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STATE OF CONNECTICUT

IN RE: BRIDGEPORT ASBESTOS LITIGATION

DOCKET NO. FBT-CV-12-6034053-S

\*\*\*\*\*

KENNETH REED, III and \*  
RUTH E. REED, \* SUPERIOR COURT  
Plaintiffs, \*  
\* J.D. OF FAIRFIELD  
vs. \*  
\* AT BRIDGEPORT  
3M COMPANY, et al, \*  
Defendants. \*

\*\*\*\*\*

AUDIOVISUAL DEPOSITION OF PNEUMO ABEX, LLC

By Its Designee ALBERT INDELICATO

Wednesday, June 24, 2015

Holiday Inn

300 Woodbury Road

Portsmouth, New Hampshire

Darlene Caiazzo Sousa, CSR, LCR (NH #139), RPR

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\*Original exhibits returned Attorney Berquist, with copies distributed to counsel)

1 -----  
2 P R O C E E D I N G S

3 10:13 a.m.  
4 -----

5 MR. JONES: The parties have  
6 stipulated that an objection by any defense  
7 counsel is good for all present, either in  
8 person or by telephone; that includes motions  
9 to strike. Counsel need not opt out of an  
10 objection or a motion at the deposition. If  
11 they chose to do so, they can make that  
12 election at trial.

13 Actually, plaintiffs and counsel for  
14 Abex have reached an agreement of sorts  
15 concerning the use of prior testimony of the  
16 witness, Mr. Indelicato. That agreement is  
17 that plaintiffs will not examine Mr. Indelicato  
18 about certain subjects that he's been deposed  
19 on in the past.

20 We've got an agreement that Abex will  
21 not object to the use of the deposition of Mr.  
22 Indelicato taken in another case on the grounds  
23 that it was taken in another case. They  
24 reserve their right to assert any objections

1 within the transcript but won't object to the  
2 transcript as a whole because it wasn't taken  
3 in the Reed case. Does that sound right?

4 MR. FLYNN: We agree to that.

5 MR. JONES: And plaintiffs, we also  
6 have a reciprocal agreement that Abex can  
7 designate counters from prior transcripts of  
8 Mr. Indelicato. Am I pronouncing that right?

9 THE WITNESS: That's perfect. That's  
10 fine.

11 MR. JONES: Plaintiffs reserve the  
12 same rights to object within the deposition but  
13 won't object to the deposition as a whole on  
14 the grounds it was taken in another case.

15 MR. FLYNN: Agreed on behalf of Pneumo  
16 Abex.

17 MR. JONES: The parties have also  
18 stipulated that the appearances and  
19 stipulations and agreements could be on the  
20 written record and not on the video record.

21 THE VIDEOGRAPHER: My name is Matthew  
22 Sandberg. I'm a legal videographer for  
23 National Video Reporters. Today's date is June  
24 24, 2015, and the time is 10:16 a.m. Today's

1 deponent is Albert Indelicato in the case of  
2 Kenneth C. Reed, III and Ruth E. Reed versus 3M  
3 Company, f/k/a Minnesota Mining and  
4 Manufacturing, et al in the Superior Court  
5 Judicial District of Fairfield at Bridgeport,  
6 case number FBT-CV-12-6034053-S.

7 We are located at the Holiday Inn, 300  
8 Woodbury Avenue, Portsmouth, New Hampshire.  
9 This is being taken by the plaintiff. Our  
10 court reporter today is Darlene Caiazzo Sousa  
11 of Eppley Court Reporting. Would the court  
12 reporter please swear in the witness.

13 ALBERT INDELICATO,  
14 having first been sworn by the Commissioner of  
15 Deeds, was examined and testified as follows:

16 EXAMINATION CONDUCTED

17 BY MR. JONES:

18 Q. Good morning.

19 A. Good morning.

20 Q. Will you please introduce yourself to  
21 the ladies and gentlemen of the jury.

22 A. Sure. I'm Albert -- I go by Al --  
23 Indelicato.

24 Q. What do you do for a living, Mr.

1 Indelicato?

2 A. I'm basically retired, but I have a  
3 little consulting business that principally is  
4 engaged in working on historical and legal  
5 matters of Pneumo Abex.

6 Q. You understand that you're here today  
7 as the corporate representative of Pneumo Abex,  
8 true?

9 A. I do.

10 Q. And you understand that the plaintiffs  
11 noticed the deposition of Pneumo Abex, the  
12 corporation, right?

13 A. Yes.

14 Q. And that you're here to speak on  
15 behalf of that corporation?

16 A. Yes, sir.

17 Q. Okay. And Pneumo Abex has had several  
18 different names over its history. We'll talk  
19 about that in a little bit, but I think the  
20 names we'll use mostly in deposition are  
21 American Brakeblok. Are you familiar with that  
22 name?

23 A. I am.

24 Q. And that is one of the former names of

1 Abex; is that fair?

2 A. That's correct.

3 Q. And it was also a trademark for a  
4 brand of Abex brakes?

5 A. Abex brake lining.

6 Q. Right. Brake lining?

7 A. Yes, sir.

8 Q. Then also the name Abex, which the  
9 corporation was known as before it became  
10 Pneumo Abex?

11 A. That's correct.

12 Q. So if I refer to the company as Abex,  
13 you understand that's the company you're  
14 testifying on behalf of today?

15 A. Yes, sir.

16 Q. Okay. The subjects I want to discuss  
17 with you today primarily deal with the  
18 relationship between Abex and three entities  
19 called Genuine Parts Company, Rayloc and NAPA.

20 A. Okay.

21 Q. Is that something you're prepared to  
22 talk about today?

23 A. Yes. I mean, I lived through a lot of  
24 the relationship period. I joined Abex in

1 1970. I was more in an engineering and  
2 technical position, but as I advanced through  
3 the corporation, principally, I would say  
4 initially in quality assurance, I would  
5 interface with the Rayloc folks. Our principal  
6 relationship was with Rayloc, which I believe  
7 was owned by Genuine Parts, and NAPA was  
8 basically a marketing arm for Genuine Parts.

9 Q. We're also going to talk about Abex's  
10 sale of asbestos products, principally asbestos  
11 brake linings to Genuine Parts Company and  
12 Rayloc. Is that something you're prepared to  
13 talk about today?

14 A. Yes, sir.

15 Q. We'll also talk about Abex's sale of  
16 asbestos brake linings to other entities like  
17 original equipment manufacturers, companies  
18 that build cars and trucks. Is that something  
19 you're prepared to talk about today?

20 A. Yes.

21 Q. And we may also talk about your supply  
22 of asbestos brake linings to brake  
23 manufacturers, brake rebuilders and perhaps  
24 clutch linings as well. Is that something



1       you're prepared to talk about today?

2           A.   Yes.

3           Q.   Is it still true that you're paid  
4       \$12,000 a month for litigation consulting?

5           A.   Well, I'm paid \$14,000 a month, and I  
6       try to think of it as broader than just  
7       litigation consulting.   Being, I guess, kind of  
8       in a position of having a fair amount of rank  
9       with Abex, a long tenure with Abex and still  
10      being alive, I have a fair amount of knowledge  
11      and I can assist in interpreting documents and  
12      so on.

13          Q.   Primarily as it relates to litigation,  
14      lawsuits?

15          A.   Primarily.

16          Q.   You've been the president of Pneumo  
17      Abex since May 2011?

18          A.   That's right.

19          Q.   You are the only employee of Pneumo  
20      Abex?

21          A.   I'm the only officer.

22          Q.   Are there any other employees?

23          A.   No.

24          Q.   Pneumo Abex today doesn't own any

1 buildings or machinery?

2 A. That's correct.

3 Q. Pneumo Abex today is owned by a

4 settlement trust; is that true?

5 A. That's correct.

6 MR. FLYNN: Objection to form.

7 Q. Is it true that your primary job today

8 is to help lawyers for Abex defend Abex in

9 asbestos lawsuits?

10 MR. FLYNN: Objection to form.

11 A. That's principally what I do.

12 Q. When you have business meetings in

13 your role as the president of Pneumo Abex,

14 those meetings are almost always with lawyers;

15 is that true?

16 A. Yes.

17 Q. And those meetings are almost always

18 with lawyers who defend Abex in asbestos

19 lawsuits; is that true?

20 A. Yes.

21 Q. For how long have you been testifying

22 as the corporate representative for Abex in

23 asbestos litigation?

24 A. Probably a year or so more than when I

1 became president, so maybe 2009, 2010.

2 Q. Okay. How frequently do you meet with  
3 Abex asbestos defense lawyers?

4 A. Generally just the day of or the day  
5 before, perhaps, of a deposition or trial.

6 Q. Is that true for this deposition?

7 A. Yes, sir.

8 Q. You met with counsel for Abex  
9 yesterday?

10 A. Well, just Mr. Flynn and I had dinner  
11 last night, and he gave me the objections  
12 documents. We reviewed the notice for today.

13 Q. I'm just going to stop you because I  
14 don't want to know what you guys talked about.

15 A. Okay.

16 Q. Thank you.

17 A. Really --

18 Q. I just want to know when you met with  
19 him.

20 A. That was essentially what we did and  
21 made arrangements to get here today.

22 Q. You know Mr. Flynn from previous work  
23 for Abex as the corporate representative?

24 A. Yeah. Mr. Flynn is one of the

1 principal attorneys that I deal with.

2 Q. You also deal with an attorney named  
3 Tom Radcliffe?

4 A. I do.

5 Q. And who is Mr. Radcliffe?

6 A. Mr. Radcliffe also works for the same  
7 firm as Mr. Flynn.

8 Q. Okay. And it's my understanding that  
9 that law firm handles the national  
10 representation of Abex; is that true?

11 A. I don't know that for certain. I  
12 mean, they seem to be involved in a lot of  
13 cases, but I also interface with other  
14 attorneys.

15 Q. Fair enough. Are you familiar with  
16 the Reed case?

17 A. Only in that I've answered some  
18 discovery. That's pretty much it.

19 Q. Do you know any of the facts of the  
20 Reed case either from documents that you've  
21 reviewed or facts that have been told to you?

22 A. First, I haven't reviewed any  
23 documents, but in just trying to, you know,  
24 frame out what this case is all about, it's my

1 understanding that Mr. Ken Reed, I believe, the  
2 third, has an asbestos-related alleged injury,  
3 and I believe he contends that he was  
4 potentially exposed by virtue of his dad being  
5 an auto mechanic.

6 Q. Okay. Is that --

7 A. That's pretty much it.

8 Q. That's everything you know?

9 A. Yes, sir.

10 Q. Okay. I don't remember if I asked  
11 this. Can you tell me approximately how many  
12 times you've testified on behalf of Abex in  
13 asbestos litigation?

14 A. Including depositions or just --

15 Q. Depositions and trial?

16 A. I would estimate about 50.

17 Q. Okay.

18 A. Perhaps it's a little bit more. I  
19 don't keep a log, if you will.

20 Q. And that goes back to 2009, 2010?

21 A. Yes.

22 Q. Okay. And you're aware that you're  
23 not the only person that has testified on  
24 behalf of Abex as a corporate representative in

1 asbestos litigation, true?

2 A. Yes.

3 Q. Have you reviewed the deposition  
4 testimony of other individuals who have  
5 testified on behalf of Abex in asbestos  
6 litigation?

7 A. I've seen a few. One that comes to  
8 mind is Mr. Buccella.

9 Q. Okay. You and I have never met; is  
10 that true?

11 A. That's correct.

12 Q. Abex is a company that, for most of  
13 its existence, manufactured and sold asbestos  
14 brake linings; is that true?

15 MR. FLYNN: Objection to form.

16 A. That was one of the principal  
17 businesses of Abex.

18 Q. And that's from the 1920s, I think,  
19 until 1987; is that true?

20 A. Well, Abex friction materials  
21 continued beyond '87, but it ceased making any  
22 asbestos-containing product at the end of 1987.

23 Q. Okay. So from the 1920s until the end  
24 of 1987, one of the businesses Abex was in was

1 the manufacture and sale of asbestos brake  
2 linings?

3 A. Yes, sir.

4 Q. You mentioned some of your history  
5 with Abex a little bit. I want to quickly kind  
6 of go through --

7 A. Sure.

8 Q. -- your work experience with Abex.

9 A. Okay.

10 Q. You started in 1970; is that true?

11 A. That's right.

12 Q. You started as a lab technician at the  
13 corporate research center in New Jersey?

14 A. That's right.

15 Q. And you -- between 1970 and 1972, you  
16 advanced to a development engineer?

17 A. That's right.

18 Q. What is the corporate research center  
19 for Abex?

20 A. Well, it was a facility in northern  
21 New Jersey that conducted what we termed  
22 advanced or basic, which seems like oxymoron,  
23 but we did. The quest for knowledge that would  
24 have application to one of Abex's business,

1 businesses, that's where kind of the basic  
2 research theme came in. And the second part of  
3 it is things like scanning electron microscopes  
4 and very expensive equipment couldn't be  
5 afforded to be placed in each of the divisions  
6 or plants of Abex so that advanced kind of  
7 technology was centralized at the corporate  
8 research center. So that's basically its  
9 overall scope. It did research on metals. It  
10 did research on castings. It did research on  
11 friction material. It did research on  
12 hydraulics and other things, but basically  
13 those were the principal divisions of the type  
14 of research that was conducted there.

15 Q. I want to follow up on a couple of  
16 things.

17 A. Sure.

18 Q. One of the things you mentioned was  
19 that you described what the research center  
20 was?

21 A. Right.

22 Q. Abex as a company is no longer a  
23 growing concern except for wrapping up  
24 litigation; is that fair?



1           A. That's correct.

2           Q. The name Abex was sold to another  
3 company that makes brake linings under the Abex  
4 name?

5           A. Yes.

6           Q. So the company that you worked for  
7 from 1970 until 1994 --

8           A. That's right.

9           Q. -- doesn't exist?

10          A. That's correct.

11          Q. Certainly not in the form that you  
12 were -- worked for, I guess?

13          A. That's right. Some of the trademarks  
14 may still be around and used, but the company  
15 doesn't exist.

16          Q. Okay. What was Abex when you got  
17 there in 1970?

18               MR. FLYNN: Objection to form. Vague.

19          A. It was an operating company. I would  
20 call it a manufacturing company, if you will.  
21 It made brake lining. We had had a division  
22 called railroad products group that made  
23 products for railroad such as railroad wheels,  
24 track work, switchgear, that sort of thing. It

1     had a castings division that made everything  
2     from simple castings that might be a manhole  
3     cover, to hatches for nuclear submarines. I'm  
4     forgetting something. Friction, railroad,  
5     castings, and hydraulics, for both industrial  
6     hydraulics, pumps and that sort of thing, and  
7     also aircraft hydraulics.

8           Q.   Where was the headquarters when you  
9     started in 1970?

10          A.   The headquarters of?

11          Q.   Abex?

12          A.   In New York City.

13          Q.   Okay. How many different facilities  
14     did Abex have in the United States or around  
15     the world when you started in 1970?

16          A.   I would estimate it would be a number  
17     approximately 60 or 70.

18          Q.   In the United States or worldwide?

19          A.   Worldwide.

20          Q.   In what countries did Abex operate in,  
21     other than the United States, when you started  
22     in 1970?

23          A.   I don't know --

24           MR. FLYNN: Objection to form.

1           A.  -- that I could recite all of them.

2           Some of them I visited, but we had a plant or  
3           plants in Italy.  We had facilities in France,  
4           Germany, UK, Canada, Mexico, several in South  
5           America.  And some of these would not  
6           necessarily be wholly owned.  Some of them  
7           could be joint venture.  Some of them could be  
8           licensing arrangement or cross-licensing deals.  
9           Without really spending some time in trying to  
10          get my head back around all of that, I couldn't  
11          say.

12          Q.  That's okay.  Do you know if any of  
13          those international facilities for Abex  
14          manufactured asbestos brake linings or disc  
15          brakes?

16                 MR. FLYNN:  Objection to form.  
17          Relevance.

18          A.  Some of them, did.

19          Q.  Do you recall which ones?

20                 MR. FLYNN:  Same objections.

21          A.  Italy manufactured brake lining,  
22          France, Germany, Canada and Mexico, those were  
23          the only ones that I recall offhand.

24          Q.  So when you started in 1970, Abex was

1       selling brake linings worldwide?

2               MR. FLYNN:  Objection to form.

3               A.  Not necessarily when I started.  I  
4       think, for example, the German relationship  
5       evolved after I got on the scene.  I think  
6       France also evolved shortly after I arrived.  I  
7       guess my answer to your question thus far has  
8       been kind of a picture back in time from what I  
9       experienced and knew, but I can't tell you  
10      precisely when each of those started.

11              Q.  By the early to mid '70s, would that  
12      be true that Abex was selling brake products  
13      worldwide?

14              MR. FLYNN:  Objection to form.

15              A.  I would say latter part of the '70s.

16              Q.  Okay.  When you started in 1970,  
17      approximately how many people worked for Abex?

18              A.  A number like 10,000 comes to mind and  
19      that's all divisions:  hydraulics, castings,  
20      railroad.

21              Q.  Abex has a corporate research center.  
22      Can you describe for me, how big was that  
23      facility?

24              A.  I mean, physically, it was kind of

1        huge because it had its own little experimental  
2        foundry in it. It housed all of our  
3        dynamometers which took up a building that was  
4        the length of maybe two football fields. The  
5        physical presence was big. In terms of the  
6        number of people, it really seemed like it  
7        didn't fit with the scope of building. There  
8        might have been 100, 150 people at the research  
9        center.

10        Q. From what you're describing, that  
11        research center had very sophisticated  
12        equipment?

13        A. Yes.

14        Q. I think you mentioned a scanning  
15        electron microscope?

16        A. That's right.

17        Q. You mentioned the break dynamometers?

18        A. That's right.

19        Q. Those were to test brakes to see how  
20        well they would stop a vehicle?

21        A. That's correct.

22        Q. You want to test them on one of those  
23        things before you test them on a car?

24        A. That's right.

1           Q.   Okay.  When you started at Abex in  
2   1970, would you agree that Abex was a very  
3   sophisticated business?

4           MR. FLYNN:  Objection to form.

5           A.   Yeah.  In my opinion, I mean,  
6   certainly I was very impressed with the scope  
7   of the businesses, the level of technology.  I  
8   had come from a business that was perhaps more  
9   high tech.  It was a semiconductor kind of  
10   business, but despite the fact that was more  
11   leading edge, I think Abex had a very good  
12   knowledgeable base of professionals and  
13   state-of-the-art equipment.

14          Q.   When you started at Abex in 1970, Abex  
15   employed engineers?

16          A.   Well, not totally.  I mean, it  
17   employed accountants and businessmen and  
18   salespeople and so on.  At the research center  
19   it was principally engineers, technicians, but  
20   even there there were some business people  
21   around.

22          Q.   What kind of engineers -- thank you  
23   for listening.  It didn't only employe  
24   engineers.  Abex employed smart people in many

1 different disciplines; is that true?

2 A. Sure.

3 Q. What types of engineers were employed  
4 by Abex?

5 A. It depended. Are you talking research  
6 center or Abex in general?

7 Q. In general?

8 A. In general, it would depend on the  
9 business, but the friction products, most often  
10 we employed mechanical engineers and a few  
11 chemists.

12 Q. Structural engineers?

13 A. No, not really. We could kind of rely  
14 on mechanical engineers for that. That's a  
15 good example of where we might get into a  
16 really hairy structural issue, and we would go  
17 to the research center and talk to some Ph.D.,  
18 ME that, you know, really could help augment  
19 our knowledge. The hydraulic guys were  
20 principally mechanical engineers, fluid-powered  
21 engineers. Railroad were mechanical. And  
22 castings were metallurgists.

23 Q. And I've seen in some of your prior  
24 testimony that the company employed Ph.D.

1 metallurgists?

2 A. That's right.

3 Q. Those are people that know about

4 metal?

5 A. Correct.

6 Q. We don't have to talk about it

7 anymore.

8 A. Okay.

9 Q. When you started in 1970, Abex had a  
10 medical department with doctors?

11 A. It had a doctor that was the head of  
12 the medical department.

13 Q. And I think one of the things the  
14 medical department did was go to the different  
15 manufacturing facilities primarily and check on  
16 the health of Abex employees; is that fair --

17 A. Yes.

18 Q. -- generally speaking?

19 A. Right. I think they set policy for,  
20 in the day, pre-employment physicals and  
21 ongoing physicals and managed the industrial  
22 hygiene department, and I think -- I know they  
23 were responsible for a traveling x-ray van that  
24 used to go around the Abex plants. We had a



1     hearing van that went around to all the Abex  
2     plants. All that fell under the medical  
3     director.

4           Q. Abex, when you started, had an  
5     industrial hygiene department?

6           A. It did.

7           Q. Their job was to go to the plants and  
8     make sure that the Abex workers were working in  
9     a safe environment?

10          A. That's correct.

11          Q. I think your estimate was that Abex,  
12     when you started, had 60 facilities around the  
13     world?

14          A. Yeah, I think it might be a few more  
15     than that.

16          Q. Roundabout?

17          A. About that number.

18          Q. I think you've testified previously  
19     that even in the late 1940s Abex had as many as  
20     50 facilities. Does that sound about right?

21          A. That seems a little high to me because  
22     I really don't think in the 1940s that we had  
23     any significant presence outside of the United  
24     States.

1 Q. Okay.

2 A. I mean, from a friction material point  
3 of view, I can tell you that, you know, in the  
4 1940s we had one factory.

5 Q. Okay.

6 A. Then I think Canada might have been  
7 the second one. So 40 or 50 seems way too high  
8 for the 1940s. It was a population.

9 Q. Okay. Maybe not factories, maybe  
10 total distribution centers, sales offices, if  
11 you included all that?

12 MR. FLYNN: Objection to form.

13 A. Still seems high.

14 Q. Okay. Fair enough. In 1972 you  
15 became the liaison engineer responsible for the  
16 friction products group, true?

17 A. I think that's correct. Would you  
18 mind if I refer to a copy of my resume?

19 Q. Not at all.

20 A. I'll offer that up as an exhibit.  
21 Would you like to do that?

22 Q. You just take over.

23 A. I mean, I've been through this dance a  
24 few times.

1 Q. I know. Go ahead. What's my next  
2 question? I'm kidding. I'm kidding.

3 MR. JONES: We'll mark that as Exhibit  
4 1.

5 (Exhibit No. 1, Resume, Albert  
6 Indelicato so marked)

7 Q. Where were we? What I have was from  
8 1972 until 1974 you were a liaison engineer for  
9 the friction products group; does that sound  
10 right?

11 A. Timing is about right.

12 Q. Okay. That involved travel to the  
13 friction division headquarters in Winchester,  
14 Virginia?

15 A. That's right.

16 Q. I think you mentioned the headquarters  
17 for Abex as a corporation when you started in  
18 1970 was in New York City?

19 A. That's right.

20 Q. Where were some of the other  
21 headquarters? Were there headquarters for  
22 different divisions?

23 A. Generally, yes. Railroad products  
24 division headquarters was in Mahwah, New

1 Jersey, in a building adjacent from the  
2 research center. I don't recall where castings  
3 was headquartered, but I believe it was in the  
4 Midwest. And hydraulics, I believe, was in  
5 Columbus, Ohio.

6 Q. Winchester, Virginia, is where Abex  
7 manufactured brake linings for passenger cars  
8 and light trucks; is that true?

9 A. And also heavy duty.

10 Q. Okay. And heavy-duty trucks?

11 A. Right.

12 Q. And when you started, I guess they  
13 were in the process of building a facility for  
14 heavy truck brakes in Salisbury, North  
15 Carolina?

16 A. That's correct.

17 Q. That opened around when?

18 A. '74, that was one of my, quote,  
19 liaison responsibilities.

20 Q. When did the Winchester, Virginia,  
21 plant open, do you know?

22 A. I don't have that exact date for you.

23 Q. Roundabout?

24 A. It was post World War II. I want to

1 say 1947 or '48 was when it became operational.

2 Q. Did Abex ever have a headquarters in  
3 Bloomfield, Michigan?

4 A. Well, in the history of Abex friction  
5 products, the original and only plant for  
6 friction material was in Detroit on Merit  
7 Avenue. I don't know if the Merit Avenue plant  
8 was, in fact, the, quote, headquarters for  
9 friction products before it moved to  
10 Winchester, but fair to say that somewhere in  
11 the greater Detroit area was where Abex  
12 friction headquarters was before it was  
13 established in Winchester.

14 Q. The reason I ask about Bloomfield is,  
15 I think I've seen that city mentioned in Abex  
16 documents. Does that sound familiar to you or  
17 not?

18 A. Honestly, I mean, I'm familiar with  
19 Bloomfield. I know a lot of guys lived up  
20 there, but I would -- I associate Troy,  
21 Michigan, more than Bloomfield as a possible  
22 place where Abex headquarters was.

23 Q. Okay. 1974 you started working at the  
24 new heavy truck brake lining manufacturing

1 facility in Salisbury?

2 A. Yes, sir.

3 Q. 1975 and '76 you were quality  
4 assurance, and you had programs for both the  
5 Winchester and Salisbury plants?

6 A. Yeah. I was responsible for both of  
7 those factories.

8 Q. 1976 to 1984 you were the director and  
9 eventually the vice president of project  
10 engineering and development?

11 A. Product engineering.

12 Q. Product engineering, thank you. And  
13 from 1987 to '93 you were the president of Abex  
14 friction products?

15 A. That's right.

16 Q. So the different divisions had a  
17 president?

18 A. Generally.

19 Q. And from '93 to '95 you were the  
20 president and chief operating officer of Abex  
21 incorporated --

22 A. That's right.

23 Q. -- and the chief executive officer of  
24 Pneumo Abex?

1           A. That's correct.

2           Q. When did Abex cease to be a  
3 manufacturing company?

4           A. I would say about 1994, the last  
5 physical factory and group of assets that we  
6 had was sold to Parker Hannifin and that was  
7 aircraft-related. It was airborne flight  
8 controls. And I view that as kind of the end  
9 of Pneumo Abex or Abex from an operating  
10 company's point of view.

11          Q. We talked about this a little bit  
12 briefly, but Abex started in the early 1900s as  
13 the American Brake Shoe and Foundry Company?

14          A. I believe that that's correct.

15          Q. In 1926 the company was incorporated  
16 in New York as American Brake Materials  
17 Corporation?

18          A. I believe that to be correct.

19          Q. In the 1920s, that company later known  
20 as Abex began manufacturing asbestos brake  
21 linings?

22          A. That's right.

23          Q. In 1933 the company changed its name  
24 to American Brakeblok Corporation?

1           A. I don't recall the exact date, but I  
2 do acknowledge that the name changed, whether  
3 it was '33 or '34, '35.

4           Q. Sometime in the '30s?

5           A. Somewhere in that time frame.

6           Q. Fair enough. Around 1937 American  
7 Brakeblok Corporation merged with American  
8 Brake Shoe and Foundry Company, and thereafter  
9 operated as the American Brakeblok division?

10          A. Could you repeat that. I'm sorry.

11          Q. It's a mouthful?

12          A. It is.

13          Q. In 1937 or around 1937, American  
14 Brakeblok Corporation merged with American  
15 Brake Shoe and Foundry Company and then  
16 operated as American Brakeblok division?

17          A. I'm confused by that only from a  
18 standpoint of if the merged company was called  
19 a division, I would say a, division of what?  
20 So I'm just not connecting the dots quite  
21 right.

22          Q. I'm going to ditch all that. It's not  
23 that important to me.

24          A. Okay.



1           Q. In 1943 or around that time, the  
2 company's name changed to American Brake Shoe  
3 Corporation?

4           A. That's right.

5           Q. 1966 or around that time the company's  
6 name changed to Abex Corporation?

7           A. Yes, sir.

8           MR. FLYNN: Just for the record, I  
9 believe in 1943 the name changed to American  
10 Brake Shoe Company, not American Brake Shoe  
11 Corporation.

12          MR. JONES: Thank you.

13          Q. Let me clean up something. I think I  
14 made a mistake. In 1943 the name changed to  
15 American Brake Shoe Company. Does that sound  
16 right?

17          A. You have me a little confused right  
18 now. I'd really love to be able to go back to  
19 some discovery and make sure it's --

20          Q. It's "company" or "corporation." If  
21 we looked at a set of interrogatories, we  
22 would --

23          A. Find the answer.

24          Q. -- flush it out?

1           A. I would agree.

2           Q. Fair enough. 1966 the name changed to  
3 Abex Corporation?

4           A. Yes, sir.

5           Q. 1978 Abex Corporation became a  
6 subsidiary of IC Industries?

7           MR. FLYNN: Object to form. I think  
8 you misread the date.

9           A. I think the date's wrong.

10          Q. '68, okay. I'll withdraw the  
11 question.

12                  1968 Abex Corporation became a  
13 subsidiary of IC Industries?

14          A. Yes.

15          Q. Okay. And Abex continued to be a  
16 manufacturing company manufacturing and selling  
17 brake linings, disc brakes until it sold its  
18 trademarks and stopped doing business in 19 --  
19 around 1994?

20          A. Well, from a friction material point  
21 of view, yes.

22          Q. Okay. Did it continue in other areas?

23          A. Well, '94 -- I'm trying to think. I  
24 think '92 is when friction was -- Abex was out

1 of the friction materials business, and then  
2 '94 was the last operating entity of Abex which  
3 was the flight control business.

4 Q. Okay.

5 MR. JONES: Do you mind if we take a  
6 quick break? I'm going to change subjects.

7 THE WITNESS: I'd love to. That would  
8 be great.

9 THE VIDEOGRAPHER: The time is 10:50  
10 a.m., and we are going off the record.

11 (Recess 10:51 a.m. to 10:58 a.m.)

12 MR. JONES: Plaintiffs and counsel for  
13 Abex had a discussion off the record concerning  
14 the scope of our agreement. And I just wanted  
15 to clarify, plaintiffs' part of that agreement  
16 is not that plaintiffs agree to only use  
17 transcripts at trial of Mr. Indelicato. As we  
18 discussed off the record, plaintiffs may seek  
19 to use other transcripts consistent with  
20 Connecticut law. And by the same token,  
21 counsel for Abex reserves their right to object  
22 to those depositions as a whole or portions of  
23 those depositions consistent with Connecticut  
24 law.

1           MR. FLYNN:  Johan Flynn on behalf of  
2   Abex.  Again, in essence, I agree with what  
3   Mr. Jones has stated.  Abex does reserve its  
4   right to object to the use of any other  
5   transcripts related to Abex other than Mr.  
6   Indelicato and to assert any and all rights and  
7   objections it has including that it wasn't  
8   taken in this case as to all other -- any other  
9   witness other than Mr. Indelicato.

10           THE VIDEOGRAPHER:  The time is 11  
11   a.m., and we are going back on the record.

12   BY MR. JONES:

13           Q.  I want to change subjects now and talk  
14   to you about the three companies I mentioned.  
15   I don't know if they are all companies, but the  
16   entities I mentioned at the beginning of the  
17   deposition, and those are NAPA, Genuine Parts  
18   Company and Rayloc.  You're familiar with those  
19   entities?

20           A.  I am.

21           Q.  What is NAPA?

22           MR. FLYNN:  Objection to form.

23           A.  NAPA, I believe, is the marketing arm  
24   of Genuine Parts; although, it's an association

1 of folks who manufacture automotive parts and  
2 elect to market them through the NAPA  
3 distribution system.

4 Q. Okay. Have you seen the commercial  
5 for NAPA, they've got that jingle that says  
6 NAPA know-how?

7 A. Yes.

8 Q. I could sing it but....

9 A. Please don't.

10 Q. You're welcome. Is that the NAPA that  
11 we're discussing now?

12 A. It is.

13 MR. FLYNN: Objection to form.

14 Q. So it's your understanding that that  
15 NAPA that has the NAPA know-how commercials,  
16 that is a marketing arm for Genuine Parts  
17 Company?

18 MR. FLYNN: Objection to form. Calls  
19 for speculation.

20 A. That's my understanding.

21 Q. Okay. That's your understanding from  
22 your experience in the friction products  
23 business going back to 1970?

24 A. Yes.

1 Q. Okay. What is Genuine Parts Company?

2 A. Genuine Parts Company is an entity  
3 that is a publicly traded company. I'm not  
4 sure -- I mean, I don't follow the company now,  
5 but I'm not sure what's in their portfolio.  
6 But at one point it had office supplies,  
7 industrial supplies, and it had Rayloc. And  
8 I'm unclear and always have been unclear as to  
9 whether or not NAPA was really owned by Genuine  
10 Parts, so I'm not going to go there with you.  
11 I just don't know.

12 Q. Fair enough. How are you familiar  
13 with the Genuine Parts Company during your  
14 career at Abex?

15 A. I mean, it varied a lot. At first, as  
16 a quality control guy, I would go and  
17 troubleshoot issues with customers. I happened  
18 to be liked by our salespeople so they would  
19 often bring me in to explain any technical  
20 issue to the folks at Genuine Parts,  
21 principally at Rayloc. As I grew up in our  
22 organization and had more rank, if you will, I  
23 would be invited to Genuine Parts' annual  
24 meetings. I would be perhaps asked to make a

1 presentation from time to time. I also got to  
2 be the guy that, you know, had to go call on  
3 high-level folks at Genuine Parts when there  
4 was some business issue that involved our two  
5 companies.

6 Q. Is it your understanding that Rayloc  
7 is a division of Genuine Parts Company?

8 A. Yes.

9 Q. And is it your understanding that  
10 Rayloc was in the business of remanufacturing  
11 brake?

12 A. Rayloc was in the business of  
13 remanufacturing many different automotive  
14 products. They did alternators, water pumps,  
15 brakes, clutches, I mean, a myriad of  
16 automotive parts.

17 Q. Fair enough. And what I'm going to  
18 talk to you most about today are going to be  
19 the brakes.

20 A. Uh-huh.

21 Q. Okay. What does it mean to  
22 remanufacture a brake?

23 A. I don't want to get into a sticky  
24 technical delineation and definition of things,

1 but Rayloc, in my view, never really  
2 remanufactured a brake. They remanufactured  
3 brake components. They remanufactured brake  
4 shoes. They remanufactured brake hydraulic  
5 components like calipers, but they didn't  
6 really ever, in my -- to my knowledge, ever  
7 really remanufacture an entire brake.

8 Q. When you say "an entire brake," you're  
9 talking about the braking system?

10 A. Well, one corner of the car, if you  
11 will. There's what's typically referred to as  
12 foundation brake; that would have some kind of  
13 a backing plate. You have some actuation  
14 device. It would have brake shoes or pads that  
15 were mounted to steel that are in some device,  
16 typically a caliper. There would be a brake  
17 drum. There would be sensors. There is all  
18 sorts of things.

19 Q. I think I'm with you.

20 A. Okay. So they never did that whole  
21 thing.

22 Q. What does it mean to remanufacture a  
23 brake shoe?

24 A. Well, a brake shoe, by definition,



1 goes on a drum brake. There aren't very many  
2 of those anymore, but it's a radiused section  
3 of steel that has a piece of friction material  
4 on it that's either bonded or riveted to the  
5 steel, and that, in my day, was one of the  
6 principal products in the brake lining at  
7 Rayloc.

8 Q. Okay. You're familiar with NAPA  
9 Genuine Parts Company and Rayloc not only  
10 through your work at Abex, but also in your  
11 work as a corporate representative for Abex in  
12 asbestos litigation; is that true?

13 A. Yeah. I mean, they, obviously, are  
14 named in many of the same suits we are, and,  
15 you know, so I know of them in that context.

16 Q. You are aware that witnesses for the  
17 Genuine Parts Company, particularly  
18 Mr. LeCour --

19 A. Yes.

20 Q. -- have testified that Abex was the  
21 exclusive supplier of asbestos brake linings  
22 for Rayloc remanufactured brake shoes. You're  
23 familiar with that?

24 MR. FLYNN: Objection to form. Lack

1 of foundation. Hearsay.

2 A. I'm familiar with Mr. LeCour's  
3 position. I've taken exception to it on  
4 numerous times, and I think in the course of  
5 litigation, we've demonstrated that we have a  
6 lot of documentation that doesn't support his  
7 allegation.

8 Q. Okay.

9 MS. VELLUCCI: Move to strike to the  
10 extent it's nonresponsive.

11 MR. FLYNN: I'm going to object to the  
12 objection. I have no idea what you consider  
13 nonresponsive and you clarify. I have no idea  
14 what that objection means.

15 MR. JONES: I think we're all all  
16 right. Everybody can get along.

17 MR. FLYNN: The statement on the  
18 record stands, but I agree with you.

19 BY MR. JONES:

20 Q. You knew Mr. LeCour professionally  
21 when you were at Abex?

22 A. Yes.

23 Q. When did you first meet Mr. LeCour?

24 A. I couldn't say. It would probably be

1 in my role as quality assurance or perhaps as a  
2 director or vice president of engineering, so  
3 I'd say mid '70s to certainly mid '80s.

4 Q. What was Mr. LeCour's job?

5 A. When I first met him, I think he was a  
6 production manager and maybe quality assurance  
7 guy for Rayloc's plant in Atlanta.

8 Q. So he was, you said, production  
9 manager?

10 A. And quality control, and/or.

11 Q. At a plant that remanufactured brake  
12 shoes?

13 A. And other things.

14 Q. Okay. Including brake shoes?

15 A. Yes.

16 Q. Were you aware generally that one of  
17 the subjects that would come up today would be  
18 Abex's relationship with NAPA?

19 A. I didn't really think much about it,  
20 but I would have been surprised if we made it  
21 through the day without that discussion  
22 occurring.

23 Q. This is something that happens in a  
24 lot of these deposition?

1           A. Routinely, yes.

2           Q. So you basically expected to talk  
3 about this a little bit today; is that fair?

4           MR. FLYNN: Objection to form.

5           A. I honestly didn't give it any thought.  
6 I mean, when you asked me the question, it's  
7 not a surprise that we'd be talking about  
8 Genuine Parts.

9           Q. Okay. And you mentioned that you had  
10 a lot of documentation that disproves Mr.  
11 LeCour's statement and the statement of other  
12 witnesses at Genuine Parts Company that for a  
13 long period of time Abex was the exclusive  
14 supplier of asbestos brake linings to Genuine  
15 Parts and its Rayloc division?

16          A. Your question is?

17          MR. FLYNN: Objection to form.

18          A. I'm sorry, your question?

19          MR. FLYNN: I'm not sure you put the  
20 question part in there.

21          MR. BERQUIST: It's at the beginning.

22          MR. JONES: Can you read it back  
23 because I forgot it. I felt good about it when  
24 I said it, but then when he said, What's your

1 question, I thought, What is my question?

2 (Question read)

3 Q. Is that true?

4 MR. FLYNN: Same objection.

5 A. I believe we have documentation.

6 Q. Did you bring any of it with you  
7 today?

8 A. I did not.

9 Q. I have read several of your prior  
10 depositions where this subject has come up.  
11 And you agree you've been deposed many times on  
12 this subject; is that true?

13 A. Yes.

14 Q. I have never seen a document produced  
15 by Abex or you dealing with this subject. Do  
16 you recall ever producing a document related to  
17 Abex's relationship with NAPA, Genuine Parts,  
18 Rayloc, at a deposition?

19 A. Yes.

20 MR. FLYNN: Objection to form.  
21 Misstates the prior testimony. Those documents  
22 have been produced in countless previous  
23 depositions of Mr. Indelicato. It's not an  
24 accurate statement to say that they have never

1       been produced.

2               MR. JONES: Well, I was asking him if  
3       they had.

4               Q. What document has been produced in  
5       your depositions on this subject?

6               A. I couldn't say for certain, but there  
7       were documents that dealt with -- I remember  
8       one that was written by a Mr. Iwarsson after  
9       having, I believe, a meeting with NAPA and  
10      discussing the fact that we had no more than  
11      about 40 percent of their business.

12              Q. 46 percent?

13              A. I don't remember the exact.

14              Q. I have seen that document. I didn't  
15      mean to interrupt. I'm sorry.

16              A. There are others. I just don't happen  
17      to recall them offhand.

18              MR. FLYNN: So the statement that Abex  
19      has never produced those documents at prior  
20      depositions is not an actual factual true  
21      statement. You've already seen the 46 percent  
22      letter; that's at least one document that's  
23      been --

24              MR. JONES: Well, he just said that.

1           Q. I misspoke before. I have seen the 46  
2 percent document. I haven't seen it in one of  
3 your depositions, but I saw it actually when an  
4 Abex lawyer showed it to a Genuine Parts  
5 Company representative.

6           MR. JONES: Do you have that document  
7 with you?

8           MR. FLYNN: I believe I do.

9           MR. JONES: Can I see it?

10          MR. FLYNN: Sure. I have to dig it  
11 out, but I think I have it.

12          A. I also believe that there were some  
13 additional LeCour testimony where he, when  
14 asked a similar question, came up with an  
15 entirely different answer. So, I mean, there's  
16 no doubt in my mind that we never had an  
17 exclusive relationship with them on all of  
18 their brake lining requirements. And I know  
19 that there's been testimony and documentation  
20 to that effect. I just am not prepared to show  
21 you.

22          Q. Can you tell me as of 1979 what  
23 products, other than brake linings, did Abex  
24 sell to Genuine Parts Company?

1           A. I don't believe there were anything  
2       other than brake lining in the broad  
3       definition, disc pads.

4           Q. Brake linings, that's a lining that  
5       goes on a brake shoe for a drum brake, right?

6           A. Okay. Yeah.

7           Q. Disc brakes?

8           A. Right. If you want to delineate  
9       between trucks and cars, then I would say brake  
10      blocks which are really just big brake linings.

11          Q. Okay. Clutch faces?

12          A. No.

13          Q. Did Abex ever supply clutch faces to  
14      Genuine Parts or Rayloc?

15          A. Not during my tenure, and I don't know  
16      that perhaps back in the early, early days it's  
17      possible, but I have no knowledge that we did.

18          Q. So the friction material --

19                 MR. JONES: Is somebody making  
20      Kool-Aid?

21          Q. The friction materials as of 1979 that  
22      Abex sold to Rayloc were brake linings, brake  
23      blocks which were big brake linings --

24          A. Right.



1           Q.  -- for heavy trucks, and disc brakes,  
2 true?

3           A.  Basically, yes.

4           Q.  Disc brakes -- correct me if I'm wrong  
5 -- were primarily a nonasbestos component; is  
6 that true?

7           A.  It depends on the point in time.  
8 There were periods of time when I would say the  
9 early American car design disc brakes used  
10 asbestos brake lining.

11          Q.  Starting when?

12          A.  '71 or so.

13          Q.  And when were -- when was asbestos  
14 phased out of disc brakes?

15          A.  At Abex?

16          Q.  Yes.

17          A.  The end of 1978 -- or '87, I'm sorry.  
18 '87?

19          Q.  The end of '87?

20          A.  Right.

21          Q.  When was it phased out?  When did the  
22 phase-out begin for clutches?

23          A.  Clutches?

24          Q.  Not clutches.  Disc brakes?  Let me

1 re-ask the question.

2 A. Okay.

3 Q. When did Abex start to phase asbestos  
4 out of disc brakes?

5 A. I'd like to try to answer your  
6 question in a little different way. When disc  
7 brakes first were on the scene for domestic  
8 cars in the United States, Abex manufactured  
9 most of its disc brakes using asbestos, but it  
10 had had asbestos-free semimetallic disc brake  
11 pads at the same time. Those semimetallic disc  
12 brake pads were principally used in severe duty  
13 application like police and taxi, that sort of  
14 thing.

15 So it's semimetallic asbestos-free had  
16 been around since the onset of asbestos disc  
17 brakes, but the asbestos disc brakes had a much  
18 larger proportion of the sales over time. And  
19 in the latter part of the '70s and very early  
20 '80s, more and more of the cars built in the  
21 United States required higher-performance brake  
22 lining. And that's when, in my opinion,  
23 semimetallic started to accelerate and asbestos  
24 decelerated.

1           Q.   Okay.  As of 1979, do you know what  
2   percentage of Rayloc-remanufactured brake shoes  
3   included Abex brake linings?

4           A.   I do not.

5           Q.   As of 1979, do you know what  
6   percentage of Rayloc heavy truck brake shoes  
7   included Abex brake blocks?

8           A.   No.

9           Q.   In 1979 do you know what percentage of  
10   Rayloc-remanufactured disc brakes included Abex  
11   friction discs?

12          A.   Not precisely, no.

13          Q.   Do you have any estimate?

14          A.   Well, I can tell you that my estimate  
15   has been that in about that time frame, we had  
16   somewhere around 35 percent of Rayloc's  
17   business in aggregate.  I think we probably  
18   were richer in heavy duty and less in passenger  
19   car.  I think we may have been richer in drum  
20   brakes and less in disc, but I couldn't tell  
21   you the exact mathematical equation that got me  
22   to my 30, 35 percent.

23          Q.   Fair enough.  You did -- your  
24   understanding is that you did more sales of

1     brake linings to Rayloc than you did brake  
2     discs?

3           A.   That's my perception.   Again, Rayloc  
4     had kind of a good, better, best marketing  
5     strategy, and oftentimes we wouldn't have a  
6     good sense of what the delineation was between  
7     good, better and best, and, typically, we  
8     participated only on the premium quality.

9           Q.   Okay.

10           MR. JONES:   Move to strike the  
11     nonresponsive portion.

12           MR. FLYNN:   I'll just object that  
13     there's no way for us to tell what the  
14     nonresponsive portion is, and I would object to  
15     the objection but go ahead.

16           MR. JONES:   I don't usually see  
17     objections to objections, but thank you.   Can I  
18     rule on the objection?

19           MR. FLYNN:   It would be nice, wouldn't  
20     it?

21           A.   I'm just trying to give a sense of the  
22     complexity of how this all --

23           Q.   Fair enough.   I get it.   Thank you.  
24     Clutches are a friction product also, true?

1           A.   Yes.

2           Q.   So brake linings, brake blocks, disc  
3   brakes and clutches are all friction products,  
4   true?

5           A.   That's true.

6           Q.   And you know that Rayloc sold  
7   clutches, remanufactured clutches?

8           A.   I do.

9           Q.   And Abex had zero percent of that  
10   business?

11          A.   That's my personal observations.  I  
12   never knew Abex to manufacture any  
13   asbestos-containing clutches during my tenure.

14          Q.   Okay.  So as of 1979, Rayloc is  
15   selling clutches, be they asbestos or not, and  
16   Abex provides none of those clutches?

17          A.   That's correct.

18          Q.   Okay.  Let me show you what we'll mark  
19   as Exhibit 2 to the deposition.

20               (Exhibit No. 2, Letter to Edward  
21   Jones, 10.1.79 so marked)

22          Q.   Have you seen the document marked as  
23   Exhibit 2 before?

24          A.   I have.

1 Q. What is Exhibit 2?

2 A. It's a letter from B.J. Iwarsson, who  
3 was then the vice president and general manager  
4 for friction U.S., and he was sending a letter  
5 to Mr. Jones -- no relation, I presume --  
6 senior vice president of operation of Genuine  
7 Parts.

8 Q. And this is one of the documents that  
9 you referenced as evidence that Abex did not  
10 have an exclusive arrangement for the provision  
11 of brake linings to Rayloc to include on that  
12 remanufactured brake shoes?

13 A. That's right.

14 Q. Are you aware of any other documents,  
15 as you sit here today?

16 A. I know I've seen others ranging from,  
17 I would say, a more casual memo where Abex was  
18 supposed to be participating in the majority of  
19 a particular line of products, as I explained,  
20 the good, better, best kind of thing, and that  
21 they were at some meeting, and one of our guys  
22 said, Hey, why is there -- I don't know this to  
23 be sure, if it was Bendix or Raybestos, but one  
24 of our competitors' brake linings was in the

1 product that should have been ours, and we  
2 called Rayloc on that. I know there was one  
3 for heavy duty.

4 Q. You called them on because if it's in  
5 an Abex box, it's supposed to be in an Abex  
6 brake?

7 MR. FLYNN: Objection to form.  
8 Misstates.

9 Q. True?

10 A. We don't make -- we didn't package for  
11 them. We didn't provide boxes for them. We  
12 supplied brake linings. They would put it on a  
13 brake shoe. We would put it into a box.

14 Q. But if NAPA advertised they were  
15 selling an American Brakeblok/Abex brake, then,  
16 according to your agreement, it was supposed to  
17 be an American Brakeblok/Abex brake?

18 A. Yes.

19 Q. And if NAPA sold or Genuine Parts sold  
20 brakes in a box that said American Brakeblok,  
21 that brake was supposed to be an American  
22 Brakeblok/Abex true?

23 A. I would agree with you with one small  
24 proviso. In some cases it wouldn't necessarily

1 say American Brakeblok Corporation on the box.  
2 It might say premium supreme brake set. And it  
3 was our understanding with Rayloc that the  
4 premium supreme brake sets would always use  
5 Abex brake lining.

6 Q. Okay. Looking at this document, if  
7 you look at the portion that gives the  
8 percentage, it's the third paragraph. Do you  
9 see that?

10 A. I do.

11 Q. It says, "This feeling is apparently  
12 shared by you as manifested by your letter and  
13 the fact that we now supply only 46 percent of  
14 your friction material needs." Did I read that  
15 correctly?

16 A. You did.

17 Q. Did Abex make clutch discs, friction  
18 clutch discs?

19 A. No.

20 Q. Never?

21 A. No. Well, not -- again, not in my  
22 tenure. Whether or not they did, you know,  
23 years and years ago, don't know.

24 Q. So. If we look at this document as of



1 1979, and your previous testimony, the friction  
2 products that we know that Rayloc sold were  
3 brake linings, true?

4 A. Yes.

5 Q. Brake blocks, true?

6 A. Yes.

7 Q. Disc brake pads?

8 A. That's right.

9 Q. And clutches?

10 A. Is your question Abex --

11 MR. FLYNN: Objection to form.

12 A. -- supplied it or that Rayloc used it?

13 Q. I'm just saying these are friction  
14 products sold by Rayloc without regard to  
15 whether or not Abex supplied the friction  
16 material?

17 A. I mean, there might even be broader  
18 definitions. There are little clutches that  
19 are inside air-conditioning compressors, and, I  
20 mean, so there's other places where there are,  
21 quote, friction products.

22 Q. Where else?

23 A. Oh, boy, I think there might be some  
24 suspension components that one could generally

1 classify as a friction product.

2 Q. What else?

3 A. I can't think of them offhand.

4 Q. These are things that you're generally  
5 aware that Rayloc sold whether or not Abex  
6 supplied the friction material?

7 A. Yes.

8 MR. FLYNN: Objection to form.

9 Q. Okay. So this letter says as of 1979  
10 Rayloc is only purchasing 46 percent of its  
11 friction material needs. And when I say  
12 "Rayloc," you understand I'm speaking about the  
13 division of Genuine Parts Company?

14 A. Yes.

15 Q. Okay. In 1979 Rayloc Genuine Parts  
16 Company, according to this letter, is only  
17 purchasing 46 percent of its friction material  
18 needs from Abex, true?

19 A. That's what it says.

20 Q. Okay. Its friction material needs  
21 include suspension components?

22 A. No. I think that we're getting into a  
23 very fine definitional point. If I were  
24 writing this letter, I might have said brake

1 lining needs.

2 Q. But it doesn't say that?

3 A. It doesn't say that.

4 Q. It says friction material needs,  
5 right?

6 A. It does say that.

7 Q. And suspension components have  
8 friction materials?

9 A. Yes.

10 Q. And Abex supplied zero of that?

11 A. That's right.

12 Q. Clutches and AC compressors, that's a  
13 friction material?

14 A. Zero.

15 Q. Sold by Rayloc, correct?

16 A. Yes.

17 Q. Abex supplied zero of that?

18 A. Correct.

19 Q. Clutches, that's a friction material,  
20 true?

21 A. Yes.

22 Q. That is a -- that's a component that's  
23 not changed as frequently as brakes, but is  
24 frequently changed; is that fair?

1 A. Yes.

2 Q. Abex has zero of that market?

3 A. Yes.

4 Q. Disc brake pads, that's a

5 Rayloc/Genuine Parts Company friction need,

6 true?

7 A. Yes.

8 Q. And Genuine Parts -- Abex supplied

9 some of those components?

10 A. Yes.

11 Q. Okay. Not near as much as it supplied

12 of brake linings and brake blocks, true?

13 A. Not at that point in time.

14 Q. Okay. Brake blocks for heavy trucks,

15 that's a friction material need of

16 Rayloc/Genuine Parts Company, true?

17 A. Yes, sir.

18 Q. And that was an area that Abex was

19 very strong in the market for the supply to

20 Genuine Parts Company/Rayloc?

21 MR. FLYNN: Objection to form.

22 Mischaracterizes the witness' testimony.

23 A. We sold a fair amount of brake block

24 to Rayloc.

1 Q. Okay. And brake linings, that is a  
2 friction material need of Rayloc?

3 A. It is.

4 Q. True?

5 A. Yes, sir.

6 Q. A division of Genuine Parts Company?

7 A. Yes, sir.

8 Q. And that is another area brake linings  
9 where Abex was very strong in its supply of  
10 friction material to Genuine Parts Company, its  
11 Rayloc branded brakes?

12 MR. FLYNN: Objection. Form.  
13 Mischaracterizes the witness' testimony.

14 A. For the premium product offering, not  
15 for the second and third line.

16 Q. I understand that that's your  
17 contention. You understand that that is not  
18 the testimony of Mr. LeCour and other witnesses  
19 at Genuine Parts Company who have testified  
20 that all of the brake linings for brake shoes  
21 for a long period of time came from Abex?

22 MR. FLYNN: Objection to form.

23 Q. You're familiar with that testimony?  
24 I'm not asking you to agree with it.

1 A. No, I'm not familiar.

2 Q. You're not. Okay.

3 MR. FLYNN: Hold on, Al. Objection to  
4 form. Argumentative. You can answer.

5 Q. Fair enough. You can answer.

6 A. I told you that I saw and I knew of  
7 LeCour's testimony. I have not seen any other  
8 testimony from Genuine Parts that alleges we  
9 were the exclusive supplier.

10 Q. I'll represent to you that that  
11 testimony exists. And it's my understanding  
12 that you don't agree with that testimony --

13 A. Correct.

14 MR. FLYNN: Same objection.

15 Q. -- if that testimony does exist?

16 MR. FLYNN: Same objections.

17 A. Correct.

18 Q. Okay.

19 THE WITNESS: Who is keeping the  
20 exhibits?

21 MR. JONES: Not me, if they want to  
22 get home.

23 MR. FLYNN: The court reporter should  
24 hold all the originals.

1           MR. JONES: Agree a thousand percent.

2       When he handed them to me, I started to have a  
3       heart attack.

4           THE WITNESS: Okay.

5           MR. JONES: That's where we will keep  
6       the exhibits.

7       BY MR. JONES:

8           Q. I want to talk to you about Abex's  
9       relationship with NAPA, the Genuine Parts  
10      Company, and the Genuine Parts Company division  
11      Rayloc.

12          A. Okay.

13          Q. You've testified previously that it's  
14      your understanding that the relationship  
15      between Abex and Genuine Parts Company goes  
16      back to the 1920s?

17          A. That's my understanding.

18          Q. You're aware of rumors that Abex  
19      loaned money to get NAPA started?

20          MR. FLYNN: Objection to form.

21          A. I understood that there was some  
22      financial support to get NAPA off the ground.

23          Q. Okay.

24          A. I honestly don't know if that was NAPA

1 or Genuine Parts, to be honest, but there was  
2 some, going back in time, Abex helping that  
3 entity, and I just don't know which one it was.

4 Q. So it's your understanding as the  
5 corporate representative of Abex that at some  
6 point Abex loaned money to either NAPA or  
7 Genuine Parts Company to get one of those  
8 entities off the ground?

9 A. Yes.

10 MR. FLYNN: Objection to form.

11 Q. The relationship between Abex and  
12 NAPA, which you've described as the marketing  
13 arm for Genuine Parts Company and Rayloc, goes  
14 back to the 1940s, at least?

15 A. I think so.

16 Q. Whenever NAPA started basically?

17 A. Yes.

18 Q. Is that true?

19 A. Yes.

20 Q. Abex sold asbestos brake linings to  
21 Genuine Parts Company for installation on  
22 Rayloc-branded brakes?

23 A. Yes.

24 MR. FLYNN: Objection to form.



1 Q. And for decades those brakes were  
2 branded American Brakeblok/Rayloc brakes, true?

3 A. There was -- there were different  
4 branding. For a while it was American  
5 Brakeblok, then it was Rayloc. There was also  
6 a brand called Genaut, G-E-N-A-U-T, and then  
7 there were, I'm going to call them generic  
8 brands, that didn't really mention a company's  
9 name but rather had a descriptive name like  
10 premium high-performance brake pads or  
11 something like that. So there were many  
12 different packaging names to the products that  
13 NAPA/Genuine Parts sold.

14 Q. We discussed this earlier. American  
15 Brakeblok is the former name of Abex?

16 A. That's right.

17 Q. And American Brakeblok is also a  
18 trademarked product name of Abex?

19 A. That's right.

20 Q. You would agree with me that NAPA and  
21 its companies Rayloc, Genuine Parts, et al,  
22 were an important customer to Abex?

23 A. Yes.

24 Q. In fact, you traveled to their plants

1 often to meet with their executives and plant  
2 personnel in your role as a quality control  
3 manager?

4 A. Yes, sir.

5 Q. Also in your role as a development  
6 engineer?

7 A. Yes.

8 Q. And also ultimately as president of  
9 the company?

10 A. Correct.

11 Q. You visited with them to discuss your  
12 business with Rayloc?

13 A. That's right.

14 Q. Your business included joint  
15 advertising ventures with NAPA, Genuine Parts  
16 Company and Rayloc, true?

17 MR. FLYNN: Objection to form.

18 A. They were only joint in the sense that  
19 often they would ask -- I'm just waiting for to  
20 you.

21 Q. I'm sorry.

22 A. They were joint in the sense that  
23 oftentimes NAPA would develop an advertising  
24 campaign and summon its suppliers to its

1       headquarters and say, This is our advertising  
2       campaign. Isn't it wonderful? We'd like all  
3       of you guys to chip in to help us spread the  
4       word.

5           Q.   NAPA advertised that it sold American  
6       Brakeblok/Abex brakes at its NAPA jobber  
7       locations, true?

8           A.   At certain points in time.

9           Q.   You were aware of that advertising?

10          A.   Yes.

11          Q.   When I say "you," I mean Abex?

12          A.   Yes.

13          Q.   And you personally when you were  
14       there?

15          A.   In some instances, yes.

16          Q.   Abex also advertised itself its  
17       American Brakeblok brakes, true?

18          A.   Yes.

19          Q.   And it advertised that those American  
20       Brakeblok brakes could be purchased at NAPA  
21       locations, true?

22          A.   I believe you're correct.

23          Q.   So you were aware of the advertising  
24       NAPA did, where they said, Go to your NAPA

1 location to buy American Brakeblok/Abex brakes,  
2 true?

3 MR. FLYNN: Objection to form.

4 A. I think it just said American  
5 Brakeblok, not American Brakeblok/Abex, but  
6 fine point.

7 Q. I agree with you. I'm just trying to  
8 make the point that it's an Abex product.

9 A. Yes.

10 MR. FLYNN: Objection to form.

11 Q. Because of that clarification, and  
12 thank you for it, whenever I say American  
13 Brakeblok brake, you understand that that is an  
14 Abex trade name for an Abex brake?

15 A. Understood.

16 Q. Okay.

17 A. I was just delineating it wouldn't say  
18 Abex on the box --

19 Q. Thank you for that.

20 A. -- which I think might be relevant at  
21 some point.

22 Q. It is, and thank you for the  
23 clarification. And certainly Abex was aware of  
24 its own advertising of American Brakeblok was

1       that those brakes could be purchased at a NAPA  
2       location?

3           A.   Yes, I believe that's true.

4           Q.   In the 1975 to '76 time frame, you  
5       visited Rayloc facilities four to six times a  
6       year?

7           A.   Yeah, perhaps more often.  I mean, it  
8       varied.

9           Q.   Depended?

10          A.   Right.

11          Q.   And you were there to resolve any  
12       product issues they might have at that  
13       facility?

14          A.   Yes.

15          Q.   The reason you went to Genuine Parts  
16       Company/Rayloc facilities was because the  
17       product -- one of the products they were using  
18       were Abex brake linings?

19          A.   Yes.

20          Q.   And you were there in case they had  
21       any questions about the installation of Abex  
22       brake linings on shoes?

23          A.   Well, it was more than installation.  
24       It usually would deal with things like customer

1 complaints about noise or the brakes not  
2 lasting as long as they thought they should,  
3 you know, some product issue.

4 Q. So when NAPA got complaints -- and  
5 when I say "NAPA," I'm kind of talking about  
6 NAPA/Genuine Parts Company and Rayloc all as  
7 one; is that okay?

8 A. That's fine with me.

9 Q. Is that how you thought about it when  
10 you were in the business?

11 A. Generally, yes.

12 Q. When you thought about those  
13 companies, you thought of them as kind of all  
14 in one?

15 A. Yeah. I mean, the only exception was  
16 there was a point in time, and I believe it was  
17 an acquisition that was made either by or on  
18 behalf of Genuine Parts of a company called  
19 Genaut, which was independent, but it was very  
20 similar to what Rayloc did. And over time I  
21 believe the Rayloc guys kind of prevailed and  
22 absorbed the Genuine Parts acquisition into  
23 their world, but for a while there was a  
24 stand-alone business unit of Genuine Parts

1       called Genaut that we handled separately for a  
2       while.

3           Q.   You've estimated that the annual sales  
4       of brake linings to NAPA/Genuine Parts  
5       Company/Rayloc was around 20 to 25 million  
6       dollars a year; does that sound right?

7           A.   It seems a little high.  That might  
8       be.  That's not crazy.

9           Q.   Abex's -- you've talked about in your  
10      prior depositions Abex's principal business,  
11      and I think you've said that Abex's principal  
12      business wasn't to sell brakes, brake shoes,  
13      brae linings directly to the people that would  
14      put them in a car or a truck?

15          A.   We didn't -- we never -- I mean, what  
16      we made was brake lining.  And brake lining,  
17      unless it's attached to something, isn't in a  
18      form that can be put on to a vehicle.

19          Q.   Abex's principal business wasn't with  
20      small companies.  It was with people like  
21      Rayloc and NAPA; is that true?

22               MR. FLYNN:  Objection to form.

23          A.   I don't know what your definition of  
24      "small" is.  I mean, we had customers that we

1       would sell, you know, everything from a couple  
2       of thousand dollars a year to others that we  
3       sell millions of dollars a year. So, I mean, I  
4       think there's a brief Pareto to that that  
5       probably, you know, 10 percent of our customers  
6       made up 80 or 90 percent of our sales.

7           Q. And Rayloc was a big one?

8           A. They were one of the larger.

9           MR. FLYNN: Objection to form.

10          Q. So it would be fair to say that most  
11       of Abex's sales of brake linings were to big  
12       companies like you described nine or ten  
13       companies made up 90 percent of your sales,  
14       right?

15         A. Yes.

16         MR. FLYNN: Objection to form.

17         Q. And Abex was a big chunk of it?

18         MR. FLYNN: Objection to form.

19         A. Abex was a big?

20         Q. You are Abex.

21         A. That's right.

22         Q. You don't sell to yourself.

23         A. That's right. Not often.

24         Q. You're not going to stay in business



1       like that. NAPA -- I'll withdraw all of that.

2               NAPA/Genuine Parts Company and its  
3       division Rayloc were a big chunk of that total  
4       sales number?

5               MR. FLYNN: Objection to form.

6               A. Yes.

7               MR. JONES: Let's go off the record  
8       for a second, if that's okay.

9               THE WITNESS: Sure.

10              THE VIDEOGRAPHER: The time is 11:42  
11       a.m., and we are going off the record.

12              (Lunch Recess 11:42 a.m. to 1:03 p.m.)

13              THE VIDEOGRAPHER: The time is 1:03  
14       p.m., and we are back on the record.

15       BY MR. JONES:

16              Q. Mr. Indelicato, I want to talk to you  
17       a little more about the relationship between  
18       Abex and Genuine Parts Company --

19              A. Okay.

20              Q. -- including its division Rayloc and  
21       NAPA. We talked a little bit about advertising  
22       done by Abex and done by NAPA, and I want to go  
23       through some ads and see if you recognize them  
24       as ads for Abex products?

1           A.   Okay.

2           Q.   Okay.

3           PHONE COUNSEL:   Mr. Jones, could I  
4   just ask that you keep your voice up?

5           MR. JONES:   Yes.   That is the first  
6   time in my career that anyone has ever raised  
7   that.

8           PHONE COUNSEL:   I had no problem  
9   listening to you this morning, but for some  
10   reason you seem to --

11          MR. JONES:   Mellowing with age.

12          PHONE COUNSEL:   I'm having trouble  
13   hearing you.

14          MR. JONES:   Mellowing with age.   I  
15   turn 40 next month.

16          Q.   Let me show you what we'll mark as  
17   Exhibit 3.

18               (Exhibit No. 3, 1942 Advertisement so  
19   marked)

20          MR. FLYNN:   Is this my copy, or did  
21   you not bring copies?

22          MR. JONES:   I only have two.   Sorry.

23          THE WITNESS:   Do you want to put the  
24   sticker on here?

1 MR. JONES: Thank you.

2 Q. What is Exhibit 3?

3 A. It appears to be a 1942 advertisement  
4 featuring American Brakeblok brake lining, and  
5 it depicts a truck and a large inset that says,  
6 "free brake lining advisory service to fit  
7 specialized linings to your needs."

8 Q. And this 1942 ad is an American Brake  
9 Shoe and Foundry Company ad, true?

10 A. It says American Brakeblok division,  
11 American Brake Shoe and Foundry Company, yes.

12 Q. It lists Detroit, Michigan?

13 A. It does.

14 Q. At that time Detroit, Michigan, was  
15 the headquarters for the friction division, the  
16 American Brakeblok division?

17 A. I presume so.

18 Q. And this is an ad by basically the  
19 same company that you're testifying for today.  
20 It's a predecessor to Abex, true?

21 A. Yes.

22 Q. Okay. And you would agree with me  
23 that this American Brakeblok division ad  
24 references NAPA?

1           A.   It does.

2           Q.   And there's a NAPA emblem on the  
3 bottom left, true?

4           A.   Yes.

5           Q.   So you would agree with me that at  
6 least as of 1942, Abex or its predecessor  
7 company was advertising to the public that  
8 American Brakeblok branded brakes could be  
9 purchased at NAPA?

10          A.   Yes.

11          Q.   Let me show you what I'll mark as  
12 Exhibit 4.

13               (Exhibit No. 4, 1950 Advertisement so  
14 marked)

15          Q.   If you'll hand that to your counsel.

16          A.   (Witness complies)

17          Q.   Thank you.   What is Exhibit 4?

18          A.   Similar advertisement to what we just  
19 looked at in Exhibit 3; although, this one is  
20 dated April 1950.

21          Q.   This is another advertisement from the  
22 American Brake Shoe Company, true?

23          A.   Yes.

24          Q.   It's an advertisement from the

1 American Brake Shoe Company, American Brakeblok  
2 division, true?

3 A. Yes, sir.

4 Q. That is the predecessor company for  
5 the company you're testifying -- that is the  
6 predecessor company for the company you're  
7 testifying on behalf of today, true?

8 A. It is.

9 Q. Okay. And it seems to indicate as of  
10 1950, Abex or its predecessor was advertising  
11 that American Brakeblok brakes could be  
12 purchased at NAPA stores?

13 A. Yes.

14 (Exhibit No. 5, 1955 Advertisement so  
15 marked)

16 Q. Let me show you what I've marked as  
17 Exhibit 5.

18 MR. FLYNN: Can I see No. 4?

19 THE WITNESS: Here's 4. Here's 5.

20 Q. What is Exhibit 5?

21 A. Another advertisement, 1955. American  
22 Brakeblok, division of American Brake Shoe  
23 Company.

24 Q. That's an advertisement by the company

1     you were testifying for today, right, the  
2     predecessor to Abex?

3           A.   It is.

4           Q.   And this advertisement also indicates  
5     that people wanting to buy American Brakeblok  
6     brakes should go to NAPA to buy them?

7           MR. FLYNN:  Objection to form of the  
8     question.

9           A.   American Brakeblok brake linings can  
10    be purchased through NAPA, that's what it says.

11          Q.   In all these advertisements we've  
12    looked at so far, American Brakeblok doesn't  
13    identify any other distributor where you can  
14    get American Brakeblok brakes other than NAPA,  
15    true?

16          A.   No.   These ads are custom-tailored to  
17    NAPA.

18          Q.   Are these examples of joint  
19    advertising efforts jointly between NAPA and  
20    Abex or the predecessor to Abex?

21          MR. FLYNN:  Objection to form.

22          A.   Yes.

23          Q.   Why do you say that?

24          A.   Because, you know, I don't know if

1 Abex ran the ad or NAPA ran the ad, but any  
2 event, both companies are mentioned. And I  
3 think in the normal course of business, you  
4 don't run an ad using a customer's logo or name  
5 without their consent, at minimum. And I  
6 suspect that there was beyond consent perhaps  
7 something questionable going on.

8 (Exhibit No. 6, Excerpt from  
9 Newspaper, 5.15.62 so marked)

10 Q. Let me show you what I've marked as  
11 Exhibit 6 to the deposition. What is Exhibit  
12 6?

13 A. It's a copy of a page of a newspaper,  
14 the Daily something, from Oklahoma, Tuesday,  
15 May 15, 1962, it appears.

16 Q. And this page from the newspaper in  
17 Ardmore, Oklahoma, in 1962 includes an  
18 advertisement for American Brakeblok, true? If  
19 you look at the bottom?

20 A. Yeah, I see it. I'm just having a  
21 hard time reading it. Yeah, that appears to  
22 be.

23 Q. And it is very small print. This  
24 advertisement is by the predecessor company

1     that you're testifying on behalf of today,  
2     true?

3           A.   Again, I'm not sure if this was --  
4     hang on a second.  I'm sorry.  I'm just having  
5     a really hard time reading it.  Yes, I would  
6     say it's an American Brakeblok ad.

7           Q.   Okay.  Why would you say that?

8           A.   It says American Brakeblok on the  
9     bottom.

10          Q.   And if you look at the end of the --  
11     there's a paragraph.  If you look at the end of  
12     that paragraph, the last sentence says,  
13     "distributed only through NAPA jobbers."  Did I  
14     read that correctly?

15          A.   Yes.

16          MR. FLYNN:  Objection to form.

17          Q.   What does that mean?

18          A.   If I could read this, just give me a  
19     second.  I'm actually starting to get it.

20          Q.   Okay.

21          A.   It basically says insist on the  
22     highest quality brake lining American Brakeblok  
23     distributed only through NAPA jobbers.

24          Q.   NAPA jobbers, what does that mean?



1           A. Essentially, the retail location where  
2       you would go to buy a set of lined shoes.

3           Q. Let me show you what I've marked as  
4       Exhibit 7 to the deposition. Is that the same  
5       year? I'm going to withdraw it. I think it's  
6       the same.

7           MR. FLYNN: Can I see No. 6?

8           MR. ZAMALOFF: It's a different day.

9           MR. JONES: It's a different day. I  
10      think it's basically the same.

11          THE WITNESS: Your preference.

12          MR. FLYNN: You don't want 7?

13          MR. JONES: No, I'm going to trash it.

14          THE WITNESS: That's 6.

15          MR. FLYNN: This is 7.

16          Q. I want to show you something else I'm  
17      going to mark as Exhibit 7.

18                (Exhibit No. 7, Advertisement so  
19      marked)

20          A. Okay.

21          Q. What is Exhibit 7?

22          A. A more current day ad by either Abex  
23      or Genuine Parts featuring what I would call  
24      heavy-duty product, American Brakeblok's, if

1       you will.

2           Q.   That's the big brake lining that goes  
3       on heavy trucks?

4           A.   That's right.

5           Q.   Okay.  And why do you say this is a  
6       newer advertisement?

7           A.   Well, the first thing that jumped out  
8       at me is the style of the ad.  But more  
9       importantly, perhaps, is the fact that we're  
10      now showing American Brakeblok on West Maple  
11      Road in Troy, Michigan, which I knew to be a  
12      more contemporary location for the sales  
13      office.

14          Q.   How -- what's your best estimate for  
15      the vintage of that ad, around what year?

16           MR. FLYNN:  Objection to form.

17          Q.   What decade?

18           MR. FLYNN:  Calls for speculation.

19          A.   I believe West Maple was around in the  
20      very early 1970s.

21          Q.   The other ads -- there was another  
22      address, and they were like '62 was the last  
23      one, I want to say.  Does that sound right?

24          A.   The date?

1 Q. Yeah. That's at Ardmore, 1962?

2 A. Ardmore, that was '62. '55 was  
3 Exhibit 5, and '50 was Exhibit 4.

4 Q. So your best estimate for the ad which  
5 is attached as Exhibit 7 is that it's the early  
6 '70s?

7 A. Yes.

8 Q. And that's based on the office  
9 location in the ad?

10 A. That's right.

11 Q. Can you tell if this is a NAPA or an  
12 American Brakeblok ad?

13 A. I think it was probably some kind of  
14 cooperative effort because it features a box  
15 that has American Brakeblok logo but with the  
16 NAPA stylized logo as well.

17 Q. Okay. And the ad has an address at  
18 the end of it -- at the end of the ad it says,  
19 "Come hell or high water, you can depend on  
20 American Brakeblok. For more information,  
21 write American Brakeblok, 900 West Maple Road,  
22 Troy, Michigan, 48084."

23 A. Yes.

24 Q. Did I read that correctly?

1           A.   You did.

2           Q.   So this advertising is inviting people  
3   to write to the Abex or the predecessor to  
4   Abex, not to NAPA?

5           A.   That's true.

6           Q.   Okay.  Does that indicate this is  
7   probably an American Brakeblok ad?

8           MR. FLYNN:  Objection to form.

9           A.   Not necessarily.

10          Q.   It could still be a combined effort?

11          A.   Right.  And I think perhaps directing  
12   it to Abex would be -- that's where there was  
13   more expertise about heavy-duty brake systems.

14          Q.   Okay.  Okay.  And, again, this  
15   indicates a combined advertising effort of NAPA  
16   and Abex directing people to purchase Abex  
17   brand brakes at NAPA locations?

18          A.   Abex brake lining through NAPA, yes.

19          Q.   Thank you.  I asked you about --

20          MR. JONES:  What Michigan town did I  
21   ask him about before?

22          MR. BERQUIST:  Bloomfield.

23          A.   Bloomfield.

24          Q.   Bloomfield.  I meant to ask about

1       Birmingham. In my defense, they both start  
2       with Bs. Let me show you what I've marked as  
3       Exhibit 8.

4               (Exhibit No. 8, Advertisement so  
5       marked)

6           Q. What is Exhibit 8?

7           A. Some form of an advertisement for  
8       American Brakeblok brake lining.

9           Q. And that's the predecessor company of  
10       Abex?

11          A. Yes.

12          Q. Can you tell from any indications on  
13       this ad around when this ad was published?

14          A. I really can't. There's no date on  
15       it. I honestly don't -- I mean, it does say  
16       Birmingham, Michigan. I don't know that we  
17       ever had a Birmingham office. I notice this is  
18       a P.O. Box, not an address. I just don't know.

19          Q. Fair enough. If you look at the  
20       bottom right, it says in small print, "American  
21       Brakeblok, ad number," and then it's got a  
22       number I can't read.

23          A. Right.

24          Q. Does this indicate that this is an

1 American Brakeblok ad?

2 A. Again, you know, I think it's just a  
3 fine line of distinction. Whether, you know  
4 Abex ran it or NAPA ran it, I suspect it's just  
5 like the others where it was some cooperative  
6 effort.

7 Q. One, the other or both?

8 A. It could be.

9 Q. Because apparently throughout -- I  
10 think the first ad we looked at was 1942, and  
11 we found one ad that's the early '70s.  
12 Throughout that time Abex and NAPA were jointly  
13 marketing the sale of American Brakeblok brakes  
14 at NAPA locations?

15 MR. FLYNN: Objection to form.

16 A. American Brakeblok brake lining.

17 Q. At NAPA locations?

18 A. Yes.

19 Q. With that qualification, my statement  
20 was true?

21 A. Yes.

22 Q. Okay.

23 MR. FLYNN: Same objection.

24 Q. And the correction you're making is

1 the American Brakeblok, the only product  
2 produced by Abex was the lining, not the shoe  
3 it was attached to?

4 A. Right.

5 Q. I've got several more advertisement  
6 that look like those. Would you generally  
7 agree with me that from the '40s through at  
8 least the '70s, there was a joint advertising  
9 effort of Abex and NAPA for the sale of  
10 American Brakeblok lined shoes at NAPA  
11 locations?

12 MR. FLYNN: Object to the preface to  
13 the question and object to form.

14 A. I essentially agree with you, but --  
15 yeah, I would agree with you. I think I'm  
16 being really technical here but....

17 Q. You've seen NAPA catalogs that  
18 included listings for Abex lined brake shoes,  
19 true?

20 A. Yes.

21 Q. And you had a deposition in 19 -- in  
22 2013 in four cases, I think here, the attorney  
23 was Jonathan George. Does that ring a bell?

24 A. I don't remember.

1 Q. We all --

2 A. You all look the same.

3 Q. Yeah, I know. Another guy with  
4 glasses. But throughout your career, and I  
5 know you've testified, you kept -- you were  
6 aware of NAPA advertising obviously?

7 A. Right.

8 Q. You were also aware of the catalogs  
9 that NAPA put out for their remanufactured  
10 brake shoes?

11 A. Yeah. I mean, I was aware they  
12 existed.

13 Q. And you saw them?

14 A. Yeah. I mean, I didn't have, you  
15 know, approval rights, if you will, but, I  
16 mean, I knew we published them regularly. I  
17 knew that oftentimes it was really just an FMSI  
18 catalog that had a NAPA wrapper around it, if  
19 you will. Other times they were more specific  
20 to NAPA.

21 Q. Let me show you what I'll mark as  
22 exhibit -- actually, I'm going to hand you two  
23 things. I'm going to see if you can tell me  
24 which one is before the other one, and then I'm



1       going to mark them sequentially accordingly.  
2       If you can; and if you can't, I'm just going to  
3       come up with something. One is '72 for sure.  
4       I'm not positive about the other one. That's  
5       the easy one.

6             A. Okay. As to time --

7             Q. We can tell from the year of the cars,  
8       maybe?

9             A. Not really. They probably go back to  
10       1950 or before.

11            Q. You've already figured it out. Go  
12       ahead. I'm sorry.

13            A. Well, I --

14            MR. FLYNN: Object to the form. I'm  
15       not sure what the question is.

16            MR. JONES: I'm pretty sure there's  
17       not one.

18            Q. From looking at those two documents,  
19       one of them is marked 1972. We know that's  
20       1972, right?

21            A. Yes.

22            Q. Do you have any -- can you tell us the  
23       date or approximate date of the other catalog?

24            A. Bear with me just a second. I would

1 estimate the date to be about 1970.

2 Q. Okay. And what's the basis for that  
3 estimation?

4 A. There's really two. One is that using  
5 your clue of what models, if I looked at cars  
6 that I knew, that I have some knowledge of like  
7 some Cadillac models, Chevrolet. '70 was the  
8 most recent one listed. And, secondly, I think  
9 up in the upper right there, BSE-70B. I  
10 believe 70 refers to the year as, I believe,  
11 the nomenclature.

12 Q. If you could hand those back to me,  
13 I'm going to mark them the 1970 one and then  
14 the 1972 one. I'll put a sticker on them and  
15 give them right back to you.

16 A. Okay.

17 Q. Thank you.

18 (Exhibit No. 9, BSE-70B Catalog so  
19 marked)

20 (Exhibit No. 10, NAPA Automotive Quick  
21 Reference Parts Catalog so marked)

22 Q. I'm handing you what I've marked as  
23 Exhibits 9 and 10.

24 A. Okay.

1 Q. What is Exhibit 9?

2 A. Exhibit 9 appears to be what I would  
3 call an FMSI catalog that has a cover and  
4 probably a back cover that tries to brand the  
5 catalog to be a NAPA American Brakeblok  
6 catalog.

7 Q. Okay.

8 A. It's specific to brake linings where  
9 the other one isn't. We'll talk about that in  
10 a minute.

11 Q. Okay. This 1970 catalog attached as  
12 Exhibit 9, it says NAPA on the front which --

13 THE WITNESS: Can I see that again,  
14 guys? I'm sorry, I thought we were done with  
15 that.

16 Q. No.

17 A. Go ahead.

18 Q. It says NAPA on the front and American  
19 Brakeblok, true?

20 A. That's right.

21 Q. Then if you go to the back, it says  
22 Abex Corporation, American Brakeblok division?

23 A. Correct.

24 Q. That's the company you're testifying

1 for today, true?

2 A. Yes, sir.

3 Q. And if you flip through the pages  
4 where they list the relined brake shoes, all of  
5 them at the top say "relined brake shoe  
6 applications with NAPA American Brakeblok,"  
7 true?

8 A. Yes.

9 Q. And American Brakeblok is the  
10 Abex-branded brake lining, true?

11 A. Yes.

12 Q. And those Abex brake linings were  
13 attached to brake shoes and sold in NAPA  
14 outlets, true?

15 A. Yes.

16 Q. Okay. Can you look at Exhibit 10.  
17 Let me ask you this: Because the Abex name is  
18 on this, and Abex Corporation is listed on the  
19 back, is it your understanding that Abex was  
20 involved in some level in the production of the  
21 catalog?

22 A. Probably at some level.

23 Q. Approval perhaps?

24 MR. FLYNN: Objection to form.

1           A. Abex would have been a member of FMSI  
2           to which I don't think Genuine Parts was, so  
3           they would have had the opportunity to get the  
4           actual FMSI catalog, which is the meat of this  
5           exhibit, and probably worked out an arrangement  
6           with NAPA to either take delivery of the FMSI  
7           catalogs and put this wrapper around it or in  
8           some way help facilitate that.

9           Q. Okay. Looking at Exhibit 10, which is  
10          the 1972 catalog --

11          A. Yes.

12          Q. -- this is excerpts from a catalog, I  
13          believe. Is that what it appears to be?

14          MR. FLYNN: Objection to form. Calls  
15          for speculation.

16          A. The page numbers jump around. It goes  
17          from 21 to 36 so, I mean -- so, yeah, I would  
18          have to say they're excerpts.

19          MR. FLYNN: I'm also going to object  
20          to lack of completeness.

21          Q. This was -- I'll represent to you,  
22          you'll see there's another exhibit sticker on  
23          the front page. It was Exhibit A?

24          A. Yes.

1 Q. 3/6/13?

2 A. Yes.

3 Q. I'll represent to you that that was  
4 marked in your deposition in the -- it was  
5 taken in four cases, Julie Byron case, March 2,  
6 2013, at the Sheraton Portsmouth Harborside  
7 Hotel. Do you remember giving a deposition?

8 A. I mean, I remember being -- giving  
9 depositions in that hotel, but I don't remember  
10 that particular case.

11 Q. Okay. Is this catalog or the excerpts  
12 from them, is this familiar to you at all?

13 MR. FLYNN: Objection to form.

14 A. I've seen catalogs like this before.

15 Q. Okay. And this catalog, the excerpts  
16 of the catalog, again, list, I believe, where  
17 it says "brake shoe," anywhere it says "brake  
18 shoe," it says "with American Brakeblok  
19 lining"?

20 MR. FLYNN: Objection to form. Lack  
21 of completeness.

22 A. The pages that are provided here seem  
23 to say that.

24 MR. JONES: I'll agree to a continuing

1 objection on the completeness thing, but I  
2 don't think I'm going to ask any more questions  
3 so I really didn't need to do that.

4 A. It seems this is where -- what they're  
5 calling an exchange shoe?

6 Q. Okay.

7 A. Is with American Brakeblok brake  
8 lining. This is just taking a while. Just it  
9 involves more than just brake parts. There's  
10 all sorts of components, steering parts and  
11 body parts and frame and wheel parts. To the  
12 extent the sheets that are provided here it  
13 says, wherein it says "brake shoe," it says,  
14 "lined exchange with American Brakeblok brake  
15 lining."

16 Q. Okay.

17 THE WITNESS: Do you need these,  
18 Johan?

19 Q. And Abex was involved in revisions to  
20 the NAPA-branded catalogs, true?

21 MR. FLYNN: Objection to form.

22 Q. Those that involved the sale of  
23 American Brakeblok lined brake shoes?

24 MR. FLYNN: Objection to form.

1 Overbroad.

2 A. To the extent that Abex had knowledge  
3 about a new vehicle and what brake fit it, and  
4 we would feed that information to the  
5 cataloging folks in Atlanta, I would say the  
6 answer to your question is yes, with that  
7 nominal proviso.

8 Q. Okay.

9 (Exhibit No. 11, Letter to Toby Moore,  
10 2.13.76 so marked)

11 Q. Let me show you what I'll mark as  
12 Exhibit 11 to the deposition.

13 MR. FLYNN: Can I see a copy of it?

14 THE WITNESS: I'm sorry.

15 MR. FLYNN: Sorry to interrupt.

16 THE WITNESS: It's hard to --

17 MR. FLYNN: I understand.

18 MR. JONES: It's my fault.

19 A. Perhaps next time we meet we'll beam  
20 it to each other on our iWatch or something.

21 Q. That's right.

22 A. Okay.

23 Q. What is Exhibit 11?

24 A. It's a February 13, 1976, memo from



1 Bob Lengele, NAPA account manager at the time,  
2 to Toby Moore who was a sales manager at Rayloc  
3 Atlanta.

4 Q. And Mr. -- how do you pronounce his  
5 name?

6 A. Lengele.

7 Q. Did you know that gentleman?

8 A. Yes.

9 Q. He's the NAPA account manager for  
10 Abex?

11 A. Yes.

12 Q. He is an Abex employee?

13 A. He's essentially the Abex salesman  
14 that calls on NAPA.

15 Q. Okay. And this document is on Abex  
16 letterhead?

17 A. It is.

18 Q. Would you agree with me that this is  
19 an Abex document?

20 A. No doubt.

21 Q. It was authored by an Abex employee?

22 A. Yes.

23 Q. And it's dated February 13, 1976,  
24 true?

1           A.   Yes.

2           MR. FLYNN:   Object.   Can I see the  
3   document again?

4           THE WITNESS:   Sure.

5           MR. FLYNN:   Just for the completeness  
6   of the record, I would lodge an objection.  
7   This may be on Abex letterhead.   The document  
8   was actually produced by Genuine Parts in a  
9   prior case called Novo.   It didn't actually  
10   come from Abex itself.

11          Q.   Do you know who Mr. Toby Moore is?

12          A.   Yes, I knew Mr. Moore.

13          Q.   Who -- has he passed?

14          A.   I don't know.   I lost touch with him,  
15   but he ultimately was -- I believe he carried  
16   the title of vice president of sales for  
17   Rayloc.

18          Q.   And how did you know Mr. Moore?

19          A.   He was a person that I would see  
20   regularly when I called on NAPA at their  
21   Atlanta office.   We also socialized a little  
22   bit, NASCAR races, that sort of thing.

23          Q.   This document is discussing a  
24   presentation about a disc brake and exchange

1 brake shoe presentation?

2 A. Yes.

3 Q. What is that?

4 A. I don't know the exact context in that  
5 particular point in time, but apparently there  
6 was some meeting coming up and NAPA had or  
7 NAPA/Rayloc/Genuine Parts asked us to  
8 participate in this NAPA presentation to  
9 explain something about disc brakes and an  
10 exchange brake shoe program, but this letter  
11 doesn't give me any more insight in terms of  
12 what it was they are really after.

13 Q. But this is an example of, again, the  
14 joint efforts of Abex and NAPA/Rayloc/Genuine  
15 Parts in the sale of Abex lined brake shoes?

16 A. Yes.

17 MR. FLYNN: Objection to form.

18 Q. And in the documents, the Abex  
19 employee describes its obligation -- this is in  
20 the second paragraph, the big paragraph. "We  
21 view our obligation as being limited to  
22 supplying Rayloc with a script and appropriate  
23 35-millimeter slides to cover the friction  
24 material part of the total presentation." Did

1 I read that correctly?

2 A. You did.

3 Q. And at this time in 1976, Abex is  
4 selling these brake linings to Genuine Parts,  
5 the Rayloc division at a pretty deep discount,  
6 aren't they?

7 MR. FLYNN: Objection to form.

8 A. I don't know how to answer your  
9 question. I mean, NAPA was a big enough  
10 customer where they would enjoy what I would  
11 consider to be kind of preferential pricing  
12 because of volume. But "deep discount," I  
13 can't really answer that.

14 Q. Well, the discount was -- the reason I  
15 say it's a deep discount is apparently Abex's  
16 prices to the Rayloc division of Genuine Parts  
17 were so low that Abex didn't want to print  
18 copies of the 35-millimeter slides and the  
19 script?

20 MR. FLYNN: Objection to form.

21 A. Well, that's your speculation.

22 MR. FLYNN: Foundation. Calls for  
23 speculation.

24 A. I'm sorry, that's your speculation. I

1 think that this is Lengele just trying to be a  
2 good Abex soldier saying, you know, we haven't  
3 had a price increase in a while, and, you know,  
4 I think that's really what he's trying to  
5 communicate here.

6 Q. Okay. And what we're both referring  
7 to the last paragraph, last sentence of the  
8 second paragraph which reads, "As you know, our  
9 material prices to Rayloc have no sales cost  
10 built into them and, therefore, the production  
11 of the presentation and cassette costs will be  
12 yours." Did I read that correctly?

13 A. You did.

14 Q. This document also indicates some  
15 cooperation between Abex and the Rayloc  
16 division of Genuine Parts for production of the  
17 NAPA catalog, true?

18 A. Yes.

19 Q. Okay. And that's what's discussed in  
20 this last paragraph, right?

21 A. Yeah. Basically, our guy Lengele is  
22 suggesting that they just do a supplement  
23 rather than a full printing of the catalog.

24 Q. And this discusses, I guess, NAPA or

1 Rayloc has a catalog committee?

2 A. Yes.

3 Q. And Abex also is involved in the  
4 approval of the catalog?

5 MR. FLYNN: Objection to form.

6 A. Well, not --

7 MR. FLYNN: Assumes facts.

8 A. -- necessarily approval of the  
9 catalog. Abex was responsible for providing  
10 content for the catalog. The catalog committee  
11 would have the final approval. Whether or not  
12 Abex had had a representative on the catalog  
13 committee, I couldn't say.

14 Q. So when these NAPA catalogs throughout  
15 the years, it's decades these catalogs included  
16 reference to American Brakeblok, true?

17 A. Yes.

18 MR. FLYNN: Objection to form.

19 Q. During the decades that these catalogs  
20 included reference to American Brakeblok  
21 linings, Abex was involved in the content of  
22 the catalogs, true?

23 MR. FLYNN: Objection to form.

24 Overbroad. Lack of foundation.

1 A. Yes.

2 Q. And because of counsel's objection,  
3 how do you know that Abex was involved in the  
4 content of these NAPA-branded catalogs that  
5 included reference to American Brakeblok brake  
6 linings?

7 MR. FLYNN: Objection. Lack of  
8 foundation. Overbroad.

9 A. From time to time, I actually would be  
10 called upon from an engineering point of view  
11 to discuss cataloging aspects, particularly as  
12 it might involve consolidation of part numbers.  
13 There might be two disc brakes that were  
14 essentially the same but carried two different  
15 FMSI numbers. So we would, you know,  
16 essentially run tests and do engineering  
17 calculations to prove to the catalog committee  
18 that the combination of two part numbers to one  
19 would be okay.

20 Q. And this collaboration in the  
21 NAPA-branded also American Brakeblok-branded  
22 catalogs went back decades?

23 MR. FLYNN: Objection to form.

24 A. Yeah. I mean, based on advertisements

1 and stuff that we reviewed today certainly.

2 Q. Back to the '40s probably?

3 MR. FLYNN: Objection to the form.

4 Calls for speculation.

5 A. '50s.

6 THE WITNESS: Do you want this?

7 Q. Abex linings on Rayloc brakes were  
8 distributed in NAPA jobber stores nationwide,  
9 true?

10 A. Yes.

11 Q. Prior to 1980, the majority of the  
12 brake linings sold to Rayloc were  
13 asbestos-containing?

14 A. Yes.

15 Q. I'll represent to you that the  
16 corporate representative of Genuine Parts  
17 Company recently testified that the first time  
18 they sold a nonasbestos brake shoe, so shoe  
19 with a nonasbestos brake lining, was in the mid  
20 1980s.

21 MR. FLYNN: Objection to form.

22 Q. Do you disagree with that?

23 MR. FLYNN: I apologize for  
24 interrupting you.



1 MR. JONES: That's okay.

2 MR. FLYNN: Objection to form.

3 A. I'm surprised by it.

4 Q. Why?

5 A. Because I know in the early '70s we  
6 supplied NAPA Rayloc with semimetallic brake  
7 shoe segments, and that was in, you know, like  
8 1972, '73 time frame. So, I mean, I presume  
9 they put them on brake shoes and sold them.

10 Q. If the corporate representative for  
11 Genuine Parts Company was correct -- now, let  
12 me back up. Are you talking about brake blocks  
13 for what type of application? Did you say  
14 block or lining?

15 A. Linings, passenger car.

16 Q. Linings. At that time I believe those  
17 were predominantly for the severe service  
18 vehicles?

19 A. Yes.

20 Q. Okay. So that wasn't for your general  
21 driving around cars?

22 A. No, it was not.

23 Q. That was for police cars, taxis,  
24 ambulances, that kind of thing?

1 A. That's right.

2 Q. Okay. Let's just say they missed  
3 that.

4 A. Okay.

5 Q. Would you agree with me that more  
6 likely than not all the other brake linings  
7 were asbestos?

8 MR. FLYNN: Objection to form. Lack  
9 of foundation. Calls for speculation.  
10 Incomplete hypothetical.

11 Q. Until the mid '80s?

12 MR. JONES: And same objections will  
13 apply.

14 MR. FLYNN: Same objections.

15 A. In the mid '80s, there were  
16 semimetallic products sold routinely for a lot  
17 of cars beyond the severe duty that were  
18 semimetallic. Also the beginning of that time  
19 frame was also when a fiberglass-reinforced  
20 brake lining was introduced and offered to NAPA  
21 so....

22 Q. You are aware that one of the reasons  
23 NAPA moved away from this long relationship  
24 with Abex is because Abex stopped selling

1 asbestos brakes?

2 MS. VELLUCCI: Objection to form.

3 A. I know that that certainly hurt our  
4 position at NAPA. I know that they weren't  
5 happy about our decision. They would just  
6 continue to supply asbestos. We told them we  
7 wouldn't, and they said, We're going to have to  
8 do what we have to do. And they went out and  
9 found other suppliers of asbestos-containing  
10 lining so they could continue.

11 Q. Okay. And Abex made NAPA aware of its  
12 products, brake lining products that didn't  
13 have asbestos before 1987, true?

14 A. Yes.

15 MS. VELLUCCI: Objection to form.

16 Q. And NAPA, Genuine Parts, Rayloc  
17 continued to buy the asbestos brake linings?

18 A. Well, they bought asbestos-free as  
19 well. They bought both.

20 Q. And when Abex stopped selling asbestos  
21 linings, NAPA, Genuine Parts, Rayloc went  
22 elsewhere to continue to sell asbestos linings?

23 A. That's right.

24 MS. VELLUCCI: Object to form.

1 Assumes facts.

2 Q. When Genuine Parts, the Rayloc  
3 division, found other sources for asbestos  
4 brake linings when Abex stopped selling those  
5 products, did Abex offer suitable nonasbestos  
6 replacement for those products?

7 MS. VELLUCCI: Object to form.

8 Assumes facts.

9 A. We believe we did, yes.

10 Q. So the Rayloc division of the Genuine  
11 Parts Company could have bought their brake  
12 linings from Abex in a nonasbestos version?

13 MS. VELLUCCI: Assumes facts. Calls  
14 for speculation.

15 A. That was our belief.

16 Q. And you've got personal knowledge they  
17 chose to continue to buy asbestos brakes  
18 elsewhere?

19 MS. VELLUCCI: Same objections.

20 A. Asbestos brake lining elsewhere, yes.

21 Q. And what is that personal knowledge?

22 A. I mean, I was told that's what they  
23 were going to do. I saw our sales decline with  
24 NAPA. When I talked to our sales guys about

1     what's going on, it was like, Well, they've  
2     enlisted the help of a whole bunch of other  
3     friction material suppliers to provide them  
4     with asbestos product.

5           Q.   I apologize.  I had something right  
6     here that I was going to use.  And even when  
7     it's under my nose I misplace it.

8           Toward the end of the '70s and into  
9     the '80s, NAPA's purchase of brake linings from  
10    Abex decreased?

11          A.   Say that again, please.

12          Q.   Starting in the late '70s, NAPA's  
13    purchase of brake linings from Abex decreased?

14          MR. FLYNN:  Objection to form.

15          MS. VELLUCCI:  Objection to form.

16          MR. FLYNN:  Assumes facts.

17          A.   I couldn't say.  I mean, you know, the  
18    sales relationship had a series of ups and  
19    downs, and I couldn't say specifically that in  
20    that time frame it declined.

21          Q.   Okay.

22          A.   It may have, but I just don't know for  
23    sure.

24          Q.   Did it decline as a result of Abex

1 phasing out asbestos linings and replacing  
2 those models with nonasbestos linings?

3 MS. VELLUCCI: Object to form. Calls  
4 for speculation. Lacks foundation.

5 A. I think that that happened in the  
6 latter part of mid '80s until the end of the  
7 '80s, but I also think that any sales declines  
8 generally were attributable to NAPA selling  
9 more and more second and third line where the  
10 American Brakeblok product was supposed to be  
11 their premium-only line.

12 Q. Can you go back to Exhibit 2, which, I  
13 hope, is toward the bottom of that. I hope  
14 it's in the pile.

15 A. I tried to keep it straight.

16 Q. There you go. We talked about this  
17 toward the beginning of your deposition.  
18 That's the October 1, 1979, letter from Mr. --

19 A. Iwarsson.

20 Q. -- Iwarsson at Abex to Mr. Jones at  
21 Genuine Parts Company.

22 A. That's right.

23 Q. And this was the one that has the  
24 number Abex is only supplying 46 percent of

1 Genuine Parts Company's friction material  
2 needs. Do you recall that?

3 A. I do.

4 Q. The vice president and general manager  
5 of Abex, Mr. Iwarsson --

6 A. Uh-huh.

7 Q. -- indicates in 1979 that this is a  
8 big difference from their historical sales,  
9 true?

10 A. Well, that's what's implied.

11 Q. He says, "The fact that we have  
12 drifted this far apart," and this is after the  
13 sentence with the 46 percent number, right?

14 A. Uh-huh. Yes.

15 Q. He says, "The fact that we have  
16 drifted this far apart is undoubtedly the  
17 result of a lack of attention." True?

18 A. He's saying yes. He's saying I accept  
19 responsibility for the decline rather than  
20 blaming the customer.

21 Q. This letter indicates that before 1979  
22 Abex was supplying a lot more brake linings?

23 A. It does say that.

24 MR. FLYNN: Objection to form.

1           A. It implies it was more than 46  
2 percent.

3           Q. And he's described it as drifting far  
4 apart, not drifting a little bit?

5           MR. FLYNN: Objection. The documents  
6 speak for itself.

7           A. He does use the word "far."

8           THE WITNESS: How about two seconds to  
9 get some housekeeping here?

10          MR. JONES: Yes. Thank you for doing  
11 that.

12          THE WITNESS: I'll send you the  
13 invoice.

14          MR. JONES: Please do.

15          THE WITNESS: That wasn't so bad.  
16 They're in pretty good shape.

17          MR. FLYNN: You kept them in order.

18          THE WITNESS: Thank you.

19          (Exhibit No. 12, File Search, Troy,  
20 Burr Ridge & FPD Winchester so marked)

21          Q. I'll show you what I'll mark as  
22 Exhibit 12 to the deposition.

23          A. This is a lot to digest. If you don't  
24 mind, just give me a minute.



1           MR. JONES: Let's go off the record  
2   for a second.

3           THE VIDEOGRAPHER: The time is 1:59  
4   p.m., and we are going off the record.

5           (Recess 1:59 p.m. to 2:03 p.m.)

6           THE VIDEOGRAPHER: The time is 2:03  
7   p.m., and we are back on the record.

8   BY MR. JONES:

9           Q. Did you have a chance to look over  
10   Exhibit 12?

11          A. I did briefly.

12          Q. What is Exhibit 12?

13          A. It appears to be excerpts of pages  
14   from an Abex strategic planning session.

15          Q. And you helped generate documents like  
16   this, true?

17          A. Yeah. Earlier in my career, I would  
18   be more a participant, and later in my career  
19   more of kind of the organizer of such  
20   documents.

21          Q. This is an Abex strategic plan summary  
22   or excerpt from Abex strategic plan summary?

23          A. Yes, sir.

24          Q. And this is an Abex document?

1           A. It appears to be.

2           Q. Authored by Abex employees?

3           A. Or perhaps a facilitator. Oftentimes  
4 we would bring an outsider in to help  
5 facilitate the strategic planning process so I  
6 can't remember if this was with a facilitator  
7 or done by ourselves.

8           Q. Abex was certainly involved in the  
9 content that went into this document?

10          A. Yes.

11          Q. Okay. Do you have any reason to  
12 dispute that this is an authentic copy of  
13 portions of the strategic plan summary?

14          A. Yeah. With the proviso that it's  
15 clear to me it's not a complete document.

16          Q. It starts at Roman numeral three?

17          A. Exactly.

18          Q. I believe you've been questioned about  
19 this document before?

20          A. I don't believe I have, frankly.

21          Q. Yeah, you were. That's all right.

22          A. Sorry. Can't remember it all.

23          Q. I read them all yesterday. It  
24 happened two years ago for you. At any rate,

1     what is a strategic plan summary?

2           A.   It's an opportunity to kind of step  
3     away from the day-to-day things we all deal  
4     with in our business and decide what changes  
5     are going on around us, what things we're doing  
6     right, what things we're doing wrong.  What are  
7     our customers' expectations?  Are we meeting  
8     them?

9           Are there really deep things that  
10    might be happening that could really have our  
11    business blow up?  And to address all of those  
12    things in a very kind of calm way from the  
13    day-to-day firefighting environment.  We'd  
14    usually go off-site for three to five days and  
15    get kind of the senior managers together and  
16    have a format that we followed to have people  
17    articulate really important issues to our  
18    business.

19          Q.   This document.  There's a date in --  
20    the document isn't dated, but there's a date in  
21    the document?

22          A.   Yes.

23          Q.   And I believe it's 1983?

24          A.   That's what I saw.

1           Q. Does that provide you the information  
2       you need to say what date the document was  
3       generated?

4           MR. FLYNN: Objection to form. Calls  
5       for speculation.

6           A. Not with certainty, but it was before  
7       '83, you know, probably done around '81 or '82,  
8       '83, in that time frame.

9           Q. Okay. At this time I believe you were  
10      the director of product engineering and  
11      development at Abex. Does that sound right?

12          A. '83. Let's see, where was I? Yeah.  
13      '83 director of product engineering and  
14      development.

15          Q. Would you be -- were you involved in  
16      this document?

17          A. I think I was a participant for  
18      portions of it, not necessarily the whole  
19      thing, but that's where, you know, the entire  
20      document would have a section talking about  
21      technology. And it would have a section  
22      talking about marketing, and it would have  
23      different sections. This seems to be kind of a  
24      boil-down summary, but I don't even think

1       that's complete.

2               I might have been brought in to talk  
3       about the technology portion of threats to our  
4       business. You know, would electric cars be  
5       coming into play and ultimately reduce the need  
6       for brakes? I mean, those were the kind of  
7       things that were discussed in this kind of  
8       study.

9               Q. Okay. If you look at under Roman  
10       numeral three, strategic plan summary for  
11       friction products division, passenger car. It  
12       says SBU. What is that?

13              A. Strategic business unit.

14              Q. That's the unit you worked in, true?

15              A. Well, I work for friction products  
16       division.

17              Q. Okay. Under business description,  
18       nature and scope, midway through it says, "We  
19       currently hold 9.9 percent of the total market  
20       with distribution to OEM and aftermarket  
21       outlets," and in parentheses it says, "NAPA  
22       jobbers and independent rebuilders." Did I  
23       read that correctly?

24              A. That's what it says.

1 Q. And of the NAPA jobbers that means  
2 aftermarket, true?

3 A. They'd be one element of the  
4 aftermarket. Independent rebuilders would be  
5 another.

6 Q. And NAPA jobbers, the NAPA stores,  
7 that's what that means, right?

8 A. Right.

9 Q. The NAPA stores were the biggest  
10 portion of Abex's aftermarket business, true?

11 A. I don't know that with certainty.  
12 Certainly, they'd be large. There might have  
13 been points in time when we had other  
14 aftermarket customers that were similar in  
15 size.

16 Q. As of the early 1980s, NAPA is the  
17 only aftermarket customer mentioned in this  
18 strategic business plan, true?

19 MR. FLYNN: Objection to form.

20 A. No, it says independent rebuilders  
21 which is a group of others.

22 Q. I'm sorry. NAPA is the only  
23 aftermarket customer mentioned by name in this  
24 early 1980s strategic plan summary?

1           MR. FLYNN:  Objection to form as to  
2   that page.

3           A.  And it's specific to that paragraph.  
4   I'm looking over this.  We see Bendix.  We see  
5   Raybestos.  We see Wagner.

6           Q.  That's the competition.  You're  
7   looking at the next paragraph which is an  
8   industry description?

9           A.  Yeah.  Wagner was similar to NAPA in  
10   many ways -- well, not similar to NAPA.  They  
11   were similar to Rayloc.

12          Q.  Yeah, but the nature and scope  
13   paragraph that mentions NAPA jobbers is talking  
14   about the people Abex sells to, true?

15          MR. FLYNN:  Objection to form.  
16   Assumes facts.  Calls for speculation as to who  
17   Abex ultimately sold to.

18          A.  Assuming that I'm correct that this  
19   was about a 1983 document, we were also selling  
20   to people like Wagner.

21          Q.  Okay.  And I'm not saying you weren't?

22          A.  Okay.

23          Q.  But my point is paragraph A, nature  
24   and scope is listing NAPA customers, true?

1 MR. FLYNN: Objection to form.

2 Assumes facts.

3 A. No, NAPA customers.

4 Q. NAPA business?

5 A. It lists NAPA.

6 Q. I messed that whole thing up. I'm  
7 sorry, I'm going to withdraw it.

8 A. I'm sorry.

9 Q. You're not asking the questions. I'm  
10 responsible for the goofy questions.

11 A. All right.

12 Q. Paragraph A describes Abex's market  
13 share, true?

14 A. Yes.

15 MR. FLYNN: Objection to form.

16 Q. And the only customer identified by  
17 name is NAPA, true?

18 A. Yes.

19 Q. The second paragraph, paragraph B,  
20 industry description, describes the other  
21 competitors in the industry, true?

22 A. Yes. Who at some points are also  
23 customers.

24 Q. Right, because you sold -- there was a



1 point in time where, I think, you actually sold  
2 linings to Bendix?

3 A. Yeah.

4 Q. Which they put in brakes?

5 A. That's right.

6 Q. I understand. But the reason they're  
7 listed in paragraph B here is because they're a  
8 competitor?

9 A. Okay.

10 MR. FLYNN: Object to form. I don't  
11 believe there was a question in there.

12 Q. Market served, paragraph C, mentions  
13 OEM customers at this time were primarily  
14 General Motors, Ford, Chrysler and AMC which is  
15 American Motors?

16 A. That's right.

17 Q. They make Jeeps; is that right?

18 A. Yeah. I think there was a time they  
19 actually dabbled with cars.

20 MR. FLYNN: I want to make sure we're  
21 clear on the record. If you could identify the  
22 Bates label for the page we've been talking  
23 about.

24 MR. JONES: We've been looking at the

1 whole -- the Bates label is W&K (2.20.2013),  
2 and then the page number is 020710.

3 MR. FLYNN: Thank you.

4 Q. That's all I want to ask you about  
5 this for now, but we're going to come back to  
6 it.

7 A. I'll keep it handy.

8 Q. Very good. We've seen catalogs from  
9 NAPA that included American Brakeblok, true?

10 A. Yes.

11 Q. We've seen advertisements that  
12 included the name American Brakeblok, true?

13 A. Yes.

14 Q. We've seen one of the advertisements  
15 had a picture of a NAPA box that included the  
16 name American Brakeblok, true?

17 A. Yes, sir.

18 Q. And you would agree with me that in  
19 your experience, the name American Brakeblok  
20 was included with NAPA advertisements, true?

21 A. Yes.

22 Q. Catalogs, true?

23 A. Yes.

24 Q. And on boxes, product boxes?

1 A. Yes.

2 Q. Okay. American Brakeblok, as we  
3 discussed before, was a trademark of Abex?

4 A. That's right.

5 Q. When you started in 1970, did Abex  
6 have a legal department?

7 A. At the corporate headquarters it did.

8 Q. And American Brakeblok was Abex's  
9 intellectual property?

10 A. It was one of your trademarks and,  
11 yes, it would have been part of our IP.

12 Q. And in many of the advertisements,  
13 we've seen Abex promote its friction products  
14 as superior for the competition; is that true?

15 A. The American Brakeblok brand is often  
16 sold on the concept of it being the premium  
17 product.

18 Q. Was it better than the competition?

19 A. I believe it was equal to or exceeded  
20 any competitive product.

21 Q. And for the business, you ran the  
22 business for several years, right?

23 A. We did.

24 Q. Would you agree with me that in

1 business it's important to protect your good  
2 name?

3 MR. FLYNN: Objection to form.

4 A. Absolutely.

5 Q. Why?

6 MR. FLYNN: Same objection.

7 A. I mean, it's just like, you know,  
8 people buying knockoff, you know, designer  
9 stuff. I mean, you know, you want to preserve  
10 the perception of the quality of your product,  
11 and that's principally it.

12 Q. If somebody bought a brake they  
13 thought was an Abex brake, and it was a cheapo  
14 knockoff brake, what would they think about  
15 Abex?

16 MR. FLYNN: Objection to form.

17 A. Abex didn't make brakes. Sorry. It's  
18 a distinction.

19 Q. I'll withdraw the question. And thank  
20 you for clarification.

21 If someone bought a brake shoe branded  
22 as having an Abex brake lining, and it, in  
23 fact, had a cheapo knockoff brake lining, it  
24 didn't perform the way it was supposed to

1 perform, how would that reflect on Abex?

2 MR. FLYNN: Objection to form.

3 A. Many possibilities. I mean,  
4 dissatisfied customer at the minimum and more  
5 extreme side perhaps an accident.

6 Q. And certainly if there was very much  
7 of that, that would affect Abex's business as a  
8 whole?

9 A. That's right.

10 Q. Abex did not want people selling  
11 brakes -- strike that.

12 Abex did not want people selling brake  
13 shoes under the name American Brakeblok linings  
14 when they were not American Brakeblok linings?

15 A. That's true.

16 Q. And if Abex found out that was going  
17 on, they would stop it?

18 A. And we ran into instances like that.

19 Q. And Abex took action to stop it?

20 A. We tried our best to do that, yes.

21 Q. Abex had lawyers to stop it?

22 MR. FLYNN: Objection to form.

23 A. Yes, we had a legal team.

24 Q. And that legal team's job was to

1 protect Abex's good name in the form of  
2 protecting its trademarks, true?

3 MR. FLYNN: Objection to form.

4 A. I would say that that is kind of the  
5 corporate mantra for that, but, generally, my  
6 experience was that issues like that,  
7 particularly when it involved a customer of  
8 substance, was generally tried to be worked out  
9 by the businessmen and not the lawyers and  
10 avoid litigation.

11 Q. Certainly, you wouldn't let somebody  
12 regularly sell brakes under the American  
13 Brakeblok name if they weren't American  
14 Brakeblok linings?

15 A. Correct.

16 MR. FLYNN: Objection to form.

17 Q. Would you agree with me that if Ken  
18 Reed, senior regularly worked with Rayloc drum  
19 brake shoes from 1966 to 1975 for passenger  
20 cars, it is more likely than not that some of  
21 those brake linings were manufactured by Abex?

22 MR. FLYNN: Objection to form. Lack  
23 of foundation. Incomplete hypothetical.

24 A. If it were Rayloc, there is a good

1 chance that some of those brake linings would  
2 have been manufactured by Abex.

3 Q. More likely than not?

4 MR. FLYNN: Objection to form. Same  
5 objections.

6 A. I gave you my answer. I think it's  
7 likely that they would be.

8 Q. And assume with me that Ken Reed,  
9 senior is a professional mechanic. That's what  
10 he does for a living.

11 A. Okay.

12 Q. And assume with me that the NAPA  
13 jobber is within a block of the auto shop where  
14 Ken Reed, senior works at.

15 A. Uh-huh.

16 Q. Okay? Are you with me?

17 A. Yes.

18 Q. Assume with me that from 1966 to 1975  
19 Ken Reed, senior -- pardon me -- the father is  
20 Ken Reed, junior?

21 MR. BERQUIST: Right.

22 Q. I'm -- when I say Ken Reed, the older,  
23 he's actually Ken, junior.

24 MR. FLYNN: Same objections.

1           Q. Assume with me that my client Ken  
2       Reed's father, Ken Reed, junior, worked  
3       regularly with NAPA Rayloc drum brake shoes  
4       from 1966 to 1975. Given those facts, would  
5       you agree with me that more likely than not he  
6       worked with Abex brake linings?

7           MR. FLYNN: Objection to form. Lack  
8       of foundation. Incomplete hypothetical.

9           A. I would say that it's likely that he  
10      came in contact with some Abex product.

11          Q. Thank you.

12          MR. JONES: Let's go off the record  
13      and take a quick break.

14          THE WITNESS: Okay.

15          THE VIDEOGRAPHER: The time is 2:20  
16      p.m., and we are going off the record.

17          (Recess 2:20 p.m. to 2:38 p.m.)

18          THE VIDEOGRAPHER: The time is 2:39  
19      p.m. We are back on the record.

20      BY MR. JONES:

21          Q. I want to talk to you a little bit  
22      about Abex's sales other than those to the  
23      Rayloc division of Genuine Parts Company?

24          A. Okay.



1           Q. Abex sold brake blocks, which are the  
2 big brake linings on heavy trucks, right?

3           A. Correct.

4           Q. Those are the brake linings you might  
5 find on like an 18-wheeler?

6           A. Yes.

7           Q. According to the strategic planning  
8 document --

9           A. I have the exhibit. I got a copy, I  
10 think.

11          Q. I've got it right here. According to  
12 the strategic planning document, in the early  
13 '80s Abex described itself -- described itself  
14 as dominant in the heavy truck market. Does  
15 that sound right?

16          MR. FLYNN: Object to form. Can you  
17 point to the Bates-labeled page to look at?

18          A. That's what I'm trying to head to it  
19 here.

20          Q. Bates-labeled page 020718. Let me --  
21 go ahead.

22          A. If you know what the word "dominant"  
23 is, I'll be happy to take your lead.

24          Q. Let me ask you the question: Based on

1 your experience as an employee, an executive at  
2 Abex in the early 1980s, would you agree that  
3 Abex was dominant in the heavy-duty brake  
4 lining market?

5 MR. FLYNN: Objection to form.

6 A. I mean, you know, just looking at this  
7 as a benchmark, it says we had 60 percent -- 61  
8 percent of the OE market and 27 percent of the  
9 aftermarket so there was somebody more than  
10 dominant than us in the aftermarket.

11 Q. It says, "Abex friction products  
12 division is the nation's largest supplier of  
13 friction materials to the heavy duty market."  
14 Did I read that correctly?

15 A. Yes, it does say that.

16 Q. "We currently have 61 percent of the  
17 original equipment market through axle and  
18 trailer manufacturers and 27 percent of the  
19 aftermarket." Did I read that correctly?

20 A. Yes.

21 Q. Now, can you explain to me, why does  
22 this mention sales to axle manufacturers in  
23 relation to original equipment sales?

24 A. There's more than one way brakes get

1 on new trucks. And in the case of trailers,  
2 that back part of the 18-wheeler, oftentimes  
3 trailers are viewed as very commodity, low-cost  
4 types of vehicles. And it's not uncommon for  
5 trailer manufacturers to put out for bid the  
6 axle business or the axles. So companies like  
7 Rockwell and Eaton, who were two of the biggest  
8 or were the biggest axle guys in the United  
9 States made trailer axles, which was just a  
10 tube of metal with two brakes on the end, and  
11 sold them at very, very competitive prices.

12 So, consequently, Abex would have to  
13 try to maintain a relationship and sell to  
14 people like Rockwell and Eaton because they  
15 would be selling axles to trailer  
16 manufacturers. They'd also be selling just the  
17 brake to the drive axle guys who would be  
18 companies like Ford or General Motors or Volvo  
19 or whoever.

20 Q. If Abex's brake linings were going to  
21 find their way on to a brand-new Peterbilt  
22 tractor trailer or Kenworth tractor trailer,  
23 Abex would have to sell those linings to the  
24 axle manufacturers Eaton or Rockwell that would

1       then incorporate those linings into the brakes  
2       which was incorporated into the axle which was  
3       sold to the truck manufacturers?

4           A.   Logical but inaccurate.

5           Q.   Okay.

6           A.   It's -- it really is a very convoluted  
7       circumstance.  You asked -- your first  
8       question, you dealt with axles.  I tried to  
9       answer that to the best of my ability.

10          Q.   Okay.

11          A.   When we are talking about drive axles  
12       like Peterbilt, this is a power unit, the front  
13       end of the 18-wheeler, there's a whole bunch of  
14       stuff going on.  Rockwell is in there trying to  
15       sell a package, a whole foundation brake  
16       complete with lining, and they would love to  
17       choose whose lining it is, but they'd like to  
18       keep their costs under control.  For a long  
19       time Rockwell was very successful.  What we  
20       found was that we had the ability to influence  
21       people like Peterbilt to say, Gee, we really  
22       prefer Abex lining and, Rockwell, we like your  
23       proposal, but we want Abex lining on there.

24          Q.   Instead of the competitor's?

1 A. Right.

2 Q. Okay. So the ultimate customer like  
3 Peterbilt could say -- could order the Rockwell  
4 lining but pick their --

5 A. Rockwell brake.

6 Q. Order the Rockwell axle with brake  
7 assembly and pick their lining manufacturer?

8 A. They could order the Rockwell brake.  
9 In the case of the drive part of the vehicle,  
10 they often don't buy axles. They just buy a  
11 brake.

12 Q. Okay. From --

13 A. From Rockwell or Eaton or Kelsey-Hayes  
14 or something like that.

15 Q. Abex sold brake blocks, which are the  
16 big brake linings, to Rockwell?

17 A. Yes.

18 Q. To Eaton?

19 A. Yes.

20 MR. FLYNN: Objection to form.

21 Q. And to Freuhauf?

22 MR. FLYNN: Objection to form.

23 A. Yes.

24 Q. During what years did Abex sell brake

1 blocks to Rockwell?

2 A. Certainly during my tenure there. I  
3 mean, it certainly predated it, but I don't  
4 know when the relationship started.

5 Q. From 1970 until 1993, '94?

6 A. Yeah.

7 Q. And before?

8 A. Right.

9 Q. That was an ongoing business when you  
10 arrived?

11 A. That's right.

12 Q. What about Eaton?

13 A. Eaton came in a little bit later. We  
14 did a little bit of business with Eaton when I  
15 first arrived on the scene, but our business  
16 with Eaton grew as Eaton was able to penetrate  
17 principally the trailer axle business that  
18 Rockwell had enjoyed for a long time.

19 Q. How about Freuhauf?

20 A. Freuhauf was an account we chased for  
21 many, many, many years. We finally got it in  
22 the late '70s for a very short period of time,  
23 and we had some quality problems with regard to  
24 the holes not lining up, and we got bounced as

1       quick as we got in. So we had some Freuhauf  
2       business, but it didn't last very long.

3           Q. Okay. If you go to the "industry  
4       description," paragraph B in the middle?

5           A. Yes.

6           Q. It mentions that the principal OEM  
7       customers are Rockwell, Eaton, and Freuhauf we  
8       discussed. Those are the axle --

9           A. Or brake manufacturers.

10          Q. -- or brake manufacturers?

11          A. Right.

12          Q. And when we say "brake manufacturer,"  
13       we mean the brake assembly including the brake  
14       shoe and lining --

15          A. Yes.

16          Q. -- for a drum brake?

17          A. Yes.

18          Q. If you look at the bottom of that  
19       paragraph, it says, "Abex is the most well  
20       respected product name in the aftermarket."  
21       Did I read that correctly?

22          A. Yes.

23          Q. Was that your opinion when you were  
24       working there?

1           A. Yeah. And it really -- it cites here  
2       this federal motor vehicle safety standard.  
3       When the government published its first motor  
4       vehicle safety standard for air brake vehicles,  
5       it required higher performing lining, and Abex  
6       was the only company that came up with it for a  
7       long time.

8           Q. Can you go to page 020720?

9           A. 0720?

10          Q. Yes.

11          A. Okay.

12          Q. It's Roman numeral two, "analysis"?

13          A. Got it.

14          Q. Paragraph B it says, "business  
15       strength factor."

16          A. Yes.

17          Q. And then it's got strategic  
18       characteristics either high, medium or low?

19          A. Right.

20          Q. Under "relative market share," it says  
21       "high"; is that correct?

22          A. Yes.

23          Q. It says, "High Abex dominance with 61  
24       percent of the original equipment market share



1 and 27 percent aftermarket. Overall Abex share  
2 is 32 percent." Did I read that correctly?

3 A. Yes. Correct.

4 Q. That's where I found that Abex  
5 described itself as being dominant in the heavy  
6 truck market.

7 A. Okay, that's fine.

8 Q. Okay. If you go to "product  
9 differentiation, breadth of line," it says,  
10 "Abex is unquestioned leader in breadth of  
11 application availability." Did I read that  
12 correctly?

13 A. Yes.

14 Q. What does that mean?

15 A. That some of our competitors basically  
16 made two or three part numbers and would try to  
17 cherry-pick the popular part numbers. Abex had  
18 essentially a part number to fit, I would say,  
19 every, but most tractor trailer and straight  
20 truck application.

21 Q. Virtually every?

22 A. Virtually every.

23 Q. Under "buyer concentration," it says,  
24 "We dominate industry." And then in

1       parentheses it says, "Abex has 231 heavy duty  
2       distributors." Did I read that correctly?

3           A. You did.

4           Q. And then if you look under  
5       "distribution," it says, "high." "Abex is the  
6       unquestioned leader with outlets through OES."  
7       What does that mean?

8           A. Original equipment service. That  
9       would be aftermarket parts sold through the  
10      original equipment dealer.

11          Q. Okay. "Abex is the unquestioned  
12      leader with outlets through original equipment  
13      service independent distributors, fleets and  
14      specialty customers." Did I read that  
15      correctly?

16          A. You did.

17          Q. So original equipment service means if  
18      the tractor or trailer originally came with an  
19      Abex lining, you could go to the tractor or  
20      trailer manufacturer and get a replacement Abex  
21      lining?

22           MR. FLYNN: Objection to form.

23          A. It doesn't really mean that. It  
24      really means that if it's a Peterbilt tractor

1 and you bring it to a Peterbilt dealer, you're  
2 going to get a Peterbilt part which may or may  
3 not have Abex lining on it.

4 Q. Okay.

5 A. So original equipment service, the  
6 concept is you're bringing -- it's like your  
7 personal car where you're bringing it back to  
8 the dealer for service.

9 Q. But if you dominate the original  
10 equipment market for someone that goes back to  
11 get original equipment replacement parts, if  
12 they got Abex the first time, they're probably  
13 going to get Abex the next time?

14 MR. FLYNN: Objection to form. Calls  
15 for speculation. Lack of foundation.

16 A. Not necessarily. Oftentimes original  
17 equipment guys will use somebody else's product  
18 on the aftermarket side as a way to try them  
19 out before they gave them carte blanche  
20 approval for original equipment.

21 Q. At any rate, Abex's opinion of itself  
22 based on its distribution through original  
23 equipment services, independent distributors,  
24 fleets and specialty customers were that Abex

1 was the unquestioned leader in the heavy-duty  
2 brake block market?

3 MR. FLYNN: Objection to form.

4 A. I don't dispute that. I mean, we were  
5 the first ones to come up with something that  
6 met the motor vehicle safety standard. We were  
7 the first ones to introduce an asbestos-free  
8 product. Even by this time, I'm sure a lot of  
9 other success was because we had an  
10 asbestos-free product available for these  
11 applications.

12 Q. Abex had an ongoing relationship with  
13 Freightliner?

14 MR. FLYNN: Objection to form. Vague  
15 and ambiguous as to "relationship."

16 A. We did sell them. They were a  
17 customer.

18 Q. For how long?

19 A. I don't know.

20 Q. The whole time you were at Abex?

21 A. No.

22 MR. FLYNN: Objection to form.

23 Q. Only a portion?

24 A. Only a portion.

1 Q. Do you know what portion?

2 A. I don't, not offhand.

3 Q. Ongoing -- Abex also had an ongoing  
4 relationship with Great Dane?

5 MR. FLYNN: Objection to form as to  
6 the term "relationship."

7 A. We sold Great Dane some lining. When  
8 I say that, I mean it may have been in the form  
9 of selling it to Rockwell or Eaton who put it  
10 on a Great Dane trailer. Some of that whole  
11 specifying thing could be Great Dane saying,  
12 Eaton, we love your new trailer axle. We want  
13 some Abex lining on it. So Eaton gets to be  
14 the customer; that's who we sell and invoice;  
15 that's who pays for the brake lining, but  
16 ultimately it winds up on a Great Dane trailer.

17 Q. What confuses me is when I look at the  
18 Abex strategic planning documents, it describes  
19 Abex as dominant, and unquestioned leader. And  
20 when I ask you about individual manufacturers,  
21 you tell me we sold some. We sold a little.  
22 We sold a few years. You sold a lot of --

23 A. And I was just trying --

24 Q. -- heavy-duty brakes, right?

1           MR. FLYNN: Hold on. The question  
2 wasn't finished. You can't answer until the  
3 question is done. I'm going to make my  
4 objection. The objection is argumentative.  
5 Assumes facts. Compound.

6           A. I attempted to explain to you that the  
7 reason for that is that Rockwell and Eaton,  
8 when you said who was Abex's biggest customers?  
9 It was Rockwell and Eaton. That's who ordered  
10 the lining, that's who we shipped the lining  
11 to, that's who paid for most of it. It may be  
12 as a result of Great Dane saying, We want Abex  
13 lining on our trailer axle. So there may not  
14 be a lot of sale directly to Great Dane. Yet  
15 there could be a lot of Abex brake lining on  
16 trailers.

17          Q. Thank you for that clarification.

18                So Abex's dominance in the axle and  
19 heavy-duty truck brake manufacturing business  
20 put their brake linings on a lot of different  
21 trucks and trailers even when Abex didn't sell  
22 directly to the truck and trailer manufacturer?

23           MR. FLYNN: Objection. Lack of  
24 foundation. Lack of specified time period.

1 Overbroad.

2 A. That's nominally how Abex went to  
3 market, principally through heavy-duty axle and  
4 brake guys.

5 Q. Abex sold to International Harvester?

6 A. It did.

7 MR. FLYNN: Objection to form.

8 Q. To Navistar?

9 MR. FLYNN: Objection to form.

10 A. Which is the same as International  
11 Harvester.

12 Q. Okay. Abex sold brake blocks to Mack  
13 Trucks in the '70s and '80s?

14 MR. FLYNN: Objection to form.

15 A. '70s, yes. We lost most of Mack  
16 business.

17 Q. In the '80s?

18 A. Latter part of the '70s, early '80s.

19 Q. Okay. Kenworth and Peterbilt were  
20 customers of Abex by virtue of being original  
21 equipment truck manufacturers to which Abex  
22 would supply brake lining to Rockwell and Eaton  
23 who, in turn, supplied those brake systems or  
24 axles to Kenworth or Peterbilt?

1           MR. FLYNN:  Objection to form.  Lack  
2   of foundation.

3           PHONE COUNSEL:  Objection to form.

4           A.  That's right.

5           MR. JONES:  Is the form objection to  
6   compound?  If it is, I'll break it up.  If it's  
7   not, I'll move on.

8           MR. FLYNN:  It's not.

9           MR. JONES:  For Abex it's not.  
10   Somebody on the phone objected to form.  Is  
11   that compound?

12          PHONE COUNSEL:  Yes, it is.

13          MR. JONES:  Do you want me to break it  
14   up?

15          PHONE COUNSEL:  If you can, please do.  
16   Thank you.

17          MR. JONES:  Sure can.

18   BY MR. JONES:

19          Q.  Kenworth was a customer of Abex by  
20   virtue of being an original equipment truck  
21   manufacturer to which Abex supplied brake  
22   linings to the axle manufacturers Rockwell and  
23   Eaton?

24          MR. FLYNN:  Objection to form.  Lack



1 of specificity. Overbroad.

2 A. Actually to the brake manufacturer,  
3 again, those guys wouldn't be buying axles  
4 generally.

5 Q. Okay. So just to clarify, Kenworth  
6 would be a customer of Abex by virtue of it  
7 being an original equipment truck manufacturer  
8 to which Abex would supply the brake lining to  
9 the break manufacturers which were Eaton and  
10 Rockwell?

11 MR. FLYNN: Objection. Lack of  
12 foundation. Overbroad. Lack of specificity.

13 A. Yes.

14 Q. If I ask the same question about  
15 Peterbilt, what would your answer be?

16 MR. FLYNN: Same objections.

17 A. Same answer.

18 Q. And how do you know that Abex linings  
19 were on Kenworth and Peterbilt trucks by virtue  
20 of Abex's sale of linings to the brake  
21 manufacturers Rockwell and Eaton?

22 MR. FLYNN: Same objections.

23 A. Just, you know, being at Abex and  
24 knowing sitting through meetings and reading

1 reports and hearing sales guys talk about our  
2 success in getting specified at Kenworth or  
3 Peterbilt or whoever. That doesn't mean that  
4 we had their business exclusively, but that we  
5 had some portion of their business.

6 Q. The brake manufacturers Rockwell and  
7 Eaton were both significant customers of Abex?

8 MR. FLYNN: Objection to form.

9 A. Yes.

10 Q. During what years?

11 A. Rockwell from essentially when I got  
12 there. I know we did business with them before  
13 that. I can't tell you when it started.  
14 Rockwell business grew as a result of us  
15 meeting 121 safety standard and also  
16 introducing asbestos-free product. Eaton came  
17 on a little later as they were successful in  
18 taking some market share on trailer axles away  
19 from Rockwell, and I'd say that was latter part  
20 of the '70s or early '80s.

21 Q. Okay. My understanding, and you can  
22 correct me if I'm wrong, but it took longer for  
23 nonasbestos brake blocks to penetrate the  
24 heavy-duty market than it did the passenger car

1 market; is that true?

2 A. No, contrary. Heavy duty actually  
3 started much faster than passenger cars did.

4 Q. When was Abex completely asbestos-free  
5 in heavy-duty applications?

6 A. Not until the end of '87. I mean,  
7 that's what happened was if I could draw you a  
8 picture of a graph, you know, we went from,  
9 let's say, nominally 1 percent asbestos-free  
10 and it grew and grew and grew, and then we kind  
11 of hit a plateau 90 percentile, and that was  
12 maybe in the '85 time frame. And then we  
13 realized that if we didn't take a stand, we'd  
14 probably be at 90 percentile forever. So  
15 that's when it was decided, hey, we're just  
16 going to set a somewhat arbitrary date; end of  
17 '87 we're not going to make any more asbestos  
18 product.

19 Q. You were a little scared that was  
20 going to cost you business?

21 A. We knew it would.

22 MR. FLYNN: Objection to form.

23 Q. It cost you business with NAPA, for  
24 example?

1           A.  It did.

2           Q.  But it turned out there was a big  
3 market for nonasbestos around the time Abex  
4 made the switch?

5           A.  Well, yeah, but the market didn't get  
6 bigger because of our decision to go out of it.  
7 The year we went out of it we lost revenue.

8           Q.  But Abex also got a foothold in the  
9 original equipment market which it previously,  
10 for passenger trucks or passenger vehicles,  
11 didn't have a big market share?

12          A.  But that was already in place.  That  
13 happened in the more like the mid '80s we got  
14 onto a lot of Ford light trucks.

15          Q.  Ford Ranger?

16          A.  Ranger and F-150.

17          Q.  Those were all nonasbestos?

18          A.  Those are all nonasbestos.

19          Q.  Nonasbestos?

20          A.  Nonasbestos, from an OE passenger car  
21 or light truck standpoint, starting for Abex in  
22 the very late '70s with the Dodge Omni Horizon  
23 and Chrysler product and the Volkswagen Rabbit.

24          Q.  Abex sold replacement brake blocks to

1 Freightliner?

2 MR. FLYNN: Objection to form. Asked  
3 and answered.

4 MR. JONES: I did. I'll withdraw.

5 Q. Abex sold replacement brake blocks  
6 directly to Peterbilt?

7 A. I believe so.

8 MR. FLYNN: Objection to form. Asked  
9 and answered.

10 MR. JONES: I think I missed that one.

11 Q. Abex sold brake blocks directly to  
12 Kenworth?

13 MR. FLYNN: Objection. Asked and  
14 answered.

15 PHONE COUNSEL: Objection.

16 A. I believe we did.

17 Q. For --

18 A. Are you done with this?

19 Q. I am. Abex also sold heavy-duty brake  
20 blocks through NAPA jobber locations?

21 MR. FLYNN: Objection to form.

22 A. We sold them to Rayloc/Genuine Parts  
23 who would put them into the NAPA distribution  
24 system and then ultimately into NAPA jobbers.

1 Q. Okay. And American Brakeblok  
2 advertised that customers seeking heavy-duty  
3 American Brakeblok brake linings could get them  
4 at NAPA jobber stores, true?

5 MS. VELLUCCI: Objection to form.

6 A. It did advertise that.

7 Q. During what years did it advertise  
8 that?

9 A. I don't know. We had some examples  
10 here today, so I don't dispute those dates.

11 Q. In the '70s while you were there?

12 A. Perhaps in the early '70s. NAPA had  
13 an interesting thing going on with heavy duty.  
14 There were kind of like periods of time where  
15 they really thought that was a big growth  
16 vehicle for them, and they really pushed it.  
17 Other times where it weaned, so I don't  
18 remember doing a whole lot of advertising with  
19 NAPA on heavy duty in the latter part of the  
20 '70s or '80s.

21 Q. Okay.

22 A. There may have been some, but it  
23 wasn't substantive.

24 Q. Who were Abex's original equipment

1 customers for passenger cars and light trucks  
2 for asbestos brake linings?

3 MR. FLYNN: Objection to form. Lack  
4 of specificity. Overbroad. Lacks time frame.

5 A. I got to think this one through.

6 Q. I've read some of your testimony.  
7 I'll throw some at you, and you can let me know  
8 if you recall that?

9 A. Fair enough.

10 Q. Ford, Lincoln and Mercury, not the  
11 passenger cars, light trucks, but medium trucks  
12 and straight bus chassis?

13 MR. FLYNN: Objection to form.

14 A. I would accept your definition except  
15 it wouldn't have been Ford, Lincoln and  
16 Mercury. It would have been just Ford.

17 Q. Just Ford because that's a heavy  
18 truck?

19 A. Yeah.

20 Q. And I didn't say, you sold to Ford for  
21 heavy truck also?

22 A. Yes.

23 MR. FLYNN: Same objection.

24 Q. Some Chrysler models?

1 A. Yes.

2 MR. FLYNN: Objection to form. Vague.

3 Q. Some General Motors models, and I  
4 believe that was Chevrolet light truck and  
5 Cadillacs, some model of Cadillac?

6 MR. FLYNN: Objection to form.  
7 Compound. Vague.

8 MR. JONES: There were like three  
9 compounds within the compound question  
10 technically. I'm going to withdraw all the  
11 compound portions of the question.

12 Q. Abex sold asbestos linings for  
13 original equipment General Motors vehicles?

14 MR. FLYNN: Objection to form. Vague.  
15 Ambiguous. Overbroad.

16 A. For Chevrolet and GMC, I think it was  
17 three-quarter ton pickup trucks and certain  
18 select Cadillac models.

19 Q. During what years?

20 A. I think it predated me, and I know  
21 that through the '70s we supplied Cadillac and  
22 the Chevy GMC truck.

23 Q. Have you heard of a clutch  
24 manufacturer called Lipe, L-I-P-E?



1           A. I have.

2           Q. And how are you familiar with Lipe  
3 clutches?

4           A. I don't think it really had anything  
5 to do with my Abex working knowledge. Lipe was  
6 a company that manufactured clutches that I may  
7 have come in contact with in my shade tree kind  
8 of work. Lipe Rollway was the term that I  
9 remembered.

10          Q. Okay. We're going to get  
11 technological.

12          A. Are you going to beam me some data?

13          Q. That's a flashlight. We're eventually  
14 going to get technological. I only have one  
15 copy so I'm going to take a picture of what I  
16 need to ask you about. Maybe I'll get in a  
17 phone commercial.

18                 Let me show you what I'll -- let me  
19 ask you this: Do you know whether or not Abex  
20 supplied clutch disc facings to Lipe?

21          A. I don't believe --

22                 MR. FLYNN: Objection to form.

23          A. -- we ever made any  
24 asbestos-containing clutch discs.

1           Q.   Okay.  Let me show you what we'll mark  
2   as Exhibit 13.  I'm only going to ask you about  
3   one answer and I've marked it.

4           A.   Okay.

5                   (Exhibit No. 13, Lipe Rollway's  
6   Objections and Answers to Plaintiffs' Master  
7   Interrogatories and Request for Production of  
8   Documents so marked)

9           MR. FLYNN:  I'm going to object to the  
10   use of this document.  It's not authenticated.  
11   There is no verification by anyone from Lipe as  
12   to the responses themselves.  They're hearsay.  
13   They're not admissible, and I object to the use  
14   of this document with this witness.  I move to  
15   strike any questions related to this document  
16   on those grounds.  You can proceed if you want  
17   to.

18          MR. JONES:  I am.  I'm waiting for him  
19   to get done.

20          A.   I am.

21          MR. FLYNN:  Which number are you on?

22          MR. JONES:  I'm not saying I agree or  
23   disagree agree with those objections.

24          MR. FLYNN:  Page 17 or answer 17?

1 A. Page 17.

2 MR. JONES: It's just there was an  
3 orange mark. You've got it.

4 MR. FLYNN: What is the interrogatory?

5 THE WITNESS: Interrogatory No. 8, I  
6 believe, titled "asbestos/rebranding."

7 MR. FLYNN: Thank you.

8 Q. I'm just going to ask you the portion  
9 that's toward the bottom of the page, the last  
10 two paragraphs discusses a five-year period in  
11 the '50s and then from '77 to '85.

12 A. Okay.

13 MR. FLYNN: Can I see a copy of what  
14 you're looking at, Mr. Indelicato, please.

15 THE WITNESS: Sure.

16 MR. FLYNN: It doesn't really match up  
17 with what I have. Just a second.

18 THE WITNESS: I think we need more  
19 chocolate, Darlene.

20 MR. JONES: I think that's the last  
21 one.

22 MR. FLYNN: I apologize. I just need  
23 to look at the document and do the same thing  
24 you're doing on your phone.

1 MR. JONES: What's that?

2 MR. FLYNN: I had to do the same thing  
3 you did.

4 A. Okay. Where we going?

5 Q. This is -- you're familiar with what  
6 interrogatories are?

7 A. Yeah.

8 Q. And, in fact, part of your job is to  
9 respond to interrogatories in litigation?

10 A. That's right.

11 Q. Interrogatories are where one party in  
12 a lawsuit asks questions of the other party,  
13 and then the other party answers them?

14 A. Correct.

15 Q. Right? And these are questions of  
16 Lipe clutches?

17 A. Okay.

18 Q. You saw that from the title?

19 A. I did.

20 Q. And then Lipe clutches is asked a  
21 question about their sale of asbestos clutches;  
22 is that generally true?

23 A. Yes.

24 Q. And Lipe identifies the suppliers of

1       its asbestos disc material, true?

2           A.   Yes.

3           MR. FLYNN:   Make the same objections I

4       made before as to lack of foundation.

5           MR. JONES:   Running objection.

6           MR. FLYNN:   Thank you.

7       BY MR. JONES:

8           Q.   It says during from -- where did we  
9       go?  It says that there's a five-year period  
10      sometime in the 1950s during which Abex,  
11      Columbus, Ohio, was Lipe's primary supplier of  
12      disc facings.  Did you see that?

13          A.   I did, but the problem is Abex didn't  
14      have a friction material business in Columbus,  
15      Ohio, ever.  We had a hydraulics business there  
16      but never an asbestos or friction material  
17      business.

18          Q.   And then at the bottom you see where  
19      it says from 1977 to 1985 when Lipe ceased  
20      manufacturing clutches, Abex supplied 90  
21      percent of Lipe's clutch disc facings?

22          A.   Well --

23          MR. FLYNN:   Same objection.

24          A.   -- between '77 and '85, I lived in

1 Winchester, Virginia. I was in the factory  
2 every day. I was in engineering, quality  
3 assurance, engineering and ultimately the  
4 general manager and president. I can tell you  
5 I never saw an asbestos clutch facing made in  
6 Winchester during that period of time.

7 Q. Were there any other Abex facilities  
8 that produced friction material other than  
9 Winchester --

10 A. Well, Salisbury.

11 Q. -- and Salisbury during that time  
12 period?

13 A. That was it.

14 Q. Let me ask you some more questions  
15 about asbestos brakes.

16 A. Do you have a clip for this?

17 Q. Kind of. Before 1980 the vast  
18 majority of Abex linings sold for passenger  
19 cars, light trucks and heavy trucks included  
20 asbestos as an ingredient?

21 A. Yes.

22 Q. Those brake linings were between 25  
23 and 70 percent asbestos, but most of them were  
24 around 35 percent asbestos by weight?

1           A.   Yes.

2           Q.   Before the mid 1970s, most cars had  
3 four-wheel drum brakes?

4           A.   Yes.

5           Q.   And then around the mid 1970s disc  
6 brakes were introduced, but they were typically  
7 rear drum brakes, front disc brakes?

8           A.   Most typically on European cars.

9           Q.   And you didn't see wide penetration of  
10 four-wheeled disc brakes until the early to mid  
11 '80s?

12          A.   Well, we started to see penetration of  
13 front-wheel drum disc brakes in '69, '70;  
14 that's when GM started putting them on cars  
15 like Firebirds and Camaros and then from there  
16 on to the mainstream line of cars. I don't  
17 know about four-wheel disc brakes, I really  
18 don't. I think I was kind of out of the  
19 business. There were some vehicles that had  
20 four-wheel disc brakes while I was still  
21 involved, but I think there was still cars  
22 today that still have rear drum brakes. I just  
23 don't feel qualified to answer that.

24          Q.   Fair enough. I want to ask you -- I

1 want to ask you about Abex's warnings related  
2 to asbestos, but the focus of the questions are  
3 going to be warnings communicated to customers  
4 like Genuine Parts, Rayloc, the Ford Motor  
5 Company, rebuilders and original equipment  
6 manufacturers. Okay?

7 A. Okay.

8 MR. FLYNN: I'm going to object to  
9 counsel's prefatory statement. That's not  
10 really a question.

11 Q. Kind of an introduction?

12 MR. FLYNN: Move to strike.

13 Q. Are you prepared to testify about  
14 asbestos warnings communicated to original  
15 equipment customers, rebuilders, brake  
16 manufacturers and the like?

17 A. Yes, to the best of my ability.

18 Q. Okay. I believe you've testified that  
19 at some point in the 1970s Abex began putting  
20 asbestos warnings on the packaging of brakes,  
21 and by 1978 virtually every asbestos brake  
22 product sold by Abex had a warning; is that  
23 true?

24 MR. FLYNN: Objection to form.



1 Misstates the witness's prior testimony.

2 A. Close, but a little tweak.

3 Q. Okay.

4 A. It wasn't brake. It was brake lining.

5 We started putting them on in the early '70s,

6 and by 1978, by the end of 1978 all product

7 leaving Abex's plant had that warning on it.

8 Q. Okay. By '78 every asbestos brake

9 lining asbestos brake pad leaving Abex's

10 factory includes an asbestos warning?

11 A. Yes, sir.

12 Q. Including asbestos brake lining

13 shipped to Genuine Parts Company's Rayloc

14 division?

15 A. Yes.

16 Q. How do you know that those asbestos

17 warnings were on the packaging of brake

18 linings, asbestos brake linings sent to the

19 Rayloc division of Genuine Parts Company?

20 A. Because there was some -- there was a  
21 period of time from like, let's say, '72 to '77

22 when we had it on most everything, but every

23 once in a while there would be some glitch.

24 Q. That was because for a while it was

1       like a stamp or --

2           A.   Started out --

3           MR. FLYNN:   Hold on.   I'm going to  
4       object.   The witness wasn't finished with his  
5       prior answer to the prior question.

6           Q.   I apologize.   I did interrupt.

7           A.   Okay.   I don't even know where we left  
8       off.

9           MR. FLYNN:   My recommendation would  
10      be, Trey, to go back, read the question and  
11      have him answer.

12          MR. JONES:   Can you read back my last  
13      question?

14          (Question and answer read)

15          A.   So the glitch was that most boxes we  
16      controlled.   We order them from corrugated  
17      manufacturers and so on.   Some boxes were  
18      supplied to us by customers.   Those were the  
19      boxes that didn't have the stamp pre-embossed.  
20      As we got later in time, we just ordered boxes  
21      with the label on it so we didn't have to worry  
22      about it.

23          Q.   So sometimes Abex would ship out brake  
24      linings in an Abex box that it controlled?

1           A. Right. Which was most times.

2           Q. Meaning Abex didn't make boxes?

3           A. No, but we ordered them, and we paid  
4 for them. We received them.

5           Q. Told them what to put on the box?

6           A. Right.

7           Q. But there was some times where an Abex  
8 product would be put into a box by Abex, but  
9 the box would be supplied by a customer?

10          A. Correct.

11          Q. There were other times where Abex  
12 would sell the linings to someone like Genuine  
13 Parts Company, the Rayloc division, and would  
14 have nothing to do with putting it in a box?

15          A. That's not true. We always put them  
16 in some kind of box.

17          Q. Not -- I'm sorry. Let me clarify.  
18 There were also situations where Abex would  
19 ship a bulk shipment of asbestos brake linings  
20 to a customer like the Rayloc division of  
21 Genuine Parts Company, and the Rayloc division  
22 would then take those linings out of the box  
23 from Abex --

24          A. Right.

1           Q.  -- put them on a brake shoe and then  
2 put it in their own box?

3           A.  In a little set box that would make it  
4 appropriate for retail sale.

5           Q.  And in that circumstance, yes, it  
6 leaves Abex in a box?

7           A.  Correct, with a warning.

8           Q.  With a warning.  But Abex has no  
9 control over the box that goes to consumers?

10          A.  That's correct.

11          Q.  Okay.  So these three circumstances  
12 I'm going to call Abex box --

13          A.  Yes.

14          Q.  -- where Abex orders a box.  Customer  
15 box -- customer orders a box; Abex fills it.  
16 The last one I'm going to say Abex box to  
17 customer box which is the bulk supply  
18 situation?

19               MR. FLYNN:  Objection to form.  
20 There's no question.  You stated there is three  
21 types of boxes.

22               MR. JONES:  I'm just trying to see if  
23 we can agree on the terminology when we go  
24 forward.  If he can, he can tell.

1           MR. FLYNN: I object to form as to  
2 "terminology."

3           MR. JONES: I'm welcome to hear a  
4 clarification from counsel if you'd like to  
5 offer one or from the witness. When we go  
6 forward, I just want to know what we're talking  
7 about.

8           A. I don't think there are really three  
9 cases. I think there's two cases. One is Abex  
10 buys a box. It has whatever warning we tell  
11 the box supplier to put on it. Second case is  
12 customer supplies the box. Abex puts the brake  
13 lining in and puts a warning on the box.

14          Q. You are aware of the third  
15 circumstance which is where Abex fills the box  
16 with linings, sends it to a rebuilder or  
17 remanufacturer, that customer of Abex then  
18 takes the lining out of the Abex box, puts it  
19 on a shoe, then puts it in their own box that  
20 has nothing to do with Abex?

21          MR. FLYNN: Objection to form.

22          A. I don't think you have it right.  
23 Everything Abex did was shipped in bulk. We  
24 would ship, whether it was Rockwell in case of

1 heavy duty or Rayloc in the case of passenger  
2 car, what I would call bulk. We would have 50  
3 or a hundred pieces of brake lining in a box.  
4 In the case of passenger car, there would be  
5 25. In the case of heavy duty, just because  
6 they're bigger and heavier, so they always went  
7 out in bulk. They always had, by the end of  
8 '87, always had a warning label on them. Then  
9 it was up to either the brake manufacturer or  
10 the rebuilder to take those parts out, put them  
11 on brake shoe, rivet them, bond them, whatever  
12 they do, put them in a box that's appropriate  
13 for their customer.

14 Q. It sounds like there was only two  
15 different situations at Abex for boxes. One  
16 where Abex controls the box?

17 A. Right.

18 Q. And one where the customer controls  
19 the box?

20 A. Essentially, yes.

21 MR. JONES: We're right where you  
22 wanted to be. A while to get there.

23 A. I was trying to help.

24 Q. And you did. Thank you.

1           A.   So the issue was that there was --

2           MR. FLYNN:   I'm not sure there's a  
3   question.

4           Q.   I'm going to ask a question.

5           A.   I'm sorry.

6           MR. FLYNN:   No question pending.   Wait  
7   for a question.

8           Q.   Some customers who controlled the  
9   writing on the box did not want a warning on  
10   the box?

11          A.   I would say that that's probably true  
12   in some cases.

13          Q.   Well --

14          PHONE COUNSEL:   Objection.   Objection  
15   to the question.

16          Q.   You're personally aware of  
17   circumstances where customers of Abex  
18   complained because the asbestos brake linings  
19   they received from Abex included a warning on  
20   the box?

21          A.   Yes, I am aware of that.

22          Q.   In what circumstances are you aware of  
23   that happening?

24          A.   The only one that comes to mind was an

1 instance with Ford where we put -- we took the  
2 liberty of putting the asbestos warning on the  
3 box. They came in and did a quality control  
4 inspection, and they digged us for putting  
5 something on their box that wasn't on their  
6 engineering drawing, in which case we just had  
7 to go through the formality of requesting a  
8 change, submitting it, getting it approved, and  
9 then we were able to continue putting the  
10 warning label on.

11 Q. Are you aware of circumstances where  
12 customers of Abex received bulk shipments of  
13 asbestos linings from Abex that included an  
14 asbestos warning, and then those customers took  
15 the linings out of the bulk shipment box,  
16 packaged them either with a shoe or  
17 individually for consumers, and the packaging  
18 to the consumer did not include an asbestos  
19 warning?

20 A. Yes.

21 Q. Tell me, what situations are you aware  
22 of where the warning was communicated to the  
23 customer, Abex's customer, but then was  
24 repackaged for the sale to the ultimate



1 consumer without a warning?

2 A. I have all sorts of instances that pop  
3 in my mind. I mean, there's a letter from Abex  
4 to Rayloc that says, Hey, we're putting these  
5 warnings on. You guys might want to consider  
6 doing the same. I can't give you a specific  
7 date or more than that right now, but I know  
8 that that's a document that's come up in the  
9 past.

10 I've been through Rayloc plants. I  
11 knew the product leaving our plant had warning  
12 labels on it. I saw the boxes that they were  
13 assembling their axle sets in didn't have a  
14 warning on it. I saw the same thing at  
15 Rockwell. I mean, it was just part of, you  
16 know, me doing my job and going around and  
17 visiting customer and making that observation.

18 Q. So when you were working at Abex, you  
19 would see the boxes that would leave Abex, and  
20 they would have asbestos linings with the  
21 asbestos warning, true?

22 A. That's right.

23 Q. You would go to the customer's plant  
24 and see the same boxes of Abex linings with the

1 asbestos warning?

2 A. Right.

3 Q. And then you would see those linings  
4 put in another box, for example, Rayloc box  
5 without an asbestos warning?

6 A. Well, I would see our lining be  
7 assembled to something, and then that assembly,  
8 shoe lining assembly, if you will, put into a  
9 box that didn't have a warning on it.

10 Q. You saw that with Rayloc?

11 A. Yes.

12 Q. Around what years?

13 A. I mean, probably from the mid '70s to,  
14 you know, the late '80s.

15 Q. You saw that with Rockwell?

16 A. Well, Rockwell didn't usually put  
17 their product in a Bendix. Occasionally they  
18 did, but normally once they built up a big  
19 heavy-duty truck brake with, you know, shoes  
20 and linings and the thing weighed a hundred  
21 pounds. They put four on a pallet, and that's  
22 how they shipped it, but there wouldn't be any  
23 warning on the pallet per se.

24 Q. My recollection of the letter to

1 Rayloc you're referencing was 1974 or 1976. Do  
2 you have it?

3 A. I think it was the Harry Jones letter,  
4 I think it was.

5 MR. JONES: Johan, do you have it?

6 MR. FLYNN: Do I have a copy?

7 MR. JONES: Yeah. You don't have to  
8 give it to me if you don't want to.

9 MR. FLYNN: I can give it to you now  
10 or on redirect.

11 MR. JONES: While we're on the  
12 subject.

13 MR. FLYNN: All right.

14 MR. JONES: That way I can look like  
15 the bad guy with NAPA, not you.

16 MR. FLYNN: Consider it a token of  
17 good will.

18 MR. JONES: I've been such a nice guy  
19 today.

20 MR. FLYNN: I've been a nice guy too.

21 MR. JONES: I just didn't bring it  
22 with me.

23 MR. FLYNN: You brought everything  
24 else.

1 MR. JONES: I brought a couple of  
2 things.

3 MR. FLYNN: Give me just a second.

4 MR. JONES: You've got a stapler.

5 THE WITNESS: He comes prepared.

6 MR. JONES: Where's your stapler?

7 THE WITNESS: One is an exhibit, and  
8 one is for counsel? Here you go.

9 MR. JONES: I've been marking. We're  
10 up to 14.

11 THE WITNESS: Mark that, and I'll put  
12 it in the pile.

13 (Exhibit No. 14, Letter to L.W. Moore,  
14 5.28.75 so marked)

15 BY MR. JONES:

16 Q. Let me hand you what I've marked as  
17 Exhibit 14 to the deposition. Is Exhibit 14  
18 the document you were referencing, the letter  
19 to Genuine Parts Company's Rayloc division  
20 concerning asbestos warnings?

21 A. Yes, sir.

22 Q. And this letter is dated May 28, 1975?

23 A. Correct.

24 Q. Is this an authentic copy of an Abex

1 document?

2 A. I believe it is.

3 Q. And this document is found in the Abex  
4 repository, true?

5 A. Yes.

6 Q. This document was authored by an Abex  
7 employee?

8 A. Yes, Mr. Harry Jones.

9 Q. No relation. What is Exhibit 14?

10 A. It's a letter to Toby Moore or L.W.  
11 Moore, as it's written here, from Harry Jones  
12 who was the sales manager at that time saying  
13 that -- can I paraphrase, or do you want me to  
14 read it?

15 Q. You can paraphrase.

16 A. That he read an article talking about  
17 how Raybestos was being sued, and as, you know,  
18 Abex is putting these warning label on its  
19 boxes. The warning reads, Caution: Contains  
20 asbestos fibers. Avoid creating dust.  
21 Breathing asbestos dust may cause serious  
22 bodily harm.

23 As you know, we've taken steps as --  
24 I'm sorry. As I know, you've taken steps to

1 protect your people. However, it comes to mind  
2 you may have some responsibility to your  
3 customers and might consider including the same  
4 caution on your boxes or labels. This could  
5 also be used as another strong reason to  
6 discourage or for discouraging field grinding  
7 of brake shoes by jobbers and/or brake shops.  
8 Should you have any further questions, a  
9 number, you can call me.

10 Q. Was this letter actually sent to Mr.  
11 Moore at Rayloc?

12 A. I believe it was.

13 MS. VELLUCCI: Objection to form.  
14 Calls for speculation.

15 Q. Why do you believe this letter was  
16 sent to Mr. Moore?

17 MS. VELLUCCI: Same objection.

18 A. I mean, this is a copy that was found  
19 in Mr. Grim's file. Obviously, distribution  
20 was made. I have no reason to believe it  
21 wasn't sent if it was sent to the people who  
22 are carbon-copied.

23 MR. FLYNN: Just a point of  
24 clarification. Is there a second page to this

1 document as well?

2 THE WITNESS: There is.

3 MR. FLYNN: Okay.

4 BY MR. JONES:

5 Q. You also know that this was  
6 communicated to the Rayloc division of Genuine  
7 Parts Company because you personally had a  
8 conversation with John Adderhold, Toby Moore  
9 and Mr. LeCour, Paul LeCour on this subject; is  
10 that true?

11 MS. VELLUCCI: Object to form.

12 A. That's right.

13 Q. Tell me about the conversation -- who  
14 is John Adderhold?

15 A. John Adderhold at the time, I believe,  
16 carried the title of president of Rayloc.

17 Q. And who was Toby Moore?

18 A. He was the, I believe, the VP of  
19 sales.

20 Q. And who was Paul LeCour?

21 A. Again, I don't know what title he had,  
22 but operations manager, quality assurance  
23 manager, don't know exactly.

24 Q. What conversation did you have with

1       these gentlemen from the Rayloc division of  
2       Genuine Parts Company?

3           A.   I mean, we'd have periodic, you know,  
4       meetings, and we'd talk about our, you know,  
5       new products, and we talked about new  
6       applications.  We talked about what was going  
7       on with asbestos regulations.  We talked about  
8       the fact that we were putting warnings on.  We,  
9       you know, would reiterate the thought that  
10      maybe it was something you guys might want to  
11      do.

12          Q.   These are things that you gave notice  
13      of to the Rayloc employees?

14          A.   Yes.

15          MS. VELLUCCI:  Objection to form.

16          Q.   You told these things to the Rayloc  
17      employees?

18          A.   Yeah.  I didn't go and, you know, it  
19      wasn't a lecture.  It was a business meeting,  
20      and we sat down and talked about, you know,  
21      OSHA regulations and dust control.  And we'd  
22      invite Rayloc folks to come down to Winchester  
23      and talk to engineers about state-of-the-art  
24      dust collection system.



1           It was a very cooperative kind of  
2   meeting, and the discussion -- you know, it was  
3   hard to not have a discussion concerning  
4   asbestos, asbestos regulations, warnings, what  
5   was likely to happen, where were we were going  
6   with asbestos-free development. I mean, all of  
7   that was just kind of the normal -- in the  
8   normal course of business conversation.

9           Q. When did these conversations about  
10   Abex asbestos warnings with Mr. Adderhold, Mr.  
11   Moore and Mr. LeCour, when did these  
12   conversations take place?

13          A. I would say that it was after this  
14   letter. Again, looking at my resume -- just  
15   give me a second, and I'll try to piece this  
16   together for you as best I can. I'd say it  
17   was, you know, '76 to '84 I was director of  
18   product engineering; that's what I spent a lot  
19   of time calling on customers, talking about  
20   asbestos-free stuff. So I'd say loosely '76 to  
21   '84 there were frequent meetings with Rayloc  
22   talking about this subject in general.

23          Q. What did the Rayloc employees tell you  
24   about whether or not they intended to put an

1 asbestos warning on their products?

2 MS. VELLUCCI: Objection to form.

3 A. Just that they were going to consider  
4 it.

5 Q. And you know from your visits to their  
6 factories that they, in fact, did not put a  
7 warning on their asbestos products?

8 MS. VELLUCCI: Object to form.

9 A. I honestly don't know exactly when  
10 they did. I understand at some point they did,  
11 but I think it was quite a bit later than '87  
12 when we were out of the asbestos-containing  
13 business.

14 MS. VELLUCCI: Move to strike  
15 speculative portion.

16 Q. Let me show you what I'm going to mark  
17 as Exhibit 15.

18 (Exhibit No. 15, Memo to Messrs  
19 Challinor and Hubbard, et al, 4.14.77 so  
20 marked)

21 MR. FLYNN: Can I see it, please?

22 THE WITNESS: Sure.

23 MR. FLYNN: Thank you.

24 Q. You can look at mine and hand it back.

1           MR. FLYNN: Do you want me to staple  
2     it?

3           MR. JONES: Sure.

4           A. Okay.

5           Q. Thank you. Are you familiar with the  
6     documents I've marked as Exhibit 15?

7           A. Yes, I've seen it before.

8           Q. What is Exhibit 15?

9           A. It's a letter from Mr. Schmaltz to a  
10    group of salespeople at Abex talking about the  
11    fact that we needed to make sure that the  
12    caution label would be on all the boxes, and  
13    the context of this is this is now we're  
14    approaching the 1978 deadline for us wanting to  
15    make sure, absolutely, positively that the  
16    warning was on everything. And there's a list  
17    of boxes listed, attached to this, that  
18    customers controlled the supply of, that we're  
19    asking our salesmen to go and make sure that  
20    these customers put the warning on.

21          Q. So as of the date -- let me ask you  
22    this: Is Exhibit 15 an Abex document?

23          A. It is.

24          Q. It's authored by an Abex employee?

1 A. Mr. Schmaltz, yes.

2 Q. It's dated April 14, 1977?

3 A. It is.

4 Q. And this is an authentic copy of a  
5 document found in Abex's files?

6 A. Yes.

7 Q. Okay. In this document the Abex  
8 employee, Mr. Schmaltz, is identifying  
9 customers of Abex who, as of 1977, April 14,  
10 1977, are not including an asbestos warning on  
11 the boxes that the customers controlled?

12 A. That's correct.

13 Q. And in April of 1977, Abex is reaching  
14 out to these customers and saying, Listen,  
15 we're going to put the warning on there?

16 A. Well, it doesn't say that we weren't  
17 putting the warning on. It may very well be we  
18 were putting the warning on. We were still  
19 doing it in an arcane way. We're trying to  
20 make sure and have a fail-safe system that, you  
21 know, every box has that warning on it. So  
22 we're asking them to please make sure that the  
23 warning is incorporated on the box that you  
24 supply us.

1           Q. Who were those customers that weren't  
2     incorporating the asbestos warning on the boxes  
3     supplied to Abex?

4           A. Well, I couldn't say that, who they  
5     were. I mean, this would imply that --  
6     certainly some GM parts, some Kelsey-Hayes  
7     parts, some Clark parts, but it doesn't mean  
8     that -- these are box and part numbers  
9     specifically.

10          Q. Doesn't mean everything --

11          A. That's right.

12          Q. -- every box? But at least some  
13     boxes, asbestos boxes from GMC didn't include  
14     the asbestos warning?

15          A. That's right.

16          Q. Kelsey-Hayes didn't include the  
17     asbestos warning?

18          A. On certain part numbers.

19          Q. Okay. Same for Clark?

20          A. Yes.

21          Q. Same for the Ford Motor Company, some  
22     of their boxes didn't include the asbestos  
23     warning?

24          A. Yes.

1 Q. Same for General Motors?

2 A. Yes.

3 Q. True? Same for Massey Ferguson?

4 A. Yes.

5 Q. Ford is listed three more times here?

6 A. Correct.

7 Q. Alfa Romeo?

8 A. Yes.

9 Q. Wagner?

10 A. Yes.

11 Q. Caterpillar?

12 A. Yes.

13 Q. International Harvester is listed as a

14 customer of Abex in 1977 that did not include

15 the asbestos warning on their boxes; is that

16 true?

17 A. That's right.

18 Q. We see Kelsey-Hayes again, true?

19 A. Yes.

20 Q. And we see Ford again?

21 A. Yes.

22 MR. FLYNN: We've been going for about

23 an hour. Let's take a five-minute break.

24 MR. JONES: I think I'm done so that's

1 perfect. Let me look at my notes, and I might  
2 be done.

3 (Discussion off the record)

4 THE VIDEOGRAPHER: The time is 3:38,  
5 and we are going off the record.

6 (Recess 3:38 p.m. to 3:52 p.m.)

7 THE VIDEOGRAPHER: The time is 3:52  
8 p.m., and we are back on the record.

9 MR. FLYNN: Go ahead, Counsel for  
10 Paccar.

11 EXAMINATION CONDUCTED

12 BY MS. DEVOS:

13 Q. Good afternoon, sir. Can you hear me  
14 okay?

15 A. Just fine. Thanks.

16 Q. My name is Stephanie DeVos. I'm from  
17 the law firm Segal McCambridge. I'm sorry I  
18 can't be there in person today, but I have some  
19 follow-up questions for you.

20 A. Go right ahead.

21 Q. My first question is regarding the  
22 composition of the friction material that Abex  
23 manufactured. Am I correct, sir, that a  
24 customer of Abex would not be consulted or

1 otherwise made aware of the particular  
2 formulation of any friction products that Abex  
3 manufactured?

4 A. No.

5 MR. FLYNN: Objection to form.

6 A. I believe that they would be aware by  
7 virtue of, A, approving the formulation for use  
8 on their vehicle and, B, by being the recipient  
9 of a MSDS that would disclose the composition.

10 Q. That information isn't considered  
11 proprietary or trade secret?

12 A. It is, and the MSDS is constructed in  
13 a way where it -- Abex believed it fulfilled  
14 its obligation to be forthright in materials of  
15 concern but not divulge the exact composition.

16 Q. If I understand you correctly, an MSDS  
17 or similar document might contain a list of  
18 particular components but not necessarily the  
19 proportions or anything like that?

20 A. And yes, to a certain degree, but more  
21 often things would be grouped together. For  
22 example, graphite, carbon, coke, and other  
23 graphitic or carbonaceous materials would be  
24 grouped and a range of concentration would be



1 listed. Things like inert minerals like barium  
2 sulfate, calcium carbonate might be grouped and  
3 give a nominal range. So that's how Abex's  
4 MSDSes would be constructed to try to protect  
5 its proprietary formulation and yet be  
6 responsive to the intent of an MSDS.

7 Q. Was that system you just described for  
8 me in effect from the beginning of your tenure  
9 at Abex?

10 A. No, I don't think it was. I don't  
11 recall the exact date that MSDSes would be --  
12 were used, but I think it was probably the '72,  
13 '73 time frame. Before that point in time,  
14 customers were still told the nominal  
15 composition; that it was asbestos-containing;  
16 that it might have brass and graphite. They  
17 would be offered samples. They would generally  
18 test those samples or sometimes rely on Abex's  
19 engineering documentation to then approve the  
20 formulation for use on their brake or vehicle.

21 Q. Now, I used the word "customer," which  
22 I understand is a broad term. Was that true  
23 across the different types of companies that  
24 Abex dealt with? And by that I mean, let's say

1 a brake manufacturer such as Rockwell or a  
2 vehicle manufacturer such as my client, Paccar?

3 A. I think people like Rockwell and  
4 vehicle manufacturers like Paccar and others  
5 would get the same knowledge that Abex had. I  
6 mean, we wouldn't -- I mean, Paccar wouldn't  
7 agree to put an Abex piece of brake lining on  
8 their vehicle until they had some engineering  
9 documentation that they were satisfied with,  
10 and that engineering documentation could be  
11 self-generated. They could use a third party.  
12 They could rely on Rockwell or the brake  
13 manufacturer, or they could rely on the  
14 friction manufacturer, in this case, Abex.

15 Q. Do you have any documents that may  
16 have been supplied to Paccar in particular  
17 during the time period that you've been working  
18 for Abex --

19 MR. FLYNN: Objection to form.

20 Q. -- regarding any of the formulations  
21 of the friction components?

22 MR. FLYNN: Objection to form.

23 A. I don't know.

24 Q. Do you recall having seen such a

1 document?

2 A. I don't recall.

3 Q. Now, typically when Paccar or another  
4 vehicle manufacturer placed an order from Abex,  
5 would that be a complete assembly coming  
6 directly from you, or would they typically go  
7 to a manufacturer such as Rockwell for that  
8 assembly?

9 A. It would never come as a complete  
10 assembly from Abex. We didn't have the  
11 capability to do that. So it would have to  
12 either be assembled by a brake manufacturer, an  
13 axle manufacturer, and I think in some cases  
14 maybe the vehicle manufacturer did the  
15 assembly, but Abex never did because we didn't  
16 have the capability.

17 Q. Do you have any knowledge as to  
18 whether Paccar specified any individual  
19 components such as the friction pads of an Abex  
20 piece of equipment versus just ordering a  
21 complete unit?

22 MR. FLYNN: Objection.

23 Q. I'm sorry, that was a poorly worded  
24 question. Does that make sense, or should I

1 rephrase?

2 MR. FLYNN: Objection to form. Abex  
3 didn't make equipment.

4 A. Why don't you start over with the  
5 question. Sorry.

6 Q. I'll rephrase. My apologies.

7 A. That's all right.

8 Q. Do you have any knowledge as to  
9 whether Paccar specified any individual  
10 components, such as friction pads, that may  
11 have ultimately made it into a final piece of  
12 equipment assembled or produced by another  
13 manufacturer such as Rockwell?

14 A. I don't know for certain. I was  
15 talking, you know, in a more generic way that  
16 oftentimes the vehicle manufacturer would  
17 specify whose brake lining to use on whose axle  
18 or brake. But there are also times when the  
19 brake or axle manufacturers were trying to sell  
20 more of a commodity item and say, We can give  
21 you a really good deal on this brake, and it  
22 meets your engineering requirements, and that's  
23 all you need to know. And some vehicle  
24 manufacturers would accept that and move along

1 without even knowing whose brake lining was on  
2 their brake.

3 Q. Do you have a specific recollection as  
4 to whether Paccar fell into the former category  
5 that you described or the latter?

6 A. I don't. Excuse me. I do not.

7 Q. Okay. I understand the rule that you  
8 described of the vehicle manufacturers in  
9 specifying which parts they might want to use  
10 their vehicles, but am I correct, sir, that a  
11 truck manufacturer such as Paccar wasn't  
12 specifying whether they wanted any of those  
13 components to contain asbestos or any other  
14 ingredient?

15 A. I don't believe that Paccar specified  
16 whether they wanted asbestos or nonasbestos. I  
17 think rather at some point in time, Abex went  
18 to Paccar and other people like Paccar and  
19 said, Eureka, look what we have for you, a  
20 wonderful piece of friction material that's  
21 better performing than what you're used to,  
22 lasts longer, and oh, by the way, it's  
23 asbestos-free. And it was up to them to elect  
24 at that point whether or not they wanted to

1 continue with their asbestos or change to  
2 asbestos-free.

3 Q. Okay. I understand that generally  
4 speaking Abex was asbestos-free after 1987, but  
5 you previously testified that the heavy truck  
6 arm of the industry was a bit quicker to adopt  
7 nonasbestos equipment; is that right?

8 A. Yes.

9 Q. Would you be able to give me an  
10 estimation of the first date that you can  
11 recall a heavy truck manufacturer, whether  
12 Paccar or somebody else, began to use and order  
13 Abex component parts that were nonasbestos?

14 A. Not sitting here today. I mean, I  
15 could estimate that it would be in the very  
16 early 1980s, but I couldn't give you a more  
17 precise answer, sitting here today.

18 Q. Okay. Do you have any records? And  
19 when I say "you," I do mean Abex as a company,  
20 any records as to previous orders that Paccar  
21 may have placed?

22 A. I'm not sure I understand your  
23 question.

24 Q. It basically goes to your

1 recordkeeping policies. Would you have held on  
2 to any documents from, let's say, the beginning  
3 of your time at Abex until about 1987  
4 containing the details of any orders that  
5 Paccar placed during that time?

6 A. There might be some documents in our  
7 repository. I couldn't say for certain.

8 Q. You wouldn't recall the contents of  
9 any of those documents specifically?

10 A. Well, I mean, I've seen a lot of  
11 different sales documents that have come up  
12 with discovery, but I don't recall any specific  
13 to Paccar. And to be candid, I haven't looked  
14 for them either so they may be there. I just  
15 don't know.

16 Q. Understood. Other than making a  
17 selection on the basis of a preference, am I  
18 correct, sir, that Paccar had no influence or  
19 role in any of the formulation of Abex  
20 products?

21 A. I'm sorry, could you repeat that for  
22 me?

23 Q. Certainly. Am I correct, sir, that  
24 Paccar had no influence or role in the

1     formulation or particular ingredients for any  
2     Abex friction components other than what you've  
3     already described in terms of expressing a  
4     preference for, let's say, a particular size or  
5     physical quality?

6           A.  It goes to the physical quality of the  
7     brake lining's ability to stop the particular  
8     vehicle that they are building.  So, yeah, I  
9     mean, they have to have knowledge that -- and  
10    get comfortable that the brake lining and brake  
11    is going to perform to their satisfaction.  So,  
12    I mean, they don't control the formulation, but  
13    they might say, gee, this formula didn't seem  
14    to give us the adequate stopping distance or  
15    margin that we're looking for so we'd like  
16    something higher in friction.  And we would  
17    say, okay, well, we have formula X, Y, Z.  So,  
18    I mean, there's some, not knowledge of  
19    formulation, but there's knowledge of the  
20    product more from a performance point of view  
21    than anything else.

22           Q.  Understood.  You answered what I asked  
23    of you.  Thank you.

24           A.  Okay.  You're quite welcome.



1           THE WITNESS: Anybody else on the  
2 phone?

3           MS. DEVOS: I believe that's all I  
4 have. Thank you for your time, sir.

5           THE WITNESS: You're welcome.

6           MR. JONES: Anybody else on the phone?  
7 Hearing nothing, in the room?

8           MS. VELLUCCI: I have a couple of  
9 questions, but I don't know if it makes more  
10 sense for you to go. I might have more  
11 questions after you go.

12          MR. FLYNN: I'm sure you'll have more  
13 questions.

14          MS. VELLUCCI: Then I'll wait.

15          MR. FLYNN: Let's go off the record.

16          (Discussion off the record)

17          THE VIDEOGRAPHER: The time is 4:05  
18 p.m. We are going off the record.

19          (Recess 4:05 p.m. to 4:11 p.m. )

20          THE VIDEOGRAPHER: The time is 4:11  
21 p.m., and we are back on the record.

22                   EXAMINATION CONDUCTED

23 BY MR. FLYNN:

24 Q. Mr. Indelicato, good afternoon. My

1 name is Johan Flynn representing Pneumo Abex.

2 I know we've been going for a long time today.

3 The jury has probably already heard a lot of  
4 testimony so I'll try to be as brief as I can,  
5 but there are a lot of important areas we have  
6 to cover.

7 A. Okay.

8 Q. Let me go back to when we first  
9 started this morning around 9:00, 9:15 or so.  
10 You were asked some questions by plaintiffs'  
11 counsel, Mr. Jones, about what type -- what was  
12 Abex's principal business. Do you recall that?

13 A. I do.

14 Q. All right. And I believe there was  
15 some questions asked of you of whether the  
16 friction material business was Abex's primary  
17 business. Do you recall that?

18 A. I don't recall that particular  
19 question, but....

20 Q. Okay. Was the friction business of  
21 the American Brake Shoe Foundry Company and its  
22 predecessor, was it primarily friction  
23 products?

24 A. No.

1           Q.   What other types of products did Abex  
2   manufacture in the past?

3           A.   Well, it varied over time, but if we  
4   go back to about 1970 when I started with the  
5   company, there were four basic divisions,  
6   friction products, railroad products, castings  
7   and hydraulics.

8           Q.   It's fair then to say that friction  
9   products was just one component of the Abex  
10   overall business, correct?

11          A.   That's right.

12          Q.   And you were asked questions this  
13   morning as well about the Abex corporate  
14   research center in Mahwah. Do you recall that?

15          A.   I do.

16          Q.   All right. And the Abex corporate  
17   research center at Mahwah was involved in  
18   research on all different types of materials  
19   and issues for Abex, correct?

20          A.   Well, yeah. I mean, there were  
21   material scientists. There were mechanical  
22   engineers. There were a few chemists. There  
23   were a lot of metallurgists. I mean, that's  
24   kind of what they did.

1           Q. And the Abex corporate research center  
2           in Mahwah was not just about research on issues  
3           related to asbestos, correct?

4           A. No, that's right.

5           Q. Okay. Why was that? Was it because  
6           Abex had such a diverse line of products that  
7           it was manufacturing?

8           A. Well, again, you know, the research  
9           center was trying to develop new and improved  
10          products. It was trying to understand why  
11          certain products wore out. It would try to  
12          understand, for example, why railroad wheels  
13          would sometimes fracture. So it was -- I don't  
14          know how to be more direct in my answer to you,  
15          but it was a very diverse group of scientists  
16          that dealt with either really far-reaching  
17          advanced stuff or in some cases remedial  
18          product failure analysis.

19          Q. And just so the jury understands this  
20          and it's clear, does Abex have any current  
21          employees?

22          A. No, sir.

23          Q. It only has one officer, right?

24          A. That's right.

1 Q. Which is you?

2 A. Me.

3 Q. Okay. What's your title for Abex?

4 A. President.

5 Q. Okay. And does Abex currently have  
6 any operating business whatsoever?

7 A. No, sir.

8 Q. Okay. Could you briefly describe for  
9 the ladies and gentlemen of the jury the  
10 different types of friction materials that Abex  
11 sold?

12 A. Basically, it manufactured  
13 asbestos-containing friction material,  
14 nonasbestos friction material that would be  
15 semimetallic and nonasbestos friction materials  
16 that would be termed as we, our nomenclature  
17 was nonasbestos nonmetallic. Those were the  
18 three basic types of formulations. At any  
19 point in time, there might be 50 or more active  
20 formulations in production, different  
21 combinations of ingredients, and it would be  
22 manufactured into disc brake pads, passenger  
23 car, light truck drum brake lining or heavy  
24 truck blocks that we discussed.

1           Q. And why did you a number of times  
2 during the deposition here today draw the  
3 distinction between a brake and a brake lining?

4           A. Because Abex manufactured brake  
5 lining, and oftentimes it's assumed that Abex  
6 manufactured the entire brake so I just --  
7 having gone through --

8           THE WITNESS: Can somebody mute their  
9 phone, please.

10          MR. JONES: Can you mute your phone  
11 whoever needs a ticket.

12          MR. FLYNN: Whoever is on the phone  
13 who's trying to buy a ticket, can you mute your  
14 phone, please.

15          THE WITNESS: It's quiet now so maybe  
16 we should try to continue.

17          A. What was the question again?

18          MR. FLYNN: Can you read back the  
19 question and the answer.

20                (Question and answer read)

21          A. That misconception numerous times I  
22 always try to make the distinction that we made  
23 just brake lining, and brake lining really  
24 can't be put onto a vehicle without further

1 assembly by someone else.

2 Q. Okay. And we've heard a lot about  
3 asbestos today. What was the purpose of the  
4 use of asbestos in brake linings that may have  
5 been manufactured by Abex?

6 A. Well, whether it was manufactured by  
7 Abex or anyone else, asbestos is a unique  
8 mineral that offers a unique set of properties,  
9 principally heat resistance, but also  
10 structural integrity, and for many, many years  
11 no one came up with an alternative methodology  
12 that would allow you to get away from the use  
13 of asbestos in brakes.

14 Q. Okay. And tell the ladies and  
15 gentlemen of the jury why December 31, 1987,  
16 was an important date for Abex and for you?

17 A. I mentioned earlier in the deposition  
18 today that Abex was making, what I thought,  
19 pretty good progress of moving toward an  
20 asbestos-free business, but we kind of hit a  
21 plateau at some point where I would say we were  
22 at about a 90 percentile of our business being  
23 asbestos-free. And management realized that if  
24 we didn't make a decision, that we'd probably

1 be at this 90 percentile forever.

2           There were lots of concerns about  
3 whether or not asbestos would be -- continue to  
4 be available, what the new OSHA standards might  
5 be because they kept getting ratcheted down,  
6 the cost for abatement if, in fact, standards  
7 went down further. So, I mean, there were a  
8 lot of business issues and also vehicles driven  
9 primarily by the corporate average fuel economy  
10 mandated by the government started to be a lot  
11 tougher on brakes. So for all of those reasons  
12 we said, you know, this is really just a great  
13 time to -- just let's put a stake in the  
14 ground.

15           Frankly, as the head of operations for  
16 that business, I would have probably preferred  
17 that it might have been a year or two later,  
18 but it was decided by the board that the end of  
19 '87 was the date. And we did everything we  
20 could to try to get our customers comfortable  
21 with that. Many did, some didn't. And as a  
22 result, we lost some business.

23           Q. Was the process of going asbestos-free  
24 by the end of December 1987 a very complex



1       undertaking for Abex?

2           A.   Very much so.

3           Q.   Were you personally involved, Mr.

4       Indelicato, in that process at Abex?

5           A.   I did.  I got to be the messenger who  
6       delivered the news to many of our major  
7       customers, some being more receptive than  
8       others.  I also, because of my engineering  
9       background, got to serve on a couple of weekly  
10      task force meetings between our engineers and  
11      some of our customers' engineers.  One specific  
12      one that comes to mind which was very  
13      religiously done every Friday was with  
14      Rockwell.

15           Rockwell had a significant piece of  
16      their business that was not covered with  
17      asbestos-free alternatives, and we decided to  
18      try to work together to help them get to that  
19      comfortable level.  And we made some serious  
20      progress, but there was, in fact, still a few  
21      brake applications we couldn't satisfy, and  
22      they had to use somebody else's brake lining.

23           Q.   And can you explain for the ladies and  
24      gentlemen of the jury kind of the process, the

1 method by which Abex started this transition to  
2 go asbestos-free by the end of December '87?

3 A. The beginning of the process?

4 Q. Yeah.

5 A. Basically, again, driven by changes in  
6 vehicle design and concerns about whether or  
7 not asbestos would be around, at the corporate  
8 research center, a Ph.D. chemist who was hired.  
9 And a lot of what's important in brake lining  
10 is polymer chemistry to keep everything  
11 together. So we hired this polymer chemist and  
12 essentially put him in a room and told  
13 everybody not to bother him and charged him  
14 with the task of trying to develop an  
15 asbestos-free basic friction material matrix  
16 that could be tailored to -- its friction  
17 properties could be tailored to satisfy a broad  
18 range of product.

19 The guy's name was Dr. Tim Merkel. He  
20 successfully came up with a matrix that had  
21 some real potential with one small problem and  
22 that was we couldn't manufacture it. So I was  
23 allowed behind the curtain to help Dr. Merkel  
24 try to come up with a way to alter his new

1 matrix so that it could be commercialized. And  
2 we succeeded with that.

3 We introduced it in the very late '70s  
4 and early '80s primarily for heavy trucks  
5 initially, had a couple failures along the way,  
6 but tweaked it some more, had to work with the  
7 fiberglass company PPG to come up with a very  
8 special chemical methodology to allow this to  
9 work properly.

10 Q. Let me stop you right there and ask as  
11 a transition type of question whether you're  
12 aware of whether there was ever a one-to-one  
13 substitute for the use of chrysotile asbestos  
14 in friction products manufactured by Abex?

15 A. No.

16 MR. BERQUIST: Objection to form.

17 Q. And you started to describe briefly  
18 that fiberglass issue. Can you describe to the  
19 ladies and gentlemen on the jury why the PPG  
20 fiberglass issue was so important to you and  
21 Abex in the process of going asbestos-free?

22 A. Well, the first product we introduced  
23 seemed like it would work really, really well  
24 based on our dynamometer tests, and we put the

1     stuff on vehicle tests and actually started to  
2     sell it in a limited range of product and found  
3     that while the brake lining stopped the vehicle  
4     really well, had some wonderful wear  
5     properties, it wore out the opposing surface,  
6     the brake drum, in very short order. And a  
7     piece of brake lining is like three bucks; four  
8     pieces, 12 on a wheel. The brake drum is like  
9     a hundred so the customers aren't real happy  
10    when your brake lining is wearing out a  
11    hundred-dollar brake drum.

12            So we had a big setback. We did a  
13    bunch of analysis. We found that the fibers  
14    would actually -- fiberglass is a bunch of  
15    monofilaments all kind of bundled together.  
16    They would kind of shred during use. When they  
17    shred, a very low amount of energy is required  
18    to get that little monofilament piece of  
19    fiberglass to melt. When it melts and then  
20    solidifies, it becomes a little glass ball.  
21    And that little glass ball was just eating up  
22    the brake drums.

23            So we had to figure out a way to  
24    maintain strand integrity and keep all the

1 monofilaments together if we were going to be  
2 successful, and that's where the PPG guys  
3 working with Dr. Merkel in the research center  
4 came up with, I would call, a sizing agent  
5 which allowed our polymer to stick to it and  
6 help everything stay -- not stay, but create  
7 strand integrity in the fiberglass.

8 Q. Was the specific type of fiberglass  
9 and the agent you just described something that  
10 was first invented or created when Abex was  
11 looking into this issue of going asbestos-free  
12 for brakes?

13 A. Not at first, but after we had some  
14 failures with the routine product, then it was,  
15 yeah, it was kind of a eureka moment of how we  
16 maintain strand integrity. And it also  
17 required Abex to change its manufacturing  
18 process a little bit. But that was really a  
19 eureka moment that allowed us to really start  
20 to grow the fundamental matrix of  
21 fiberglass-reinforced friction material.

22 Q. Did this revolutionary new type of  
23 fiberglass exist in the 1940s?

24 A. No?

1 Q. Did it exist in the '50s?

2 A. No.

3 Q. Did it exist in the '60s?

4 A. No.

5 Q. Did it exist in the 1970s?

6 A. I think the fundamental glass formula  
7 did, but the sizing agent and the ability to  
8 keep it together didn't exist until we kind of  
9 coinvented it with PPG.

10 Q. And that was unique to Abex's efforts  
11 it undertook, correct?

12 A. It was.

13 Q. Now, is it fair to say that one of the  
14 things you're most proud of when you worked at  
15 Abex was your work on going asbestos-free?

16 A. Absolutely.

17 Q. And why is that?

18 A. It was Herculean task. We were the  
19 only company in the world, to our knowledge,  
20 that had achieved it. Again, Abex had a pretty  
21 broad range of products. We had everything  
22 from passenger car lining to industrial  
23 off-highway stuff. So it wasn't like we were  
24 just making passenger car disc brakes for

1 something.

2 So that fact, it allowed us to get a  
3 lot of new business. It allowed us to  
4 penetrate Ford Motor Company for passenger cars  
5 and light trucks which we hadn't been able to  
6 do in the history of the company with any  
7 significant volume. We wound up having  
8 essentially all of Ford's light truck business  
9 but for front and rear.

10 The irony was that we always viewed  
11 Bendix/Allied Signal as Abex's arch enemy and  
12 biggest competitor, yet they wound up being our  
13 largest customer because they made the brake  
14 that went on the Fords, and Ford specified Abex  
15 brake lining. So that was kind of a feather in  
16 our cap. So for all of these reasons, and then  
17 when the EPA finally decided to come out with  
18 an asbestos ban, we were pretty happily  
19 positioned to -- ready to go.

20 Q. Do you recall whether Abex supported  
21 the EPA-proposed ban?

22 A. Yes.

23 Q. Okay. And is it fair to say then  
24 that, as you understand it, based on your

1 personal knowledge, experience and training at  
2 Abex, that Abex was the first friction  
3 manufacturer in the United States with a full  
4 line of nonasbestos friction products?

5 A. Yes, and I believe it was broader than  
6 that. I think it was in the world.

7 Q. Let's shift gears a little bit and  
8 talk about some of the exhibits that were  
9 covered this morning. I'm going to go back and  
10 take you down memory lane a little bit here  
11 this morning. I'm going to hand you what is  
12 marked as Exhibit 6. I've handed you, Mr.  
13 Indelicato, what has been marked as Exhibit 6.  
14 Do you recall this advertisement that we talked  
15 about earlier this morning from, I think it's  
16 1962 in an Oklahoma newspaper?

17 A. Yes.

18 Q. Okay. You were asked some questions  
19 about this by Mr. Jones this morning, right?

20 A. Yes.

21 Q. What do you consider, Mr. Indelicato,  
22 to be a potential hazard for brake or friction  
23 materials that Abex manufactured?

24 A. Any brake, it's brake failure,



1       inability to control the vehicle.

2           Q.   And were brakes part of the safety  
3       equipment that were on vehicles?

4           A.   Yes.

5           Q.   Okay.  And what is the -- do you see  
6       at the top of this advertisement -- I know it's  
7       small and it's in black and white.  I'm sure  
8       we'll be happy to blow this up for the jury at  
9       the time of trial, but do you see a little kid  
10      standing in front of the car?

11          A.   It looks like a little kid.

12          Q.   What does the caption say right below  
13      that photograph of the little kid in front of  
14      the car?

15          A.   "Stop, save a life."

16          Q.   And what does it say right after that?

17          A.   "Your ability to stop your car can  
18      mean life or death to someone, including you.  
19      Make sure you have stopping power.  Have a  
20      brake specialist listed below check your brakes  
21      thoroughly now before it's too late."

22          Q.   Okay.  You can stop right there.

23          A.   Okay.

24          Q.   Now, this advertisement, what does

1       this advertisement indicate to you in terms of  
2       the issue of safety as it relates to brakes?

3           A.   Don't ignore them.   Pay attention to  
4       them.   Make sure they're working properly.

5           Q.   And could Abex have taken asbestos out  
6       of friction materials in, say, the 1960s, '50s  
7       or '40s and made a brake lining that would have  
8       stopped cars safely?

9           A.   I don't believe so.

10          Q.   Okay.   That's in large part because  
11       of --

12               MR. JONES:   Can we break for half a  
13       second?

14               MR. FLYNN:   Sure.   We can go off the  
15       record.

16               THE VIDEOGRAPHER:   The time is 4:30,  
17       and we're going off the record.

18               (Recess 4:30 p.m. to 4:32 p.m.)

19               THE VIDEOGRAPHER:   The time is 4:32  
20       p.m., and we are going back on the record.

21       BY MR. FLYNN:

22           Q.   Mr. Indelicato, I think we just  
23       wrapped up talking about Exhibit No. 6.   And do  
24       you also recall -- I think you looked at

1 Exhibit No. 8 as well. Do you recall that  
2 exhibit from this morning?

3 A. I do.

4 Q. And does that exhibit also touch on  
5 the issue, generally speaking, of why it's  
6 important that your brakes work properly on a  
7 car?

8 A. Yeah. Without spending time reading  
9 it, it's paraphrasing, you know, will you be  
10 able to stop in time? And it talks about how a  
11 hundred horsepower is required to accelerate  
12 and a thousand horsepower is required to  
13 decelerate to 60 miles an hour. Again, that  
14 same theme of safety and ability to stop.

15 Q. I want to turn your attention now to  
16 Exhibit No. 10. Do you recall this exhibit  
17 catalog from this morning? It looks like, I  
18 believe, it was a 1972 catalog?

19 A. Yes.

20 Q. Okay. Is the name -- do you see the  
21 name Rayloc anywhere on the cover?

22 A. No, I don't.

23 Q. Do you see American Brakeblok or Abex  
24 on the cover of that document?

1           A. I do not.

2           Q. Do you see Genuine Parts Company  
3 anywhere on the cover of that document?

4           A. No, sir.

5           Q. Okay. Let's shift gears now and talk  
6 about Exhibit No. 9. It's an, I think, a 1970  
7 catalog. Do you recall this exhibit as well?

8           A. Yes, I do.

9           Q. Okay. Now, there's no mention on the  
10 cover of the document of Rayloc, is there?

11          A. No.

12          Q. And there's no mention of Genuine  
13 Parts Company on this document either as well?

14          A. No, sir.

15          Q. And at the top of that document it, in  
16 fact, references BHT, does it not?

17          A. It does.

18          Q. And do you recall who BHT was?

19          A. No, I don't.

20          Q. Okay. All right. You can set that  
21 exhibit aside. We spent a lot of time this  
22 morning and this afternoon, Mr. Indelicato,  
23 talking about NAPA, Genuine Parts Company and  
24 Rayloc. You'd agree with that, right?

1           A. Absolutely.

2           Q. Okay. I believe it's fair to say that  
3 you agree that GPC, Genuine Parts Company, and  
4 Rayloc was a significant customer of Abex,  
5 correct?

6           A. Yes.

7           Q. They were never an exclusive customer,  
8 were they?

9           A. That's right.

10          Q. Okay. Can you describe the specific  
11 types of friction materials that Abex sold to  
12 -- may have sold to GPC or Rayloc?

13          A. It sold passenger car and light truck  
14 drum brake lining asbestos, some asbestos-free,  
15 some semimetallic. It sold disc brake pads,  
16 asbestos and semimetallic. It sold brake  
17 blocks which are heavy truck pieces of friction  
18 material that were asbestos and in some cases  
19 asbestos-free.

20          Q. You've testified earlier today that  
21 the friction materials that Abex may have  
22 supplied to GPC, Genuine Parts Company, or  
23 Rayloc were supplied in bulk by Abex?

24          A. That's right.

1           Q. And can you describe for the ladies  
2 and gentlemen of the jury the step-by-step  
3 description of how and what GPC would -- Rayloc  
4 would do with the Abex friction material that  
5 it received in its plants?

6           MS. VELLUCCI: Objection to form.

7           A. Basically, we would ship, again,  
8 depending on the size of the brake lining, the  
9 boxes that were, I don't know, maybe 3 feet  
10 long by a foot and a half wide by maybe 8  
11 inches high, and it would have nested pieces of  
12 friction material in it.

13           Rayloc would generally take a piece  
14 out, assemble it to a brake shoe, most  
15 typically by riveting it, in some cases by  
16 bonding it with an adhesive and heat and  
17 pressure process, and then take that article,  
18 match it up with its mating part and put what  
19 would be an axle set which is typically for  
20 brake shoes into a box for sale through their  
21 channels. Oftentimes there would be a plastic  
22 bag or a paper envelope with some springs or  
23 other items that would typically need to be  
24 replaced when they did the brake job.

1           Q.   And how would -- if I use the term  
2   "GPC," do you understand that to mean Genuine  
3   Parts Company?

4           A.   I do.

5           Q.   Okay.   How did GPC and/or Rayloc  
6   attach the Abex friction material that came  
7   into the plant in bulk to the brake shoe?

8           A.   I just said either riveted it or  
9   bonded it.

10          Q.   Did they ever have to drill the brake  
11   linings?

12          A.   No. The lining would be predrilled if  
13   it were to be riveted.

14          Q.   Do you recall whether Rayloc ever  
15   preground any of the brake linings that it  
16   received from Abex before it went to the end  
17   user?

18          A.   Yes.   Rayloc would typically grind the  
19   brake linings so that it would assure a good  
20   fit into a brake drum.

21          Q.   And who controlled what went into the  
22   GPC boxes that went to the jobber, the  
23   individual NAPA stores?

24               MS. VELLUCCI:   Object to form.   Calls

1       for speculation.

2           A.   The Rayloc rebuilders.

3           Q.   And how do you know that?

4           A.   I've seen it.  I've been there.

5           Q.   You saw with your own eyes in the  
6       plant?

7           A.   Yes, sir.

8           Q.   Okay.  Did Abex have any control  
9       whatsoever of what went into the boxes that GPC  
10      or Rayloc sent to the NAPA jobber stores?

11           MS. VELLUCCI:  Object to form.

12           A.   I mean, no, really we weren't there  
13      supervising it on a day-to-day basis.  I mean,  
14      I know that there were instances where a box  
15      might say lined with American Brakeblok brake  
16      lining and, in fact, it wasn't, and we would  
17      call them out on it.  But, you know, we took  
18      them at their word that the products that they  
19      committed to use Abex brake lining for would be  
20      using Abex brake lining.

21           Q.   So then it's fair to say then that  
22      GPC/Rayloc is the one who controlled what went  
23      into their box that went to their customers?

24           A.   Absolutely.



1 MS. VELLUCCI: Object to form.

2 Q. And Abex couldn't go into any of  
3 Rayloc's remanufacturing plants and tell them  
4 how to do their job in terms of how they should  
5 attach the linings to the shoes, right?

6 A. No.

7 MS. VELLUCCI: Object to form.

8 A. They had more expertise in that than  
9 we did.

10 Q. Those issues were all controlled by  
11 Rayloc, the remanufacturer, not Abex, correct?

12 A. That's right.

13 MS. VELLUCCI: Object to form.

14 Q. Abex couldn't go into the Rayloc plant  
15 and tell GPC or Rayloc, you have to put a  
16 warning on a box that's going to an end user,  
17 do you?

18 MS. VELLUCCI: Objection.

19 A. No. We could suggest, but it was  
20 their decision.

21 Q. That was something that GPC Rayloc  
22 decided, not Abex, correct?

23 A. That's right.

24 Q. And I believe you've seen what's

1 marked earlier as Exhibit 14. It's the letter  
2 from Mr. Moore. I'll hand it to you again. Or  
3 Mr. Jones.

4 A. Mr. Jones.

5 Q. Let me hand you that letter. This  
6 letter Exhibit 14 touches on that very topic I  
7 just asked you about, does it not?

8 A. It does.

9 Q. Okay. And in this letter what does  
10 Abex tell Rayloc that it should consider doing?

11 A. Putting a warning label on their  
12 boxes.

13 Q. Okay. There was an objection, I  
14 think, earlier as to speculation that this  
15 particular letter was ever sent. I'd like to  
16 turn your attention to page two of the letter.

17 A. Yes.

18 Q. What do you see on the second page of  
19 Exhibit 14?

20 A. A date stamp that it was received by  
21 Abex in Winchester, Virginia, on June 2.

22 Q. What's the date of the letter itself  
23 on Exhibit 14?

24 A. May 28.

1           Q. And is this typical to the way you  
2 would have seen documents at Abex if you were  
3 copied or blind-copied on a letter such as  
4 this?

5           A. Yes. In fact, as I mentioned to you  
6 earlier, I noticed that Mr. Grim was -- his  
7 name was underlined which suggests to me this  
8 was his copy, and Mr. Grim was, in fact, at  
9 Winchester.

10          Q. To say that it was speculation that  
11 this letter was sent just simply is not true,  
12 is it?

13          A. Correct.

14          Q. You mentioned earlier, I believe, that  
15 you did not recall when GPC Rayloc ever put a  
16 warning on its products, correct?

17          A. Right. I wasn't certain as to the  
18 date.

19               MR. FLYNN: I need to mark an exhibit  
20 as to No -- I guess we're at 16; is that right?

21               THE WITNESS: 14 was the Moore letter.

22               MR. FLYNN: Let's mark it as Exhibit

23          A.

24               MR. JONES: No, please, Exhibit 16.

1           (Exhibit No. 16, Genuine Parts  
2   Company's Amended Responses to Plaintiffs'  
3   Standard Interrogatories (Dieden  
4   Interrogatories) so marked)

5           THE WITNESS:   Whatever you like.

6   BY MR. FLYNN:

7           Q.   I'm going to hand you, Mr. Indelicato,  
8   what I've now marked as Exhibit 16.  I've given  
9   you a second copy as well for plaintiffs'  
10   counsel to review as I ask my questions.

11           Do you recognize what I've handed you  
12   as Exhibit No. 16?

13           A.   Not offhand.  Give me a sec.  I  
14   honestly didn't recognize it, but when I see  
15   the Exhibit No. and the case, I know that I've  
16   seen this before.

17           Q.   Okay.  What's the title on the first  
18   page of this legal document that's been marked  
19   as Exhibit 16, or on the right-hand it says  
20   defendant what?

21           A.   I'm sorry, I'm not sure where.

22           Q.   Right below the case number?

23           A.   Defendant Genuine Parts Company's  
24   amended response to plaintiffs' standard

1       interrogatories.

2           Q.   What does it say in parentheses?

3           A.   Dieden interrogatories.

4           Q.   Okay.  And this was actually marked as  
5   an exhibit at one of your recent depositions,  
6   was it not?

7           A.   That's right.

8           Q.   I'd like you to turn to the second to  
9   last page of Exhibit 16, please.  Actually go  
10   to the third to last page, one more forward,  
11   please.  And what's the date on that third to  
12   last page of Exhibit 16?

13          A.   November 19, 2001.

14          Q.   If you flip forward to the next page,  
15   do you see the verification there?

16          A.   I do.

17          Q.   And what's the date on which the  
18   verification was subscribed and sworn to?

19          A.   It looks like 11/16/01.

20          Q.   Okay.  And who signed the verification  
21   to this set of discovery responses?

22          A.   I really can't make out the entire  
23   signature, but first name Paul, it looks like  
24   last name begins in L and he's titled QA

1 manager so I presume it's Mr. LeCour.

2 Q. Okay. Look at the second line of the  
3 verification at the top. Does it say his name?

4 A. It does.

5 Q. Okay. This appears to be a  
6 verification by Mr. LeCour of Genuine Parts  
7 Company's amended responses to plaintiffs'  
8 standard interrogatories that are dated from  
9 November of 2001, correct?

10 A. Yes.

11 Q. Okay. I'd like to turn your attention  
12 to the response of interrogatory No. 32 which  
13 is on page 36.

14 A. Okay. Page 26, interrogatory No.,  
15 what? 32?

16 Q. 32. And look down the line 23 on page  
17 26 and read that first paragraph to yourself,  
18 please.

19 A. Okay.

20 Q. And when you're done, tell me.

21 A. Okay.

22 Q. Does this refresh your recollection as  
23 to the date of when Genuine Parts Company  
24 stated and verified in discovery responses to

1 the date that it began placing warning labels  
2 on its brake packaging?

3 A. It says here it was 1988.

4 Q. And we've looked just a second ago at  
5 Exhibit No. 14, the letter from Abex to Rayloc,  
6 and that was dated May 28, 1975. Was it not?

7 A. It was, sir.

8 Q. Okay. It was roughly 13 years after  
9 Abex sent Exhibit 14 to GPC/Rayloc that  
10 GPC/Rayloc decided to put warnings on products,  
11 friction products that were provided to their  
12 stores; is that correct?

13 MS. VELLUCCI: Objection.  
14 Argumentative. And documents speak for  
15 themselves.

16 A. This says '88, and our letter was sent  
17 to them in '75.

18 Q. Roughly 13 years later?

19 A. Roughly 13 years, right.

20 Q. Okay. And I think you described  
21 earlier, Mr. Indelicato, what a NAPA jobber is.  
22 I just want to be crystal clear for the ladies  
23 and gentlemen of the jury. What exactly is a  
24 NAPA jobber?

1           A. I can only tell you what I believe to  
2 be the case.

3           Q. Sure. Okay.

4           A. But basically it's a small retail  
5 store that has all sorts of auto parts in it,  
6 everything from motor oil to windshield wiper  
7 blades, more sophisticated complex products,  
8 alternators, things like that where you could  
9 walk in as an individual and buy something.  
10 More often I think they have relationships with  
11 local gas stations and dealerships where they  
12 can call up and say, hey, Joe, I need an  
13 alternator for a Toyota Camry, and they say, We  
14 have it in stock, and we'll dispatch it to your  
15 store later today.

16          Q. Okay. And do you know from your own  
17 personal knowledge and experience working at  
18 Abex, Mr. Indelicato, whether NAPA jobber  
19 stores were only allowed to sell  
20 NAPA/Rayloc-branded products?

21           MS. VELLUCCI: Object to form.

22          A. I believe that that was the spirit of  
23 the relationship between the jobber and Genuine  
24 Parts. I also know that from time to time



1 specific jobbers might deviate a bit from what  
2 was supposed to be and might carry something  
3 that wasn't necessarily in the, quote, package  
4 of products that were offered by Genuine Parts.

5 Q. So the individual NAPA jobber stores  
6 were not required to only carry Rayloc  
7 products, as you understand?

8 A. Right. I don't know that I have the  
9 terminology exactly correct, but I think some  
10 jobbers are essentially more like a franchisee,  
11 and others are company-owned stores which are  
12 managed and run by effectively GPC employees.

13 Q. Okay. And Abex itself did not sell  
14 directly to any individual NAPA jobber stores,  
15 did it?

16 A. No.

17 Q. Abex sold directly to, if it did, was  
18 to Rayloc or GPC in its remanufacturing  
19 facility, right?

20 A. That's right.

21 Q. And is it fair to say that you've been  
22 -- earlier today plaintiffs' counsel raised the  
23 issue of Mr. LeCour's testimony. Do you recall  
24 that?

1           A.    I do.

2           Q.    And whether the issues of how much  
3   Abex may or may not have supplied to  
4   GPC/Rayloc.  Do you recall that?

5           A.    I do.

6           Q.    And did you disagree with plaintiff's  
7   argument that Abex was the exclusive supplier  
8   to GPC Rayloc?

9           A.    Absolutely.

10          MS. VELLUCCI:  Object to form.

11          Q.    Why do you disagree with that?

12          A.    I know it not to be true.

13          Q.    Can you explain to the ladies and  
14   gentlemen of the jury how you know that?

15          A.    I mean, there's several ways.  I've  
16   been through their factories.  I've seen  
17   competitive brake linings.  I've been  
18   threatened to have our business taken away and  
19   awarded to other companies.  In fact, that  
20   happened.  I know of instances where products  
21   should have been ours in a stylized logo  
22   American Brakeblok package and, in fact, it  
23   wasn't.  I know that we were supposed to have  
24   the premium disc brake line only to find out

1       that Bendix was really enjoying that business.  
2       I've seen it over and over again in my history  
3       with Abex and Rayloc.

4           Q.   Okay.  And let's go back and look with  
5       the jury at Exhibit No. 16 again, if you'd be  
6       so kind.

7           A.   Okay.

8           Q.   I'd like you to turn to page 10 of  
9       those interrogatories that are verified by Mr.  
10      LeCour.  Do you see that?

11          A.   I do.  Page 10?

12          Q.   Yeah.  I'd like you to look down at  
13      paragraph H, please.  Do you see that?

14          A.   I do.

15          Q.   And can you please read what's stated  
16      in GPC's verified discovery responses by Mr.  
17      LeCour as to who the manufacturers of the  
18      asbestos-containing friction materials  
19      purchased by GPC were at various times?

20          A.   Abex Corporation, Ace Manufacturing,  
21      Aisin, American Precision, Bendix, Borg-Warner,  
22      Central Automotive, Certified Brakes, Daido,  
23      Daikin, Dixtex, Eastern Automotive Parts,  
24      European Parts Exchange, Friction Division

1 Products, Friction Material Warehouse of  
2 Florida, Friction Materials, Inc., Friction  
3 Materials Company, Hemisphere, Kolon, Luk,  
4 MIDCO, Raymark, Sachs, Automotive Products and  
5 Tappa Enterprises.

6 Q. Is this response from Genuine Parts  
7 consistent with Abex's belief and understanding  
8 that it was not an exclusive supplier to  
9 Genuine Parts Company and Rayloc?

10 MR. BERQUIST: Objection to form.

11 MS. VELLUCCI: Form.

12 A. Yes, sir. Are you done with that one?

13 Q. Yes, sir.

14 (Exhibit No. 17, Letter to E.P. Hoff,  
15 9.19.78 so marked)

16 Q. I'm going to hand you now, Mr.  
17 Indelicato, what we're going to mark as Exhibit  
18 No. 17. I'll give you two copies. You can  
19 provide one to Mr. Jones on the other side of  
20 the room, if you would be so kind, sir.

21 MR. JONES: Thank you.

22 THE WITNESS: You're welcome.

23 BY MR. FLYNN:

24 Q. Do you recall Exhibit No. 17? Have

1       you seen this before?

2           A.   Give me a second.   Yeah, I do recall  
3       this.

4           Q.   Okay.   And this is a letter dated  
5       September 19, 1978, is it not?

6           A.   Yes.

7           Q.   And it's from a Mr. Carroll Warner to  
8       Mr. E.P. Hoff?

9           A.   Yes.

10          Q.   Do you recall who those individuals  
11       were?

12          A.   I do.   Mr. Warner was, I think, VP of  
13       sales at that time for Abex, and he was writing  
14       to Mr. Hoff who was, not certain of the title,  
15       but I think it was regional manager on the West  
16       Coast.   I think he was headquartered in the San  
17       Francisco Bay area.

18          Q.   Okay.   And is there a section of this  
19       letter from September 19, 1978, where it says  
20       "items worthwhile noting"?

21          A.   Yes.

22          Q.   And can you please read those next  
23       three paragraphs to the ladies and gentlemen of  
24       the jury, please?

1           A. It says, "The brake parts systems  
2 groups, specifically the Rayloc pieces on  
3 display - I noted competitive materials on  
4 their high-performance metallic disc brake  
5 pads, Bendix BX material. Their new shoe  
6 program - Raybestos-Manhattan segments. Their  
7 exchange through thick block, Maremount/Grizzly  
8 edgecode MG 22 EE."

9           Q. And how do you interpret what's listed  
10 in these three paragraphs that you just read as  
11 it relates to the claim that Abex was the  
12 exclusive supplier for friction material to  
13 GPC?

14           MR. BERQUIST: Objection to form.

15           MS. VELLUCCI: Objection. Calls for  
16 speculation.

17           A. It clearly supports the information  
18 that was included in Exhibit 16. It supports  
19 my recollection and further discounts Mr.  
20 LeCour's claim that we were an exclusive  
21 supplier.

22           Q. And Exhibit 17 also references a new  
23 shoe program. Do you see that in the second to  
24 last paragraph?

1           A. I do, yes.

2           Q. Do you recall what that was?

3           A. Rayloc decided that they thought there  
4 was a market niche to be able to sell a  
5 higher-cost product that didn't use a reclaimed  
6 brake shoe but rather a new brake shoe, and  
7 that along with this Bendix BX disc brake  
8 material were two products, product offering  
9 that were supposed to be using Abex brake  
10 lining.

11          Q. So it's your understanding that for a  
12 period of time Genuine Parts Company and/or  
13 Rayloc sold brand-new brakes that were not  
14 remanufactured, correct?

15          A. Brand-new brake shoes.

16          Q. Brand-new brake shoes that were not  
17 remanufactured; is that right?

18          A. That's correct.

19          Q. Was Abex ever a supplier to the Rayloc  
20 new shoe program they had?

21          A. I believe we were for some period of  
22 time. I think I -- we started the program off  
23 with them and then found that, in fact, there  
24 were instances where they were using someone

1       else's brake lining.

2           Q.   Okay.  And I want to turn your  
3       attention to Exhibit 2 next, if I can find it.  
4       I've handed you what was previously marked  
5       Exhibit No. 2.  Do you recall that letter?

6           A.   Yes.

7           Q.   This was the Iwarsson letter to  
8       Mr. Jones at Genuine Parts Company dated  
9       October 1, 1979, correct?

10          A.   Right.

11          Q.   Does this letter also support Abex's  
12       understanding and your understanding as well  
13       that Abex was not an exclusive supplier to  
14       GPC/Rayloc?

15               MS. VELLUCCI:  Objection to form.

16               MR. BERQUIST:  Objection to form.

17          A.   Yes.

18          Q.   Why is that?

19          A.   Because 46 percent isn't a hundred.

20          Q.   And that means Abex was not exclusive,  
21       as you understand it, at that period?

22               MS. VELLUCCI:  Objection to form.

23          A.   Yes, sir.

24          Q.   I think you mentioned earlier, and I'd



1     like you to describe for the jury in a little  
2     bit more detail what did you mean when you saw  
3     instances of where NAPA had put -- had American  
4     Brakeblok boxes but had other company's brake  
5     linings in those boxes? What did you mean by  
6     that?

7           A. There was an instance or two where it  
8     was reported that someone went and bought a  
9     piece of or a set of NAPA brakes that said  
10    American Brakeblok. They asked for brake  
11    block. They received a box that said lining  
12    was American Brakeblok only to find that the  
13    brake lining in the box was not American  
14    Brakeblok.

15           (Exhibit No. 18, Air Sampling &  
16    Industrial Hygiene Survey, August, 1972 so  
17    marked)

18           Q. I'm going to mark another document  
19    next, Mr. Indelicato. I think we're at 17?

20           MR. BERQUIST: 18.

21           A. 18 is coming up, yeah.

22           MR. JONES: Or Q.

23           A. Mr. Flynn, I'm going to need a break  
24    here at some point.

1           Q. Yeah. I've handed you two copies.  
2       You can hand one to Mr. Jones as well, please.

3           Do you recall what I've handed you as  
4       Exhibit No. 18?

5           A. Yeah, I've seen this before.

6           Q. And what's the title of the document?

7           A. Air sampling and industrial hygiene  
8       survey, Genuine Parts, Rayloc division,  
9       Atlanta, Georgia.

10          Q. And what's the date on this particular  
11       industrial hygiene survey?

12          A. It's dated -- cover page dated August  
13       1972.

14          Q. And does this particular document on  
15       page six under the results and discussions  
16       section, do you see where it references the  
17       OSHA eight-hour time-weighted average for  
18       asbestos fibers?

19          A. I do.

20          Q. As you understand it, do you have  
21       personal knowledge of whether Genuine Parts  
22       Company was aware of the OSHA regulations as it  
23       related to asbestos?

24               MS. VELLUCCI: Object to form.

1           A. I know that over the course of our  
2 relationship we would always kind of keep them  
3 informed of what we knew was -- or what we  
4 thought was coming down the pike. I also think  
5 that Rayloc did a pretty effective job of  
6 staying in tune with OSHA requirements on their  
7 own. So I would have no reason to believe that  
8 they didn't have knowledge of what the  
9 standards were.

10          Q. And from looking at this document,  
11 you're able to tell that GPC's Rayloc division  
12 actually conducted an industrial hygiene  
13 surveys at its Atlanta plant; is that correct?

14          A. Yeah. It seems to me to be a pretty  
15 thorough survey. It was a five-day survey,  
16 July 17, with the report being published  
17 sometime in August. This looks to be a pretty  
18 comprehensive survey.

19          Q. And given all the information you know  
20 from your experience working with individuals  
21 at NAPA, GPC and Rayloc, and what you see here  
22 in this document here, do you believe that  
23 GPC/Rayloc was a sophisticated user of friction  
24 materials?

1 MS. VELLUCCI: Object to form. Calls  
2 for a legal conclusion. Calls for speculation.

3 A. I mean, I think that they were  
4 knowledgeable. They were better than any other  
5 rebuilder that I saw. I would say that their  
6 plant was comparable to many OEM plants in  
7 terms of cleanliness and the way it was  
8 organized and methodologies that were used.  
9 Yeah, I mean, I think they were as  
10 sophisticated as one can be in that business.

11 Q. And you talked earlier about the  
12 conversion. Then we'll wrap up and take a  
13 break. But in terms of nonasbestos conversion  
14 and issues related to Genuine Parts Company and  
15 Rayloc, could Abex force Genuine Parts/Rayloc  
16 to go asbestos-free in terms of friction  
17 material it sold to its customers?

18 A. No.

19 MS. VELLUCCI: Object to form.

20 Q. And I believe you testified earlier  
21 that GPC/Rayloc continued to sell asbestos  
22 products to its customers after Abex stopped  
23 selling asbestos-containing friction products  
24 at the end of December 31, 1987, correct?

1           A.   Yes, sir.

2           Q.   Okay.

3           MR. FLYNN:   Why don't we go ahead and  
4   take a break at this point, and then we'll wrap  
5   up.

6           THE VIDEOGRAPHER:   The time is 5:02  
7   p.m., and we are going off the record.

8           (Recess 5:02 p.m. to 5:10 p.m. )

9           (Exhibit No. 19, Letter to E.F Potts,  
10   12.15.78 so marked)

11          THE VIDEOGRAPHER:   The time is 5:10  
12   p.m.   We are back on the record.

13          BY MR. FLYNN:

14          Q.   Mr. Indelicato, we left off a minute  
15   ago.   I believe we were talking about some  
16   warnings-related issues.   I want to hand you  
17   back what is marked as Exhibit 15.   It's the  
18   Schmaltz letter from April 14, 1977.   Do you  
19   recall that?

20          A.   I do.

21          Q.   All right.   And if you turn to the  
22   second page of that letter, do you remember  
23   discussing those different part numbers and  
24   vendors with Mr. Jones earlier?

1           A. I do.

2           Q. Okay. And in terms of the total  
3 number of part numbers that Abex had, is what's  
4 depicted on the second page of Exhibit 15 an  
5 incredibly, incredibly small portion of the  
6 overall part numbers Abex had?

7           A. I think our the number we used to kind  
8 of throw around was we had 30,000 active part  
9 numbers, and there's probably no more than 20  
10 on here.

11          Q. That's fair to say that's an extremely  
12 small number of issues that Abex may have had  
13 at that time?

14          A. Right, but nonetheless they were  
15 issues, and we were trying to make sure that we  
16 had essentially a foolproof system that, you  
17 know, if a box was in the plant, it had a label  
18 on it so there wasn't any reliance on someone  
19 forgetting to snap it or put a label on it.

20          Q. Did all of the individual vendors that  
21 are listed on the vehicle page of Exhibit 15,  
22 did they all eventually agree that a warning  
23 should go on their particular packaging?

24          A. I believe they did.

1           Q.   Okay.  Abex had no issues with doing  
2   that with those customers, correct?

3           A.   I mean, I think there were some  
4   issues, and I think it took some cajoling and  
5   phone calls to follow up and finally kind of a  
6   stake in the ground that says, hey, after this  
7   date, if you don't agree to put a warning label  
8   on it, we're not shipping you the product.

9           Q.   Okay.

10                  (Exhibit No. 20, Letter to C.B.  
11   Mallory, 10.19.72 so marked)

12           Q.   I'm going to hand you what we've  
13   marked as Exhibit No. 19.  There's two copies,  
14   one for you and Mr. Jones.  Mr. Indelicato, do  
15   you recognize what I've handed you as Exhibit  
16   No. 19?

17           A.   I do.  I'm just taking a minute to  
18   kind of --

19           Q.   Sure.

20           A.   -- refresh my memory.  Yeah.

21           Q.   What's the date of the particular  
22   letter?

23           A.   December 15, 1978.

24           Q.   And what's on the letterhead at the

1 top?

2 A. Friction Products Group, Winchester.

3 Q. Okay. Who is the author of the  
4 letter, and who was it going to?

5 A. It's Mr. Larry Keenan, and it was  
6 being addressed to Mr. Earl Potts.

7 Q. And what's the subject of this  
8 particular letter?

9 A. The asbestos warning label.

10 Q. And can you read the first paragraph  
11 of this December 15, 1978, letter that's been  
12 marked as Exhibit No. 19 for the jury?

13 A. Just the first paragraph?

14 Q. Yes, please.

15 A. Okay. "This will confirm our  
16 conversation regarding asbestos warning labels  
17 on all boxes and cartons shipped from  
18 Winchester."

19 Q. And does this letter confirm what you  
20 recalled earlier, that every package or box  
21 that was sent out of the Abex plant as of  
22 December 1978 had a warning on it?

23 A. Yes.

24 Q. Okay.



1           (Exhibit No. 21, Copy of Warning Label  
2   so marked)

3           Q. I'm going to hand you what we've  
4   marked next as Exhibit No. 20. Take a look at  
5   that and please hand a copy to Mr. Jones as  
6   well.

7           What's the date on Exhibit No. 20, Mr.  
8   Indelicato?

9           A. The date is October 19, 1972.

10          Q. Okay. Who is the author of the  
11   letter?

12          A. Mr. Borchherding.

13          Q. Who is the recipient of the letter?

14          A. Mr. Mallory.

15          Q. Okay. And you've seen this letter  
16   before?

17          A. I have.

18          Q. Have you not? You have?

19          A. I have, but it's been a while. I'm  
20   just trying to get reacquainted. Okay.

21          Q. Does this particular letter talk about  
22   the OSHA warning for or OSHA label  
23   requirements?

24          A. Yes.

1           Q.   Okay.  And tell the ladies and  
2 gentlemen of the jury why Abex decided to put a  
3 warning on its friction products starting in  
4 the early 1970s?

5           A.  Well, the third page of this letter is  
6 really a copy from the Federal Register dated  
7 June 7, 1972.  On it -- without reading it  
8 aloud, it talks about a requirement for  
9 labeling asbestos-containing products.  It uses  
10 the exact language that Abex adopted, Caution:  
11 Contains asbestos fibers.  Avoid creating dust.  
12 Breathing asbestos dust may cause serious  
13 bodily harm.

14           There's an interesting spin to this  
15 which is there's actually an out.  If you have  
16 your product encapsulated in a resin binder, it  
17 basically says you can exempt -- you can be  
18 exempted from the label requirement.  There was  
19 a lot of discussion at Abex that we really  
20 could be exempted, but I think just to err on  
21 the side of caution, Abex decided to go with  
22 the regulation as it was published in the  
23 Federal Register.

24           Q.  And that -- you recall that first

1       happening, the warning going on the products at  
2       Abex in the early 1970s?

3           A.   Right.

4           Q.   Okay.  Let me hand you what I've now  
5       marked as Exhibit No. 21.  There's an extra  
6       copy there for Mr. Jones as well.

7                   Do you recall what I've handed you as  
8       Exhibit No. 21?

9           A.   I do.

10          Q.   And what is depicted on Exhibit No.  
11       21?

12          A.   On the first page it's a label of  
13       what's actually a photograph, not to scale, of  
14       a heavy-duty brake block box which would  
15       contain eight pieces of brake lining which  
16       would be one axle worth of brake lining.

17          Q.   And what's depicted at the -- right  
18       below where it says "this side up"?

19          A.   The very warning label or verbiage  
20       that I just read.

21          Q.   Okay.  This, what's depicted on  
22       Exhibit No. 21 is the warning label that Abex  
23       included on its friction products starting in  
24       the early 1970s, correct?

1           A. Yes, sir.

2           Q. And is the same thing depicted on page  
3 two of Exhibit No. 21 as well?

4           A. Yeah. Page two is, again, a  
5 photograph, not to scale, of what I would think  
6 would be medium truck brake lining. I couldn't  
7 be certain, but I think that's what it would be  
8 and has the same caution label that we just  
9 discussed.

10          Q. Okay. We're going to shift gears  
11 again staying on the same topic of warnings but  
12 move to Exhibit No. 22 which I'm handing you  
13 now, Mr. Indelicato. There's a second copy for  
14 Mr. Jones again.

15                   (Exhibit No. 22, Recommended  
16 Procedures For Reducing Asbestos Dust During  
17 Brake Servicing so marked)

18           MR. JONES: Thank you.

19          Q. Do you recognize what I've handed you  
20 as Exhibit No. 22, Mr. Indelicato?

21          A. Yeah. I believe this was an -- I want  
22 to call it a page out of the Friction Material  
23 Standards Institute catalog that talks about  
24 recommended practice for reducing asbestos dust

1 during brake servicing.

2 Q. Is this another example of the steps  
3 Abex took to potentially warn its customers  
4 related to issues regarding asbestos and  
5 friction products?

6 A. Yes.

7 Q. And where was this particular  
8 document, Exhibit No. 22? Where would it be  
9 published?

10 A. It would be published in the brake  
11 lining or, I'm sorry, in the brake catalog  
12 published by FMSI which was really the bible of  
13 brake service folks that if you needed to know  
14 what part number to buy to fit a Toyota or a  
15 Chevrolet Impala, you would go to that catalog  
16 and use it to know what part number to order.

17 Q. Okay. You would agree with me, Mr.  
18 Indelicato, that the conditions in the various  
19 Abex plants where Abex manufactured its  
20 friction material were very different than the  
21 conditions that a mechanic might encounter when  
22 they are working with a brake on their car,  
23 correct?

24 MR. BERQUIST: Objection to form.

1           A. Yes, sir.

2           Q. Why is there a big difference between  
3 what Abex was doing when it was manufacturing  
4 lining in its plants versus what the end user  
5 is doing with a finished product?

6           MR. BERQUIST: Objection to form.

7           A. There's several aspects to that. One  
8 is just in sheer quantity. I mean, Abex went  
9 through hundreds of thousands of pounds of raw  
10 asbestos in its factories. And, consequently,  
11 had, you know, more of a concern and difficult  
12 time to control that vast quantity of raw  
13 asbestos.

14           So you have the one issue of just  
15 scale and size, where a mechanic would be  
16 dealing with a few brake jobs, you know, a week  
17 or maybe in the off chance a couple a day, but  
18 I think the bigger issue was that Abex was  
19 dealing with raw asbestos. When the friction  
20 material was manufactured, the asbestos was  
21 pretty well tied up and encapsulated in a  
22 polymer that really rendered it very difficult  
23 to be airborne.

24           So I think it's a matter of just sheer

1 quantity, and I also think it's a matter of raw  
2 versus processed asbestos. Much to the warning  
3 in the Federal Register which essentially gave  
4 you an out if you felt that your product had  
5 the asbestos encapsulated.

6 Q. Do you believe that the  
7 asbestos-containing friction materials that  
8 were manufactured by Abex up until the end of  
9 December 31, 1987, were hazardous to any end  
10 user?

11 A. No, I don't believe they were.

12 Q. Do you believe that the  
13 asbestos-containing friction material  
14 manufactured by Abex up until the end of  
15 December 1987 were safe?

16 A. Yes.

17 Q. I want to shift gears, and the last  
18 section I want to cover and, hopefully, we can  
19 wrap up, was the sale to other various  
20 entities, Mr. Indelicato?

21 A. Okay.

22 Q. I believe you were shown a document  
23 that was marked as Exhibit No. 12 which I'll  
24 hand to you now. This was the -- I guess, how

1 would you describe this document again?

2 A. It's excerpts from strategic planning  
3 exercise that Abex did, and the best we could  
4 estimate it was probably vintage '82 or '83.

5 Q. And there were a lot of questions  
6 about Abex's supply to various entities. Do  
7 you recall that?

8 A. Yes.

9 Q. And there were also a lot of questions  
10 about Abex's associated market share at any  
11 given time. Do you recall that?

12 A. That's right, I do.

13 Q. Was Abex ever able to ascertain with  
14 any specificity how much market share it had at  
15 any given time with any sort of specificity, or  
16 was it more of a guess?

17 A. It's more of an educated guess but  
18 also candidly easily manipulated depending on  
19 the outcome that one would like to see. And I  
20 saw an instance in one of these strategic  
21 planning exercises that I was intimately  
22 involved with that the market shares made no  
23 sense. And when I started to drill into it a  
24 little bit, I found out that the guys that



1       worked up the numbers decided that because  
2       General Motors had a captive friction material  
3       business, they decided to exclude it. So, you  
4       know, they're best estimates at best.

5           Q. And market share is changing at any  
6       given time. What could be in effect in 1983  
7       could change in 1984 or '85 or '86, right?

8           A. Could change tomorrow.

9           Q. Okay. Just because Abex had a certain  
10      market share in roughly the 1983 time period  
11      for any particular market doesn't mean that  
12      Abex had the same market share in the 1940s,  
13      '50s, '60s or '70s, did it?

14          A. Absolutely correct.

15          Q. I'm probably going to have to do this  
16      individually which will take more time. I'll  
17      try to speed it up a little bit. You mentioned  
18      earlier sales to Rockwell and Eaton. Do you  
19      recall that?

20          A. Yes.

21          Q. Do you have -- are you able to offer  
22      any testimony as to how much friction material  
23      Abex may have supplied to Rockwell and Eaton in  
24      the '30s, '40s, '50s or '60s before you got to

1 Abex?

2 A. No. I mean, I'm pretty sure Rockwell  
3 was a customer going back into the '50s at  
4 least. I'm not sure that Eaton was until  
5 probably much later in time like '70s.

6 Q. And do you have any -- based on your  
7 personal knowledge, your experience, your  
8 training, all the customers you visited,  
9 including Rockwell and Eaton, do you recall if  
10 Abex was ever an exclusive supplier of any  
11 friction materials to either Rockwell or Eaton?

12 A. No. I don't believe we were ever  
13 exclusive.

14 Q. So it's your understanding that then  
15 there were multiple other suppliers that both  
16 Rockwell and Eaton used for various heavy-duty  
17 friction products, correct?

18 A. Yes.

19 Q. It wasn't just Abex, was it?

20 A. It was not.

21 Q. Any statement to the contrary would  
22 just simply be false, correct?

23 A. Yes.

24 Q. Same type of questions as to Freuhauf.

1 You're not able to state with any certainty or  
2 specificity how big a customer Freuhauf may  
3 have been in the '40s, '50s, '60s before you  
4 got to Abex, correct?

5 A. Correct.

6 Q. And as you understand it, Freuhauf had  
7 a variety of different friction material  
8 suppliers, correct?

9 A. Yeah. Principally, as I recall it, it  
10 was Carlisle, and our mission was to try to  
11 unseat them and get a position at Freuhauf.

12 Q. So there was no -- as you understand  
13 it, Abex was never an exclusive supplier to  
14 Freuhauf for OEM applications, correct?

15 A. Correct.

16 Q. And the little bit of business Abex  
17 had with Freuhauf was gone really quick because  
18 of the problems Abex had with the particular  
19 drilling of the linings, correct?

20 A. Right. And then we tried to work to  
21 get some back, but it was a very long and  
22 arduous process.

23 Q. Okay. I'm going to try to do this in  
24 shortcut fashion. If I get an objection, I'll

1 do it the slow way. But you were asked earlier  
2 about Freightliner?

3 A. Right.

4 Q. You were asked about Great Dane,  
5 International Harvester, Navistar, Mack Truck,  
6 Kenworth and Peterbilt in terms of Abex  
7 supplying them, correct?

8 A. Yes.

9 Q. For any of those companies I just  
10 listed, do you have any personal knowledge  
11 prior to the time you got to Abex as to the  
12 extent of Abex's sale or supply of friction  
13 materials to those companies in the '40s, '50s  
14 or the '60s?

15 A. I do not.

16 Q. Okay. As you understand, for all  
17 these various companies, Abex was never an  
18 exclusive supplier for OEM applications for  
19 those particular companies' friction needs,  
20 correct?

21 A. I don't believe that we were ever  
22 exclusive.

23 Q. So that means it's your understanding  
24 that each of those companies had multiple

1 suppliers of friction products beyond just  
2 Abex, right?

3 A. Yes.

4 MR. JONES: Object to form.  
5 Foundation. Not compound. I'm not objecting  
6 to compound. Sorry.

7 Q. Mr. Indelicato, in terms of all those  
8 various companies I mentioned earlier,  
9 Freightliner, Great Dane, International  
10 Harvester, Navistar, Mack Truck, Kenworth and  
11 Peterbilt, do you have enough personal  
12 knowledge as to whether other companies  
13 supplied them with friction products?

14 A. Yes.

15 Q. Okay. So based on that knowledge, are  
16 you able to tell the ladies and gentlemen of  
17 the jury that Bendix was not an exclusive  
18 supplier to any of those companies for OEM  
19 applications?

20 A. Yes.

21 Q. Okay. You were also asked questions  
22 about Ford medium trucks?

23 A. I'm sorry, Ford?

24 Q. Ford medium trucks?

1           A.   Yes.

2           Q.   And whether Abex was a supplier.  Do  
3   you recall that?

4           A.   Yes.

5           Q.   All right.  Same questions, kind of  
6   repetitive, I apologize, but in terms of your  
7   own personal knowledge of whether Abex supplied  
8   Ford OEM brake linings for medium trucks in the  
9   '30s, '40s, '50s and '60s before you started,  
10   you have no knowledge of that, right?

11          A.   I have no knowledge.

12          Q.   And for the time period after when you  
13   started in 1970, is it your understanding that  
14   Ford had multiple different suppliers of  
15   friction material for use on medium trucks?

16          A.   Yes.

17          Q.   Abex was never an exclusive supplier  
18   to Ford for medium trucks, was it?

19          A.   No.

20          Q.   You talked about Chevy and Cadillac  
21   earlier as well.  Do you recall whether General  
22   Motors, they were the owners of Chevy and  
23   Cadillac, correct?

24          A.   Yes.

1           Q. Did General Motors have its own  
2 captive friction manufacturing company that  
3 used raw asbestos and manufactured friction  
4 materials just like Abex?

5           A. Yes. In fact, they had two. One was  
6 called Inland, and the other was called Delco.  
7 I think ultimately they merged into one  
8 operating business. But when I first got  
9 involved, Delco basically took care the disc  
10 brakes and Inland took care of the drum brakes,  
11 and they would supply most of the General  
12 Motors' requirements with their own captive  
13 friction material. For purposes of security of  
14 supply, should there be a work stoppage or some  
15 other catastrophe, they always like to have  
16 some other friction company kind of in the  
17 wings, and they would kind of throw what I  
18 would call a bone to them.

19          Q. Okay.

20          A. Abex's bone was the rear brakes on  
21 GMC, and Chevy I think it was three-quarter ton  
22 trucks. And Cadillac, I believe it was the  
23 Cadillac Deville 12-inch rear brake. And I  
24 think that was it.

1           Q. You don't recall the years when Abex  
2    may have supplied Cadillac for the Deville, do  
3    you?

4           A. No, I think it was going on in about  
5    the time I started visiting Winchester with  
6    some frequency and certainly while I was  
7    working there.

8           Q. But it was limited solely to one  
9    model, as you recall, correct?

10          A. Yes.

11          Q. It was just for the OEM application,  
12   correct?

13          A. That's right. We would ship the brake  
14    lining to, I believe, Delco who assembled it on  
15    to a shoe and further on to a brake and on to  
16    an axle and on to the vehicle.

17          Q. Same questions for Chevy. Who would  
18    assemble the lining on to the shoe that would  
19    go to Chevy for the three-quarter ton or  
20    quarter-ton trucks?

21          A. Well, it was three-quarter ton, as I  
22    recall it, and Chevy and GMC were benign to us.  
23    It was the same part number. So we didn't know  
24    where it was going to go. Rather it would go



1 to probably Delco where it would be assembled  
2 on to a brake.

3 Q. What Abex was supplying to Chevy for  
4 three-quarter ton pickup was similar friction  
5 material for the brake itself?

6 A. Right. I don't think Chevy was the  
7 customer of record, if you will. I think it  
8 was probably Delco.

9 Q. You don't recall the years for which  
10 Abex may have supplied OEM to Chevy for the  
11 three-quarter ton or quarter-ton pickup trucks,  
12 do you?

13 A. No. I think -- and just to correct  
14 you, Mr. Flynn, I don't think we supplied  
15 quarter-ton. I think it was just three-quarter  
16 ton.

17 Q. Okay.

18 A. I think the time period was, again,  
19 analogous to what I recited for Cadillac, about  
20 when I arrived at Winchester in the early '70s  
21 through most of my career there.

22 THE WITNESS: A good massage on her  
23 expense account, don't you think? Maybe I  
24 should bring my own chair. Maybe that's the

1       trick.

2       BY MR. FLYNN:

3             Q.   Mr. Indelicato, I just want to wrap up  
4       by simply asking you, your time at Abex, did  
5       you like working at Abex?

6             A.   I did.

7             Q.   Why is that?

8             A.   It was an exciting company.  I mean,  
9       it was progressive in many ways.  You know, a  
10      lot things I learned or developed in the  
11      laboratory I got to see become a commercial  
12      success.  I was the guy that designed the  
13      process that Salisbury was based on so I saw it  
14      go from the laboratory experiment to a factory  
15      that was putting out a lot of brake lining  
16      every day.  I was instrumental in getting Abex  
17      positioned with an asbestos-free product  
18      offering with Dr. Merkel.  I went from a lab  
19      technician to the president of the company and  
20      ultimately the CEO.  You know, it was a pretty  
21      good ride.  It was a lot of fun.

22            MR. FLYNN:  I have no further  
23      questions at this time.  And the last thing I  
24      would simply want to do is mark as whatever the

1 last exhibit is Abex's objection to the notice  
2 of deposition from plaintiff. And with that I  
3 have no further questions for you.

4 (Exhibit No. 23, Pneumo Abex, LLC's  
5 Response and Objections to Plaintiffs' Notice  
6 of Videotaped Deposition of Pneumo Abex, LLC so  
7 marked)

8 MR. FLYNN: Just for the record that  
9 will be -- Exhibit 23 will be Abex's objection  
10 to the deposition notice.

11 Mr. Indelicato, thank you for your  
12 time.

13 THE WITNESS: My pleasure.

14 EXAMINATION CONDUCTED

15 BY MS. VELLUCCI:

16 Q. Sir, afternoon. My name is Margreta  
17 Vellucci. I don't have a whole lot of  
18 questions for you, but I do have some.

19 A. Okay.

20 Q. I'm here on behalf of Genuine Parts  
21 Company, and I just want to first direct your  
22 attention to what I believe was marked as  
23 Exhibit 16. And those are some Genuine Parts  
24 Company discovery responses. Let me know when

1       you have that in front of you?

2           A.   Unfortunately, these are no longer in  
3       order.

4           Q.   I know.

5           A.   I'll do my best to get us there.

6           Q.   Okay.

7           MR. JONES:   I can give you my copy.

8           A.   Yeah, I'm fine with that.

9           THE WITNESS:   Are you okay with that,  
10       Johan, if I use the unlabeled copy of the  
11       exhibit?

12          MR. FLYNN:   That's fine.

13          Q.   That's fine.   As long as we are  
14       looking at the same thing, that's fine with me.

15          A.   Yeah, I recognize it.

16          Q.   I'm on page 10 and it's letter H.   Let  
17       me know when you're there.

18          A.   I am there.

19          Q.   Okay.   And looking at letter H, the  
20       beginning of that response says, "Manufacturers  
21       of the asbestos-containing friction materials  
22       purchased by GPC at various times included,"  
23       and then there's a colon and a list?

24          A.   Right.

1           Q. I first want to ask you, that various  
2 times, you don't know what time frame it  
3 referred to in those discovery responses, do  
4 you?

5           A. No, I haven't seen the whole discovery  
6 response so I don't know if it's defined in  
7 here somewhere.

8           Q. Okay. As you sit here today, you  
9 can't tell me the time frame that any or all of  
10 these friction materials were purchased by  
11 Genuine Parts Company; is that true?

12          A. Well, I can tell you that some of  
13 these names I recognize, and I personally saw  
14 them in the Rayloc plant in Atlanta.  
15 Specifically, Bendix, Tappa, Hemispheres,  
16 Kolon, Friction Division Products which used to  
17 be called Thiakol, Certified. I've seen those  
18 there.

19          Q. Okay. Let me -- the first one you  
20 said was Bendix?

21          A. Yeah. Let's go from the beginning,  
22 make it easier on both of us.

23          Q. You said you saw Bendix where?

24          A. At Rayloc, Atlanta.

1           Q.   Okay.   And in what context?   Where did  
2   you see Bendix?

3           A.   In the factory being assembled on to  
4   brake shoes and put in boxes.

5           Q.   And what time frame is that?

6           A.   Couldn't say precisely, sometime  
7   probably in the '70s and '80s.

8           Q.   Are you able to be more specific?  
9   Could you tell me, was it throughout both  
10   decades, or could it have been in 1980s alone  
11   and not in the 1970s?

12          A.   I'd say it was probably the latter  
13   part of the 1970s.   If I had to, you know, give  
14   you an estimate, I'd say '75 to '80 would be  
15   probably the best time that I would have had  
16   opportunity to see that.

17          Q.   You can't be any more specific than  
18   that with me?

19          A.   No.

20          Q.   Okay.   Do you have -- can you tell me  
21   why you were there, what reason that you were  
22   there for that particular visit?

23          A.   You know, I was summoned to not  
24   Genuine Parts headquarters, but Rayloc

1       headquarters in Atlantic pretty regularly. I  
2       also went just to support our sales staff so I  
3       was there a lot.

4           Q.   Okay.

5           A.   The reasons were generally to  
6       introduce a new product, to present some  
7       technical data or to -- when I was in quality  
8       assurance, to help solve a problem.

9           Q.   Okay. Maybe this will make -- this  
10       might make it easier for us and even shortcut  
11       it a little bit.

12          A.   Okay.

13          Q.   Are you able to tell me, other than,  
14       you know, that '75 to '80 time frame when you  
15       recall seeing any of the other manufacturers at  
16       the Rayloc facility in Atlanta? In other  
17       words, can you be more specific with respect to  
18       any of the other ones that you listed out  
19       Hemispheres, Tappa, Friction Division Products  
20       or Certified Brakes?

21          A.   No, not really. I mean, all of those  
22       would be available to be seen at some point in  
23       my visits to Rayloc. I mean, they used all of  
24       those brake linings pretty regularly.

1           Q.   What do you mean by "pretty  
2   regularly"?

3           A.   Well, I mean, you know, if I'm only  
4   going down there like let's say once every  
5   couple of months and I see one of these  
6   products, I would have to assume they were  
7   there pretty regularly, or I wouldn't have the  
8   opportunity to see them.

9           Q.   You can't tell me how often Genuine  
10   Parts or Rayloc used any of those products; is  
11   that true?

12          A.   That's true.

13          Q.   You can't give me a percentage for any  
14   of those products; is that true?

15          A.   No.

16          Q.   That's a true statement?

17          A.   Yes.

18          Q.   Okay. I also want to ask you about  
19   some of the other names listed also in H, and  
20   if you look at it, it says Ace Manufacturing  
21   and Parts Co. Do you see that?

22          A.   Yes.

23          Q.   If I represent to you that Ace  
24   Manufacturing and Parts Company, that they



1       manufactured clutch assemblies, do you have any  
2       reason to disagree with that?

3           A.   I do not.

4           Q.   All right.  Next on that list that I  
5       want you to look at is American Precision Co.  
6       Do you see that?

7           A.   Yes.

8           Q.   And if I represented to you that  
9       American Precision Co., they manufactured  
10      clutch facings, do you have any reason to  
11      disagree with that?

12          A.   I do not.

13          Q.   If you look at Borg-Warner Corp., do  
14      you see that one?

15          A.   I do.

16          Q.   If I represented to you that they  
17      manufactured complete clutch assemblies, do you  
18      have any reason to disagree with that?

19          A.   I would agree that they manufactured  
20      complete clutch assemblies, but I think there  
21      were periods of time when Borg-Warner also had  
22      some friction materials, brake lining.

23          Q.   Okay.  Are you able to tell me what  
24      that period of time would have been?

1           A. I'd have to really think on that.

2           There was an executive that came to Abex that  
3           was a former Borg-Warner employee, and I talked  
4           to him about the fact that there was a point in  
5           time when Borg-Warner did, in fact, supply  
6           brake lining that was asbestos-containing.  
7           Whether or not they supplied Rayloc, I couldn't  
8           say for certain.

9           Q. Okay. All right. Central Automotive,  
10          do you see that one?

11          A. I do.

12          Q. If I represented to you that they  
13          manufactured complete clutch assemblies, do you  
14          have any reason to disagree with that?

15          A. I do not.

16          Q. Next on my list is Daido, D-A-I-D-O  
17          Overseas, Inc. If I represented to you that  
18          they manufactured complete clutch assemblies,  
19          do you have any reason to disagree with that?

20          A. I don't want to challenge you, but I  
21          think that I know the name Daido from some  
22          brake business so I just -- I'm not certain  
23          about that one.

24          Q. Okay. You can't say one way or the

1 other?

2 A. I really can't.

3 Q. Daikin Clutch, if I represented to you  
4 that Daikin Clutch manufactured complete clutch  
5 assemblies, do you have any reason to disagree  
6 with that?

7 A. I do not.

8 Q. Eastern Auto Parts, if I represented  
9 to you that they manufactured complete clutch  
10 assemblies, do you have any reason to disagree  
11 with that?

12 A. No, I do not.

13 Q. European Parts Exchange, Inc., if I  
14 represented to you that they manufactured  
15 complete clutch assemblies, would you have any  
16 reason to disagree with that?

17 MR. FLYNN: Object to form. Assumes  
18 facts. Misstates the evidence.

19 A. I know that EP also made brake lining.

20 Q. Okay.

21 A. Or I shouldn't say made brake lining.  
22 They assembled and distributed brake lining.

23 Q. Do you have any firsthand knowledge or  
24 evidence that they supplied brake linings to

1 Rayloc?

2 A. No.

3 Q. All right. Friction Material  
4 Warehouse of Florida, Inc., if I represented to  
5 you that they manufactured clutch facings, do  
6 you have any reason to disagree with that?

7 A. I do not.

8 Q. Kolon California Corp., do you see  
9 that one?

10 A. Yes.

11 Q. If I represented to you that they  
12 manufactured complete clutch assemblies, do you  
13 have any reason to disagree with that?

14 A. No, but I think they also may have  
15 manufactured brake lining.

16 Q. Do you have any evidence or firsthand  
17 knowledge that they supplied brake linings to  
18 Rayloc?

19 A. No.

20 Q. The next one I'm looking at is Luk,  
21 L-U-K. If I represented to you that they  
22 manufactured complete clutch assemblies, do you  
23 have any reason to disagree with that?

24 A. I do not.

1           Q. Raymark, if I represented to you that  
2           they manufactured clutch facings, do you have  
3           any reason to disagree with that?

4           A. I can only add that I know that  
5           Raymark, a/k/a Raybestos-Manhattan, supplied  
6           brake lining to Rayloc.

7           Q. And that's -- the testimony you  
8           provided earlier is the reason that you're  
9           saying that?

10          A. Yes.

11          Q. Okay. We've already discussed that?

12          A. Okay.

13          Q. Or you have anyway, right? Okay.  
14          Sachs, S-A-C-H-S, Automotive Products, if I  
15          represented to you that they manufactured  
16          complete clutch assemblies, do you have any  
17          reason to disagree with that?

18          A. I do not.

19          Q. Okay. I think that's all I have for  
20          you on that document. I want to ask you about  
21          a couple of other things that you said earlier.  
22          One was that you mentioned there was an  
23          instance or two where someone bought NAPA  
24          brakes that said American Brakeblok but found

1 the linings not to be American Brakeblok. Do  
2 you recall that testimony?

3 A. I do.

4 Q. Can you tell me that instance or two  
5 when it occurred, what decade that was in?

6 A. I probably could. I just can't recall  
7 right now. I think there was some document.  
8 There was a note that kind of flew around  
9 announcing that discovery. I remember the  
10 individual who found that out, but I don't  
11 remember the exact date.

12 Q. What was that individual's name?

13 A. Last name is Laus, L-A-U-S.

14 Q. You believe there was a -- you said a  
15 memo?

16 A. I don't know if it was a handwritten  
17 note or -- but it was some correspondence that  
18 said, hey, guys, we got a problem.

19 Q. And who is this gentleman Laus?

20 A. I don't know what job he had at the  
21 time. He started out as a co-op student with  
22 Abex or summer intern from the University of  
23 Michigan, and we hired him when he graduated.  
24 He worked in our purchasing department. He

1       worked in quality assurance, ultimately became  
2       VP of manufacturing. Somewhere in there, I  
3       think earlier in his career rather than later  
4       is when he went to buy a set of brakes to  
5       reline his own car and insisted on American  
6       Brakeblok brake lining and/or American  
7       Brakeblok and got it home and opened it up and  
8       lo and behold it wasn't our brake lining.

9           Q. So he purchased this -- the brakes for  
10       his own personal use?

11          A. Yes.

12          Q. Do you know where he purchased those  
13       brakes?

14          A. I honestly don't know if he purchased  
15       them from a NAPA jobber or he might have gotten  
16       some gratis from Rayloc. I mean, it's  
17       possible. We used to do that, occasionally  
18       call up and say, you know, Al wants a set of  
19       brake lining for his car. Can you guys send  
20       us. So I don't know that he actually purchased  
21       it, but it came through the NAPA system.

22          Q. Okay. And your understanding is that  
23       he purchased them, and they came in a box that  
24       said American Brakeblok?

1           A. That's my understanding.

2           Q. And that he opened the box and there  
3           were brakes in there, and that the linings were  
4           not American Brakeblok linings?

5           A. Yes.

6           Q. Did he mention how he knew that they  
7           were not American Brakeblok linings?

8           A. No. It should be obvious on a new  
9           brake lining; there's edgecodes. He would  
10          recognize our edgecodes. If it wasn't ours, it  
11          would be presumably somebody else's.

12          Q. Okay. And you can't tell me -- I know  
13          he said you didn't know the year, but you can't  
14          tell me the decade when it happened?

15          A. No.

16          Q. It was somewhere in Michigan?

17          A. No, it happened, I think he was in  
18          Winchester at the time, Winchester, Virginia.

19          Q. Okay.

20          A. I would say that the nominal time is  
21          the '80s, probably the earlier part of it.

22          Q. You think this was sometime in the  
23          early 1980s?

24          A. Yes.



1           Q. Do you know if he was buying disc  
2       brakes or drum brakes?

3           A. I'm not certain.

4           Q. And that document that you referenced,  
5       is that part of Abex's document repository?

6           A. I've seen it. I don't know if it came  
7       out of our repository or if it surfaced  
8       somewhere in all this litigation we're involved  
9       in. I've seen it in the context of the  
10      litigation. Whether it was actually a document  
11      that came out of our repository, I couldn't  
12      tell you, sitting here today.

13          Q. When was the last time you saw that  
14      document personally?

15          A. Maybe a year ago.

16          Q. Was that in the context of a  
17      deposition or a lawsuit?

18          A. Yeah. I presume so, sure. It's kind  
19      of all I do.

20          Q. I want to ask you a quick question or  
21      two about what we marked as Exhibit 2, which is  
22      the letter from Mr. Iwarsson?

23          A. Give me a second.

24          Q. Sure.

1           A. Got it.

2           Q. I want to ask you about -- with  
3 referenced in the third paragraph of that  
4 letter, there's a reference to a letter that  
5 would have come from Genuine Parts Company from  
6 Edward Jones to Abex.

7           A. I see that.

8           Q. Okay. Have you seen that letter?

9           A. I don't recall it.

10          Q. Okay. Do you know anything about the  
11 content of that letter? Can you tell me  
12 anything about it without speculating?

13          A. No, only what I could assume based on  
14 this.

15          Q. Okay. Have you seen any data to  
16 support this 46 percent figure in the third  
17 paragraph?

18          A. I have not.

19          Q. Okay. Let me ask you this. This is  
20 just a clarification for me. When you were  
21 describing earlier the product, the 3-foot  
22 long, and I think you said 8-foot wide product  
23 that went from -- maybe I've got my numbers  
24 mixed up -- that went from Abex to Rayloc of

1 the lining?

2 A. That wasn't the product. That was  
3 describing the box the product went in.

4 Q. Okay. I missed that.

5 A. It wasn't 8 feet. It was 8 inches.

6 Q. 8 inches. I knew I had that wrong on  
7 some level, sounds like every level?

8 A. That's okay.

9 Q. Let me ask you this: Did Abex ever  
10 sell rolls of friction material to Rayloc?

11 MR. FLYNN: Objection to form.

12 A. It's possible that we did at some  
13 point earlier on for very special instrumental  
14 kind of application on a very limited scope.  
15 It would be mainstream business.

16 Q. Okay.

17 A. Rayloc would sometimes pride itself on  
18 trying to help people out of jams. So if  
19 somebody came and said, gee, I have some kind  
20 of really old vehicle, like a Model T Ford, and  
21 you don't have part numbers, can you help me  
22 out? That's where that kind of thing might  
23 happen.

24 Q. And you said "earlier on." Are you

1     able to tell me a year or decade when you think  
2     that type of product, that roll product would  
3     have been sold?

4             MR. FLYNN:  Objection to form.  
5     Relevance.

6             A.  I saw some roll product in the early  
7     '70s.

8             Q.  Okay.

9             A.  So, you know, certainly predating  
10    that.

11            Q.  Okay.  Earlier you had discussed, you  
12    had mentioned some visits you made to a Rayloc  
13    facility where you didn't see warnings on the  
14    brake boxes.  Do you remember that testimony  
15    generally?

16            A.  Basically.

17            Q.  From earlier, do you have a particular  
18    facility in mind in Atlanta?

19            A.  Yeah, probably Atlanta.  I mean, I  
20    went, you know, through -- I'd say 90 percent  
21    of the visits I made to Rayloc or to Genuine  
22    Parts were to Atlanta.  Most often it would be  
23    the Rayloc facility with a stop in at Genuine  
24    Parts headquarters and NAPA headquarters, but

1 I've also been to, you know, their plant in  
2 Stephenville, Texas. I've been to the one  
3 Hancock, Maryland. I think there was one out  
4 in Utah for a while.

5 So I've been around, but most of the  
6 time it was Atlanta because Rayloc's  
7 headquarters was in Atlanta. That's where kind  
8 of the decisions were made for purchasing or  
9 engineering or....

10 Q. When you saw the brake boxes that you  
11 recalled not having warnings, did you have a  
12 memory of seeing that specifically in Atlanta,  
13 or do you have a general memory and you know  
14 you went to the Atlanta a lot and that's why  
15 you --

16 A. No, I kind of remember it being  
17 Atlanta.

18 Q. Are you able to give me -- I know you  
19 said it could have been the mid '70s up to  
20 until the late '80s. Can you be any more  
21 specific as far as when that occurred?

22 A. No.

23 MS. VELLUCCI: I think those are all  
24 the questions that I have.

1 THE WITNESS: Okay. Great.

2 EXAMINATION CONDUCTED

3 BY MR. JONES:

4 Q. Mr. Indelicato, I'll try to make this  
5 brief. You were asked some questions before by  
6 the representative for Paccar about whether or  
7 not the OEM truck manufacturers would know  
8 about the asbestos content of the brakes that  
9 were installed on their trucks as original  
10 equipment. Do you recall those questions?

11 A. I do.

12 Q. Paccar, that's the company that now  
13 owns, I think, Peterbilt and Kenworth; is that  
14 right?

15 A. I think that's right, but I haven't  
16 kept track of....

17 Q. In general, if a particular brake  
18 lining -- they're identified by model number?

19 A. Formula number.

20 Q. Okay. If a particular brake lining  
21 was approved for use on a vehicle, be it a  
22 passenger car, light or heavy truck, was the  
23 manufacturer of the vehicle aware of the  
24 ingredients of the friction material?

1           A. I would say they should be, and I'm  
2       not saying forever, but there was a point when  
3       MSDSes came in and the whole right to know  
4       thing came in to play. Abex had an obligation  
5       to send its MSDS to the person we shipped our  
6       product to. I believe they, in turn, had an  
7       obligation to have an MSDS go to their  
8       customer. So my answer to your question is  
9       yes, I believe that the ultimate end recipient  
10      of that product would have knowledge.

11          Q. For OEM applications, is the lining  
12      manufacturer like Abex and the brake  
13      manufacturer like Rockwell or Eaton and the  
14      original equipment manufacturer like Peterbilt  
15      or Kenworth, do they work together in coming to  
16      a final product that will be used on the truck,  
17      the heavy-duty truck?

18          A. It's true in light trucks and  
19      passenger cars as well. I mean, they're, you  
20      know, a good example would be the development  
21      of the Ford Ranger. Even after the basic brake  
22      was selected, which happened to be a Bendix  
23      9-inch brake and Abex's lining was nominally  
24      selected, Bendix engineers, Ford engineers,

1 Abex engineers all went out on field trips  
2 where they'd have 20 mules, which were  
3 prereleased production vehicles to have all  
4 those components on the vehicle. They were  
5 tested. The cars were instrumented. There  
6 would be tweaks, and, gee, we really think this  
7 break should come into play a little bit  
8 earlier. We change a proportioning valve. So  
9 there is all sorts of stuff like that that goes  
10 on between friction manufacturers, brake  
11 engineers, or brake manufacturers and vehicle  
12 manufacturers, very common.

13 Q. So the original equipment vehicle  
14 manufacturer, it's not like they just call Abex  
15 and say, hey, I need a lining, and the lining  
16 shows up, and they throw it on the vehicle?

17 A. No. I mean, they might call up and  
18 say Abex, you know, we have a 23,000-pound  
19 axle. What you do think? And we say, gee, we  
20 think 693551 B would be a good formula for  
21 that. Can we send you some samples? Would you  
22 like some engineering data?

23 Q. Were the original equipment  
24 manufacturers, generally speaking,



1 knowledgeable about brake systems in general  
2 and friction materials specifically?

3 A. Brakes, very much so. I mean, they  
4 had an obligation to make sure that their  
5 vehicle complied with the Federal Motor Vehicle  
6 Safety Standards, or they better know. And as  
7 a result of attaining that knowledge, they  
8 would have a pretty good working knowledge of  
9 friction material.

10 Q. Approximately how many brake linings  
11 per year in the 1970s was Abex selling to GPC,  
12 Rayloc, NAPA?

13 A. I couldn't even -- I mean, you know, I  
14 could go home with a martini and try to come up  
15 with a scenario for you, but I really don't  
16 know.

17 Q. Would it be measured in the tens, the  
18 hundreds, the thousands, the hundred thousands,  
19 millions in a year?

20 A. In a year?

21 MR. FLYNN: Objection to form.

22 A. I don't know. I mean, you're really  
23 asking me to pull a rabbit out of a hat here.  
24 I just don't know.

1 Q. Around how much was one lining?

2 A. Dollar-wise?

3 Q. Yeah.

4 A. Well, I mean, I'll give you a really  
5 good example.

6 MR. FLYNN: Objection to form.

7 A. It makes my answer so difficult. Disc  
8 brake pads sold to Rayloc for about \$.25.

9 Q. Okay.

10 A. A brake block set of eight -- well, a  
11 brake block sold for about \$3 or \$4. So, I  
12 mean, if I'm off in my estimate of passenger  
13 car disc brakes versus heavy-duty drum brakes,  
14 you know, I could swing the answer by an order  
15 of magnitude or two.

16 Q. Well, if you assume it's the \$4  
17 number, and you assumed \$20 million in sales  
18 for one year, that's 5,000,000 linings in a  
19 year?

20 A. If they were all --

21 MR. FLYNN: Objection to form.

22 Incomplete hypothetical. Don't speculate. If  
23 you can't answer the question --

24 Q. That would be --

1           MR. FLYNN: -- don't answer the  
2 question.

3           Q. I had previously asked you about the  
4 amount in sales per year in the '70s, and you  
5 said \$20 to \$25 million, right?

6           A. Right.

7           Q. And I asked you -- you told me the  
8 most expensive lining product was \$4, right?

9           A. Approximately.

10          Q. I took the lower of the 20 to 25, 20  
11 million, right?

12          A. Okay.

13          Q. And I took the higher of the price,  
14 \$4, came up with around a million linings?

15                 MR. FLYNN: Objection to form.  
16 Misstates the witness' testimony. Assumes  
17 facts. Incomplete hypothetical.

18          A. I would agree that your math seems to  
19 be correct.

20          Q. Okay. Let me show you what I'll mark  
21 as Exhibit 24 and 25 for the deposition.

22                 (Exhibit No. 24, Letter to Robert  
23 McKenna, 4.24.84 so marked)

24                 (Exhibit No. 25, Letter to Richard

1 Rohr, 5.18.84 so marked)

2 Q. This is 24 and 25. I think those are  
3 my only copies. If you could show those to  
4 your counsel?

5 A. Sure.

6 THE WITNESS: Can we go off the record  
7 for just a minute?

8 MR. JONES: We may.

9 (Discussion off the record)

10 THE VIDEOGRAPHER: The time is 5:58  
11 p.m., and we are going off the record.

12 (Recess 5:58 p.m. to 6:00 p.m.)

13 THE VIDEOGRAPHER: The time is 6 p.m.,  
14 and we are back on the record.

15 BY MR. JONES:

16 Q. Have you seen Exhibits 24 and 25  
17 before?

18 A. I don't believe I have. I read 24. I  
19 haven't read 25. I just got it from my counsel  
20 so you just give me a second.

21 Q. Sure.

22 A. I get the nominal picture. Okay.

23 Q. Exhibit 24 is a letter to a person at  
24 NAPA?

1 A. Yeah, Bob McKenna.

2 Q. Do you know Mr. McKenna?

3 A. I do.

4 Q. And the letter, I believe, is from  
5 Mr. McKenna's attorneys or NAPA attorneys?

6 A. Presume so. It's Richard Rohr, and  
7 the content of it makes me believe that it's  
8 his attorney writing to him.

9 Q. Okay. And Exhibit 25 is a letter to  
10 Mr. Rohr from an employee at Abex?

11 A. He was the general --

12 MR. FLYNN: Object to foundation.

13 Lack of authenticity. Hearsay.

14 Q. Okay.

15 MR. FLYNN: Relevance.

16 Q. For Exhibit 25, the second document --

17 A. Yes.

18 Q. -- who is the Abex employee who  
19 authored this letter?

20 A. It looks to be Mr. Charles Grinnell  
21 who was the general counsel for Abex at that  
22 time.

23 Q. Did you know Mr. Grinnell?

24 A. I've met him a few times, yes.

1 Q. Okay. And what was your position at  
2 Abex?

3 A. In '85?

4 Q. Yeah.

5 A. '84, '85 vice president of engineering  
6 in '85.

7 Q. Okay. And does Exhibit 25 appear to  
8 be on Abex letterhead?

9 A. It does.

10 Q. That's the same letterhead used in  
11 that time frame while you were there?

12 A. Yeah. It's a little different. This  
13 was after the New York headquarters were closed  
14 and it moved to Stamford. That's what's kind  
15 of sticking out to me.

16 Q. Okay. And that's Mr. Grinnell's  
17 signature on the second page?

18 A. It looks like it, probably is.

19 Q. Okay. Do you have any reason to  
20 dispute that this is an authentic copy of an  
21 Abex letter?

22 MR. FLYNN: Objection to form.

23 A. No. I mean, it's signed. It looks  
24 like it's stylized logo letterhead. It has a

1 received stamp. No, I don't have any reason to  
2 think it's not authentic.

3 Q. Okay. What these two documents  
4 basically discuss are lawsuits brought against  
5 NAPA related to asbestos brakes?

6 A. Right.

7 Q. And in --

8 MR. FLYNN: I'm going to object --  
9 pardon me to interrupt. Object to form as to  
10 the definition of NAPA, what it entails. Is  
11 vague, ambiguous. Not to find -- lacks  
12 specificity.

13 Q. And in the second letter Mr. Grinnell  
14 agrees to cover some defense costs encountered  
15 by -- strike that.

16 In the second letter Mr. Grinnell  
17 agrees on behalf of Abex to pay some of the  
18 defense costs of NAPA in defending itself in  
19 asbestos litigation related to asbestos brakes,  
20 true?

21 A. In a specific case.

22 MR. FLYNN: Objection to form.

23 Q. And one of the reasons being is that  
24 Abex was a supplier of the asbestos friction

1 material included on the asbestos brake shoes?

2 MR. FLYNN: Objection to form.

3 Assumes facts. Lack of foundation. Overbroad.

4 A. I think there's more to it than that.

5 I think it's an accommodation to a good

6 customer, but I think that in some instances

7 Abex would have been named in the same suit

8 with NAPA. And at that point in time, it made

9 sense to perhaps not have two law firms

10 involved. Let's just have one. We'll defend

11 both of us. I think that was a little bit of

12 the spirit of this.

13 Q. And that's what it says?

14 A. Right.

15 Q. It says there's an understanding that

16 where NAPA and Abex are in the case, Abex will

17 cover the defense expenses for NAPA. If it's

18 just NAPA, you cover your own?

19 A. Right.

20 MR. FLYNN: Objection to form. Lack

21 of foundation. Calls for speculation.

22 Q. Is that your understanding of the

23 letters?

24 MR. FLYNN: Same objection.



1           A. Yeah, nominally, that's my  
2 understanding.

3           MR. JONES: Pass the witness.

4                   EXAMINATION CONDUCTED

5 BY MR. FLYNN:

6           Q. Mr. Indelicato, can I direct your  
7 attention to Exhibit 25, please.

8           A. Sure.

9           Q. The second page, last paragraph,  
10 please?

11          A. Yes.

12          Q. As I understand it, can you read that  
13 last paragraph, please.

14          A. It says, "Our understanding to defend  
15 in these cases is limited to NAPA, and does not  
16 extend to its parents, affiliates or  
17 subsidiaries or any person who may control it  
18 and is contingent upon a lack of evidence that  
19 NAPA did not have an active role concerning the  
20 products in question such as manufacture,  
21 assembly or repackaging, etcetera."

22          Q. Anywhere in the letter does it define  
23 what NAPA means?

24          A. No.

1           Q.   Okay.   And have we talked about  
2   earlier today how NAPA, Genuine Parts, Rayloc  
3   may have manufactured brake linings that it  
4   sold to its jobbers?

5           A.   I'm sorry, try it again.   I apologize.

6           Q.   I apologize.   It was probably a bad  
7   question.   Let me restate it.

8                   Did Genuine Parts Company or Rayloc  
9   play an active role in the manufacture of the  
10   friction, the brakes that were sold to NAPA  
11   jobbers under the trade name Rayloc.

12           MS. VELLUCCI:   Object to form.

13           A.   Try it one more time.   I'm sorry.   You  
14   said brakes, and I'm not sure where --

15           Q.   Let me try it again.

16                   MR. JONES:   Did you catch him on the  
17   brake thing?

18                   THE WITNESS:   I did.   I'm consistent.

19   BY MR. FLYNN:

20           Q.   Let me try it again.   Did we talk  
21   earlier today about how Genuine Parts Company  
22   and Rayloc assembled brake lining onto shoes at  
23   their facilities and sold those, quote, brakes  
24   to individual NAPA jobber stores?

1           A.    Yes.

2           Q.    Okay.  Did we talk earlier today about  
3   how GPC and/or Rayloc controlled the packaging  
4   that was sent to or the brake linings that went  
5   into that are sent to the individual jobbers?

6           MS. VELLUCCI:  Object to form.

7           A.    We did.

8           Q.    And did we talk earlier today about, I  
9   think it was Exhibit 14, the Moore letter, on  
10   which Abex told NAPA, GPC, Rayloc that you may  
11   want to put a warning on your products?

12          A.    We did.

13          Q.    And did we also look earlier today at  
14   NAPA's discovery responses where it didn't put  
15   a warning on its products until 1988?

16          A.    We did.

17          Q.    Okay.  Based on what we've just  
18   discussed, do you believe that NAPA, Genuine  
19   Parts or Rayloc played an active role  
20   concerning its role as a manufacturer or  
21   assembly or repackaging of the friction  
22   products it sold to its individual jobbers?

23          MR. BERQUIST:  Objection to form.

24          MS. VELLUCCI:  Objection to form.

1           A. Yes, I believe they had an active role  
2     in that process.

3           Q. And if NAPA had an active role, how  
4     does that relate to the last paragraph of  
5     Exhibit No. 25?

6           MS. VELLUCCI: Object to form.

7           Q. Let me ask a better question.  
8     Pursuant to the last paragraph in Exhibit 25,  
9     if NAPA or Genuine Parts or Rayloc played an  
10    active role, according to this letter, is Abex  
11    going to defend those cases for --

12          MS. VELLUCCI: Object to form. Calls  
13    for speculation.

14          A. Yeah, I'm not certain. I mean, I  
15    really am uncomfortable trying to interpret  
16    this. I really am. I can tell you from  
17    firsthand experience that I had to go to NAPA  
18    -- sorry, to Genuine Parts headquarters and  
19    tell their chairman that their understanding  
20    that Abex was going to essentially indemnify  
21    them, cover all the defense costs for asbestos  
22    case going forward was never the agreement and  
23    that we were not going to do it anymore at all.

24          Q. Why was that?

1           A. Because it was never the agreement.

2           It was never what we intended. When this goes  
3           back a long time in my history, but, you know,  
4           I had briefings with our lawyers and a bunch of  
5           discussion about whether or not Abex ever  
6           agreed to indemnify or cover cases. The  
7           nominal points of view were A, it started out  
8           to be vehicle accidents where brakes were  
9           alleged to not function properly. It was never  
10          intended to be asbestos. There was a carve-out  
11          that Grinnell made at one point, and it was on  
12          a one-off basis, and we never agreed to  
13          continue to defend Rayloc, Genuine Parts, NAPA  
14          for such matters.

15          Q. Okay. The two letters then marked as  
16          Exhibits 24 and 25 are ultimately not  
17          consistent with Abex's position as it relates  
18          to NAPA and the issues raised in these letters,  
19          correct?

20                 MS. VELLUCCI: Object to form.

21          A. I think they were consistent. Here's  
22          one that says we're suggesting Rayloc -- NAPA  
23          and NAPA's attorneys are saying, Why don't we  
24          see if Abex will step up. Grinnell gives them

1 a carve-out for a very specific and narrow  
2 situation. Sometime after this NAPA, Genuine  
3 Parts started to interpret that as a broader  
4 agreement on Abex's behalf or that Abex would  
5 extend. And I got to be the guy that went down  
6 and straighten it out and say, no, that was  
7 never the intent. We're not going to do it.

8 MR. FLYNN: No further questions.

9 MR. JONES: Nothing.

10 MR. FLYNN: While we are on the  
11 record, before we go off the record, the  
12 witness wishes to read and sign the transcript.

13 THE VIDEOGRAPHER: The time is 6:11,  
14 and the deposition has concluded. We are now  
15 off the record.

16 (Whereupon, the deposition concluded  
17 at 6:11 p.m.)

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## C E R T I F I C A T E

STATE OF NEW HAMPSHIRE

I, Darlene Caiazzo Sousa, a Licensed Court Reporter #139, Registered Professional Reporter and Commissioner of Deeds in and for the State of New Hampshire, do hereby certify that the foregoing transcript of the deposition of ALBERT INDELICATO, having been duly sworn, on Wednesday, June 24, 2015, is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 30th day of June, 2015.

---

Darlene Caiazzo Sousa,  
LCR (NH #139), RPR  
Commissioner of Deeds

My commission expires: February 11, 2020

1 DEPONENT'S ERRATA SHEET  
2 AND SIGNATURE INSTRUCTIONS

3  
4 The original of the Errata Sheet has been  
5 delivered to Matthew Zamaloff, Esq.

6 When the Errata Sheet has been completed  
7 by the deponent and signed, a copy thereof  
8 should be delivered to each party of record and  
9 the ORIGINAL delivered to Darron Berquist, Esq.  
10 to whom the original deposition transcript was  
11 delivered.

12  
13 INSTRUCTIONS TO DEPONENT

14 After reading this volume of your  
15 deposition, indicate any corrections or changes  
16 to your testimony and the reasons therefor on  
17 the Errata Sheet supplied to you and sign it.  
18 DO NOT make marks or notations on the  
19 transcript volume itself.

20  
21 REPLACE THIS PAGE OF THE TRANSCRIPT WITH THE  
22 COMPLETED AND SIGNED ERRATA SHEET WHEN  
23 RECEIVED.

24



ATTACH TO THE DEPOSITION OF ALBERT INDELICATO

ERRATA SHEET

.  
INSTRUCTIONS: After reading the transcript of your deposition, note any change or correction to your testimony and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Sign and date this errata sheet (before a Notary Public, if required). Refer to Page 304 of the transcript for errata sheet distribution instructions.

PAGE        LINE

_____	_____	CHANGE: _____
9	_____	REASON: _____
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19	_____	REASON: _____

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

\_\_\_\_\_  
ALBERT INDELICATO

\_\_\_\_\_  
DATE