAVLISH - Vol. I
2 coming to Delaware and providing testimony
3 at trial. That is your current intention;
4 correct?
5 A. Correct. 09:43:40
6 Q. Are you being compensated for
7 this deposition?
8 A. No, other than the salary that I
9 receive.
10 Q. And that salary is paid by whom? 09:43:50
11 A. That would be Midwest Energy
12 Emissions Corp.
13 Q. Okay. That is a good time to
14 move into your employment.
15 Are you currently employed? 09:44:04
16 A. Yes.
17 Q. And who is your employer?
18 A. In short, ME2C.
19 Q. When we use the term ME2C, we'll
20 understand that to mean Midwest Energy 09:44:22
21 Corp. Is that agreeable to you?
22 A. Yes, Midwest Energy Emissions
23 Corp., ME2C.
24 Q. There's also an entity called
25 MES. 09:44:33

Page 12

1 [REDACTED] - JOHN PAVLISH - Vol. I
2 Are you familiar with that?
3 A. Somewhat.
4 Q. What is that entity?
5 A. I'm not really sure. My 09:44:37
6 understanding is it's -- it's a company
7 that's associated with ME2C. I'm not even
8 sure if it's in North Dakota or Delaware.
9 Q. Okay. But your paychecks are
10 signed by ME2C; is that right? 09:44:58
11 A. Correct.
12 Q. What is your position at ME2C?
13 A. My position is chief technology
14 officer, as well as I'm a senior research
15 VP. I should say a senior VP at ME2C. 09:45:10
16 Q. I see, okay.
17 A. Vice president for VP.
18 Q. What are your responsibilities
19 as chief technology officer?
20 A. Primary responsibilities is the 09:45:26
21 oversight of the development and the
22 support of the technology that is either
23 developed or commercialized or marketed by
24 ME2C.
25 Q. How long have you had that title 09:45:41

Page 13

1 [REDACTED] - JOHN PAVLISH - Vol. I
2 of CTO at ME2C?
3 A. Since 2014.
4 Q. Have your responsibilities
5 changed since 2014? 09:45:54
6 A. No.
7 Q. Okay. And you're also senior
8 VP.
9 Do you have any responsibilities
10 as senior VP at ME2C? 09:46:05
11 A. I would say no, other than
12 obviously representing the technology that
13 we're either developing or marketing.
14 Q. And how long have you had that
15 title? 09:46:21
16 A. Senior VP, since 2014.
17 Q. Okay. When were you first
18 employed by ME2C?
19 A. November 2014.
20 Q. And so when you came to ME2C in 09:46:32
21 November of 2014, you were given the titles
22 chief technology officer and senior VP and
23 you've held those titles since that time?
24 A. That is correct.
25 Q. Thank you. 09:46:46

4 (Pages 10 - 13)

[REDACTED]

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] 12:19:00
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] 12:19:07

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1 [REDACTED] JOHN PAVLISH - Vol. I
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 Q. So that is the '147 patent and I
18 have some questions about it.
19 Could you read the abstract on
20 the first page to yourself. 12:20:20
21 A. I've read it.
22 Q. Okay. Is that an accurate
23 description of your invention?
24 A. I would say it's not an
25 all-inclusive description of the invention. 12:21:26

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 Q. What's it missing?
3 A. More specificity.
4 Q. Okay. Is there any aspect of
5 the invention that's missing? 12:21:42
6 A. I think at a high level it
7 summarizes the invention, but -- specifics
8 are not included -- and like I say, it
9 doesn't include necessarily all of the
10 features -- 12:22:09
11 Q. Well --
12 A. -- of the invention.
13 Q. What features are missing?
14 A. I wouldn't say "missing." I
15 would say not described in detail. 12:22:19
16 Q. Okay. Do you see the third
17 sentence says: "Optional components may be
18 added to increase reactivity and mercury
19 capacity"?
20 A. Yes, I see that. 12:22:38
21 Q. What are those? What does that
22 mean?
23 A. That means essentially what it
24 states. Other components, meaning other
25 chemicals that are in addition to the 12:22:58

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1 [REDACTED] JOHN PAVLISH - Vol. I
2 singular -- in other words, not just one
3 product on the front or one product in the
4 back.
5 There could be additional 12:23:14
6 components to that, meaning they're not
7 necessarily required. They're optional in
8 the way of further enhancing or potentially
9 enhancing -- enhancing mercury capture
10 reactivity and capacity. 12:23:34
11 Q. So those are additives that are
12 separate from the sorbent and the
13 bromine-containing promoter; right?
14 A. They could be either/or. There
15 could be optional components that could be 12:23:51
16 added, either/or, to enhance the
17 effectiveness of the reactivity.
18 Q. Okay. But what I mean is, that
19 is something -- that's an additive other
20 than the sorbent and other than the 12:24:04
21 bromine-containing promoter.
22 A. Other than and in addition to.
23 Q. Okay. Right. I'm sorry, yes.
24 In addition to the -- it's an
25 optional additive that is in addition to 12:24:22

29 (Pages 110 - 113)

Page 114

1 [REDACTED] - JOHN PAVLISH - Vol. I
2 the sorbent and the bromine-containing
3 promoter; correct?
4 A. Correct.
5 Q. Okay. Thank you. 12:24:31
6 We're going to scroll down to
7 some of the -- to column 8.
8 A. All right.
9 Q. I may have said scroll. I guess
10 technically flipped. 12:25:22
11 A. Yeah, I flipped there.
12 Q. Okay. Good.
13 Actually, please go back to 5.
14 I apologize. I have --
15 A. Column 5? 12:25:39
16 Q. Yes.
17 A. Okay.
18 Q. Now, do you see where it says at
19 line 41 it says: "Figure 1 schematically
20 illustrates methods for preparation of 12:25:56
21 promoted carbon sorbents in accordance with
22 the present invention"?
23 A. I see that.
24 Q. That's an accurate statement,
25 isn't it? 12:26:10

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1 [REDACTED] JOHN PAVLISH - Vol. I
2 A. It's an accurate statement but
3 I'm not sure it includes all embodiments.
4 Q. Okay.
5 Could you look at column 8, 12:26:51
6 please.
7 A. Okay.
8 Q. Could you look at line 30 -- the
9 sentence starting on line 38.
10 I'm going to read that to you. 12:27:27
11 A. There it is. I see that. Go
12 ahead.
13 Q. You see it says:
14 "A source of air, nitrogen, or
15 other transport gasses is provided by gas 12:27:35
16 source 170 to transport line 115 for the
17 purpose of entraining materials discharged
18 from reservoirs 110, 120, 130 and 180 and
19 injecting such materials, via injection
20 .116 into contaminated flue gas stream 15." 12:27:54
21 Do you see that?
22 A. I do.
23 Q. What did you mean by the term
24 "entraining," "entraining materials"?
25 A. Conveying the material. 12:28:17

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 Q. Okay. So what does it mean to
3 say that a material is entrained in a gas
4 stream?
5 A. It would mean that it would flow 12:28:36
6 with.
7 Q. That the material would flow
8 with the gas stream.
9 A. Yeah.
10 Q. Let me see if I understand. 12:28:54
11 If I have leaves on my driveway
12 and a big wind comes up, they start moving,
13 are those leaves entrained in the wind
14 stream? I'm just trying to understand the
15 term. 12:29:19
16 A. That would be a -- probably a
17 critic's apple.
18 Q. Okay.
19 Now I'd like to turn now to
20 column 14. I have some questions about 12:30:03
21 some of the examples.
22 So you see Example 1:
23 "Preparation and Testing of
24 Halogenated Carbon (& Comparative Example)
25 Gas Phase Halogenation"? 12:30:32

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 A. I see that.
3 Q. Could you tell me what the
4 bromine-containing promoter is in that
5 example? 12:30:41
6 A. I don't know.
7 Q. Okay. Can you confirm for me
8 that in Example 1 no bromine was added
9 directly to the coal?
10 A. This description -- 12:32:48
11 Q. I'm sorry, could you repeat your
12 answer? Your audio cut out for a moment.
13 A. I said based on the description,
14 I would say no.
15 Q. Okay. Let's go to Example 2 on 12:33:07
16 the bottom of column 15.
17 Do you know what the
18 bromine-containing promoter is in Example 2?
19 A. No.
20 Q. And can you confirm to me that 12:33:29
21 no bromine was applied to the coal in
22 Example 2?
23 A. No, I probably can't confirm
24 that. I don't know if all of the
25 description was provided to ascertain that, 12:34:00

30 (Pages 114 - 117)

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 but...
3 Q. But it certainly doesn't
4 describe it?
5 A. I don't see the description 12:34:08
6 included, no.
7 Q. Okay. Example 3, "Liquid Phase
8 Water Halogenation."
9 Can you tell me what the
10 bromine-containing promoter is in that? 12:34:18
11 A. No.
12 Q. And can you confirm for me that
13 there's no mention of applying bromine
14 directly to coal?
15 A. I don't see that mentioned. 12:34:28
16 Q. Okay. Example 4, could you tell
17 me what the bromine-containing promoter is
18 in Example 4?
19 A. No.
20 Q. And can you confirm for me that 12:34:55
21 there's no discussion of adding bromine to
22 coal.
23 A. It's not described there.
24 Q. Okay. Example 5, can you tell
25 me what the bromine-containing promoter is? 12:35:23

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 A. I believe it's described.
3 Q. What is it?
4 A. Phosphorous tribromide.
5 Q. Okay. PBr3 is the 12:35:45
6 bromine-containing promoter?
7 A. I can't confirm that. I'm not a
8 chemist. I don't know if PB3 is the
9 chemical symbol for that.
10 Q. Okay. Phosphorous tribromide. 12:35:59
11 And then does Example 5 describe
12 the addition of bromine directly to coal?
13 A. It doesn't describe it.
14 Q. Okay. Example 6, what is the
15 bromine-containing promoter? 12:36:19
16 A. Apologize for the time. It's
17 just rather lengthy.
18 Q. That's okay. I understand it's
19 a long one.
20 I'm sorry, what did you say? 12:38:09
21 A. It's a long example to read
22 through.
23 Q. Yes.
24 A. Yeah, I can't tell you the form
25 of bromine. 12:40:33

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 Q. Okay. And can you confirm that
3 there's no description of adding bromine
4 directly to the coal?
5 A. I don't see that included. 12:40:43
6 Q. Okay. Let's go to Example 7.
7 And can you tell me what the
8 bromine-containing promoter is for Example
9 7?
10 A. No. No, I can't. 12:41:09
11 Q. Okay. And can you confirm that
12 Example 7 does not describe the addition of
13 bromine to coal?
14 A. I don't see that in the
15 description. 12:41:51
16 Q. Okay. Let's go to Example 8.
17 And I will be asking you the
18 same two questions.
19 A. That form of bromine would
20 appear to the HBr. 12:43:26
21 I don't see it included in the
22 description of that added to a coal.
23 Q. Okay. And so I just want to
24 confirm, for 8 you're saying that IBr is
25 the bromine-containing promoter? 12:43:45

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 A. I can say it was at least one
3 because it's referenced.
4 Q. Okay.
5 A. Point 1, normal of HBr powder 12:43:53
6 was collected by -- it further states
7 regeneration of HBr, so...
8 Q. Okay. So we're up to Example 9,
9 same two questions.
10 A. Molecular bromine. 12:44:57
11 Q. Molecular bromine, Br2?
12 A. It says "molecular bromine,"
13 so...
14 Q. That's the bromine-containing
15 promoter? 12:45:25
16 A. That's what was used to treat
17 carbon.
18 Q. And there's no disclosure of
19 bromine being applied directly to coal;
20 correct? 12:45:33
21 A. Not in that example.
22 Q. Okay. Let's look at Number 10.
23 Same two questions.
24 A. I don't see that it discloses
25 the form of bromine that was used -- 12:46:47

31 (Pages 118 - 121)

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 bromine.
3 Q. And it also doesn't disclose the
4 addition of bromine to coal; correct?
5 A. I don't see the disclosure of 12:47:00
6 that.
7 Q. Okay. Will you look at – this
8 is an Example 10 also, look at – will you
9 look at the sentence that starts on line 10
10 of column 20 -- I'm sorry, the sentence 12:47:19
11 that starts at line 12.
12 It says: "In general, however,
13 the inventive sorbent can be injected where
14 desired (for example, before, after or
15 within the boiler)." 12:47:39
16 Do you see that?
17 A. I do.
18 Q. Is that a true statement, that
19 the sorbent can be injected before, after
20 or within the boiler? 12:47:50
21 A. Sure. Why not?
22 Q. Okay. So the activated --
23 excuse me -- the activated carbon sorbent,
24 or the promoted activated carbon sorbent
25 can be injected either before, after or 12:48:08

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 within the boiler; is that correct?
3 A. It can be.
4 Q. Okay. And why was that sentence
5 included there? 12:48:25
6 MR. NEMUNAITIS: Objection.
7 I'll caution the witness, you
8 could answer that question, but only
9 if your answer would not reveal the
10 content of any privileged 12:48:32
11 communications.
12 If you could answer, go ahead
13 and answer. Otherwise, don't answer.
14 A. Other than stated earlier, it
15 can be. 12:48:44
16 Q. Okay. Let's look at Example
17 11A.
18 A. I can't tell you the form of
19 bromine but it refers to other figures
20 and... 12:49:58
21 Q. And it doesn't disclose the
22 application of bromine directly to coal;
23 correct?
24 A. It's not stated on this
25 disclosure. 12:50:09

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 Q. So take a look at 11B.
3 A. I don't see the mention of the
4 form other than reference to a treated and
5 non-treated activated carbon, which 12:53:34
6 obviously the treated carbon has some form.
7 Q. Okay. But it doesn't tell you
8 what the bromine-containing promoter is?
9 A. I don't see that in the
10 description. 12:53:49
11 Q. Okay. And you also don't see a
12 description of applying bromine directly to
13 coal; correct?
14 A. I don't see that in the
15 description. 12:53:57
16 Q. Okay. Now we're up to the last
17 example, Example 12. If you take a moment
18 to read it, I'll be asking the same two
19 questions.
20 MR. NEMUNAITIS: You want to 12:54:11
21 take a break after this -- after
22 Example 12?
23 THE WITNESS: After Example 12?
24 MR. EVALL: Are you asking me or
25 the witness, Justin? 12:54:23

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 MR. NEMUNAITIS: I was asking
3 you.
4 MR. EVALL: Yeah, that's fine.
5 MR. NEMUNAITIS: It just seems 12:54:30
6 like a logical point.
7 A. A form of mercury is defined.
8 Q. Where?
9 A. Br₂, Pb₃.
10 Q. Okay. And that's -- is that the 12:57:36
11 bromine-containing promoter?
12 A. Yes.
13 Q. Okay. And then can you confirm
14 that there's no disclosure in that example
15 of adding bromine directly to coal. 12:57:51
16 A. I can confirm there's nothing in
17 the description that states that.
18 Q. Great.
19 MR. EVALL: Is now a good time
20 then for everyone to take a break? 12:58:10
21 MR. NEMUNAITIS: Yes, that works
22 for me.
23 Do you want to take a lunch
24 break now? I'm sorry, off the record.
25 THE VIDEOGRAPHER: We're off the 12:58:19

32 (Pages 122 - 125)

[REDACTED]

Page 126

1 [REDACTED] JOHNPAVLISH - Vol. I
2 record at 11:58 a.m.
3 (A luncheon recess was taken.)
4 THE VIDEOGRAPHER: This is Media
5 Number 3 in the deposition of John 13:47:12
6 Pavlish.
7 Today is August 25, 2022.
8 We're back on the record at
9 12:47 p.m.
10 MR. EVALL: Thank you. 13:47:24
11 BY MR. EVALL:
12 Q. Good afternoon, Mr. Pavlish.
13 A. Good afternoon.
14 Q. Did you have any discussions
15 about the deposition with your counsel? 13:47:32
16 A. None.
17 Q. Okay. Returning to a couple of
18 things from this morning --
19 A. If I could comment before we
20 initiate those discussions? 13:47:45
21 Q. Uh-huh.
22 A. I guess what I'd like to
23 comment, we went through all the examples
24 and you asked some specific questions
25 related to those examples, and I am 13:47:58

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1 [REDACTED] - JOHN PAVLISH - Vol. I
2 familiar with a few of those in which I
3 know bromine was added to the coal.
4 I don't know or understand why
5 that was not included in record of the 13:48:11
6 patents and I -- that can be only be
7 determined I guess by the patent attorney
8 that filed it, but...
9 Q. Okay. Let me see if I
10 understand. 13:48:24
11 And am I correct that you did
12 not discuss the subject at lunch?
13 A. That is correct.
14 Q. What you're saying is that in
15 your recollection, some of those examples 13:48:33
16 that we went through in the '147 patent
17 actually did involve the application of
18 bromine to the coal, but that the fact that
19 bromine was applied to the coal was not
20 disclosed in the description of those 13:48:52
21 examples in the patent; is that correct?
22 A. That is correct. I don't know
23 if it was for the sake of brevity, why that
24 detail was not included, I can't comment to
25 that. 13:49:06

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1 [REDACTED] - JOHNPAVLISH - Vol. I
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 A. [REDACTED] 17
6 [REDACTED]
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9 Q. [REDACTED]
10 [REDACTED] 13:49:31
11 [REDACTED]
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15 [REDACTED] 13:49:48
16 [REDACTED]
17 Q. [REDACTED]
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[REDACTED] 13:50:20

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[REDACTED] 13:51:13
16 regulators. And you provided the specific
17 example of Vistra; right?
18 A. Yes, and I would go beyond
19 regulators. I would also mention for
20 safety and handling purposes. Not just for 13:51:25
21 regulatory purposes, but...
22 Q. In that case, that was a
23 disclosure to Vistra. It wasn't a breach
24 -- it was a planned disclosure to Vistra.
25 It wasn't a breach that made it public 13:51:39

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Page 252

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Page 251

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Page 253

1 [REDACTED] - JOHN PAVLISH - Vol. I
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 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 Q. How were you familiar with him?
 22 A. I've known the expert witness
 23 for a long time, going back almost to
 24 '04-'05 time frame.
 25 Q. That's Stephen Niksa, is it? 17:12:05



Page 254

1 [REDACTED] - JOHN PAVLISH - Vol. I
 2 A. Steve Niksa, that's correct, or
 3 my understanding that's what was stated.
 4 Q. How have you known him?
 5 Have you known him 17:12:18
 6 professionally?
 7 A. Yes.
 8 Q. Through your work at the EERC?
 9 A. Not through the EERC.
 10 Through encounters at various 17:12:27
 11 venues such as conferences, DOE review
 12 meetings, special meetings regarding topics
 13 directly related to mercury on the domestic
 14 and international front.
 15 Q. And is he somebody who you 17:12:45
 16 consider knowledgeable in the field?
 17 A. Yes.
 18 [REDACTED]
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Page 256

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Page 255

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Page 257

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65 (Pages 254 - 257)

Page 278

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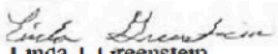
Page 279

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24 _____
JOHNPAVLISH
25 Subscribed and sworn to before me

Page 280

1 [REDACTED] JOHN PAVLISH - Vol. I
2 this ____ day of ____, 2022.
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Page 281

1 [REDACTED] - JOHN PAVLISH - Vol. I
2 CERTIFICATE
3
4 I, Linda J. Greenstein, Professional
5 Shorthand Reporter and Notary Public in and
6 for the State of New York, do hereby
7 certify that, JOHN PAVLISH, the witness
8 whose deposition is hereinbefore set forth,
9 was duly sworn and that such deposition is
10 a true record of the testimony given by the
11 witness to the best of my skill and
12 ability.
13 I further certify that I am neither
14 related to or employed by any of the
15 parties in or counsel to this action, nor
16 am I financially interested in the outcome
17 of this action.
18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 26th day of August 2022.
20
21
22 
Linda J. Greenstein
23
24 My commission expires: January 30, 2025
25

71 (Pages 278 - 281)

1 [REDACTED] - JOHN PAVLISH - Vol. I
 2 I N D E X
 3
 4 WITNESS EXAMINED BY PAGE
 5 JOHN PAVLISH Mr. Evall 6
 6
 7 ----- INFORMATION REQUESTS -----
 8 DIRECTIONS: (NONE)
 9 RULINGS: (NONE)
 10 TO BE FURNISHED: (NONE)
 11 REQUESTS: (NONE)
 12 MOTIONS: (NONE)
 13 ----- E X H I B I T S -----
 14 NO. PAGE
 15 (Pavlish Exhibit 1 marked for 48
 identification, two-page
 16 document, email exchange, top
 cover email dated 8/6/18 from
 17 Murray Abbot to Stacey Hyatt and
 John Pavlish, production numbers
 18 ME2C-RC-00215907 through 5908.)
 (Pavlish Exhibit 2 marked for 49
 19 identification, multi-page
 document, presentation titled
 20 "MEGA Symposium-August 23, 2018,"
 production numbers
 21 ME2C-RC-00041150 through 1170.)
 (Pavlish Exhibit 3 marked for 62
 22 identification, multi-page
 document titled "Fast and
 23 Accurate Troubleshooting to
 Ensure Mercury MATS Compliance,"
 24 production numbers
 ME2C-RC-00215661 through 5666.)
 25

1 [REDACTED] - JOHN PAVLISH - Vol. I
 2 C O N T I N U E D
 I N D E X:
 3
 4 ----- E X H I B I T S -----
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 5
 6 (Pavlish Exhibit 4 marked for 68
 identification, multi-page
 document titled "Midwest Energy
 7 Emissions Corporation Description
 of Technology Products,"
 production numbers
 ME2C-RC-00074412 through 4417.)
 8
 9 (Pavlish Exhibit 5 marked for 89
 identification, multi-page
 10 document, copy of U.S. Patent
 8,168,147 B2, dated 5/1/12.)
 11 (Pavlish Exhibit 6 marked for 89
 identification, multi-page
 12 document, copy of U.S. Patent
 10,343,114 B2, dated 7/9/19.)
 13 (Pavlish Exhibit 7 marked for 89
 identification, multi-page
 14 document, copy of U.S. Patent
 10,589,225 B2, dated 3/17/20.)
 15 (Pavlish Exhibit 8 marked for 90
 identification, multi-page
 16 document, copy of U.S. Patent
 10,596,517 B2, dated 3/24/20.)
 17 (Pavlish Exhibit 9 marked for 90
 identification, multi-page
 18 document, copy of U.S. Patent
 10,668,430 B2, dated 6/2/20.)
 19 (Pavlish Exhibit 10 marked for 154
 identification, two-page
 20 document, listing of defendants
 and power plants.)
 21 (Previously marked Pavlish
 Exhibit 5 shown to witness.) 178
 22 (Pavlish Exhibit 11 marked for 190
 identification, multi-page
 23 document, provisional patent
 application, production numbers
 24 ME2C-RC-00055866 through 5890.)
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1 [REDACTED] - JOHN PAVLISH - Vol. I
 2 C O N T I N U E D
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 6 (Previously marked Pavlish 202
 Exhibit 6 shown to witness.)
 7 (Previously marked Pavlish 203
 Exhibit 8 shown to witness.)
 8 (Previously marked Pavlish 204
 Exhibit 9 shown to witness.)
 9 (Previously marked Pavlish 206
 Exhibit 11 shown to witness.)
 10 (Pavlish Exhibit 12 marked for 220
 identification, multi-page
 document titled "Center for Air
 11 Toxic Metals (CATM) 2003 Research
 Ideas.")
 12 (Pavlish Exhibit 13 marked for 255
 identification, multi-page
 13 document, IPR proceedings with
 declaration of John Pavlish.)
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1 [REDACTED] - JOHN PAVLISH - Vol. I
 2 D E P O S I T I O N E R R A T A S H E E T
 3
 4 Our Assignment No.: 5407942
 5 Case Caption: Midwest Energy v. Gallagher,
 6 et al.
 7 D E C L A R A T I O N U N D E R P E N A L T Y O F P E R J U R Y
 8
 9 I declare under penalty of
 10 perjury that I have read the entire
 11 transcript of my Deposition taken in the
 12 captioned matter or the same has been read
 13 to me, and the same is true and accurate,
 14 save and except for changes and/or
 15 corrections, if any, as indicated by me on
 16 the DEPOSITION ERRATA SHEET hereof, with
 17 the understanding that I offer these
 18 changes as if still under oath.
 19
 20 JOHN PAVLISH
 21 Subscribed and sworn to on the ____ day of
 22 _____, 20 ____ before me.
 23 _____
 Notary Public,
 24 in and for the State of _____.
 25

1 [REDACTED] - JOHN PAVLISH - Vol. I
 2 DEPOSITION ERRATA SHEET
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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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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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