
P R O C E E D I N G S

10:13 a.m.

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

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

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

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

MR. FLYNN: We agree to that.

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

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

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

MR. FLYNN: Agreed on behalf of Pneumo Abex.

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

THE VIDEOGRAPHER: My name is Matthew Sandberg. I'm a legal videographer for National Video Reporters. Today's date is June

24, 2015, and the time is 10:16 a.m. Today's

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

We are located at the Holiday Inn, 300
Woodbury Avenue, Portsmouth, New Hampshire.

This is being taken by the plaintiff. Our
court reporter today is Darlene Caiazzo Sousa
of Eppley Court Reporting. Would the court
reporter please swear in the witness.

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

EXAMINATION CONDUCTED

BY MR. JONES:

Q. Good morning.

A. Good morning.

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

A. Sure. I'm Albert -- I go by Al --

Indelicato.

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

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Indelicato?

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

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

A. I do.

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

A. Yes.

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

A. Yes, sir.

Q. Okay. And Pneumo Abex has had several different names over its history. We'll talk about that in a little bit, but I think the names we'll use mostly in deposition are

American Brakeblok. Are you familiar with that name?

A. I am.

Q. And that is one of the former names of

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Abex; is that fair?

A. That's correct.

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

A. Abex brake lining.

Q. Right. Brake lining?

A. Yes, sir.

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

A. That's correct.

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

A. Yes, sir.

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

A. Okay.

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

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

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

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

A. Yes, sir.

Q. We'll also talk about Abex's sale of asbestos brake linings to other entities like original equipment manufacturers, companies

that build cars and trucks. Is that something you're prepared to talk about today?

A. Yes.

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

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you're prepared to talk about today?

A. Yes.

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

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

Q. Primarily as it relates to litigation, lawsuits?

A. Primarily.

Q. You've been the president of Pneumo

Abex since May 2011?

A. That's right.

Q. You are the only employee of Pneumo Abex?

A. I'm the only officer.

Q. Are there any other employees?

A. No.

Q. Pneumo Abex today doesn't own any

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buildings or machinery?

A. That's correct.

Q. Pneumo Abex today is owned by a settlement trust; is that true?

A. That's correct.

MR. FLYNN: Objection to form.

Q. Is it true that your primary job today is to help lawyers for Abex defend Abex in asbestos lawsuits?

MR. FLYNN: Objection to form.

A. That's principally what I do.

Q. When you have business meetings in your role as the president of Pneumo Abex, those meetings are almost always with lawyers;

is that true?

A. Yes.

Q. And those meetings are almost always with lawyers who defend Abex in asbestos lawsuits; is that true?

A. Yes.

Q. For how long have you been testifying as the corporate representative for Abex in asbestos litigation?

A. Probably a year or so more than when I

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became president, so maybe 2009, 2010.

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

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

Q. Is that true for this deposition?

A. Yes, sir.

Q. You met with counsel for Abex yesterday?

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

Q. I'm just going to stop you because I

don't want to know what you guys talked about.

A. Okay.

Q. Thank you.

A. Really --

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

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

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

A. Yeah. Mr. Flynn is one of the

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principal attorneys that I deal with.

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

A. I do.

Q. And who is Mr. Radcliffe?

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

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

A. I don't know that for certain. I

mean, they seem to be involved in a lot of cases, but I also interface with other attorneys.

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

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

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

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

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

Q. Okay. Is that --

A. That's pretty much it.

Q. That's everything you know?

A. Yes, sir.

Q. Okay. I don't remember if I asked

this. Can you tell me approximately how many times you've testified on behalf of Abex in asbestos litigation?

A. Including depositions or just --

Q. Depositions and trial?

A. I would estimate about 50.

Q. Okay.

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

Q. And that goes back to 2009, 2010?

A. Yes.

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

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asbestos litigation, true?

A. Yes.

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

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

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

A. That's correct.

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

MR. FLYNN: Objection to form.

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

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

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

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

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the manufacture and sale of asbestos brake linings?

A. Yes, sir.

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

A. Sure.

Q. -- your work experience with Abex.

A. Okay.

Q. You started in 1970; is that true?

A. That's right.

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

A. That's right.

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

A. That's right.

Q. What is the corporate research center for Abex?

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

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businesses, that's where kind of the basic research theme came in. And the second part of it is things like scanning electron microscopes and very expensive equipment couldn't be afforded to be placed in each of the divisions

or plants of Abex so that advanced kind of technology was centralized at the corporate research center. So that's basically its overall scope. It did research on metals. It did research on castings. It did research on friction material. It did research on hydraulics and other things, but basically those were the principal divisions of the type of research that was conducted there.

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

A. Sure.

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

A. Right.

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

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A. That's correct.

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

A. Yes.

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

A. That's right.

Q. -- doesn't exist?

A. That's correct.

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

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

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

MR. FLYNN: Objection to form. Vague.

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

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had a castings division that made everything
from simple castings that might be a manhole

cover, to hatches for nuclear submarines. I'm forgetting something. Friction, railroad, castings, and hydraulics, for both industrial hydraulics, pumps and that sort of thing, and also aircraft hydraulics.

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

A. The headquarters of?

Q. Abex?

A. In New York City.

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

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

Q. In the United States or worldwide?

A. Worldwide.

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

A. I don't know --

MR. FLYNN: Objection to form.

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

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

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

MR. FLYNN: Objection to form. Relevance.

A. Some of them, did.

Q. Do you recall which ones?

MR. FLYNN: Same objections.

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

Q. So when you started in 1970, Abex was

selling brake linings worldwide?

MR. FLYNN: Objection to form.

A. Not necessarily when I started. I

think, for example, the German relationship

evolved after I got on the scene. I think

France also evolved shortly after I arrived. I

guess my answer to your question thus far has

been kind of a picture back in time from what I

experienced and knew, but I can't tell you

precisely when each of those started.

Q. By the early to mid '70s, would that

be true that Abex was selling brake products

worldwide?

MR. FLYNN: Objection to form.

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

Q. Okay. When you started in 1970,

approximately how many people worked for Abex?

A. A number like 10,000 comes to mind and

that's all divisions: hydraulics, castings,

railroad.

Q. Abex has a corporate research center.

Can you describe for me, how big was that

facility?

A. I mean, physically, it was kind of

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

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

A. Yes.

Q. I think you mentioned a scanning electron microscope?

A. That's right.

Q. You mentioned the break dynamometers?

A. That's right.

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

A. That's correct.

Q. You want to test them on one of those

things before you test them on a car?

A. That's right.

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

MR. FLYNN: Objection to form.

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

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

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

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

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different disciplines; is that true?

A. Sure.

Q. What types of engineers were employed by Abex?

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

Q. In general?

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

Q. Structural engineers?

A. No, not really. We could kind of rely on mechanical engineers for that. That's a good example of where we might get into a really hairy structural issue, and we would go to the research center and talk to some Ph.D., ME that, you know, really could help augment our knowledge. The hydraulic guys were

principally mechanical engineers, fluid-powered engineers. Railroad were mechanical. And castings were metallurgists.

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

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metallurgists?

A. That's right.

Q. Those are people that know about metal?

A. Correct.

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

A. Okay.

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

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

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

A. Yes.

Q. -- generally speaking?

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

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

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

A. It did.

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

A. That's correct.

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

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

Q. Roundabout?

A. About that number.

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

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

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Q. Okay.

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

Q. Okay.

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

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

MR. FLYNN: Objection to form.

A. Still seems high.

Q. Okay. Fair enough. In 1972 you became the liaison engineer responsible for the

friction products group, true?

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

Q. Not at all.

A. I'll offer that up as an exhibit.

Would you like to do that?

Q. You just take over.

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

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

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

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

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

A. Timing is about right.

Q. Okay. That involved travel to the friction division headquarters in Winchester,

Virginia?

A. That's right.

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

A. That's right.

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

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

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

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

A. And also heavy duty.

Q. Okay. And heavy-duty trucks?

A. Right.

Q. And when you started, I guess they

were in the process of building a facility for heavy truck brakes in Salisbury, North Carolina?

A. That's correct.

Q. That opened around when?

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

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

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

Q. Roundabout?

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

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say 1947 or '48 was when it became operational.

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

A. Well, in the history of Abex friction products, the original and only plant for friction material was in Detroit on Merit Avenue. I don't know if the Merit Avenue plant was, in fact, the, quote, headquarters for friction products before it moved to Winchester, but fair to say that somewhere in

the greater Detroit area was where Abex friction headquarters was before it was established in Winchester.

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

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

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

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facility in Salisbury?

A. Yes, sir.

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

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

Q. 1976 to 1984 you were the director and eventually the vice president of project

engineering and development?

A. Product engineering.

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

A. That's right.

Q. So the different divisions had a president?

A. Generally.

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

A. That's right.

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

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A. That's correct.

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

A. I would say about 1994, the last physical factory and group of assets that we had was sold to Parker Hannifin and that was aircraft-related. It was airborne flight

controls. And I view that as kind of the end of Pneumo Abex or Abex from an operating company's point of view.

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

A. I believe that that's correct.

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

A. I believe that to be correct.

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

A. That's right.

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

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

Q. Sometime in the '30s?

A. Somewhere in that time frame.

Q. Fair enough. Around 1937 American

Brakeblok Corporation merged with American Brake Shoe and Foundry Company, and thereafter operated as the American Brakeblok division?

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

Q. It's a mouthful?

A. It is.

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

A. I'm confused by that only from a standpoint of if the merged company was called a division, I would say a, division of what?

So I'm just not connecting the dots quite right.

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

A. Okay.

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

A. That's right.

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

A. Yes, sir.

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

MR. JONES: Thank you.

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

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

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

A. Find the answer.

Q. -- flush it out?

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A. I would agree.

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

A. Yes, sir.

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

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

A. I think the date's wrong.

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

1968 Abex Corporation became a subsidiary of IC Industries?

A. Yes.

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

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

Q. Okay. Did it continue in other areas?

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

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of the friction materials business, and then

'94 was the last operating entity of Abex which was the flight control business.

Q. Okay.

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

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

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

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

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

MR. FLYNN: Johan Flynn on behalf of

Abex. Again, in essence, I agree with what

Mr. Jones has stated. Abex does reserve its

right to object to the use of any other

transcripts related to Abex other than Mr.

Indelicato and to assert any and all rights and

objections it has including that it wasn't

taken in this case as to all other -- any other

witness other than Mr. Indelicato.

THE VIDEOGRAPHER: The time is 11

a.m., and we are going back on the record.

BY MR. JONES:

Q. I want to change subjects now and talk

to you about the three companies I mentioned.

I don't know if they are all companies, but the

entities I mentioned at the beginning of the

deposition, and those are NAPA, Genuine Parts

Company and Rayloc. You're familiar with those

entities?

A. I am.

Q. What is NAPA?

MR. FLYNN: Objection to form.

A. NAPA, I believe, is the marketing arm

of Genuine Parts; although, it's an association

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

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

A. Yes.

Q. I could sing it but....

A. Please don't.

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

A. It is.

MR. FLYNN: Objection to form.

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

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

A. That's my understanding.

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

A. Yes.

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Q. Okay. What is Genuine Parts Company?

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

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

A. I mean, it varied a lot. At first, as a quality control guy, I would go and troubleshoot issues with customers. I happened to be liked by our salespeople so they would often bring me in to explain any technical issue to the folks at Genuine Parts, principally at Rayloc. As I grew up in our

organization and had more rank, if you will, I would be invited to Genuine Parts' annual meetings. I would be perhaps asked to make a

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

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

A. Yes.

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

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

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

A. Uh-huh.

Q. Okay. What does it mean to

remanufacture a brake?

A. I don't want to get into a sticky

technical delineation and definition of things,

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but Rayloc, in my view, never really

remanufactured a brake. They remanufactured

brake components. They remanufactured brake

shoes. They remanufactured brake hydraulic

components like calipers, but they didn't

really ever, in my -- to my knowledge, ever

really remanufacture an entire brake.

Q. When you say "an entire brake," you're

talking about the braking system?

A. Well, one corner of the car, if you

will. There's what's typically referred to as

foundation brake; that would have some kind of

a backing plate. You have some actuation

device. It would have brake shoes or pads that

were mounted to steel that are in some device,

typically a caliper. There would be a brake

drum. There would be sensors. There is all

sorts of things.

Q. I think I'm with you.

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

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

A. Well, a brake shoe, by definition,

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

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

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

Q. You are aware that witnesses for the Genuine Parts Company, particularly

Mr. LeCour --

A. Yes.

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

MR. FLYNN: Objection to form. Lack

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of foundation. Hearsay.

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

Q. Okay.

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

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

MR. JONES: I think we're all all

right. Everybody can get along.

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

BY MR. JONES:

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

A. Yes.

Q. When did you first meet Mr. LeCour?

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

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

Q. What was Mr. LeCour's job?

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

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

A. And quality control, and/or.

Q. At a plant that remanufactured brake shoes?

A. And other things.

Q. Okay. Including brake shoes?

A. Yes.

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

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

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

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A. Routinely, yes.

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

MR. FLYNN: Objection to form.

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

Q. Okay. And you mentioned that you had a lot of documentation that disproves Mr. LeCour's statement and the statement of other witnesses at Genuine Parts Company that for a

long period of time Abex was the exclusive supplier of asbestos brake linings to Genuine Parts and its Rayloc division?

A. Your question is?

MR. FLYNN: Objection to form.

A. I'm sorry, your question?

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

MR. BERQUIST: It's at the beginning.

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

■53

question, I thought, What is my question?

(Question read)

Q. Is that true?

MR. FLYNN: Same objection.

A. I believe we have documentation.

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

A. I did not.

Q. I have read several of your prior depositions where this subject has come up.

And you agree you've been deposed many times on

this subject; is that true?

A. Yes.

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

A. Yes.

MR. FLYNN: Objection to form.

Misstates the prior testimony. Those documents have been produced in countless previous depositions of Mr. Indelicato. It's not an accurate statement to say that they have never

■54

been produced.

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

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

A. I couldn't say for certain, but there were documents that dealt with -- I remember one that was written by a Mr. Iwarsson after having, I believe, a meeting with NAPA and

discussing the fact that we had no more than about 40 percent of their business.

Q. 46 percent?

A. I don't remember the exact.

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

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

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

MR. JONES: Well, he just said that.

■55

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

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

MR. FLYNN: I believe I do.

MR. JONES: Can I see it?

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

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

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

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

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

A. Okay. Yeah.

Q. Disc brakes?

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

Q. Okay. Clutch faces?

A. No.

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

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

Q. So the friction material --

MR. JONES: Is somebody making Kool-Aid?

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

A. Right.

■57

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

A. Basically, yes.

Q. Disc brakes -- correct me if I'm wrong -- were primarily a nonasbestos component; is

that true?

A. It depends on the point in time.

There were periods of time when I would say the early American car design disc brakes used asbestos brake lining.

Q. Starting when?

A. '71 or so.

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

A. At Abex?

Q. Yes.

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

'87?

Q. The end of '87?

A. Right.

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

A. Clutches?

Q. Not clutches. Disc brakes? Let me

■58

re-ask the question.

A. Okay.

Q. When did Abex start to phase asbestos

out of disc brakes?

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

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

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Q. Okay. As of 1979, do you know what percentage of Rayloc-remanufactured brake shoes

included Abex brake linings?

A. I do not.

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

A. No.

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

A. Not precisely, no.

Q. Do you have any estimate?

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

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

brake linings to Rayloc than you did brake discs?

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

Q. Okay.

MR. JONES: Move to strike the nonresponsive portion.

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

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

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

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

Q. Fair enough. I get it. Thank you.

Clutches are a friction product also, true?

A. Yes.

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

A. That's true.

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

A. I do.

Q. And Abex had zero percent of that business?

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

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

A. That's correct.

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

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

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

A. I have.

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Q. What is Exhibit 2?

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

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

A. That's right.

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

A. I know I've seen others ranging from, I would say, a more casual memo where Abex was supposed to be participating in the majority of a particular line of products, as I explained, the good, better, best kind of thing, and that they were at some meeting, and one of our guys said, Hey, why is there -- I don't know this to

be sure, if it was Bendix or Raybestos, but one of our competitors' brake linings was in the

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

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

MR. FLYNN: Objection to form.

Misstates.

Q. True?

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

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

A. Yes.

Q. And if NAPA sold or Genuine Parts sold brakes in a box that said American Brakeblok,

that brake was supposed to be an American
Brakeblok/Abex true?

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

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

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

A. I do.

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

A. You did.

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

A. No.

Q. Never?

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

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

■1

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

A. Yes.

Q. Brake blocks, true?

A. Yes.

Q. Disc brake pads?

A. That's right.

Q. And clutches?

A. Is your question Abex --

MR. FLYNN: Objection to form.

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

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

A. I mean, there might even be broader

definitions. There are little clutches that are inside air-conditioning compressors, and, I mean, so there's other places where there are, quote, friction products.

Q. Where else?

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

■66

classify as a friction product.

Q. What else?

A. I can't think of them offhand.

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

A. Yes.

MR. FLYNN: Objection to form.

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

A. Yes.

Q. Okay. In 1979 Rayloc Genuine Parts Company, according to this letter, is only

purchasing 46 percent of its friction material needs from Abex, true?

A. That's what it says.

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

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

■67

lining needs.

Q. But it doesn't say that?

A. It doesn't say that.

Q. It says friction material needs, right?

A. It does say that.

Q. And suspension components have friction materials?

A. Yes.

Q. And Abex supplied zero of that?

A. That's right.

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

A. Zero.

Q. Sold by Rayloc, correct?

A. Yes.

Q. Abex supplied zero of that?

A. Correct.

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

A. Yes.

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

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A. Yes.

Q. Abex has zero of that market?

A. Yes.

Q. Disc brake pads, that's a
Rayloc/Genuine Parts Company friction need,
true?

A. Yes.

Q. And Genuine Parts -- Abex supplied
some of those components?

A. Yes.

Q. Okay. Not near as much as it supplied
of brake linings and brake blocks, true?

A. Not at that point in time.

Q. Okay. Brake blocks for heavy trucks,
that's a friction material need of
Rayloc/Genuine Parts Company, true?

A. Yes, sir.

Q. And that was an area that Abex was
very strong in the market for the supply to
Genuine Parts Company/Rayloc?

MR. FLYNN: Objection to form.

Mischaracterizes the witness' testimony.

A. We sold a fair amount of brake block
to Rayloc.

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

A. It is.

Q. True?

A. Yes, sir.

Q. A division of Genuine Parts Company?

A. Yes, sir.

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

MR. FLYNN: Objection. Form.

Mischaracterizes the witness' testimony.

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

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

MR. FLYNN: Objection to form.

Q. You're familiar with that testimony?

I'm not asking you to agree with it.

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A. No, I'm not familiar.

Q. You're not. Okay.

MR. FLYNN: Hold on, AI. Objection to form. Argumentative. You can answer.

Q. Fair enough. You can answer.

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

Q. I'll represent to you that that

testimony exists. And it's my understanding
that you don't agree with that testimony --

A. Correct.

MR. FLYNN: Same objection.

Q. -- if that testimony does exist?

MR. FLYNN: Same objections.

A. Correct.

Q. Okay.

THE WITNESS: Who is keeping the
exhibits?

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

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

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MR. JONES: Agree a thousand percent.

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

THE WITNESS: Okay.

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

BY MR. JONES:

Q. I want to talk to you about Abex's

relationship with NAPA, the Genuine Parts Company, and the Genuine Parts Company division Rayloc.

A. Okay.

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

A. That's my understanding.

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

MR. FLYNN: Objection to form.

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

Q. Okay.

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

■72

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

Q. So it's your understanding as the corporate representative of Abex that at some point Abex loaned money to either NAPA or Genuine Parts Company to get one of those

entities off the ground?

A. Yes.

MR. FLYNN: Objection to form.

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

A. I think so.

Q. Whenever NAPA started basically?

A. Yes.

Q. Is that true?

A. Yes.

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

A. Yes.

MR. FLYNN: Objection to form.

■73

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

A. There was -- there were different branding. For a while it was American Brakeblok, then it was Rayloc. There was also

a brand called Genaut, G-E-N-A-U-T, and then there were, I'm going to call them generic brands, that didn't really mention a company's name but rather had a descriptive name like premium high-performance brake pads or something like that. So there were many different packaging names to the products that NAPA/Genuine Parts sold.

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

A. That's right.

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

A. That's right.

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

A. Yes.

Q. In fact, you traveled to their plants

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

A. Yes, sir.

Q. Also in your role as a development engineer?

A. Yes.

Q. And also ultimately as president of the company?

A. Correct.

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

A. That's right.

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

MR. FLYNN: Objection to form.

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

Q. I'm sorry.

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

■75

headquarters and say, This is our advertising campaign. Isn't it wonderful? We'd like all

of you guys to chip in to help us spread the word.

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

A. At certain points in time.

Q. You were aware of that advertising?

A. Yes.

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

A. Yes.

Q. And you personally when you were there?

A. In some instances, yes.

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

A. Yes.

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

A. I believe you're correct.

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

■76

location to buy American Brakeblok/Abex brakes,

true?

MR. FLYNN: Objection to form.

A. I think it just said American

Brakeblok, not American Brakeblok/Abex, but
fine point.

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

A. Yes.

MR. FLYNN: Objection to form.

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

A. Understood.

Q. Okay.

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

Q. Thank you for that.

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

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

that those brakes could be purchased at a NAPA location?

A. Yes, I believe that's true.

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

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

Q. Depended?

A. Right.

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

A. Yes.

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

A. Yes.

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

A. Well, it was more than installation.

It usually would deal with things like customer

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

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

A. That's fine with me.

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

A. Generally, yes.

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

A. Yeah. I mean, the only exception was there was a point in time, and I believe it was an acquisition that was made either by or on behalf of Genuine Parts of a company called Genaut, which was independent, but it was very similar to what Rayloc did. And over time I believe the Rayloc guys kind of prevailed and absorbed the Genuine Parts acquisition into

their world, but for a while there was a stand-alone business unit of Genuine Parts

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called Genaut that we handled separately for a while.

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

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

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

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

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

MR. FLYNN: Objection to form.

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

■80

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

Q. And Rayloc was a big one?

A. They were one of the larger.

MR. FLYNN: Objection to form.

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

A. Yes.

MR. FLYNN: Objection to form.

Q. And Abex was a big chunk of it?

MR. FLYNN: Objection to form.

A. Abex was a big?

Q. You are Abex.

A. That's right.

Q. You don't sell to yourself.

A. That's right. Not often.

Q. You're not going to stay in business

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

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

MR. FLYNN: Objection to form.

A. Yes.

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

THE WITNESS: Sure.

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

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

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

BY MR. JONES:

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

A. Okay.

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

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A. Okay.

Q. Okay.

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

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

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

MR. JONES: Mellowing with age.

PHONE COUNSEL: I'm having trouble hearing you.

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

Q. Let me show you what we'll mark as

Exhibit 3.

(Exhibit No. 3, 1942 Advertisement so marked)

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

MR. JONES: I only have two. Sorry.

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

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MR. JONES: Thank you.

Q. What is Exhibit 3?

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

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

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

Q. It lists Detroit, Michigan?

A. It does.

Q. At that time Detroit, Michigan, was the headquarters for the friction division, the

American Brakeblok division?

A. I presume so.

Q. And this is an ad by basically the same company that you're testifying for today.

It's a predecessor to Abex, true?

A. Yes.

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

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A. It does.

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

A. Yes.

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

A. Yes.

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

(Exhibit No. 4, 1950 Advertisement so

marked)

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

A. (Witness complies)

Q. Thank you. What is Exhibit 4?

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

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

A. Yes.

Q. It's an advertisement from the

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American Brake Shoe Company, American Brakeblok division, true?

A. Yes, sir.

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

A. It is.

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

A. Yes.

(Exhibit No. 5, 1955 Advertisement so marked)

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

MR. FLYNN: Can I see No. 4?

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

Q. What is Exhibit 5?

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

Q. That's an advertisement by the company

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

A. It is.

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

MR. FLYNN: Objection to form of the question.

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

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

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

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

MR. FLYNN: Objection to form.

A. Yes.

Q. Why do you say that?

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

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

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

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

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

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

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

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

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

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

Q. Okay. Why would you say that?

A. It says American Brakeblok on the bottom.

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

A. Yes.

MR. FLYNN: Objection to form.

Q. What does that mean?

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

Q. Okay.

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

Q. NAPA jobbers, what does that mean?

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

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

MR. FLYNN: Can I see No. 6?

MR. ZAMALOFF: It's a different day.

MR. JONES: It's a different day. I

think it's basically the same.

THE WITNESS: Your preference.

MR. FLYNN: You don't want 7?

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

THE WITNESS: That's 6.

MR. FLYNN: This is 7.

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

(Exhibit No. 7, Advertisement so
marked)

A. Okay.

Q. What is Exhibit 7?

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

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you will.

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

A. That's right.

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

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

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

MR. FLYNN: Objection to form.

Q. What decade?

MR. FLYNN: Calls for speculation.

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

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

A. The date?

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

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

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

A. Yes.

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

A. That's right.

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

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

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

A. Yes.

Q. Did I read that correctly?

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A. You did.

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

A. That's true.

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

MR. FLYNN: Objection to form.

A. Not necessarily.

Q. It could still be a combined effort?

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

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

A. Abex brake lining through NAPA, yes.

Q. Thank you. I asked you about --

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

MR. BERQUIST: Bloomfield.

A. Bloomfield.

Q. Bloomfield. I meant to ask about

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

(Exhibit No. 8, Advertisement so marked)

Q. What is Exhibit 8?

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

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

A. Yes.

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

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

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

A. Right.

Q. Does this indicate that this is an

American Brakeblok ad?

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

Q. One, the other or both?

A. It could be.

Q. Because apparently throughout -- I think the first ad we looked at was 1942, and we found one ad that's the early '70s.

Throughout that time Abex and NAPA were jointly marketing the sale of American Brakeblok brakes at NAPA locations?

MR. FLYNN: Objection to form.

A. American Brakeblok brake lining.

Q. At NAPA locations?

A. Yes.

Q. With that qualification, my statement was true?

A. Yes.

Q. Okay.

MR. FLYNN: Same objection.

Q. And the correction you're making is

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

A. Right.

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

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

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

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

A. Yes.

Q. And you had a deposition in 19 -- in

2013 in four cases, I think here, the attorney was Jonathan George. Does that ring a bell?

A. I don't remember.

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Q. We all --

A. You all look the same.

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

A. Right.

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

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

Q. And you saw them?

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

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

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going to mark them sequentially accordingly.

If you can; and if you can't, I'm just going to come up with something. One is '72 for sure. I'm not positive about the other one. That's the easy one.

A. Okay. As to time --

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

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

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

A. Well, I --

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

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

Q. From looking at those two documents,

one of them is marked 1972. We know that's 1972, right?

A. Yes.

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

A. Bear with me just a second. I would

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estimate the date to be about 1970.

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

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

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

A. Okay.

Q. Thank you.

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

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

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

A. Okay.

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Q. What is Exhibit 9?

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

Q. Okay.

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

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

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

Q. No.

A. Go ahead.

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

A. That's right.

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

A. Correct.

Q. That's the company you're testifying

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for today, true?

A. Yes, sir.

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

A. Yes.

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

A. Yes.

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

A. Yes.

Q. Okay. Can you look at Exhibit 10.

Let me ask you this: Because the Abex name is on this, and Abex Corporation is listed on the back, is it your understanding that Abex was involved in some level in the production of the catalog?

A. Probably at some level.

Q. Approval perhaps?

MR. FLYNN: Objection to form.

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

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

A. Yes.

Q. -- this is excerpts from a catalog, I

believe. Is that what it appears to be?

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

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

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

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

A. Yes.

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Q. 3/6/13?

A. Yes.

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

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

Q. Okay. Is this catalog or the excerpts

from them, is this familiar to you at all?

MR. FLYNN: Objection to form.

A. I've seen catalogs like this before.

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

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

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

MR. JONES: I'll agree to a continuing

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

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

Q. Okay.

A. Is with American Brakeblok brake lining. This is just taking a while. Just it involves more than just brake parts. There's

all sorts of components, steering parts and body parts and frame and wheel parts. To the extent the sheets that are provided here it says, wherein it says "brake shoe," it says, "lined exchange with American Brakeblok brake lining."

Q. Okay.

THE WITNESS: Do you need these, Johan?

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

MR. FLYNN: Objection to form.

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

MR. FLYNN: Objection to form.

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Overbroad.

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

Q. Okay.

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

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

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

THE WITNESS: I'm sorry.

MR. FLYNN: Sorry to interrupt.

THE WITNESS: It's hard to --

MR. FLYNN: I understand.

MR. JONES: It's my fault.

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

Q. That's right.

A. Okay.

Q. What is Exhibit 11?

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

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

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

A. Lengele.

Q. Did you know that gentleman?

A. Yes.

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

A. Yes.

Q. He is an Abex employee?

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

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

A. It is.

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

A. No doubt.

Q. It was authored by an Abex employee?

A. Yes.

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

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A. Yes.

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

THE WITNESS: Sure.

MR. FLYNN: Just for the completeness

of the record, I would lodge an objection.

This may be on Abex letterhead. The document was actually produced by Genuine Parts in a prior case called Novo. It didn't actually come from Abex itself.

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

A. Yes, I knew Mr. Moore.

Q. Who -- has he passed?

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

Q. And how did you know Mr. Moore?

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

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

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brake shoe presentation?

A. Yes.

Q. What is that?

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

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

A. Yes.

MR. FLYNN: Objection to form.

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

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I read that correctly?

A. You did.

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

MR. FLYNN: Objection to form.

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

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

MR. FLYNN: Objection to form.

A. Well, that's your speculation.

MR. FLYNN: Foundation. Calls for speculation.

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

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

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

A. You did.

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

A. Yes.

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

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

Q. And this discusses, I guess, NAPA or

Rayloc has a catalog committee?

A. Yes.

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

MR. FLYNN: Objection to form.

A. Well, not --

MR. FLYNN: Assumes facts.

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

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

A. Yes.

MR. FLYNN: Objection to form.

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

MR. FLYNN: Objection to form.

Overbroad. Lack of foundation.

■111

A. Yes.

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

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

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

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

MR. FLYNN: Objection to form.

A. Yeah. I mean, based on advertisements

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and stuff that we reviewed today certainly.

Q. Back to the '40s probably?

MR. FLYNN: Objection to the form.

Calls for speculation.

A. '50s.

THE WITNESS: Do you want this?

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

A. Yes.

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

A. Yes.

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

MR. FLYNN: Objection to form.

Q. Do you disagree with that?

MR. FLYNN: I apologize for
interrupting you.

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MR. JONES: That's okay.

MR. FLYNN: Objection to form.

A. I'm surprised by it.

Q. Why?

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

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

A. Linings, passenger car.

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

A. Yes.

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

A. No, it was not.

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

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A. That's right.

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

A. Okay.

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

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

Q. Until the mid '80s?

MR. JONES: And same objections will apply.

MR. FLYNN: Same objections.

A. In the mid '80s, there were semimetallic products sold routinely for a lot of cars beyond the severe duty that were

semimetallic. Also the beginning of that time frame was also when a fiberglass-reinforced brake lining was introduced and offered to NAPA so....

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

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asbestos brakes?

MS. VELLUCCI: Objection to form.

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

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

A. Yes.

MS. VELLUCCI: Objection to form.

Q. And NAPA, Genuine Parts, Rayloc

continued to buy the asbestos brake linings?

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

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

A. That's right.

MS. VELLUCCI: Object to form.

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Assumes facts.

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

MS. VELLUCCI: Object to form.

Assumes facts.

A. We believe we did, yes.

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

MS. VELLUCCI: Assumes facts. Calls for speculation.

A. That was our belief.

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

MS. VELLUCCI: Same objections.

A. Asbestos brake lining elsewhere, yes.

Q. And what is that personal knowledge?

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

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

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

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

A. Say that again, please.

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

MR. FLYNN: Objection to form.

MS. VELLUCCI: Objection to form.

MR. FLYNN: Assumes facts.

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

Q. Okay.

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

Q. Did it decline as a result of Abex

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

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

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

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

A. I tried to keep it straight.

Q. There you go. We talked about this toward the beginning of your deposition.

That's the October 1, 1979, letter from Mr. --

A. Iwarsson.

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

A. That's right.

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

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

A. I do.

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

A. Uh-huh.

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

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

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

A. Uh-huh. Yes.

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

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

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

A. It does say that.

MR. FLYNN: Objection to form.

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A. It implies it was more than 46 percent.

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

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

A. He does use the word "far."

THE WITNESS: How about two seconds to

get some housekeeping here?

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

THE WITNESS: I'll send you the invoice.

MR. JONES: Please do.

THE WITNESS: That wasn't so bad.

They're in pretty good shape.

MR. FLYNN: You kept them in order.

THE WITNESS: Thank you.

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

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

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

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

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

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

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

BY MR. JONES:

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

A. I did briefly.

Q. What is Exhibit 12?

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

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

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

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

A. Yes, sir.

Q. And this is an Abex document?

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A. It appears to be.

Q. Authored by Abex employees?

A. Or perhaps a facilitator. Oftentimes we would bring an outsider in to help facilitate the strategic planning process so I

can't remember if this was with a facilitator
or done by ourselves.

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

A. Yes.

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

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

Q. It starts at Roman numeral three?

A. Exactly.

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

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

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

A. Sorry. Can't remember it all.

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

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what is a strategic plan summary?

A. It's an opportunity to kind of step
away from the day-to-day things we all deal
with in our business and decide what changes

are going on around us, what things we're doing right, what things we're doing wrong. What are our customers' expectations? Are we meeting them?

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

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

A. Yes.

Q. And I believe it's 1983?

A. That's what I saw.

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Q. Does that provide you the information you need to say what date the document was

generated?

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

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

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

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

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

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

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that's complete.

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

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

A. Strategic business unit.

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

A. Well, I work for friction products division.

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

A. That's what it says.

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

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

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

A. Right.

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

A. I don't know that with certainty.

Certainly, they'd be large. There might have been points in time when we had other aftermarket customers that were similar in size.

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

MR. FLYNN: Objection to form.

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

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

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

A. And it's specific to that paragraph.

I'm looking over this. We see Bendix. We see Raybestos. We see Wagner.

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

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

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

MR. FLYNN: Objection to form.

Assumes facts. Calls for speculation as to who Abex ultimately sold to.

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

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

A. Okay.

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

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MR. FLYNN: Objection to form.

Assumes facts.

A. No, NAPA customers.

Q. NAPA business?

A. It lists NAPA.

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

A. I'm sorry.

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

A. All right.

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

A. Yes.

MR. FLYNN: Objection to form.

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

A. Yes.

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

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

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

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

A. Yeah.

Q. Which they put in brakes?

A. That's right.

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

A. Okay.

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

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

A. That's right.

Q. They make Jeeps; is that right?

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

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

MR. JONES: We've been looking at the

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

MR. FLYNN: Thank you.

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

A. I'll keep it handy.

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

A. Yes.

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

A. Yes.

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

A. Yes, sir.

Q. And you would agree with me that in

your experience, the name American Brakeblok was included with NAPA advertisements, true?

A. Yes.

Q. Catalogs, true?

A. Yes.

Q. And on boxes, product boxes?

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A. Yes.

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

A. That's right.

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

A. At the corporate headquarters it did.

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

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

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

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

product.

Q. Was it better than the competition?

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

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

A. We did.

Q. Would you agree with me that in

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business it's important to protect your good name?

MR. FLYNN: Objection to form.

A. Absolutely.

Q. Why?

MR. FLYNN: Same objection.

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

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

MR. FLYNN: Objection to form.

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

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

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

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perform, how would that reflect on Abex?

MR. FLYNN: Objection to form.

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

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

A. That's right.

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

Abex did not want people selling brake shoes under the name American Brakeblok linings

when they were not American Brakeblok linings?

A. That's true.

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

A. And we ran into instances like that.

Q. And Abex took action to stop it?

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

Q. Abex had lawyers to stop it?

MR. FLYNN: Objection to form.

A. Yes, we had a legal team.

Q. And that legal team's job was to

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

MR. FLYNN: Objection to form.

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

Q. Certainly, you wouldn't let somebody regularly sell brakes under the American

Brakeblok name if they weren't American

Brakeblok linings?

A. Correct.

MR. FLYNN: Objection to form.

Q. Would you agree with me that if Ken

Reed, senior regularly worked with Rayloc drum

brake shoes from 1966 to 1975 for passenger

cars, it is more likely than not that some of

those brake linings were manufactured by Abex?

MR. FLYNN: Objection to form. Lack

of foundation. Incomplete hypothetical.

A. If it were Rayloc, there is a good

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chance that some of those brake linings would

have been manufactured by Abex.

Q. More likely than not?

MR. FLYNN: Objection to form. Same

objections.

A. I gave you my answer. I think it's

likely that they would be.

Q. And assume with me that Ken Reed,

senior is a professional mechanic. That's what

he does for a living.

A. Okay.

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

A. Uh-huh.

Q. Okay? Are you with me?

A. Yes.

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

MR. BERQUIST: Right.

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

MR. FLYNN: Same objections.

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

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

A. I would say that it's likely that he

came in contact with some Abex product.

Q. Thank you.

MR. JONES: Let's go off the record

and take a quick break.

THE WITNESS: Okay.

THE VIDEOGRAPHER: The time is 2:20

p.m., and we are going off the record.

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

THE VIDEOGRAPHER: The time is 2:39

p.m. We are back on the record.

BY MR. JONES:

Q. I want to talk to you a little bit

about Abex's sales other than those to the

Rayloc division of Genuine Parts Company?

A. Okay.

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Q. Abex sold brake blocks, which are the

big brake linings on heavy trucks, right?

A. Correct.

Q. Those are the brake linings you might

find on like an 18-wheeler?

A. Yes.

Q. According to the strategic planning

document --

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

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

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

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

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

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

Q. Let me ask you the question: Based on

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

MR. FLYNN: Objection to form.

A. I mean, you know, just looking at this

as a benchmark, it says we had 60 percent -- 61 percent of the OE market and 27 percent of the aftermarket so there was somebody more than dominant than us in the aftermarket.

Q. It says, "Abex friction products division is the nation's largest supplier of friction materials to the heavy duty market."

Did I read that correctly?

A. Yes, it does say that.

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

A. Yes.

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

A. There's more than one way brakes get

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on new trucks. And in the case of trailers, that back part of the 18-wheeler, oftentimes trailers are viewed as very commodity, low-cost types of vehicles. And it's not uncommon for

trailer manufacturers to put out for bid the axle business or the axles. So companies like Rockwell and Eaton, who were two of the biggest or were the biggest axle guys in the United States made trailer axles, which was just a tube of metal with two brakes on the end, and sold them at very, very competitive prices. So, consequently, Abex would have to try to maintain a relationship and sell to people like Rockwell and Eaton because they would be selling axles to trailer manufacturers. They'd also be selling just the brake to the drive axle guys who would be companies like Ford or General Motors or Volvo or whoever.

Q. If Abex's brake linings were going to find their way on to a brand-new Peterbilt tractor trailer or Kenworth tractor trailer, Abex would have to sell those linings to the axle manufacturers Eaton or Rockwell that would

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then incorporate those linings into the brakes which was incorporated into the axle which was sold to the truck manufacturers?

A. Logical but inaccurate.

Q. Okay.

A. It's -- it really is a very convoluted circumstance. You asked -- your first question, you dealt with axles. I tried to answer that to the best of my ability.

Q. Okay.

A. When we are talking about drive axles like Peterbilt, this is a power unit, the front end of the 18-wheeler, there's a whole bunch of stuff going on. Rockwell is in there trying to sell a package, a whole foundation brake complete with lining, and they would love to choose whose lining it is, but they'd like to keep their costs under control. For a long time Rockwell was very successful. What we found was that we had the ability to influence people like Peterbilt to say, Gee, we really prefer Abex lining and, Rockwell, we like your proposal, but we want Abex lining on there.

Q. Instead of the competitor's?

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A. Right.

Q. Okay. So the ultimate customer like Peterbilt could say -- could order the Rockwell lining but pick their --

A. Rockwell brake.

Q. Order the Rockwell axle with brake assembly and pick their lining manufacturer?

A. They could order the Rockwell brake.

In the case of the drive part of the vehicle, they often don't buy axles. They just buy a brake.

Q. Okay. From --

A. From Rockwell or Eaton or Kelsey-Hayes or something like that.

Q. Abex sold brake blocks, which are the big brake linings, to Rockwell?

A. Yes.

Q. To Eaton?

A. Yes.

MR. FLYNN: Objection to form.

Q. And to Freuhauf?

MR. FLYNN: Objection to form.

A. Yes.

Q. During what years did Abex sell brake

blocks to Rockwell?

A. Certainly during my tenure there. I mean, it certainly predated it, but I don't know when the relationship started.

Q. From 1970 until 1993, '94?

A. Yeah.

Q. And before?

A. Right.

Q. That was an ongoing business when you arrived?

A. That's right.

Q. What about Eaton?

A. Eaton came in a little bit later. We did a little bit of business with Eaton when I first arrived on the scene, but our business with Eaton grew as Eaton was able to penetrate principally the trailer axle business that Rockwell had enjoyed for a long time.

Q. How about Freuhauf?

A. Freuhauf was an account we chased for many, many, many years. We finally got it in the late '70s for a very short period of time, and we had some quality problems with regard to the holes not lining up, and we got bounced as

quick as we got in. So we had some Freuhauf business, but it didn't last very long.

Q. Okay. If you go to the "industry description," paragraph B in the middle?

A. Yes.

Q. It mentions that the principal OEM customers are Rockwell, Eaton, and Freuhauf we discussed. Those are the axle --

A. Or brake manufacturers.

Q. -- or brake manufacturers?

A. Right.

Q. And when we say "brake manufacturer," we mean the brake assembly including the brake shoe and lining --

A. Yes.

Q. -- for a drum brake?

A. Yes.

Q. If you look at the bottom of that paragraph, it says, "Abex is the most well respected product name in the aftermarket."

Did I read that correctly?

A. Yes.

Q. Was that your opinion when you were

working there?

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A. Yeah. And it really -- it cites here this federal motor vehicle safety standard. When the government published its first motor vehicle safety standard for air brake vehicles, it required higher performing lining, and Abex was the only company that came up with it for a long time.

Q. Can you go to page 020720?

A. 0720?

Q. Yes.

A. Okay.

Q. It's Roman numeral two, "analysis"?

A. Got it.

Q. Paragraph B it says, "business strength factor."

A. Yes.

Q. And then it's got strategic characteristics either high, medium or low?

A. Right.

Q. Under "relative market share," it says "high"; is that correct?

A. Yes.

Q. It says, "High Abex dominance with 61 percent of the original equipment market share

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and 27 percent aftermarket. Overall Abex share is 32 percent." Did I read that correctly?

A. Yes. Correct.

Q. That's where I found that Abex described itself as being dominant in the heavy truck market.

A. Okay, that's fine.

Q. Okay. If you go to "product differentiation, breadth of line," it says, "Abex is unquestioned leader in breadth of application availability." Did I read that correctly?

A. Yes.

Q. What does that mean?

A. That some of our competitors basically made two or three part numbers and would try to cherry-pick the popular part numbers. Abex had essentially a part number to fit, I would say, every, but most tractor trailer and straight truck application.

Q. Virtually every?

A. Virtually every.

Q. Under "buyer concentration," it says,

"We dominate industry." And then in

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parentheses it says, "Abex has 231 heavy duty distributors." Did I read that correctly?

A. You did.

Q. And then if you look under

"distribution," it says, "high." "Abex is the unquestioned leader with outlets through OES."

What does that mean?

A. Original equipment service. That would be aftermarket parts sold through the original equipment dealer.

Q. Okay. "Abex is the unquestioned leader with outlets through original equipment service independent distributors, fleets and specialty customers." Did I read that correctly?

A. You did.

Q. So original equipment service means if the tractor or trailer originally came with an

Abex lining, you could go to the tractor or trailer manufacturer and get a replacement Abex lining?

MR. FLYNN: Objection to form.

A. It doesn't really mean that. It really means that if it's a Peterbilt tractor

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and you bring it to a Peterbilt dealer, you're going to get a Peterbilt part which may or may not have Abex lining on it.

Q. Okay.

A. So original equipment service, the concept is you're bringing -- it's like your personal car where you're bringing it back to the dealer for service.

Q. But if you dominate the original equipment market for someone that goes back to get original equipment replacement parts, if they got Abex the first time, they're probably going to get Abex the next time?

MR. FLYNN: Objection to form. Calls for speculation. Lack of foundation.

A. Not necessarily. Oftentimes original equipment guys will use somebody else's product

on the aftermarket side as a way to try them out before they gave them carte blanche approval for original equipment.

Q. At any rate, Abex's opinion of itself based on its distribution through original equipment services, independent distributors, fleets and specialty customers were that Abex

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was the unquestioned leader in the heavy-duty brake block market?

MR. FLYNN: Objection to form.

A. I don't dispute that. I mean, we were the first ones to come up with something that met the motor vehicle safety standard. We were the first ones to introduce an asbestos-free product. Even by this time, I'm sure a lot of other success was because we had an asbestos-free product available for these applications.

Q. Abex had an ongoing relationship with Freightliner?

MR. FLYNN: Objection to form. Vague and ambiguous as to "relationship."

A. We did sell them. They were a customer.

Q. For how long?

A. I don't know.

Q. The whole time you were at Abex?

A. No.

MR. FLYNN: Objection to form.

Q. Only a portion?

A. Only a portion.

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Q. Do you know what portion?

A. I don't, not offhand.

Q. Ongoing -- Abex also had an ongoing relationship with Great Dane?

MR. FLYNN: Objection to form as to the term "relationship."

A. We sold Great Dane some lining. When I say that, I mean it may have been in the form of selling it to Rockwell or Eaton who put it on a Great Dane trailer. Some of that whole specifying thing could be Great Dane saying, Eaton, we love your new trailer axle. We want some Abex lining on it. So Eaton gets to be the customer; that's who we sell and invoice;

that's who pays for the brake lining, but ultimately it winds up on a Great Dane trailer.

Q. What confuses me is when I look at the Abex strategic planning documents, it describes Abex as dominant, and unquestioned leader. And when I ask you about individual manufacturers, you tell me we sold some. We sold a little.

We sold a few years. You sold a lot of --

A. And I was just trying --

Q. -- heavy-duty brakes, right?

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MR. FLYNN: Hold on. The question wasn't finished. You can't answer until the question is done. I'm going to make my objection. The objection is argumentative. Assumes facts. Compound.

A. I attempted to explain to you that the reason for that is that Rockwell and Eaton, when you said who was Abex's biggest customers?

It was Rockwell and Eaton. That's who ordered the lining, that's who we shipped the lining to, that's who paid for most of it. It may be as a result of Great Dane saying, We want Abex

lining on our trailer axle. So there may not be a lot of sale directly to Great Dane. Yet there could be a lot of Abex brake lining on trailers.

Q. Thank you for that clarification.

So Abex's dominance in the axle and heavy-duty truck brake manufacturing business put their brake linings on a lot of different trucks and trailers even when Abex didn't sell directly to the truck and trailer manufacturer?

MR. FLYNN: Objection. Lack of foundation. Lack of specified time period.

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Overbroad.

A. That's nominally how Abex went to market, principally through heavy-duty axle and brake guys.

Q. Abex sold to International Harvester?

A. It did.

MR. FLYNN: Objection to form.

Q. To Navistar?

MR. FLYNN: Objection to form.

A. Which is the same as International Harvester.

Q. Okay. Abex sold brake blocks to Mack

Trucks in the '70s and '80s?

MR. FLYNN: Objection to form.

A. '70s, yes. We lost most of Mack
business.

Q. In the '80s?

A. Latter part of the '70s, early '80s.

Q. Okay. Kenworth and Peterbilt were
customers of Abex by virtue of being original
equipment truck manufacturers to which Abex
would supply brake lining to Rockwell and Eaton
who, in turn, supplied those brake systems or
axles to Kenworth or Peterbilt?

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MR. FLYNN: Objection to form. Lack
of foundation.

PHONE COUNSEL: Objection to form.

A. That's right.

MR. JONES: Is the form objection to
compound? If it is, I'll break it up. If it's
not, I'll move on.

MR. FLYNN: It's not.

MR. JONES: For Abex it's not.

Somebody on the phone objected to form. Is that compound?

PHONE COUNSEL: Yes, it is.

MR. JONES: Do you want me to break it up?

PHONE COUNSEL: If you can, please do.

Thank you.

MR. JONES: Sure can.

BY MR. JONES:

Q. Kenworth was a customer of Abex by virtue of being an original equipment truck manufacturer to which Abex supplied brake linings to the axle manufacturers Rockwell and Eaton?

MR. FLYNN: Objection to form. Lack

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of specificity. Overbroad.

A. Actually to the brake manufacturer, again, those guys wouldn't be buying axles generally.

Q. Okay. So just to clarify, Kenworth would be a customer of Abex by virtue of it being an original equipment truck manufacturer to which Abex would supply the brake lining to

the brake manufacturers which were Eaton and Rockwell?

MR. FLYNN: Objection. Lack of foundation. Overbroad. Lack of specificity.

A. Yes.

Q. If I ask the same question about Peterbilt, what would your answer be?

MR. FLYNN: Same objections.

A. Same answer.

Q. And how do you know that Abex linings were on Kenworth and Peterbilt trucks by virtue of Abex's sale of linings to the brake manufacturers Rockwell and Eaton?

MR. FLYNN: Same objections.

A. Just, you know, being at Abex and knowing sitting through meetings and reading

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reports and hearing sales guys talk about our success in getting specified at Kenworth or Peterbilt or whoever. That doesn't mean that we had their business exclusively, but that we had some portion of their business.

Q. The brake manufacturers Rockwell and

Eaton were both significant customers of Abex?

MR. FLYNN: Objection to form.

A. Yes.

Q. During what years?

A. Rockwell from essentially when I got there. I know we did business with them before that. I can't tell you when it started.

Rockwell business grew as a result of us meeting 121 safety standard and also introducing asbestos-free product. Eaton came on a little later as they were successful in taking some market share on trailer axles away from Rockwell, and I'd say that was latter part of the '70s or early '80s.

Q. Okay. My understanding, and you can correct me if I'm wrong, but it took longer for nonasbestos brake blocks to penetrate the heavy-duty market than it did the passenger car

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market; is that true?

A. No, contrary. Heavy duty actually started much faster than passenger cars did.

Q. When was Abex completely asbestos-free in heavy-duty applications?

A. Not until the end of '87. I mean, that's what happened was if I could draw you a picture of a graph, you know, we went from, let's say, nominally 1 percent asbestos-free and it grew and grew and grew, and then we kind of hit a plateau 90 percentile, and that was maybe in the '85 time frame. And then we realized that if we didn't take a stand, we'd probably be at 90 percentile forever. So that's when it was decided, hey, we're just going to set a somewhat arbitrary date; end of '87 we're not going to make any more asbestos product.

Q. You were a little scared that was going to cost you business?

A. We knew it would.

MR. FLYNN: Objection to form.

Q. It cost you business with NAPA, for example?

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A. It did.

Q. But it turned out there was a big market for nonasbestos around the time Abex

made the switch?

A. Well, yeah, but the market didn't get bigger because of our decision to go out of it. The year we went out of it we lost revenue.

Q. But Abex also got a foothold in the original equipment market which it previously, for passenger trucks or passenger vehicles, didn't have a big market share?

A. But that was already in place. That happened in the more like the mid '80s we got onto a lot of Ford light trucks.

Q. Ford Ranger?

A. Ranger and F-150.

Q. Those were all nonasbestos?

A. Those are all nonasbestos.

Q. Nonasbestos?

A. Nonasbestos, from an OE passenger car or light truck standpoint, starting for Abex in the very late '70s with the Dodge Omni Horizon and Chrysler product and the Volkswagen Rabbit.

Q. Abex sold replacement brake blocks to

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Freightliner?

MR. FLYNN: Objection to form. Asked

and answered.

MR. JONES: I did. I'll withdraw.

Q. Abex sold replacement brake blocks directly to Peterbilt?

A. I believe so.

MR. FLYNN: Objection to form. Asked and answered.

MR. JONES: I think I missed that one.

Q. Abex sold brake blocks directly to Kenworth?

MR. FLYNN: Objection. Asked and answered.

PHONE COUNSEL: Objection.

A. I believe we did.

Q. For --

A. Are you done with this?

Q. I am. Abex also sold heavy-duty brake blocks through NAPA jobber locations?

MR. FLYNN: Objection to form.

A. We sold them to Rayloc/Genuine Parts who would put them into the NAPA distribution system and then ultimately into NAPA jobbers.

Q. Okay. And American Brakeblok advertised that customers seeking heavy-duty American Brakeblok brake linings could get them at NAPA jobber stores, true?

MS. VELLUCCI: Objection to form.

A. It did advertise that.

Q. During what years did it advertise that?

A. I don't know. We had some examples here today, so I don't dispute those dates.

Q. In the '70s while you were there?

A. Perhaps in the early '70s. NAPA had an interesting thing going on with heavy duty.

There were kind of like periods of time where they really thought that was a big growth vehicle for them, and they really pushed it.

Other times where it weaned, so I don't remember doing a whole lot of advertising with NAPA on heavy duty in the latter part of the '70s or '80s.

Q. Okay.

A. There may have been some, but it wasn't substantive.

Q. Who were Abex's original equipment

customers for passenger cars and light trucks
for asbestos brake linings?

MR. FLYNN: Objection to form. Lack
of specificity. Overbroad. Lacks time frame.

A. I got to think this one through.

Q. I've read some of your testimony.

I'll throw some at you, and you can let me know
if you recall that?

A. Fair enough.

Q. Ford, Lincoln and Mercury, not the
passenger cars, light trucks, but medium trucks
and straight bus chassis?

MR. FLYNN: Objection to form.

A. I would accept your definition except
it wouldn't have been Ford, Lincoln and
Mercury. It would have been just Ford.

Q. Just Ford because that's a heavy
truck?

A. Yeah.

Q. And I didn't say, you sold to Ford for
heavy truck also?

A. Yes.

MR. FLYNN: Same objection.

Q. Some Chrysler models?

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A. Yes.

MR. FLYNN: Objection to form. Vague.

Q. Some General Motors models, and I believe that was Chevrolet light truck and Cadillacs, some model of Cadillac?

MR. FLYNN: Objection to form.

Compound. Vague.

MR. JONES: There were like three compounds within the compound question technically. I'm going to withdraw all the compound portions of the question.

Q. Abex sold asbestos linings for original equipment General Motors vehicles?

MR. FLYNN: Objection to form. Vague.

Ambiguous. Overbroad.

A. For Chevrolet and GMC, I think it was three-quarter ton pickup trucks and certain select Cadillac models.

Q. During what years?

A. I think it predated me, and I know that through the '70s we supplied Cadillac and the Chevy GMC truck.

Q. Have you heard of a clutch
manufacturer called Lipe, L-I-P-E?

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A. I have.

Q. And how are you familiar with Lipe
clutches?

A. I don't think it really had anything
to do with my Abex working knowledge. Lipe was
a company that manufactured clutches that I may
have come in contact with in my shade tree kind
of work. Lipe Rollway was the term that I
remembered.

Q. Okay. We're going to get
technological.

A. Are you going to beam me some data?

Q. That's a flashlight. We're eventually
going to get technological. I only have one
copy so I'm going to take a picture of what I
need to ask you about. Maybe I'll get in a
phone commercial.

Let me show you what I'll -- let me
ask you this: Do you know whether or not Abex
supplied clutch disc facings to Lipe?

A. I don't believe --

MR. FLYNN: Objection to form.

A. -- we ever made any
asbestos-containing clutch discs.

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Q. Okay. Let me show you what we'll mark
as Exhibit 13. I'm only going to ask you about
one answer and I've marked it.

A. Okay.

(Exhibit No. 13, Lipe Rollway's
Objections and Answers to Plaintiffs' Master
Interrogatories and Request for Production of
Documents so marked)

MR. FLYNN: I'm going to object to the
use of this document. It's not authenticated.
There is no verification by anyone from Lipe as
to the responses themselves. They're hearsay.
They're not admissible, and I object to the use
of this document with this witness. I move to
strike any questions related to this document
on those grounds. You can proceed if you want
to.

MR. JONES: I am. I'm waiting for him
to get done.

A. I am.

MR. FLYNN: Which number are you on?

MR. JONES: I'm not saying I agree or disagree agree with those objections.

MR. FLYNN: Page 17 or answer 17?

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A. Page 17.

MR. JONES: It's just there was an orange mark. You've got it.

MR. FLYNN: What is the interrogatory?

THE WITNESS: Interrogatory No. 8, I believe, titled "asbestos/rebranding."

MR. FLYNN: Thank you.

Q. I'm just going to ask you the portion that's toward the bottom of the page, the last two paragraphs discusses a five-year period in the '50s and then from '77 to '85.

A. Okay.

MR. FLYNN: Can I see a copy of what you're looking at, Mr. Indelicato, please.

THE WITNESS: Sure.

MR. FLYNN: It doesn't really match up with what I have. Just a second.

THE WITNESS: I think we need more chocolate, Darlene.

MR. JONES: I think that's the last one.

MR. FLYNN: I apologize. I just need to look at the document and do the same thing you're doing on your phone.

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MR. JONES: What's that?

MR. FLYNN: I had to do the same thing you did.

A. Okay. Where we going?

Q. This is -- you're familiar with what interrogatories are?

A. Yeah.

Q. And, in fact, part of your job is to respond to interrogatories in litigation?

A. That's right.

Q. Interrogatories are where one party in a lawsuit asks questions of the other party, and then the other party answers them?

A. Correct.

Q. Right? And these are questions of Lipe clutches?

A. Okay.

Q. You saw that from the title?

A. I did.

Q. And then Lipe clutches is asked a question about their sale of asbestos clutches; is that generally true?

A. Yes.

Q. And Lipe identifies the suppliers of

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its asbestos disc material, true?

A. Yes.

MR. FLYNN: Make the same objections I made before as to lack of foundation.

MR. JONES: Running objection.

MR. FLYNN: Thank you.

BY MR. JONES:

Q. It says during from -- where did we go? It says that there's a five-year period sometime in the 1950s during which Abex, Columbus, Ohio, was Lipe's primary supplier of disc facings. Did you see that?

A. I did, but the problem is Abex didn't have a friction material business in Columbus,

Ohio, ever. We had a hydraulics business there but never an asbestos or friction material business.

Q. And then at the bottom you see where it says from 1977 to 1985 when Lipe ceased manufacturing clutches, Abex supplied 90 percent of Lipe's clutch disc facings?

A. Well --

MR. FLYNN: Same objection.

A. -- between '77 and '85, I lived in

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Winchester, Virginia. I was in the factory every day. I was in engineering, quality assurance, engineering and ultimately the general manager and president. I can tell you I never saw an asbestos clutch facing made in Winchester during that period of time.

Q. Were there any other Abex facilities that produced friction material other than Winchester --

A. Well, Salisbury.

Q. -- and Salisbury during that time period?

A. That was it.

Q. Let me ask you some more questions about asbestos brakes.

A. Do you have a clip for this?

Q. Kind of. Before 1980 the vast majority of Abex linings sold for passenger cars, light trucks and heavy trucks included asbestos as an ingredient?

A. Yes.

Q. Those brake linings were between 25 and 70 percent asbestos, but most of them were around 35 percent asbestos by weight?

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A. Yes.

Q. Before the mid 1970s, most cars had four-wheel drum brakes?

A. Yes.

Q. And then around the mid 1970s disc brakes were introduced, but they were typically rear drum brakes, front disc brakes?

A. Most typically on European cars.

Q. And you didn't see wide penetration of four-wheeled disc brakes until the early to mid '80s?

A. Well, we started to see penetration of front-wheel drum disc brakes in '69, '70; that's when GM started putting them on cars like Firebirds and Camaros and then from there on to the mainstream line of cars. I don't know about four-wheel disc brakes, I really don't. I think I was kind of out of the business. There were some vehicles that had four-wheel disc brakes while I was still involved, but I think there was still cars today that still have rear drum brakes. I just don't feel qualified to answer that.

Q. Fair enough. I want to ask you -- I

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want to ask you about Abex's warnings related to asbestos, but the focus of the questions are going to be warnings communicated to customers like Genuine Parts, Rayloc, the Ford Motor Company, rebuilders and original equipment manufacturers. Okay?

A. Okay.

MR. FLYNN: I'm going to object to counsel's prefatory statement. That's not really a question.

Q. Kind of an introduction?

MR. FLYNN: Move to strike.

Q. Are you prepared to testify about asbestos warnings communicated to original equipment customers, rebuilders, brake manufacturers and the like?

A. Yes, to the best of my ability.

Q. Okay. I believe you've testified that at some point in the 1970s Abex began putting asbestos warnings on the packaging of brakes, and by 1978 virtually every asbestos brake product sold by Abex had a warning; is that true?

MR. FLYNN: Objection to form.

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Misstates the witness's prior testimony.

A. Close, but a little tweak.

Q. Okay.

A. It wasn't brake. It was brake lining. We started putting them on in the early '70s, and by 1978, by the end of 1978 all product leaving Abex's plant had that warning on it.

Q. Okay. By '78 every asbestos brake

lining asbestos brake pad leaving Abex's
factory includes an asbestos warning?

A. Yes, sir.

Q. Including asbestos brake lining
shipped to Genuine Parts Company's Rayloc
division?

A. Yes.

Q. How do you know that those asbestos
warnings were on the packaging of brake
linings, asbestos brake linings sent to the
Rayloc division of Genuine Parts Company?

A. Because there was some -- there was a
period of time from like, let's say, '72 to '77
when we had it on most everything, but every
once in a while there would be some glitch.

Q. That was because for a while it was

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like a stamp or --

A. Started out --

MR. FLYNN: Hold on. I'm going to
object. The witness wasn't finished with his
prior answer to the prior question.

Q. I apologize. I did interrupt.

A. Okay. I don't even know where we left

off.

MR. FLYNN: My recommendation would be, Trey, to go back, read the question and have him answer.

MR. JONES: Can you read back my last question?

(Question and answer read)

A. So the glitch was that most boxes we controlled. We order them from corrugated manufacturers and so on. Some boxes were supplied to us by customers. Those were the boxes that didn't have the stamp pre-embossed. As we got later in time, we just ordered boxes with the label on it so we didn't have to worry about it.

Q. So sometimes Abex would ship out brake linings in an Abex box that it controlled?

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A. Right. Which was most times.

Q. Meaning Abex didn't make boxes?

A. No, but we ordered them, and we paid for them. We received them.

Q. Told them what to put on the box?

A. Right.

Q. But there was some times where an Abex product would be put into a box by Abex, but the box would be supplied by a customer?

A. Correct.

Q. There were other times where Abex would sell the linings to someone like Genuine Parts Company, the Rayloc division, and would have nothing to do with putting it in a box?

A. That's not true. We always put them in some kind of box.

Q. Not -- I'm sorry. Let me clarify.

There were also situations where Abex would ship a bulk shipment of asbestos brake linings to a customer like the Rayloc division of Genuine Parts Company, and the Rayloc division would then take those linings out of the box from Abex --

A. Right.

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Q. -- put them on a brake shoe and then put it in their own box?

A. In a little set box that would make it appropriate for retail sale.

Q. And in that circumstance, yes, it

leaves Abex in a box?

A. Correct, with a warning.

Q. With a warning. But Abex has no control over the box that goes to consumers?

A. That's correct.

Q. Okay. So these three circumstances

I'm going to call Abex box --

A. Yes.

Q. -- where Abex orders a box. Customer box -- customer orders a box; Abex fills it.

The last one I'm going to say Abex box to customer box which is the bulk supply situation?

MR. FLYNN: Objection to form.

There's no question. You stated there is three types of boxes.

MR. JONES: I'm just trying to see if we can agree on the terminology when we go forward. If he can, he can tell.

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MR. FLYNN: I object to form as to "terminology."

MR. JONES: I'm welcome to hear a clarification from counsel if you'd like to offer one or from the witness. When we go forward, I just want to know what we're talking about.

A. I don't think there are really three cases. I think there's two cases. One is Abex buys a box. It has whatever warning we tell the box supplier to put on it. Second case is customer supplies the box. Abex puts the brake lining in and puts a warning on the box.

Q. You are aware of the third circumstance which is where Abex fills the box with linings, sends it to a rebuilder or remanufacturer, that customer of Abex then takes the lining out of the Abex box, puts it on a shoe, then puts it in their own box that has nothing to do with Abex?

MR. FLYNN: Objection to form.

A. I don't think you have it right. Everything Abex did was shipped in bulk. We would ship, whether it was Rockwell in case of

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heavy duty or Rayloc in the case of passenger

car, what I would call bulk. We would have 50 or a hundred pieces of brake lining in a box. In the case of passenger car, there would be 25. In the case of heavy duty, just because they're bigger and heavier, so they always went out in bulk. They always had, by the end of '87, always had a warning label on them. Then it was up to either the brake manufacturer or the rebuilder to take those parts out, put them on brake shoe, rivet them, bond them, whatever they do, put them in a box that's appropriate for their customer.

Q. It sounds like there was only two different situations at Abex for boxes. One where Abex controls the box?

A. Right.

Q. And one where the customer controls the box?

A. Essentially, yes.

MR. JONES: We're right where you wanted to be. A while to get there.

A. I was trying to help.

Q. And you did. Thank you.

A. So the issue was that there was --

MR. FLYNN: I'm not sure there's a question.

Q. I'm going to ask a question.

A. I'm sorry.

MR. FLYNN: No question pending. Wait for a question.

Q. Some customers who controlled the writing on the box did not want a warning on the box?

A. I would say that that's probably true in some cases.

Q. Well --

PHONE COUNSEL: Objection. Objection to the question.

Q. You're personally aware of circumstances where customers of Abex complained because the asbestos brake linings they received from Abex included a warning on the box?

A. Yes, I am aware of that.

Q. In what circumstances are you aware of that happening?

A. The only one that comes to mind was an

instance with Ford where we put -- we took the liberty of putting the asbestos warning on the box. They came in and did a quality control inspection, and they digged us for putting something on their box that wasn't on their engineering drawing, in which case we just had to go through the formality of requesting a change, submitting it, getting it approved, and then we were able to continue putting the warning label on.

Q. Are you aware of circumstances where customers of Abex received bulk shipments of asbestos linings from Abex that included an asbestos warning, and then those customers took the linings out of the bulk shipment box, packaged them either with a shoe or individually for consumers, and the packaging to the consumer did not include an asbestos warning?

A. Yes.

Q. Tell me, what situations are you aware of where the warning was communicated to the

customer, Abex's customer, but then was repackaged for the sale to the ultimate

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consumer without a warning?

A. I have all sorts of instances that pop in my mind. I mean, there's a letter from Abex to Rayloc that says, Hey, we're putting these warnings on. You guys might want to consider doing the same. I can't give you a specific date or more than that right now, but I know that that's a document that's come up in the past.

I've been through Rayloc plants. I knew the product leaving our plant had warning labels on it. I saw the boxes that they were assembling their axle sets in didn't have a warning on it. I saw the same thing at Rockwell. I mean, it was just part of, you know, me doing my job and going around and visiting customer and making that observation.

Q. So when you were working at Abex, you would see the boxes that would leave Abex, and they would have asbestos linings with the asbestos warning, true?

A. That's right.

Q. You would go to the customer's plant
and see the same boxes of Abex linings with the

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asbestos warning?

A. Right.

Q. And then you would see those linings
put in another box, for example, Rayloc box
without an asbestos warning?

A. Well, I would see our lining be
assembled to something, and then that assembly,
shoe lining assembly, if you will, put into a
box that didn't have a warning on it.

Q. You saw that with Rayloc?

A. Yes.

Q. Around what years?

A. I mean, probably from the mid '70s to,
you know, the late '80s.

Q. You saw that with Rockwell?

A. Well, Rockwell didn't usually put
their product in a Bendix. Occasionally they
did, but normally once they built up a big
heavy-duty truck brake with, you know, shoes

and linings and the thing weighed a hundred pounds. They put four on a pallet, and that's how they shipped it, but there wouldn't be any warning on the pallet per se.

Q. My recollection of the letter to

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Rayloc you're referencing was 1974 or 1976. Do you have it?

A. I think it was the Harry Jones letter, I think it was.

MR. JONES: Johan, do you have it?

MR. FLYNN: Do I have a copy?

MR. JONES: Yeah. You don't have to give it to me if you don't want to.

MR. FLYNN: I can give it to you now or on redirect.

MR. JONES: While we're on the subject.

MR. FLYNN: All right.

MR. JONES: That way I can look like the bad guy with NAPA, not you.

MR. FLYNN: Consider it a token of good will.

MR. JONES: I've been such a nice guy

today.

MR. FLYNN: I've been a nice guy too.

MR. JONES: I just didn't bring it

with me.

MR. FLYNN: You brought everything

else.

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MR. JONES: I brought a couple of

things.

MR. FLYNN: Give me just a second.

MR. JONES: You've got a stapler.

THE WITNESS: He comes prepared.

MR. JONES: Where's your stapler?

THE WITNESS: One is an exhibit, and

one is for counsel? Here you go.

MR. JONES: I've been marking. We're

up to 14.

THE WITNESS: Mark that, and I'll put

it in the pile.

(Exhibit No. 14, Letter to L.W. Moore,

5.28.75 so marked)

BY MR. JONES:

Q. Let me hand you what I've marked as

Exhibit 14 to the deposition. Is Exhibit 14 the document you were referencing, the letter to Genuine Parts Company's Rayloc division concerning asbestos warnings?

A. Yes, sir.

Q. And this letter is dated May 28, 1975?

A. Correct.

Q. Is this an authentic copy of an Abex

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document?

A. I believe it is.

Q. And this document is found in the Abex repository, true?

A. Yes.

Q. This document was authored by an Abex employee?

A. Yes, Mr. Harry Jones.

Q. No relation. What is Exhibit 14?

A. It's a letter to Toby Moore or L.W.

Moore, as it's written here, from Harry Jones who was the sales manager at that time saying that -- can I paraphrase, or do you want me to read it?

Q. You can paraphrase.

A. That he read an article talking about how Raybestos was being sued, and as, you know, Abex is putting these warning label on its boxes. The warning reads, Caution: Contains asbestos fibers. Avoid creating dust. Breathing asbestos dust may cause serious bodily harm. As you know, we've taken steps as -- I'm sorry. As I know, you've taken steps to

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protect your people. However, it comes to mind you may have some responsibility to your customers and might consider including the same caution on your boxes or labels. This could also be used as another strong reason to discourage or for discouraging field grinding of brake shoes by jobbers and/or brake shops. Should you have any further questions, a number, you can call me.

Q. Was this letter actually sent to Mr. Moore at Rayloc?

A. I believe it was.

MS. VELLUCCI: Objection to form.

Calls for speculation.

Q. Why do you believe this letter was sent to Mr. Moore?

MS. VELLUCCI: Same objection.

A. I mean, this is a copy that was found in Mr. Grim's file. Obviously, distribution was made. I have no reason to believe it wasn't sent if it was sent to the people who are carbon-copied.

MR. FLYNN: Just a point of clarification. Is there a second page to this

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document as well?

THE WITNESS: There is.

MR. FLYNN: Okay.

BY MR. JONES:

Q. You also know that this was communicated to the Rayloc division of Genuine Parts Company because you personally had a conversation with John Adderhold, Toby Moore and Mr. LeCour, Paul LeCour on this subject; is that true?

MS. VELLUCCI: Object to form.

A. That's right.

Q. Tell me about the conversation -- who is John Adderhold?

A. John Adderhold at the time, I believe, carried the title of president of Rayloc.

Q. And who was Toby Moore?

A. He was the, I believe, the VP of sales.

Q. And who was Paul LeCour?

A. Again, I don't know what title he had, but operations manager, quality assurance manager, don't know exactly.

Q. What conversation did you have with

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these gentlemen from the Rayloc division of Genuine Parts Company?

A. I mean, we'd have periodic, you know, meetings, and we'd talk about our, you know, new products, and we talked about new applications. We talked about what was going on with asbestos regulations. We talked about the fact that we were putting warnings on. We, you know, would reiterate the thought that maybe it was something you guys might want to

do.

Q. These are things that you gave notice of to the Rayloc employees?

A. Yes.

MS. VELLUCCI: Objection to form.

Q. You told these things to the Rayloc employees?

A. Yeah. I didn't go and, you know, it wasn't a lecture. It was a business meeting, and we sat down and talked about, you know, OSHA regulations and dust control. And we'd invite Rayloc folks to come down to Winchester and talk to engineers about state-of-the-art dust collection system.

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It was a very cooperative kind of meeting, and the discussion -- you know, it was hard to not have a discussion concerning asbestos, asbestos regulations, warnings, what was likely to happen, where were we were going with asbestos-free development. I mean, all of that was just kind of the normal -- in the normal course of business conversation.

Q. When did these conversations about

Abex asbestos warnings with Mr. Adderhold, Mr.

Moore and Mr. LeCour, when did these conversations take place?

A. I would say that it was after this letter. Again, looking at my resume -- just give me a second, and I'll try to piece this together for you as best I can. I'd say it was, you know, '76 to '84 I was director of product engineering; that's what I spent a lot of time calling on customers, talking about asbestos-free stuff. So I'd say loosely '76 to '84 there were frequent meetings with Rayloc talking about this subject in general.

Q. What did the Rayloc employees tell you about whether or not they intended to put an

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asbestos warning on their products?

MS. VELLUCCI: Objection to form.

A. Just that they were going to consider it.

Q. And you know from your visits to their factories that they, in fact, did not put a warning on their asbestos products?

MS. VELLUCCI: Object to form.

A. I honestly don't know exactly when they did. I understand at some point they did, but I think it was quite a bit later than '87 when we were out of the asbestos-containing business.

MS. VELLUCCI: Move to strike speculative portion.

Q. Let me show you what I'm going to mark as Exhibit 15.

(Exhibit No. 15, Memo to Messrs Challinor and Hubbard, et al, 4.14.77 so marked)

MR. FLYNN: Can I see it, please?

THE WITNESS: Sure.

MR. FLYNN: Thank you.

Q. You can look at mine and hand it back.

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MR. FLYNN: Do you want me to staple it?

MR. JONES: Sure.

A. Okay.

Q. Thank you. Are you familiar with the documents I've marked as Exhibit 15?

A. Yes, I've seen it before.

Q. What is Exhibit 15?

A. It's a letter from Mr. Schmaltz to a group of salespeople at Abex talking about the fact that we needed to make sure that the caution label would be on all the boxes, and the context of this is this is now we're approaching the 1978 deadline for us wanting to make sure, absolutely, positively that the warning was on everything. And there's a list of boxes listed, attached to this, that customers controlled the supply of, that we're asking our salesmen to go and make sure that these customers put the warning on.

Q. So as of the date -- let me ask you this: Is Exhibit 15 an Abex document?

A. It is.

Q. It's authored by an Abex employee?

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A. Mr. Schmaltz, yes.

Q. It's dated April 14, 1977?

A. It is.

Q. And this is an authentic copy of a

document found in Abex's files?

A. Yes.

Q. Okay. In this document the Abex employee, Mr. Schmaltz, is identifying customers of Abex who, as of 1977, April 14, 1977, are not including an asbestos warning on the boxes that the customers controlled?

A. That's correct.

Q. And in April of 1977, Abex is reaching out to these customers and saying, Listen, we're going to put the warning on there?

A. Well, it doesn't say that we weren't putting the warning on. It may very well be we were putting the warning on. We were still doing it in an arcane way. We're trying to make sure and have a fail-safe system that, you know, every box has that warning on it. So we're asking them to please make sure that the warning is incorporated on the box that you supply us.

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Q. Who were those customers that weren't incorporating the asbestos warning on the boxes supplied to Abex?

A. Well, I couldn't say that, who they were. I mean, this would imply that -- certainly some GM parts, some Kelsey-Hayes parts, some Clark parts, but it doesn't mean that -- these are box and part numbers specifically.

Q. Doesn't mean everything --

A. That's right.

Q. -- every box? But at least some boxes, asbestos boxes from GMC didn't include the asbestos warning?

A. That's right.

Q. Kelsey-Hayes didn't include the asbestos warning?

A. On certain part numbers.

Q. Okay. Same for Clark?

A. Yes.

Q. Same for the Ford Motor Company, some of their boxes didn't include the asbestos warning?

A. Yes.

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Q. Same for General Motors?

A. Yes.

Q. True? Same for Massey Ferguson?

A. Yes.

Q. Ford is listed three more times here?

A. Correct.

Q. Alfa Romeo?

A. Yes.

Q. Wagner?

A. Yes.

Q. Caterpillar?

A. Yes.

Q. International Harvester is listed as a customer of Abex in 1977 that did not include the asbestos warning on their boxes; is that true?

A. That's right.

Q. We see Kelsey-Hayes again, true?

A. Yes.

Q. And we see Ford again?

A. Yes.

MR. FLYNN: We've been going for about an hour. Let's take a five-minute break.

MR. JONES: I think I'm done so that's

perfect. Let me look at my notes, and I might be done.

(Discussion off the record)

THE VIDEOGRAPHER: The time is 3:38, and we are going off the record.

(Recess 3:38 p.m. to 3:52 p.m.)

THE VIDEOGRAPHER: The time is 3:52 p.m., and we are back on the record.

MR. FLYNN: Go ahead, Counsel for Paccar.

EXAMINATION CONDUCTED

BY MS. DEVOS:

Q. Good afternoon, sir. Can you hear me okay?

A. Just fine. Thanks.

Q. My name is Stephanie DeVos. I'm from the law firm Segal McCambridge. I'm sorry I can't be there in person today, but I have some follow-up questions for you.

A. Go right ahead.

Q. My first question is regarding the composition of the friction material that Abex manufactured. Am I correct, sir, that a customer of Abex would not be consulted or

otherwise made aware of the particular formulation of any friction products that Abex manufactured?

A. No.

MR. FLYNN: Objection to form.

A. I believe that they would be aware by virtue of, A, approving the formulation for use on their vehicle and, B, by being the recipient of a MSDS that would disclose the composition.

Q. That information isn't considered proprietary or trade secret?

A. It is, and the MSDS is constructed in a way where it -- Abex believed it fulfilled its obligation to be forthright in materials of concern but not divulge the exact composition.

Q. If I understand you correctly, an MSDS or similar document might contain a list of particular components but not necessarily the proportions or anything like that?

A. And yes, to a certain degree, but more often things would be grouped together. For example, graphite, carbon, coke, and other graphitic or carbonaceous materials would be

grouped and a range of concentration would be

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listed. Things like inert minerals like barium sulfate, calcium carbonate might be grouped and give a nominal range. So that's how Abex's MSDSes would be constructed to try to protect its proprietary formulation and yet be responsive to the intent of an MSDS.

Q. Was that system you just described for me in effect from the beginning of your tenure at Abex?

A. No, I don't think it was. I don't recall the exact date that MSDSes would be -- were used, but I think it was probably the '72, '73 time frame. Before that point in time, customers were still told the nominal composition; that it was asbestos-containing; that it might have brass and graphite. They would be offered samples. They would generally test those samples or sometimes rely on Abex's engineering documentation to then approve the formulation for use on their brake or vehicle.

Q. Now, I used the word "customer," which

I understand is a broad term. Was that true across the different types of companies that Abex dealt with? And by that I mean, let's say

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a brake manufacturer such as Rockwell or a vehicle manufacturer such as my client, Paccar?

A. I think people like Rockwell and vehicle manufacturers like Paccar and others would get the same knowledge that Abex had. I mean, we wouldn't -- I mean, Paccar wouldn't agree to put an Abex piece of brake lining on their vehicle until they had some engineering documentation that they were satisfied with, and that engineering documentation could be self-generated. They could use a third party. They could rely on Rockwell or the brake manufacturer, or they could rely on the friction manufacturer, in this case, Abex.

Q. Do you have any documents that may have been supplied to Paccar in particular during the time period that you've been working for Abex --

MR. FLYNN: Objection to form.

Q. -- regarding any of the formulations

of the friction components?

MR. FLYNN: Objection to form.

A. I don't know.

Q. Do you recall having seen such a

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document?

A. I don't recall.

Q. Now, typically when Paccar or another vehicle manufacturer placed an order from Abex, would that be a complete assembly coming directly from you, or would they typically go to a manufacturer such as Rockwell for that assembly?

A. It would never come as a complete assembly from Abex. We didn't have the capability to do that. So it would have to either be assembled by a brake manufacturer, an axle manufacturer, and I think in some cases maybe the vehicle manufacturer did the assembly, but Abex never did because we didn't have the capability.

Q. Do you have any knowledge as to whether Paccar specified any individual

components such as the friction pads of an Abex piece of equipment versus just ordering a complete unit?

MR. FLYNN: Objection.

Q. I'm sorry, that was a poorly worded question. Does that make sense, or should I

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rephrase?

MR. FLYNN: Objection to form. Abex didn't make equipment.

A. Why don't you start over with the question. Sorry.

Q. I'll rephrase. My apologies.

A. That's all right.

Q. Do you have any knowledge as to whether Paccar specified any individual components, such as friction pads, that may have ultimately made it into a final piece of equipment assembled or produced by another manufacturer such as Rockwell?

A. I don't know for certain. I was talking, you know, in a more generic way that oftentimes the vehicle manufacturer would specify whose brake lining to use on whose axle

or brake. But there are also times when the brake or axle manufacturers were trying to sell more of a commodity item and say, We can give you a really good deal on this brake, and it meets your engineering requirements, and that's all you need to know. And some vehicle manufacturers would accept that and move along

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without even knowing whose brake lining was on their brake.

Q. Do you have a specific recollection as to whether Paccar fell into the former category that you described or the latter?

A. I don't. Excuse me. I do not.

Q. Okay. I understand the rule that you described of the vehicle manufacturers in specifying which parts they might want to use their vehicles, but am I correct, sir, that a truck manufacturer such as Paccar wasn't specifying whether they wanted any of those components to contain asbestos or any other ingredient?

A. I don't believe that Paccar specified

whether they wanted asbestos or nonasbestos. I think rather at some point in time, Abex went to Paccar and other people like Paccar and said, Eureka, look what we have for you, a wonderful piece of friction material that's better performing than what you're used to, lasts longer, and oh, by the way, it's asbestos-free. And it was up to them to elect at that point whether or not they wanted to

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continue with their asbestos or change to asbestos-free.

Q. Okay. I understand that generally speaking Abex was asbestos-free after 1987, but you previously testified that the heavy truck arm of the industry was a bit quicker to adopt nonasbestos equipment; is that right?

A. Yes.

Q. Would you be able to give me an estimation of the first date that you can recall a heavy truck manufacturer, whether Paccar or somebody else, began to use and order Abex component parts that were nonasbestos?

A. Not sitting here today. I mean, I

could estimate that it would be in the very early 1980s, but I couldn't give you a more precise answer, sitting here today.

Q. Okay. Do you have any records? And when I say "you," I do mean Abex as a company, any records as to previous orders that Paccar may have placed?

A. I'm not sure I understand your question.

Q. It basically goes to your

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recordkeeping policies. Would you have held on to any documents from, let's say, the beginning of your time at Abex until about 1987 containing the details of any orders that Paccar placed during that time?

A. There might be some documents in our repository. I couldn't say for certain.

Q. You wouldn't recall the contents of any of those documents specifically?

A. Well, I mean, I've seen a lot of different sales documents that have come up with discovery, but I don't recall any specific

to Paccar. And to be candid, I haven't looked for them either so they may be there. I just don't know.

Q. Understood. Other than making a selection on the basis of a preference, am I correct, sir, that Paccar had no influence or role in any of the formulation of Abex products?

A. I'm sorry, could you repeat that for me?

Q. Certainly. Am I correct, sir, that Paccar had no influence or role in the

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formulation or particular ingredients for any Abex friction components other than what you've already described in terms of expressing a preference for, let's say, a particular size or physical quality?

A. It goes to the physical quality of the brake lining's ability to stop the particular vehicle that they are building. So, yeah, I mean, they have to have knowledge that -- and get comfortable that the brake lining and brake is going to perform to their satisfaction. So,

I mean, they don't control the formulation, but they might say, gee, this formula didn't seem to give us the adequate stopping distance or margin that we're looking for so we'd like something higher in friction. And we would say, okay, well, we have formula X, Y, Z. So, I mean, there's some, not knowledge of formulation, but there's knowledge of the product more from a performance point of view than anything else.

Q. Understood. You answered what I asked of you. Thank you.

A. Okay. You're quite welcome.

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THE WITNESS: Anybody else on the phone?

MS. DEVOS: I believe that's all I have. Thank you for your time, sir.

THE WITNESS: You're welcome.

MR. JONES: Anybody else on the phone?

Hearing nothing, in the room?

MS. VELLUCCI: I have a couple of questions, but I don't know if it makes more

sense for you to go. I might have more questions after you go.

MR. FLYNN: I'm sure you'll have more questions.

MS. VELLUCCI: Then I'll wait.

MR. FLYNN: Let's go off the record.

(Discussion off the record)

THE VIDEOGRAPHER: The time is 4:05 p.m. We are going off the record.

(Recess 4:05 p.m. to 4:11 p.m.)

THE VIDEOGRAPHER: The time is 4:11 p.m., and we are back on the record.

EXAMINATION CONDUCTED

BY MR. FLYNN:

Q. Mr. Indelicato, good afternoon. My

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name is Johan Flynn representing Pneumo Abex.

I know we've been going for a long time today.

The jury has probably already heard a lot of testimony so I'll try to be as brief as I can, but there are a lot of important areas we have to cover.

A. Okay.

Q. Let me go back to when we first

started this morning around 9:00, 9:15 or so.

You were asked some questions by plaintiffs' counsel, Mr. Jones, about what type -- what was Abex's principal business. Do you recall that?

A. I do.

Q. All right. And I believe there was some questions asked of you of whether the friction material business was Abex's primary business. Do you recall that?

A. I don't recall that particular question, but....

Q. Okay. Was the friction business of the American Brake Shoe Foundry Company and its predecessor, was it primarily friction products?

A. No.

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Q. What other types of products did Abex manufacture in the past?

A. Well, it varied over time, but if we go back to about 1970 when I started with the company, there were four basic divisions, friction products, railroad products, castings

and hydraulics.

Q. It's fair then to say that friction products was just one component of the Abex overall business, correct?

A. That's right.

Q. And you were asked questions this morning as well about the Abex corporate research center in Mahwah. Do you recall that?

A. I do.

Q. All right. And the Abex corporate research center at Mahwah was involved in research on all different types of materials and issues for Abex, correct?

A. Well, yeah. I mean, there were material scientists. There were mechanical engineers. There were a few chemists. There were a lot of metallurgists. I mean, that's kind of what they did.

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Q. And the Abex corporate research center in Mahwah was not just about research on issues related to asbestos, correct?

A. No, that's right.

Q. Okay. Why was that? Was it because

Abex had such a diverse line of products that it was manufacturing?

A. Well, again, you know, the research center was trying to develop new and improved products. It was trying to understand why certain products wore out. It would try to understand, for example, why railroad wheels would sometimes fracture. So it was -- I don't know how to be more direct in my answer to you, but it was a very diverse group of scientists that dealt with either really far-reaching advanced stuff or in some cases remedial product failure analysis.

Q. And just so the jury understands this and it's clear, does Abex have any current employees?

A. No, sir.

Q. It only has one officer, right?

A. That's right.

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Q. Which is you?

A. Me.

Q. Okay. What's your title for Abex?

A. President.

Q. Okay. And does Abex currently have any operating business whatsoever?

A. No, sir.

Q. Okay. Could you briefly describe for the ladies and gentlemen of the jury the different types of friction materials that Abex sold?

A. Basically, it manufactured asbestos-containing friction material, nonasbestos friction material that would be semimetallic and nonasbestos friction materials that would be termed as we, our nomenclature was nonasbestos nonmetallic. Those were the three basic types of formulations. At any point in time, there might be 50 or more active formulations in production, different combinations of ingredients, and it would be manufactured into disc brake pads, passenger car, light truck drum brake lining or heavy truck blocks that we discussed.

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Q. And why did you a number of times during the deposition here today draw the

distinction between a brake and a brake lining?

A. Because Abex manufactured brake lining, and oftentimes it's assumed that Abex manufactured the entire brake so I just -- having gone through --

THE WITNESS: Can somebody mute their phone, please.

MR. JONES: Can you mute your phone whoever needs a ticket.

MR. FLYNN: Whoever is on the phone who's trying to buy a ticket, can you mute your phone, please.

THE WITNESS: It's quiet now so maybe we should try to continue.

A. What was the question again?

MR. FLYNN: Can you read back the question and the answer.

(Question and answer read)

A. That misconception numerous times I always try to make the distinction that we made just brake lining, and brake lining really can't be put onto a vehicle without further

assembly by someone else.

Q. Okay. And we've heard a lot about asbestos today. What was the purpose of the use of asbestos in brake linings that may have been manufactured by Abex?

A. Well, whether it was manufactured by Abex or anyone else, asbestos is a unique mineral that offers a unique set of properties, principally heat resistance, but also structural integrity, and for many, many years no one came up with an alternative methodology that would allow you to get away from the use of asbestos in brakes.

Q. Okay. And tell the ladies and gentlemen of the jury why December 31, 1987, was an important date for Abex and for you?

A. I mentioned earlier in the deposition today that Abex was making, what I thought, pretty good progress of moving toward an asbestos-free business, but we kind of hit a plateau at some point where I would say we were at about a 90 percentile of our business being asbestos-free. And management realized that if we didn't make a decision, that we'd probably

be at this 90 percentile forever.

There were lots of concerns about whether or not asbestos would be -- continue to be available, what the new OSHA standards might be because they kept getting ratcheted down, the cost for abatement if, in fact, standards went down further. So, I mean, there were a lot of business issues and also vehicles driven primarily by the corporate average fuel economy mandated by the government started to be a lot tougher on brakes. So for all of those reasons we said, you know, this is really just a great time to -- just let's put a stake in the ground.

Frankly, as the head of operations for that business, I would have probably preferred that it might have been a year or two later, but it was decided by the board that the end of '87 was the date. And we did everything we could to try to get our customers comfortable with that. Many did, some didn't. And as a result, we lost some business.

Q. Was the process of going asbestos-free

by the end of December 1987 a very complex

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undertaking for Abex?

A. Very much so.

Q. Were you personally involved, Mr.

Indelicato, in that process at Abex?

A. I did. I got to be the messenger who delivered the news to many of our major customers, some being more receptive than others. I also, because of my engineering background, got to serve on a couple of weekly task force meetings between our engineers and some of our customers' engineers. One specific one that comes to mind which was very religiously done every Friday was with Rockwell.

Rockwell had a significant piece of their business that was not covered with asbestos-free alternatives, and we decided to try to work together to help them get to that comfortable level. And we made some serious progress, but there was, in fact, still a few brake applications we couldn't satisfy, and they had to use somebody else's brake lining.

Q. And can you explain for the ladies and gentlemen of the jury kind of the process, the

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method by which Abex started this transition to go asbestos-free by the end of December '87?

A. The beginning of the process?

Q. Yeah.

A. Basically, again, driven by changes in vehicle design and concerns about whether or not asbestos would be around, at the corporate research center, a Ph.D. chemist who was hired. And a lot of what's important in brake lining is polymer chemistry to keep everything together. So we hired this polymer chemist and essentially put him in a room and told everybody not to bother him and charged him with the task of trying to develop an asbestos-free basic friction material matrix that could be tailored to -- its friction properties could be tailored to satisfy a broad range of product.

The guy's name was Dr. Tim Merkel. He successfully came up with a matrix that had

some real potential with one small problem and that was we couldn't manufacture it. So I was allowed behind the curtain to help Dr. Merkel try to come up with a way to alter his new

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matrix so that it could be commercialized. And we succeeded with that.

We introduced it in the very late '70s and early '80s primarily for heavy trucks initially, had a couple failures along the way, but tweaked it some more, had to work with the fiberglass company PPG to come up with a very special chemical methodology to allow this to work properly.

Q. Let me stop you right there and ask as a transition type of question whether you're aware of whether there was ever a one-to-one substitute for the use of chrysotile asbestos in friction products manufactured by Abex?

A. No.

MR. BERQUIST: Objection to form.

Q. And you started to describe briefly that fiberglass issue. Can you describe to the ladies and gentlemen on the jury why the PPG

fiberglass issue was so important to you and Abex in the process of going asbestos-free?

A. Well, the first product we introduced seemed like it would work really, really well based on our dynamometer tests, and we put the

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stuff on vehicle tests and actually started to sell it in a limited range of product and found that while the brake lining stopped the vehicle really well, had some wonderful wear properties, it wore out the opposing surface, the brake drum, in very short order. And a piece of brake lining is like three bucks; four pieces, 12 on a wheel. The brake drum is like a hundred so the customers aren't real happy when your brake lining is wearing out a hundred-dollar brake drum.

So we had a big setback. We did a bunch of analysis. We found that the fibers would actually -- fiberglass is a bunch of monofilaments all kind of bundled together. They would kind of shred during use. When they shred, a very low amount of energy is required

to get that little monofilament piece of fiberglass to melt. When it melts and then solidifies, it becomes a little glass ball.

And that little glass ball was just eating up the brake drums.

So we had to figure out a way to maintain strand integrity and keep all the

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monofilaments together if we were going to be successful, and that's where the PPG guys working with Dr. Merkel in the research center came up with, I would call, a sizing agent which allowed our polymer to stick to it and help everything stay -- not stay, but create strand integrity in the fiberglass.

Q. Was the specific type of fiberglass and the agent you just described something that was first invented or created when Abex was looking into this issue of going asbestos-free for brakes?

A. Not at first, but after we had some failures with the routine product, then it was, yeah, it was kind of a eureka moment of how we maintain strand integrity. And it also

required Abex to change its manufacturing process a little bit. But that was really a eureka moment that allowed us to really start to grow the fundamental matrix of fiberglass-reinforced friction material.

Q. Did this revolutionary new type of fiberglass exist in the 1940s?

A. No?

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Q. Did it exist in the '50s?

A. No.

Q. Did it exist in the '60s?

A. No.

Q. Did it exist in the 1970s?

A. I think the fundamental glass formula did, but the sizing agent and the ability to keep it together didn't exist until we kind of coinvented it with PPG.

Q. And that was unique to Abex's efforts it undertook, correct?

A. It was.

Q. Now, is it fair to say that one of the things you're most proud of when you worked at

Abex was your work on going asbestos-free?

A. Absolutely.

Q. And why is that?

A. It was Herculean task. We were the only company in the world, to our knowledge, that had achieved it. Again, Abex had a pretty broad range of products. We had everything from passenger car lining to industrial off-highway stuff. So it wasn't like we were just making passenger car disc brakes for

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something.

So that fact, it allowed us to get a lot of new business. It allowed us to penetrate Ford Motor Company for passenger cars and light trucks which we hadn't been able to do in the history of the company with any significant volume. We wound up having essentially all of Ford's light truck business but for front and rear.

The irony was that we always viewed Bendix/Allied Signal as Abex's arch enemy and biggest competitor, yet they wound up being our largest customer because they made the brake

that went on the Fords, and Ford specified Abex brake lining. So that was kind of a feather in our cap. So for all of these reasons, and then when the EPA finally decided to come out with an asbestos ban, we were pretty happily positioned to -- ready to go.

Q. Do you recall whether Abex supported the EPA-proposed ban?

A. Yes.

Q. Okay. And is it fair to say then that, as you understand it, based on your

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personal knowledge, experience and training at Abex, that Abex was the first friction manufacturer in the United States with a full line of nonasbestos friction products?

A. Yes, and I believe it was broader than that. I think it was in the world.

Q. Let's shift gears a little bit and talk about some of the exhibits that were covered this morning. I'm going to go back and take you down memory lane a little bit here this morning. I'm going to hand you what is

marked as Exhibit 6. I've handed you, Mr. Indelicato, what has been marked as Exhibit 6. Do you recall this advertisement that we talked about earlier this morning from, I think it's 1962 in an Oklahoma newspaper?

A. Yes.

Q. Okay. You were asked some questions about this by Mr. Jones this morning, right?

A. Yes.

Q. What do you consider, Mr. Indelicato, to be a potential hazard for brake or friction materials that Abex manufactured?

A. Any brake, it's brake failure,

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inability to control the vehicle.

Q. And were brakes part of the safety equipment that were on vehicles?

A. Yes.

Q. Okay. And what is the -- do you see at the top of this advertisement -- I know it's small and it's in black and white. I'm sure we'll be happy to blow this up for the jury at the time of trial, but do you see a little kid standing in front of the car?

A. It looks like a little kid.

Q. What does the caption say right below that photograph of the little kid in front of the car?

A. "Stop, save a life."

Q. And what does it say right after that?

A. "Your ability to stop your car can mean life or death to someone, including you. Make sure you have stopping power. Have a brake specialist listed below check your brakes thoroughly now before it's too late."

Q. Okay. You can stop right there.

A. Okay.

Q. Now, this advertisement, what does

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this advertisement indicate to you in terms of the issue of safety as it relates to brakes?

A. Don't ignore them. Pay attention to them. Make sure they're working properly.

Q. And could Abex have taken asbestos out of friction materials in, say, the 1960s, '50s or '40s and made a brake lining that would have stopped cars safely?

A. I don't believe so.

Q. Okay. That's in large part because
of --

MR. JONES: Can we break for half a
second?

MR. FLYNN: Sure. We can go off the
record.

THE VIDEOGRAPHER: The time is 4:30,
and we're going off the record.

(Recess 4:30 p.m. to 4:32 p.m.)

THE VIDEOGRAPHER: The time is 4:32
p.m., and we are going back on the record.

BY MR. FLYNN:

Q. Mr. Indelicato, I think we just
wrapped up talking about Exhibit No. 6. And do
you also recall -- I think you looked at

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Exhibit No. 8 as well. Do you recall that
exhibit from this morning?

A. I do.

Q. And does that exhibit also touch on
the issue, generally speaking, of why it's
important that your brakes work properly on a
car?

A. Yeah. Without spending time reading it, it's paraphrasing, you know, will you be able to stop in time? And it talks about how a hundred horsepower is required to accelerate and a thousand horsepower is required to decelerate to 60 miles an hour. Again, that same theme of safety and ability to stop.

Q. I want to turn your attention now to Exhibit No. 10. Do you recall this exhibit catalog from this morning? It looks like, I believe, it was a 1972 catalog?

A. Yes.

Q. Okay. Is the name -- do you see the name Rayloc anywhere on the cover?

A. No, I don't.

Q. Do you see American Brakeblok or Abex on the cover of that document?

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A. I do not.

Q. Do you see Genuine Parts Company anywhere on the cover of that document?

A. No, sir.

Q. Okay. Let's shift gears now and talk

about Exhibit No. 9. It's an, I think, a 1970 catalog. Do you recall this exhibit as well?

A. Yes, I do.

Q. Okay. Now, there's no mention on the cover of the document of Rayloc, is there?

A. No.

Q. And there's no mention of Genuine Parts Company on this document either as well?

A. No, sir.

Q. And at the top of that document it, in fact, references BHT, does it not?

A. It does.

Q. And do you recall who BHT was?

A. No, I don't.

Q. Okay. All right. You can set that exhibit aside. We spent a lot of time this morning and this afternoon, Mr. Indelicato, talking about NAPA, Genuine Parts Company and Rayloc. You'd agree with that, right?

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A. Absolutely.

Q. Okay. I believe it's fair to say that you agree that GPC, Genuine Parts Company, and Rayloc was a significant customer of Abex,

correct?

A. Yes.

Q. They were never an exclusive customer, were they?

A. That's right.

Q. Okay. Can you describe the specific types of friction materials that Abex sold to -- may have sold to GPC or Rayloc?

A. It sold passenger car and light truck drum brake lining asbestos, some asbestos-free, some semimetallic. It sold disc brake pads, asbestos and semimetallic. It sold brake blocks which are heavy truck pieces of friction material that were asbestos and in some cases asbestos-free.

Q. You've testified earlier today that the friction materials that Abex may have supplied to GPC, Genuine Parts Company, or Rayloc were supplied in bulk by Abex?

A. That's right.

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Q. And can you describe for the ladies and gentlemen of the jury the step-by-step

description of how and what GPC would -- Rayloc would do with the Abex friction material that it received in its plants?

MS. VELLUCCI: Objection to form.

A. Basically, we would ship, again, depending on the size of the brake lining, the boxes that were, I don't know, maybe 3 feet long by a foot and a half wide by maybe 8 inches high, and it would have nested pieces of friction material in it.

Rayloc would generally take a piece out, assemble it to a brake shoe, most typically by riveting it, in some cases by bonding it with an adhesive and heat and pressure process, and then take that article, match it up with its mating part and put what would be an axle set which is typically for brake shoes into a box for sale through their channels. Oftentimes there would be a plastic bag or a paper envelope with some springs or other items that would typically need to be replaced when they did the brake job.

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Q. And how would -- if I use the term

"GPC," do you understand that to mean Genuine Parts Company?

A. I do.

Q. Okay. How did GPC and/or Rayloc attach the Abex friction material that came into the plant in bulk to the brake shoe?

A. I just said either riveted it or bonded it.

Q. Did they ever have to drill the brake linings?

A. No. The lining would be predrilled if it were to be riveted.

Q. Do you recall whether Rayloc ever preground any of the brake linings that it received from Abex before it went to the end user?

A. Yes. Rayloc would typically grind the brake linings so that it would assure a good fit into a brake drum.

Q. And who controlled what went into the GPC boxes that went to the jobber, the individual NAPA stores?

MS. VELLUCCI: Object to form. Calls

for speculation.

A. The Rayloc rebuilders.

Q. And how do you know that?

A. I've seen it. I've been there.

Q. You saw with your own eyes in the plant?

A. Yes, sir.

Q. Okay. Did Abex have any control whatsoever of what went into the boxes that GPC or Rayloc sent to the NAPA jobber stores?

MS. VELLUCCI: Object to form.

A. I mean, no, really we weren't there supervising it on a day-to-day basis. I mean, I know that there were instances where a box might say lined with American Brakeblok brake lining and, in fact, it wasn't, and we would call them out on it. But, you know, we took them at their word that the products that they committed to use Abex brake lining for would be using Abex brake lining.

Q. So then it's fair to say then that GPC/Rayloc is the one who controlled what went into their box that went to their customers?

A. Absolutely.

MS. VELLUCCI: Object to form.

Q. And Abex couldn't go into any of Rayloc's remanufacturing plants and tell them how to do their job in terms of how they should attach the linings to the shoes, right?

A. No.

MS. VELLUCCI: Object to form.

A. They had more expertise in that than we did.

Q. Those issues were all controlled by Rayloc, the remanufacturer, not Abex, correct?

A. That's right.

MS. VELLUCCI: Object to form.

Q. Abex couldn't go into the Rayloc plant and tell GPC or Rayloc, you have to put a warning on a box that's going to an end user, do you?

MS. VELLUCCI: Objection.

A. No. We could suggest, but it was their decision.

Q. That was something that GPC Rayloc decided, not Abex, correct?

A. That's right.

Q. And I believe you've seen what's

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marked earlier as Exhibit 14. It's the letter from Mr. Moore. I'll hand it to you again. Or Mr. Jones.

A. Mr. Jones.

Q. Let me hand you that letter. This letter Exhibit 14 touches on that very topic I just asked you about, does it not?

A. It does.

Q. Okay. And in this letter what does Abex tell Rayloc that it should consider doing?

A. Putting a warning label on their boxes.

Q. Okay. There was an objection, I think, earlier as to speculation that this particular letter was ever sent. I'd like to turn your attention to page two of the letter.

A. Yes.

Q. What do you see on the second page of Exhibit 14?

A. A date stamp that it was received by Abex in Winchester, Virginia, on June 2.

Q. What's the date of the letter itself
on Exhibit 14?

A. May 28.

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Q. And is this typical to the way you
would have seen documents at Abex if you were
copied or blind-copied on a letter such as
this?

A. Yes. In fact, as I mentioned to you
earlier, I noticed that Mr. Grim was -- his
name was underlined which suggests to me this
was his copy, and Mr. Grim was, in fact, at
Winchester.

Q. To say that it was speculation that
this letter was sent just simply is not true,
is it?

A. Correct.

Q. You mentioned earlier, I believe, that
you did not recall when GPC Rayloc ever put a
warning on its products, correct?

A. Right. I wasn't certain as to the
date.

MR. FLYNN: I need to mark an exhibit

as to No -- I guess we're at 16; is that right?

THE WITNESS: 14 was the Moore letter.

MR. FLYNN: Let's mark it as Exhibit

A.

MR. JONES: No, please, Exhibit 16.

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(Exhibit No. 16, Genuine Parts

Company's Amended Responses to Plaintiffs'

Standard Interrogatories (Dieden

Interrogatories) so marked)

THE WITNESS: Whatever you like.

BY MR. FLYNN:

Q. I'm going to hand you, Mr. Indelicato,
what I've now marked as Exhibit 16. I've given
you a second copy as well for plaintiffs'
counsel to review as I ask my questions.

Do you recognize what I've handed you
as Exhibit No. 16?

A. Not offhand. Give me a sec. I
honestly didn't recognize it, but when I see
the Exhibit No. and the case, I know that I've
seen this before.

Q. Okay. What's the title on the first
page of this legal document that's been marked

as Exhibit 16, or on the right-hand it says
defendant what?

A. I'm sorry, I'm not sure where.

Q. Right below the case number?

A. Defendant Genuine Parts Company's
amended response to plaintiffs' standard

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interrogatories.

Q. What does it say in parentheses?

A. Dieden interrogatories.

Q. Okay. And this was actually marked as
an exhibit at one of your recent depositions,
was it not?

A. That's right.

Q. I'd like you to turn to the second to
last page of Exhibit 16, please. Actually go
to the third to last page, one more forward,
please. And what's the date on that third to
last page of Exhibit 16?

A. November 19, 2001.

Q. If you flip forward to the next page,
do you see the verification there?

A. I do.

Q. And what's the date on which the verification was subscribed and sworn to?

A. It looks like 11/16/01.

Q. Okay. And who signed the verification to this set of discovery responses?

A. I really can't make out the entire signature, but first name Paul, it looks like last name begins in L and he's titled QA

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manager so I presume it's Mr. LeCour.

Q. Okay. Look at the second line of the verification at the top. Does it say his name?

A. It does.

Q. Okay. This appears to be a verification by Mr. LeCour of Genuine Parts Company's amended responses to plaintiffs' standard interrogatories that are dated from November of 2001, correct?

A. Yes.

Q. Okay. I'd like to turn your attention to the response of interrogatory No. 32 which is on page 36.

A. Okay. Page 26, interrogatory No., what? 32?

Q. 32. And look down the line 23 on page 26 and read that first paragraph to yourself, please.

A. Okay.

Q. And when you're done, tell me.

A. Okay.

Q. Does this refresh your recollection as to the date of when Genuine Parts Company stated and verified in discovery responses to

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the date that it began placing warning labels on its brake packaging?

A. It says here it was 1988.

Q. And we've looked just a second ago at Exhibit No. 14, the letter from Abex to Rayloc, and that was dated May 28, 1975. Was it not?

A. It was, sir.

Q. Okay. It was roughly 13 years after Abex sent Exhibit 14 to GPC/Rayloc that GPC/Rayloc decided to put warnings on products, friction products that were provided to their stores; is that correct?

MS. VELLUCCI: Objection.

Argumentative. And documents speak for themselves.

A. This says '88, and our letter was sent to them in '75.

Q. Roughly 13 years later?

A. Roughly 13 years, right.

Q. Okay. And I think you described earlier, Mr. Indelicato, what a NAPA jobber is. I just want to be crystal clear for the ladies and gentlemen of the jury. What exactly is a NAPA jobber?

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A. I can only tell you what I believe to be the case.

Q. Sure. Okay.

A. But basically it's a small retail store that has all sorts of auto parts in it, everything from motor oil to windshield wiper blades, more sophisticated complex products, alternators, things like that where you could walk in as an individual and buy something. More often I think they have relationships with local gas stations and dealerships where they can call up and say, hey, Joe, I need an

alternator for a Toyota Camry, and they say, We have it in stock, and we'll dispatch it to your store later today.

Q. Okay. And do you know from your own personal knowledge and experience working at Abex, Mr. Indelicato, whether NAPA jobber stores were only allowed to sell NAPA/Rayloc-branded products?

MS. VELLUCCI: Object to form.

A. I believe that that was the spirit of the relationship between the jobber and Genuine Parts. I also know that from time to time

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specific jobbers might deviate a bit from what was supposed to be and might carry something that wasn't necessarily in the, quote, package of products that were offered by Genuine Parts.

Q. So the individual NAPA jobber stores were not required to only carry Rayloc products, as you understand?

A. Right. I don't know that I have the terminology exactly correct, but I think some jobbers are essentially more like a franchisee,

and others are company-owned stores which are managed and run by effectively GPC employees.

Q. Okay. And Abex itself did not sell directly to any individual NAPA jobber stores, did it?

A. No.

Q. Abex sold directly to, if it did, was to Rayloc or GPC in its remanufacturing facility, right?

A. That's right.

Q. And is it fair to say that you've been -- earlier today plaintiffs' counsel raised the issue of Mr. LeCour's testimony. Do you recall that?

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A. I do.

Q. And whether the issues of how much Abex may or may not have supplied to GPC/Rayloc. Do you recall that?

A. I do.

Q. And did you disagree with plaintiff's argument that Abex was the exclusive supplier to GPC Rayloc?

A. Absolutely.

MS. VELLUCCI: Object to form.

Q. Why do you disagree with that?

A. I know it not to be true.

Q. Can you explain to the ladies and gentlemen of the jury how you know that?

A. I mean, there's several ways. I've been through their factories. I've seen competitive brake linings. I've been threatened to have our business taken away and awarded to other companies. In fact, that happened. I know of instances where products should have been ours in a stylized logo American Brakeblok package and, in fact, it wasn't. I know that we were supposed to have the premium disc brake line only to find out

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that Bendix was really enjoying that business. I've seen it over and over again in my history with Abex and Rayloc.

Q. Okay. And let's go back and look with the jury at Exhibit No. 16 again, if you'd be so kind.

A. Okay.

Q. I'd like you to turn to page 10 of those interrogatories that are verified by Mr. LeCour. Do you see that?

A. I do. Page 10?

Q. Yeah. I'd like you to look down at paragraph H, please. Do you see that?

A. I do.

Q. And can you please read what's stated in GPC's verified discovery responses by Mr. LeCour as to who the manufacturers of the asbestos-containing friction materials purchased by GPC were at various times?

A. Abex Corporation, Ace Manufacturing, Aisin, American Precision, Bendix, Borg-Warner, Central Automotive, Certified Brakes, Daido, Daikin, Dixtex, Eastern Automotive Parts, European Parts Exchange, Friction Division

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Products, Friction Material Warehouse of Florida, Friction Materials, Inc., Friction Materials Company, Hemisphere, Kolon, Luk, MIDCO, Raymark, Sachs, Automotive Products and Tappa Enterprises.

Q. Is this response from Genuine Parts

consistent with Abex's belief and understanding
that it was not an exclusive supplier to
Genuine Parts Company and Rayloc?

MR. BERQUIST: Objection to form.

MS. VELLUCCI: Form.

A. Yes, sir. Are you done with that one?

Q. Yes, sir.

(Exhibit No. 17, Letter to E.P. Hoff,
9.19.78 so marked)

Q. I'm going to hand you now, Mr.
Indelicato, what we're going to mark as Exhibit
No. 17. I'll give you two copies. You can
provide one to Mr. Jones on the other side of
the room, if you would be so kind, sir.

MR. JONES: Thank you.

THE WITNESS: You're welcome.

BY MR. FLYNN:

Q. Do you recall Exhibit No. 17? Have

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you seen this before?

A. Give me a second. Yeah, I do recall
this.

Q. Okay. And this is a letter dated

September 19, 1978, is it not?

A. Yes.

Q. And it's from a Mr. Carroll Warner to
Mr. E.P. Hoff?

A. Yes.

Q. Do you recall who those individuals
were?

A. I do. Mr. Warner was, I think, VP of
sales at that time for Abex, and he was writing
to Mr. Hoff who was, not certain of the title,
but I think it was regional manager on the West
Coast. I think he was headquartered in the San
Francisco Bay area.

Q. Okay. And is there a section of this
letter from September 19, 1978, where it says
"items worthwhile noting"?

A. Yes.

Q. And can you please read those next
three paragraphs to the ladies and gentlemen of
the jury, please?

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A. It says, "The brake parts systems
groups, specifically the Rayloc pieces on
display - I noted competitive materials on

their high-performance metallic disc brake pads, Bendix BX material. Their new shoe program - Raybestos-Manhattan segments. Their exchange through thick block, Maremount/Grizzly edgecode MG 22 EE."

Q. And how do you interpret what's listed in these three paragraphs that you just read as it relates to the claim that Abex was the exclusive supplier for friction material to GPC?

MR. BERQUIST: Objection to form.

MS. VELLUCCI: Objection. Calls for speculation.

A. It clearly supports the information that was included in Exhibit 16. It supports my recollection and further discounts Mr. LeCour's claim that we were an exclusive supplier.

Q. And Exhibit 17 also references a new shoe program. Do you see that in the second to last paragraph?

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A. I do, yes.

Q. Do you recall what that was?

A. Rayloc decided that they thought there was a market niche to be able to sell a higher-cost product that didn't use a reclaimed brake shoe but rather a new brake shoe, and that along with this Bendix BX disc brake material were two products, product offerings that were supposed to be using Abex brake lining.

Q. So it's your understanding that for a period of time Genuine Parts Company and/or Rayloc sold brand-new brakes that were not remanufactured, correct?

A. Brand-new brake shoes.

Q. Brand-new brake shoes that were not remanufactured; is that right?

A. That's correct.

Q. Was Abex ever a supplier to the Rayloc new shoe program they had?

A. I believe we were for some period of time. I think I -- we started the program off with them and then found that, in fact, there were instances where they were using someone

else's brake lining.

Q. Okay. And I want to turn your attention to Exhibit 2 next, if I can find it.

I've handed you what was previously marked Exhibit No. 2. Do you recall that letter?

A. Yes.

Q. This was the Iwarsson letter to Mr. Jones at Genuine Parts Company dated October 1, 1979, correct?

A. Right.

Q. Does this letter also support Abex's understanding and your understanding as well that Abex was not an exclusive supplier to GPC/Rayloc?

MS. VELLUCCI: Objection to form.

MR. BERQUIST: Objection to form.

A. Yes.

Q. Why is that?

A. Because 46 percent isn't a hundred.

Q. And that means Abex was not exclusive, as you understand it, at that period?

MS. VELLUCCI: Objection to form.

A. Yes, sir.

Q. I think you mentioned earlier, and I'd

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like you to describe for the jury in a little bit more detail what did you mean when you saw instances of where NAPA had put -- had American Brakeblok boxes but had other company's brake linings in those boxes? What did you mean by that?

A. There was an instance or two where it was reported that someone went and bought a piece of or a set of NAPA brakes that said American Brakeblok. They asked for brake block. They received a box that said lining was American Brakeblok only to find that the brake lining in the box was not American Brakeblok.

(Exhibit No. 18, Air Sampling & Industrial Hygiene Survey, August, 1972 so marked)

Q. I'm going to mark another document next, Mr. Indelicato. I think we're at 17?

MR. BERQUIST: 18.

A. 18 is coming up, yeah.

MR. JONES: Or Q.

A. Mr. Flynn, I'm going to need a break

here at some point.

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Q. Yeah. I've handed you two copies.

You can hand one to Mr. Jones as well, please.

Do you recall what I've handed you as

Exhibit No. 18?

A. Yeah, I've seen this before.

Q. And what's the title of the document?

A. Air sampling and industrial hygiene
survey, Genuine Parts, Rayloc division,
Atlanta, Georgia.

Q. And what's the date on this particular
industrial hygiene survey?

A. It's dated -- cover page dated August
1972.

Q. And does this particular document on
page six under the results and discussions
section, do you see where it references the
OSHA eight-hour time-weighted average for
asbestos fibers?

A. I do.

Q. As you understand it, do you have
personal knowledge of whether Genuine Parts

Company was aware of the OSHA regulations as it related to asbestos?

MS. VELLUCCI: Object to form.

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A. I know that over the course of our relationship we would always kind of keep them informed of what we knew was -- or what we thought was coming down the pike. I also think that Rayloc did a pretty effective job of staying in tune with OSHA requirements on their own. So I would have no reason to believe that they didn't have knowledge of what the standards were.

Q. And from looking at this document, you're able to tell that GPC's Rayloc division actually conducted an industrial hygiene surveys at its Atlanta plant; is that correct?

A. Yeah. It seems to me to be a pretty thorough survey. It was a five-day survey, July 17, with the report being published sometime in August. This looks to be a pretty comprehensive survey.

Q. And given all the information you know from your experience working with individuals

at NAPA, GPC and Rayloc, and what you see here in this document here, do you believe that GPC/Rayloc was a sophisticated user of friction materials?

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MS. VELLUCCI: Object to form. Calls for a legal conclusion. Calls for speculation.

A. I mean, I think that they were knowledgeable. They were better than any other rebuilder that I saw. I would say that their plant was comparable to many OEM plants in terms of cleanliness and the way it was organized and methodologies that were used. Yeah, I mean, I think they were as sophisticated as one can be in that business.

Q. And you talked earlier about the conversion. Then we'll wrap up and take a break. But in terms of nonasbestos conversion and issues related to Genuine Parts Company and Rayloc, could Abex force Genuine Parts/Rayloc to go asbestos-free in terms of friction material it sold to its customers?

A. No.

MS. VELLUCCI: Object to form.

Q. And I believe you testified earlier that GPC/Rayloc continued to sell asbestos products to its customers after Abex stopped selling asbestos-containing friction products at the end of December 31, 1987, correct?

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A. Yes, sir.

Q. Okay.

MR. FLYNN: Why don't we go ahead and take a break at this point, and then we'll wrap up.

THE VIDEOGRAPHER: The time is 5:02 p.m., and we are going off the record.

(Recess 5:02 p.m. to 5:10 p.m.)

(Exhibit No. 19, Letter to E.F Potts, 12.15.78 so marked)

THE VIDEOGRAPHER: The time is 5:10 p.m. We are back on the record.

BY MR. FLYNN:

Q. Mr. Indelicato, we left off a minute ago. I believe we were talking about some warnings-related issues. I want to hand you back what is marked as Exhibit 15. It's the

Schmaltz letter from April 14, 1977. Do you recall that?

A. I do.

Q. All right. And if you turn to the second page of that letter, do you remember discussing those different part numbers and vendors with Mr. Jones earlier?

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A. I do.

Q. Okay. And in terms of the total number of part numbers that Abex had, is what's depicted on the second page of Exhibit 15 an incredibly, incredibly small portion of the overall part numbers Abex had?

A. I think our the number we used to kind of throw around was we had 30,000 active part numbers, and there's probably no more than 20 on here.

Q. That's fair to say that's an extremely small number of issues that Abex may have had at that time?

A. Right, but nonetheless they were issues, and we were trying to make sure that we

had essentially a foolproof system that, you know, if a box was in the plant, it had a label on it so there wasn't any reliance on someone forgetting to snap it or put a label on it.

Q. Did all of the individual vendors that are listed on the vehicle page of Exhibit 15, did they all eventually agree that a warning should go on their particular packaging?

A. I believe they did.

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Q. Okay. Abex had no issues with doing that with those customers, correct?

A. I mean, I think there were some issues, and I think it took some cajoling and phone calls to follow up and finally kind of a stake in the ground that says, hey, after this date, if you don't agree to put a warning label on it, we're not shipping you the product.

Q. Okay.

(Exhibit No. 20, Letter to C.B.

Mallory, 10.19.72 so marked)

Q. I'm going to hand you what we've marked as Exhibit No. 19. There's two copies, one for you and Mr. Jones. Mr. Indelicato, do

you recognize what I've handed you as Exhibit

No. 19?

A. I do. I'm just taking a minute to

kind of --

Q. Sure.

A. -- refresh my memory. Yeah.

Q. What's the date of the particular letter?

A. December 15, 1978.

Q. And what's on the letterhead at the

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top?

A. Friction Products Group, Winchester.

Q. Okay. Who is the author of the letter, and who was it going to?

A. It's Mr. Larry Keenan, and it was being addressed to Mr. Earl Potts.

Q. And what's the subject of this particular letter?

A. The asbestos warning label.

Q. And can you read the first paragraph of this December 15, 1978, letter that's been marked as Exhibit No. 19 for the jury?

A. Just the first paragraph?

Q. Yes, please.

A. Okay. "This will confirm our conversation regarding asbestos warning labels on all boxes and cartons shipped from Winchester."

Q. And does this letter confirm what you recalled earlier, that every package or box that was sent out of the Abex plant as of December 1978 had a warning on it?

A. Yes.

Q. Okay.

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(Exhibit No. 21, Copy of Warning Label so marked)

Q. I'm going to hand you what we've marked next as Exhibit No. 20. Take a look at that and please hand a copy to Mr. Jones as well.

What's the date on Exhibit No. 20, Mr. Indelicato?

A. The date is October 19, 1972.

Q. Okay. Who is the author of the letter?

A. Mr. Borcharding.

Q. Who is the recipient of the letter?

A. Mr. Mallory.

Q. Okay. And you've seen this letter before?

A. I have.

Q. Have you not? You have?

A. I have, but it's been a while. I'm just trying to get reacquainted. Okay.

Q. Does this particular letter talk about the OSHA warning for or OSHA label requirements?

A. Yes.

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Q. Okay. And tell the ladies and gentlemen of the jury why Abex decided to put a warning on its friction products starting in the early 1970s?

A. Well, the third page of this letter is really a copy from the Federal Register dated June 7, 1972. On it -- without reading it aloud, it talks about a requirement for labeling asbestos-containing products. It uses

the exact language that Abex adopted, Caution:

Contains asbestos fibers. Avoid creating dust.

Breathing asbestos dust may cause serious
bodily harm.

There's an interesting spin to this

which is there's actually an out. If you have

your product encapsulated in a resin binder, it

basically says you can exempt -- you can be

exempted from the label requirement. There was

a lot of discussion at Abex that we really

could be exempted, but I think just to err on

the side of caution, Abex decided to go with

the regulation as it was published in the

Federal Register.

Q. And that -- you recall that first

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happening, the warning going on the products at

Abex in the early 1970s?

A. Right.

Q. Okay. Let me hand you what I've now

marked as Exhibit No. 21. There's an extra

copy there for Mr. Jones as well.

Do you recall what I've handed you as

Exhibit No. 21?

A. I do.

Q. And what is depicted on Exhibit No. 21?

A. On the first page it's a label of what's actually a photograph, not to scale, of a heavy-duty brake block box which would contain eight pieces of brake lining which would be one axle worth of brake lining.

Q. And what's depicted at the -- right below where it says "this side up"?

A. The very warning label or verbiage that I just read.

Q. Okay. This, what's depicted on Exhibit No. 21 is the warning label that Abex included on its friction products starting in the early 1970s, correct?

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A. Yes, sir.

Q. And is the same thing depicted on page two of Exhibit No. 21 as well?

A. Yeah. Page two is, again, a photograph, not to scale, of what I would think would be medium truck brake lining. I couldn't

be certain, but I think that's what it would be and has the same caution label that we just discussed.

Q. Okay. We're going to shift gears again staying on the same topic of warnings but move to Exhibit No. 22 which I'm handing you now, Mr. Indelicato. There's a second copy for Mr. Jones again.

(Exhibit No. 22, Recommended Procedures For Reducing Asbestos Dust During Brake Servicing so marked)

MR. JONES: Thank you.

Q. Do you recognize what I've handed you as Exhibit No. 22, Mr. Indelicato?

A. Yeah. I believe this was an -- I want to call it a page out of the Friction Material Standards Institute catalog that talks about recommended practice for reducing asbestos dust

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during brake servicing.

Q. Is this another example of the steps Abex took to potentially warn its customers related to issues regarding asbestos and friction products?

A. Yes.

Q. And where was this particular document, Exhibit No. 22? Where would it be published?

A. It would be published in the brake lining or, I'm sorry, in the brake catalog published by FMSI which was really the bible of brake service folks that if you needed to know what part number to buy to fit a Toyota or a Chevrolet Impala, you would go to that catalog and use it to know what part number to order.

Q. Okay. You would agree with me, Mr. Indelicato, that the conditions in the various Abex plants where Abex manufactured its friction material were very different than the conditions that a mechanic might encounter when they are working with a brake on their car, correct?

MR. BERQUIST: Objection to form.

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A. Yes, sir.

Q. Why is there a big difference between what Abex was doing when it was manufacturing

lining in its plants versus what the end user is doing with a finished product?

MR. BERQUIST: Objection to form.

A. There's several aspects to that. One is just in sheer quantity. I mean, Abex went through hundreds of thousands of pounds of raw asbestos in its factories. And, consequently, had, you know, more of a concern and difficult time to control that vast quantity of raw asbestos.

So you have the one issue of just scale and size, where a mechanic would be dealing with a few brake jobs, you know, a week or maybe in the off chance a couple a day, but I think the bigger issue was that Abex was dealing with raw asbestos. When the friction material was manufactured, the asbestos was pretty well tied up and encapsulated in a polymer that really rendered it very difficult to be airborne.

So I think it's a matter of just sheer

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quantity, and I also think it's a matter of raw versus processed asbestos. Much to the warning

in the Federal Register which essentially gave you an out if you felt that your product had the asbestos encapsulated.

Q. Do you believe that the asbestos-containing friction materials that were manufactured by Abex up until the end of December 31, 1987, were hazardous to any end user?

A. No, I don't believe they were.

Q. Do you believe that the asbestos-containing friction material manufactured by Abex up until the end of December 1987 were safe?

A. Yes.

Q. I want to shift gears, and the last section I want to cover and, hopefully, we can wrap up, was the sale to other various entities, Mr. Indelicato?

A. Okay.

Q. I believe you were shown a document that was marked as Exhibit No. 12 which I'll hand to you now. This was the -- I guess, how

would you describe this document again?

A. It's excerpts from strategic planning exercise that Abex did, and the best we could estimate it was probably vintage '82 or '83.

Q. And there were a lot of questions about Abex's supply to various entities. Do you recall that?

A. Yes.

Q. And there were also a lot of questions about Abex's associated market share at any given time. Do you recall that?

A. That's right, I do.

Q. Was Abex ever able to ascertain with any specificity how much market share it had at any given time with any sort of specificity, or was it more of a guess?

A. It's more of an educated guess but also candidly easily manipulated depending on the outcome that one would like to see. And I saw an instance in one of these strategic planning exercises that I was intimately involved with that the market shares made no sense. And when I started to drill into it a little bit, I found out that the guys that

worked up the numbers decided that because General Motors had a captive friction material business, they decided to exclude it. So, you know, they're best estimates at best.

Q. And market share is changing at any given time. What could be in effect in 1983 could change in 1984 or '85 or '86, right?

A. Could change tomorrow.

Q. Okay. Just because Abex had a certain market share in roughly the 1983 time period for any particular market doesn't mean that Abex had the same market share in the 1940s, '50s, '60s or '70s, did it?

A. Absolutely correct.

Q. I'm probably going to have to do this individually which will take more time. I'll try to speed it up a little bit. You mentioned earlier sales to Rockwell and Eaton. Do you recall that?

A. Yes.

Q. Do you have -- are you able to offer any testimony as to how much friction material Abex may have supplied to Rockwell and Eaton in

the '30s, '40s, '50s or '60s before you got to

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Abex?

A. No. I mean, I'm pretty sure Rockwell was a customer going back into the '50s at least. I'm not sure that Eaton was until probably much later in time like '70s.

Q. And do you have any -- based on your personal knowledge, your experience, your training, all the customers you visited, including Rockwell and Eaton, do you recall if Abex was ever an exclusive supplier of any friction materials to either Rockwell or Eaton?

A. No. I don't believe we were ever exclusive.

Q. So it's your understanding that then there were multiple other suppliers that both Rockwell and Eaton used for various heavy-duty friction products, correct?

A. Yes.

Q. It wasn't just Abex, was it?

A. It was not.

Q. Any statement to the contrary would just simply be false, correct?

A. Yes.

Q. Same type of questions as to Freuhauf.

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You're not able to state with any certainty or specificity how big a customer Freuhauf may have been in the '40s, '50s, '60s before you got to Abex, correct?

A. Correct.

Q. And as you understand it, Freuhauf had a variety of different friction material suppliers, correct?

A. Yeah. Principally, as I recall it, it was Carlisle, and our mission was to try to unseat them and get a position at Freuhauf.

Q. So there was no -- as you understand it, Abex was never an exclusive supplier to Freuhauf for OEM applications, correct?

A. Correct.

Q. And the little bit of business Abex had with Freuhauf was gone really quick because of the problems Abex had with the particular drilling of the linings, correct?

A. Right. And then we tried to work to

get some back, but it was a very long and arduous process.

Q. Okay. I'm going to try to do this in shortcut fashion. If I get an objection, I'll

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do it the slow way. But you were asked earlier about Freightliner?

A. Right.

Q. You were asked about Great Dane, International Harvester, Navistar, Mack Truck, Kenworth and Peterbilt in terms of Abex supplying them, correct?

A. Yes.

Q. For any of those companies I just listed, do you have any personal knowledge prior to the time you got to Abex as to the extent of Abex's sale or supply of friction materials to those companies in the '40s, '50s or the '60s?

A. I do not.

Q. Okay. As you understand, for all these various companies, Abex was never an exclusive supplier for OEM applications for those particular companies' friction needs,

correct?

A. I don't believe that we were ever exclusive.

Q. So that means it's your understanding that each of those companies had multiple

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suppliers of friction products beyond just Abex, right?

A. Yes.

MR. JONES: Object to form.

Foundation. Not compound. I'm not objecting to compound. Sorry.

Q. Mr. Indelicato, in terms of all those various companies I mentioned earlier, Freightliner, Great Dane, International Harvester, Navistar, Mack Truck, Kenworth and Peterbilt, do you have enough personal knowledge as to whether other companies supplied them with friction products?

A. Yes.

Q. Okay. So based on that knowledge, are you able to tell the ladies and gentlemen of the jury that Bendix was not an exclusive

supplier to any of those companies for OEM applications?

A. Yes.

Q. Okay. You were also asked questions about Ford medium trucks?

A. I'm sorry, Ford?

Q. Ford medium trucks?

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A. Yes.

Q. And whether Abex was a supplier. Do you recall that?

A. Yes.

Q. All right. Same questions, kind of repetitive, I apologize, but in terms of your own personal knowledge of whether Abex supplied Ford OEM brake linings for medium trucks in the '30s, '40s, '50s and '60s before you started, you have no knowledge of that, right?

A. I have no knowledge.

Q. And for the time period after when you started in 1970, is it your understanding that Ford had multiple different suppliers of friction material for use on medium trucks?

A. Yes.

Q. Abex was never an exclusive supplier to Ford for medium trucks, was it?

A. No.

Q. You talked about Chevy and Cadillac earlier as well. Do you recall whether General Motors, they were the owners of Chevy and Cadillac, correct?

A. Yes.

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Q. Did General Motors have its own captive friction manufacturing company that used raw asbestos and manufactured friction materials just like Abex?

A. Yes. In fact, they had two. One was called Inland, and the other was called Delco. I think ultimately they merged into one operating business. But when I first got involved, Delco basically took care the disc brakes and Inland took care of the drum brakes, and they would supply most of the General Motors' requirements with their own captive friction material. For purposes of security of supply, should there be a work stoppage or some

other catastrophe, they always like to have some other friction company kind of in the wings, and they would kind of throw what I would call a bone to them.

Q. Okay.

A. Abex's bone was the rear brakes on GMC, and Chevy I think it was three-quarter ton trucks. And Cadillac, I believe it was the Cadillac Deville 12-inch rear brake. And I think that was it.

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Q. You don't recall the years when Abex may have supplied Cadillac for the Deville, do you?

A. No, I think it was going on in about the time I started visiting Winchester with some frequency and certainly while I was working there.

Q. But it was limited solely to one model, as you recall, correct?

A. Yes.

Q. It was just for the OEM application, correct?

A. That's right. We would ship the brake

lining to, I believe, Delco who assembled it on to a shoe and further on to a brake and on to an axle and on to the vehicle.

Q. Same questions for Chevy. Who would assemble the lining on to the shoe that would go to Chevy for the three-quarter ton or quarter-ton trucks?

A. Well, it was three-quarter ton, as I recall it, and Chevy and GMC were benign to us. It was the same part number. So we didn't know where it was going to go. Rather it would go

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to probably Delco where it would be assembled on to a brake.

Q. What Abex was supplying to Chevy for three-quarter ton pickup was similar friction material for the brake itself?

A. Right. I don't think Chevy was the customer of record, if you will. I think it was probably Delco.

Q. You don't recall the years for which Abex may have supplied OEM to Chevy for the three-quarter ton or quarter-ton pickup trucks,

do you?

A. No. I think -- and just to correct you, Mr. Flynn, I don't think we supplied quarter-ton. I think it was just three-quarter ton.

Q. Okay.

A. I think the time period was, again, analogous to what I recited for Cadillac, about when I arrived at Winchester in the early '70s through most of my career there.

THE WITNESS: A good massage on her expense account, don't you think? Maybe I should bring my own chair. Maybe that's the

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trick.

BY MR. FLYNN:

Q. Mr. Indelicato, I just want to wrap up by simply asking you, your time at Abex, did you like working at Abex?

A. I did.

Q. Why is that?

A. It was an exciting company. I mean, it was progressive in many ways. You know, a lot things I learned or developed in the

laboratory I got to see become a commercial success. I was the guy that designed the process that Salisbury was based on so I saw it go from the laboratory experiment to a factory that was putting out a lot of brake lining every day. I was instrumental in getting Abex positioned with an asbestos-free product offering with Dr. Merkel. I went from a lab technician to the president of the company and ultimately the CEO. You know, it was a pretty good ride. It was a lot of fun.

MR. FLYNN: I have no further questions at this time. And the last thing I would simply want to do is mark as whatever the

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last exhibit is Abex's objection to the notice of deposition from plaintiff. And with that I have no further questions for you.

(Exhibit No. 23, Pneumo Abex, LLC's Response and Objections to Plaintiffs' Notice of Videotaped Deposition of Pneumo Abex, LLC so marked)

MR. FLYNN: Just for the record that

will be -- Exhibit 23 will be Abex's objection to the deposition notice.

Mr. Indelicato, thank you for your time.

THE WITNESS: My pleasure.

EXAMINATION CONDUCTED

BY MS. VELLUCCI:

Q. Sir, afternoon. My name is Margreta Vellucci. I don't have a whole lot of questions for you, but I do have some.

A. Okay.

Q. I'm here on behalf of Genuine Parts Company, and I just want to first direct your attention to what I believe was marked as Exhibit 16. And those are some Genuine Parts Company discovery responses. Let me know when

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you have that in front of you?

A. Unfortunately, these are no longer in order.

Q. I know.

A. I'll do my best to get us there.

Q. Okay.

MR. JONES: I can give you my copy.

A. Yeah, I'm fine with that.

THE WITNESS: Are you okay with that, Johan, if I use the unlabeled copy of the exhibit?

MR. FLYNN: That's fine.

Q. That's fine. As long as we are looking at the same thing, that's fine with me.

A. Yeah, I recognize it.

Q. I'm on page 10 and it's letter H. Let me know when you're there.

A. I am there.

Q. Okay. And looking at letter H, the beginning of that response says, "Manufacturers of the asbestos-containing friction materials purchased by GPC at various times included," and then there's a colon and a list?

A. Right.

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Q. I first want to ask you, that various times, you don't know what time frame it referred to in those discovery responses, do you?

A. No, I haven't seen the whole discovery

response so I don't know if it's defined in here somewhere.

Q. Okay. As you sit here today, you can't tell me the time frame that any or all of these friction materials were purchased by Genuine Parts Company; is that true?

A. Well, I can tell you that some of these names I recognize, and I personally saw them in the Rayloc plant in Atlanta.

Specifically, Bendix, Tappa, Hemispheres, Kolon, Friction Division Products which used to be called Thiakol, Certified. I've seen those there.

Q. Okay. Let me -- the first one you said was Bendix?

A. Yeah. Let's go from the beginning, make it easier on both of us.

Q. You said you saw Bendix where?

A. At Rayloc, Atlanta.

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Q. Okay. And in what context? Where did you see Bendix?

A. In the factory being assembled on to brake shoes and put in boxes.

Q. And what time frame is that?

A. Couldn't say precisely, sometime probably in the '70s and '80s.

Q. Are you able to be more specific?

Could you tell me, was it throughout both decades, or could it have been in 1980s alone and not in the 1970s?

A. I'd say it was probably the latter part of the 1970s. If I had to, you know, give you an estimate, I'd say '75 to '80 would be probably the best time that I would have had opportunity to see that.

Q. You can't be any more specific than that with me?

A. No.

Q. Okay. Do you have -- can you tell me why you were there, what reason that you were there for that particular visit?

A. You know, I was summoned to not Genuine Parts headquarters, but Rayloc

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headquarters in Atlantic pretty regularly. I also went just to support our sales staff so I

was there a lot.

Q. Okay.

A. The reasons were generally to introduce a new product, to present some technical data or to -- when I was in quality assurance, to help solve a problem.

Q. Okay. Maybe this will make -- this might make it easier for us and even shortcut it a little bit.

A. Okay.

Q. Are you able to tell me, other than, you know, that '75 to '80 time frame when you recall seeing any of the other manufacturers at the Rayloc facility in Atlanta? In other words, can you be more specific with respect to any of the other ones that you listed out Hemispheres, Tappa, Friction Division Products or Certified Brakes?

A. No, not really. I mean, all of those would be available to be seen at some point in my visits to Rayloc. I mean, they used all of those brake linings pretty regularly.

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Q. What do you mean by "pretty

regularly"?

A. Well, I mean, you know, if I'm only going down there like let's say once every couple of months and I see one of these products, I would have to assume they were there pretty regularly, or I wouldn't have the opportunity to see them.

Q. You can't tell me how often Genuine Parts or Rayloc used any of those products; is that true?

A. That's true.

Q. You can't give me a percentage for any of those products; is that true?

A. No.

Q. That's a true statement?

A. Yes.

Q. Okay. I also want to ask you about some of the other names listed also in H, and if you look at it, it says Ace Manufacturing and Parts Co. Do you see that?

A. Yes.

Q. If I represent to you that Ace Manufacturing and Parts Company, that they

manufactured clutch assemblies, do you have any reason to disagree with that?

A. I do not.

Q. All right. Next on that list that I want you to look at is American Precision Co.

Do you see that?

A. Yes.

Q. And if I represented to you that American Precision Co., they manufactured clutch facings, do you have any reason to disagree with that?

A. I do not.

Q. If you look at Borg-Warner Corp., do you see that one?

A. I do.

Q. If I represented to you that they manufactured complete clutch assemblies, do you have any reason to disagree with that?

A. I would agree that they manufactured complete clutch assemblies, but I think there were periods of time when Borg-Warner also had some friction materials, brake lining.

Q. Okay. Are you able to tell me what that period of time would have been?

A. I'd have to really think on that.

There was an executive that came to Abex that was a former Borg-Warner employee, and I talked to him about the fact that there was a point in time when Borg-Warner did, in fact, supply brake lining that was asbestos-containing. Whether or not they supplied Rayloc, I couldn't say for certain.

Q. Okay. All right. Central Automotive, do you see that one?

A. I do.

Q. If I represented to you that they manufactured complete clutch assemblies, do you have any reason to disagree with that?

A. I do not.

Q. Next on my list is Daido, D-A-I-D-O Overseas, Inc. If I represented to you that they manufactured complete clutch assemblies, do you have any reason to disagree with that?

A. I don't want to challenge you, but I think that I know the name Daido from some brake business so I just -- I'm not certain

about that one.

Q. Okay. You can't say one way or the

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other?

A. I really can't.

Q. Daikin Clutch, if I represented to you that Daikin Clutch manufactured complete clutch assemblies, do you have any reason to disagree with that?

A. I do not.

Q. Eastern Auto Parts, if I represented to you that they manufactured complete clutch assemblies, do you have any reason to disagree with that?

A. No, I do not.

Q. European Parts Exchange, Inc., if I represented to you that they manufactured complete clutch assemblies, would you have any reason to disagree with that?

MR. FLYNN: Object to form. Assumes facts. Misstates the evidence.

A. I know that EP also made brake lining.

Q. Okay.

A. Or I shouldn't say made brake lining.

They assembled and distributed brake lining.

Q. Do you have any firsthand knowledge or evidence that they supplied brake linings to

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Rayloc?

A. No.

Q. All right. Friction Material

Warehouse of Florida, Inc., if I represented to you that they manufactured clutch facings, do you have any reason to disagree with that?

A. I do not.

Q. Kolon California Corp., do you see that one?

A. Yes.

Q. If I represented to you that they manufactured complete clutch assemblies, do you have any reason to disagree with that?

A. No, but I think they also may have manufactured brake lining.

Q. Do you have any evidence or firsthand knowledge that they supplied brake linings to Rayloc?

A. No.

Q. The next one I'm looking at is Luk,
L-U-K. If I represented to you that they
manufactured complete clutch assemblies, do you
have any reason to disagree with that?

A. I do not.

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Q. Raymark, if I represented to you that
they manufactured clutch facings, do you have
any reason to disagree with that?

A. I can only add that I know that
Raymark, a/k/a Raybestos-Manhattan, supplied
brake lining to Rayloc.

Q. And that's -- the testimony you
provided earlier is the reason that you're
saying that?

A. Yes.

Q. Okay. We've already discussed that?

A. Okay.

Q. Or you have anyway, right? Okay.
Sachs, S-A-C-H-S, Automotive Products, if I
represented to you that they manufactured
complete clutch assemblies, do you have any
reason to disagree with that?

A. I do not.

Q. Okay. I think that's all I have for you on that document. I want to ask you about a couple of other things that you said earlier. One was that you mentioned there was an instance or two where someone bought NAPA brakes that said American Brakeblok but found

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the linings not to be American Brakeblok. Do you recall that testimony?

A. I do.

Q. Can you tell me that instance or two when it occurred, what decade that was in?

A. I probably could. I just can't recall right now. I think there was some document. There was a note that kind of flew around announcing that discovery. I remember the individual who found that out, but I don't remember the exact date.

Q. What was that individual's name?

A. Last name is Laus, L-A-U-S.

Q. You believe there was a -- you said a memo?

A. I don't know if it was a handwritten

note or -- but it was some correspondence that said, hey, guys, we got a problem.

Q. And who is this gentleman Laus?

A. I don't know what job he had at the time. He started out as a co-op student with Abex or summer intern from the University of Michigan, and we hired him when he graduated. He worked in our purchasing department. He

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worked in quality assurance, ultimately became VP of manufacturing. Somewhere in there, I think earlier in his career rather than later is when he went to buy a set of brakes to reline his own car and insisted on American Brakeblok brake lining and/or American Brakeblok and got it home and opened it up and lo and behold it wasn't our brake lining.

Q. So he purchased this -- the brakes for his own personal use?

A. Yes.

Q. Do you know where he purchased those brakes?

A. I honestly don't know if he purchased them from a NAPA jobber or he might have gotten

some gratis from Rayloc. I mean, it's possible. We used to do that, occasionally call up and say, you know, Al wants a set of brake lining for his car. Can you guys send us. So I don't know that he actually purchased it, but it came through the NAPA system.

Q. Okay. And your understanding is that he purchased them, and they came in a box that said American Brakeblok?

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A. That's my understanding.

Q. And that he opened the box and there were brakes in there, and that the linings were not American Brakeblok linings?

A. Yes.

Q. Did he mention how he knew that they were not American Brakeblok linings?

A. No. It should be obvious on a new brake lining; there's edgecodes. He would recognize our edgecodes. If it wasn't ours, it would be presumably somebody else's.

Q. Okay. And you can't tell me -- I know he said you didn't know the year, but you can't

tell me the decade when it happened?

A. No.

Q. It was somewhere in Michigan?

A. No, it happened, I think he was in Winchester at the time, Winchester, Virginia.

Q. Okay.

A. I would say that the nominal time is the '80s, probably the earlier part of it.

Q. You think this was sometime in the early 1980s?

A. Yes.

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Q. Do you know if he was buying disc brakes or drum brakes?

A. I'm not certain.

Q. And that document that you referenced, is that part of Abex's document repository?

A. I've seen it. I don't know if it came out of our repository or if it surfaced somewhere in all this litigation we're involved in. I've seen it in the context of the litigation. Whether it was actually a document that came out of our repository, I couldn't tell you, sitting here today.

Q. When was the last time you saw that document personally?

A. Maybe a year ago.

Q. Was that in the context of a deposition or a lawsuit?

A. Yeah. I presume so, sure. It's kind of all I do.

Q. I want to ask you a quick question or two about what we marked as Exhibit 2, which is the letter from Mr. Iwarsson?

A. Give me a second.

Q. Sure.

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A. Got it.

Q. I want to ask you about -- with referenced in the third paragraph of that letter, there's a reference to a letter that would have come from Genuine Parts Company from Edward Jones to Abex.

A. I see that.

Q. Okay. Have you seen that letter?

A. I don't recall it.

Q. Okay. Do you know anything about the

content of that letter? Can you tell me anything about it without speculating?

A. No, only what I could assume based on this.

Q. Okay. Have you seen any data to support this 46 percent figure in the third paragraph?

A. I have not.

Q. Okay. Let me ask you this. This is just a clarification for me. When you were describing earlier the product, the 3-foot long, and I think you said 8-foot wide product that went from -- maybe I've got my numbers mixed up -- that went from Abex to Rayloc of

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the lining?

A. That wasn't the product. That was describing the box the product went in.

Q. Okay. I missed that.

A. It wasn't 8 feet. It was 8 inches.

Q. 8 inches. I knew I had that wrong on some level, sounds like every level?

A. That's okay.

Q. Let me ask you this: Did Abex ever

sell rolls of friction material to Rayloc?

MR. FLYNN: Objection to form.

A. It's possible that we did at some point earlier on for very special instrumental kind of application on a very limited scope. It would be mainstream business.

Q. Okay.

A. Rayloc would sometimes pride itself on trying to help people out of jams. So if somebody came and said, gee, I have some kind of really old vehicle, like a Model T Ford, and you don't have part numbers, can you help me out? That's where that kind of thing might happen.

Q. And you said "earlier on." Are you

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able to tell me a year or decade when you think that type of product, that roll product would have been sold?

MR. FLYNN: Objection to form.

Relevance.

A. I saw some roll product in the early '70s.

Q. Okay.

A. So, you know, certainly predating that.

Q. Okay. Earlier you had discussed, you had mentioned some visits you made to a Rayloc facility where you didn't see warnings on the brake boxes. Do you remember that testimony generally?

A. Basically.

Q. From earlier, do you have a particular facility in mind in Atlanta?

A. Yeah, probably Atlanta. I mean, I went, you know, through -- I'd say 90 percent of the visits I made to Rayloc or to Genuine Parts were to Atlanta. Most often it would be the Rayloc facility with a stop in at Genuine Parts headquarters and NAPA headquarters, but

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I've also been to, you know, their plant in Stephenville, Texas. I've been to the one Hancock, Maryland. I think there was one out in Utah for a while.

So I've been around, but most of the time it was Atlanta because Rayloc's

headquarters was in Atlanta. That's where kind of the decisions were made for purchasing or engineering or....

Q. When you saw the brake boxes that you recalled not having warnings, did you have a memory of seeing that specifically in Atlanta, or do you have a general memory and you know you went to the Atlanta a lot and that's why you --

A. No, I kind of remember it being Atlanta.

Q. Are you able to give me -- I know you said it could have been the mid '70s up to until the late '80s. Can you be any more specific as far as when that occurred?

A. No.

MS. VELLUCCI: I think those are all the questions that I have.

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THE WITNESS: Okay. Great.

EXAMINATION CONDUCTED

BY MR. JONES:

Q. Mr. Indelicato, I'll try to make this

brief. You were asked some questions before by the representative for Paccar about whether or not the OEM truck manufacturers would know about the asbestos content of the brakes that were installed on their trucks as original equipment. Do you recall those questions?

A. I do.

Q. Paccar, that's the company that now owns, I think, Peterbilt and Kenworth; is that right?

A. I think that's right, but I haven't kept track of....

Q. In general, if a particular brake lining -- they're identified by model number?

A. Formula number.

Q. Okay. If a particular brake lining was approved for use on a vehicle, be it a passenger car, light or heavy truck, was the manufacturer of the vehicle aware of the ingredients of the friction material?

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A. I would say they should be, and I'm not saying forever, but there was a point when MSDSes came in and the whole right to know

thing came in to play. Abex had an obligation to send its MSDS to the person we shipped our product to. I believe they, in turn, had an obligation to have an MSDS go to their customer. So my answer to your question is yes, I believe that the ultimate end recipient of that product would have knowledge.

Q. For OEM applications, is the lining manufacturer like Abex and the brake manufacturer like Rockwell or Eaton and the original equipment manufacturer like Peterbilt or Kenworth, do they work together in coming to a final product that will be used on the truck, the heavy-duty truck?

A. It's true in light trucks and passenger cars as well. I mean, they're, you know, a good example would be the development of the Ford Ranger. Even after the basic brake was selected, which happened to be a Bendix 9-inch brake and Abex's lining was nominally selected, Bendix engineers, Ford engineers,

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Abex engineers all went out on field trips

where they'd have 20 mules, which were prereleased production vehicles to have all those components on the vehicle. They were tested. The cars were instrumented. There would be tweaks, and, gee, we really think this break should come into play a little bit earlier. We change a proportioning valve. So there is all sorts of stuff like that that goes on between friction manufacturers, brake engineers, or brake manufacturers and vehicle manufacturers, very common.

Q. So the original equipment vehicle manufacturer, it's not like they just call Abex and say, hey, I need a lining, and the lining shows up, and they throw it on the vehicle?

A. No. I mean, they might call up and say Abex, you know, we have a 23,000-pound axle. What you do think? And we say, gee, we think 693551 B would be a good formula for that. Can we send you some samples? Would you like some engineering data?

Q. Were the original equipment manufacturers, generally speaking,

knowledgeable about brake systems in general and friction materials specifically?

A. Brakes, very much so. I mean, they had an obligation to make sure that their vehicle complied with the Federal Motor Vehicle Safety Standards, or they better know. And as a result of attaining that knowledge, they would have a pretty good working knowledge of friction material.

Q. Approximately how many brake linings per year in the 1970s was Abex selling to GPC, Rayloc, NAPA?

A. I couldn't even -- I mean, you know, I could go home with a martini and try to come up with a scenario for you, but I really don't know.

Q. Would it be measured in the tens, the hundreds, the thousands, the hundred thousands, millions in a year?

A. In a year?

MR. FLYNN: Objection to form.

A. I don't know. I mean, you're really asking me to pull a rabbit out of a hat here. I just don't know.

Q. Around how much was one lining?

A. Dollar-wise?

Q. Yeah.

A. Well, I mean, I'll give you a really good example.

MR. FLYNN: Objection to form.

A. It makes my answer so difficult. Disc brake pads sold to Rayloc for about \$.25.

Q. Okay.

A. A brake block set of eight -- well, a brake block sold for about \$3 or \$4. So, I mean, if I'm off in my estimate of passenger car disc brakes versus heavy-duty drum brakes, you know, I could swing the answer by an order of magnitude or two.

Q. Well, if you assume it's the \$4 number, and you assumed \$20 million in sales for one year, that's 5,000,000 linings in a year?

A. If they were all --

MR. FLYNN: Objection to form.

Incomplete hypothetical. Don't speculate. If you can't answer the question --

Q. That would be --

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MR. FLYNN: -- don't answer the question.

Q. I had previously asked you about the amount in sales per year in the '70s, and you said \$20 to \$25 million, right?

A. Right.

Q. And I asked you -- you told me the most expensive lining product was \$4, right?

A. Approximately.

Q. I took the lower of the 20 to 25, 20 million, right?

A. Okay.

Q. And I took the higher of the price, \$4, came up with around a million linings?

MR. FLYNN: Objection to form.

Misstates the witness' testimony. Assumes facts. Incomplete hypothetical.

A. I would agree that your math seems to be correct.

Q. Okay. Let me show you what I'll mark as Exhibit 24 and 25 for the deposition.

(Exhibit No. 24, Letter to Robert

McKenna, 4.24.84 so marked)

(Exhibit No. 25, Letter to Richard

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Rohr, 5.18.84 so marked)

Q. This is 24 and 25. I think those are my only copies. If you could show those to your counsel?

A. Sure.

THE WITNESS: Can we go off the record for just a minute?

MR. JONES: We may.

(Discussion off the record)

THE VIDEOGRAPHER: The time is 5:58 p.m., and we are going off the record.

(Recess 5:58 p.m. to 6:00 p.m.)

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

BY MR. JONES:

Q. Have you seen Exhibits 24 and 25 before?

A. I don't believe I have. I read 24. I haven't read 25. I just got it from my counsel so you just give me a second.

Q. Sure.

A. I get the nominal picture. Okay.

Q. Exhibit 24 is a letter to a person at
NAPA?

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A. Yeah, Bob McKenna.

Q. Do you know Mr. McKenna?

A. I do.

Q. And the letter, I believe, is from
Mr. McKenna's attorneys or NAPA attorneys?

A. Presume so. It's Richard Rohr, and
the content of it makes me believe that it's
his attorney writing to him.

Q. Okay. And Exhibit 25 is a letter to
Mr. Rohr from an employee at Abex?

A. He was the general --

MR. FLYNN: Object to foundation.

Lack of authenticity. Hearsay.

Q. Okay.

MR. FLYNN: Relevance.

Q. For Exhibit 25, the second document --

A. Yes.

Q. -- who is the Abex employee who

authored this letter?

A. It looks to be Mr. Charles Grinnell who was the general counsel for Abex at that time.

Q. Did you know Mr. Grinnell?

A. I've met him a few times, yes.

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Q. Okay. And what was your position at Abex?

A. In '85?

Q. Yeah.

A. '84, '85 vice president of engineering in '85.

Q. Okay. And does Exhibit 25 appear to be on Abex letterhead?

A. It does.

Q. That's the same letterhead used in that time frame while you were there?

A. Yeah. It's a little different. This was after the New York headquarters were closed and it moved to Stamford. That's what's kind of sticking out to me.

Q. Okay. And that's Mr. Grinnell's signature on the second page?

A. It looks like it, probably is.

Q. Okay. Do you have any reason to dispute that this is an authentic copy of an Abex letter?

MR. FLYNN: Objection to form.

A. No. I mean, it's signed. It looks like it's stylized logo letterhead. It has a

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received stamp. No, I don't have any reason to think it's not authentic.

Q. Okay. What these two documents basically discuss are lawsuits brought against NAPA related to asbestos brakes?

A. Right.

Q. And in --

MR. FLYNN: I'm going to object -- pardon me to interrupt. Object to form as to the definition of NAPA, what it entails. Is vague, ambiguous. Not to find -- lacks specificity.

Q. And in the second letter Mr. Grinnell agrees to cover some defense costs encountered by -- strike that.

In the second letter Mr. Grinnell agrees on behalf of Abex to pay some of the defense costs of NAPA in defending itself in asbestos litigation related to asbestos brakes, true?

A. In a specific case.

MR. FLYNN: Objection to form.

Q. And one of the reasons being is that Abex was a supplier of the asbestos friction

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material included on the asbestos brake shoes?

MR. FLYNN: Objection to form.

Assumes facts. Lack of foundation. Overbroad.

A. I think there's more to it than that.

I think it's an accommodation to a good customer, but I think that in some instances Abex would have been named in the same suit with NAPA. And at that point in time, it made sense to perhaps not have two law firms involved. Let's just have one. We'll defend both of us. I think that was a little bit of the spirit of this.

Q. And that's what it says?

A. Right.

Q. It says there's an understanding that where NAPA and Abex are in the case, Abex will cover the defense expenses for NAPA. If it's just NAPA, you cover your own?

A. Right.

MR. FLYNN: Objection to form. Lack of foundation. Calls for speculation.

Q. Is that your understanding of the letters?

MR. FLYNN: Same objection.

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A. Yeah, nominally, that's my understanding.

MR. JONES: Pass the witness.

EXAMINATION CONDUCTED

BY MR. FLYNN:

Q. Mr. Indelicato, can I direct your attention to Exhibit 25, please.

A. Sure.

Q. The second page, last paragraph, please?

A. Yes.

Q. As I understand it, can you read that

last paragraph, please.

A. It says, "Our understanding to defend in these cases is limited to NAPA, and does not extend to its parents, affiliates or subsidiaries or any person who may control it and is contingent upon a lack of evidence that NAPA did not have an active role concerning the products in question such as manufacture, assembly or repackaging, etcetera."

Q. Anywhere in the letter does it define what NAPA means?

A. No.

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Q. Okay. And have we talked about earlier today how NAPA, Genuine Parts, Rayloc may have manufactured brake linings that it sold to its jobbers?

A. I'm sorry, try it again. I apologize.

Q. I apologize. It was probably a bad question. Let me restate it.

Did Genuine Parts Company or Rayloc play an active role in the manufacture of the friction, the brakes that were sold to NAPA jobbers under the trade name Rayloc.

MS. VELLUCCI: Object to form.

A. Try it one more time. I'm sorry. You said brakes, and I'm not sure where --

Q. Let me try it again.

MR. JONES: Did you catch him on the brake thing?

THE WITNESS: I did. I'm consistent.

BY MR. FLYNN:

Q. Let me try it again. Did we talk earlier today about how Genuine Parts Company and Rayloc assembled brake lining onto shoes at their facilities and sold those, quote, brakes to individual NAPA jobber stores?

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A. Yes.

Q. Okay. Did we talk earlier today about how GPC and/or Rayloc controlled the packaging that was sent to or the brake linings that went into that are sent to the individual jobbers?

MS. VELLUCCI: Object to form.

A. We did.

Q. And did we talk earlier today about, I think it was Exhibit 14, the Moore letter, on

which Abex told NAPA, GPC, Rayloc that you may want to put a warning on your products?

A. We did.

Q. And did we also look earlier today at NAPA's discovery responses where it didn't put a warning on its products until 1988?

A. We did.

Q. Okay. Based on what we've just discussed, do you believe that NAPA, Genuine Parts or Rayloc played an active role concerning its role as a manufacturer or assembly or repackaging of the friction products it sold to its individual jobbers?

MR. BERQUIST: Objection to form.

MS. VELLUCCI: Objection to form.

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A. Yes, I believe they had an active role in that process.

Q. And if NAPA had an active role, how does that relate to the last paragraph of Exhibit No. 25?

MS. VELLUCCI: Object to form.

Q. Let me ask a better question.

Pursuant to the last paragraph in Exhibit 25,

if NAPA or Genuine Parts or Rayloc played an active role, according to this letter, is Abex going to defend those cases for --

MS. VELLUCCI: Object to form. Calls for speculation.

A. Yeah, I'm not certain. I mean, I really am uncomfortable trying to interpret this. I really am. I can tell you from firsthand experience that I had to go to NAPA -- sorry, to Genuine Parts headquarters and tell their chairman that their understanding that Abex was going to essentially indemnify them, cover all the defense costs for asbestos case going forward was never the agreement and that we were not going to do it anymore at all.

Q. Why was that?

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A. Because it was never the agreement.

It was never what we intended. When this goes back a long time in my history, but, you know, I had briefings with our lawyers and a bunch of discussion about whether or not Abex ever agreed to indemnify or cover cases. The

nominal points of view were A, it started out to be vehicle accidents where brakes were alleged to not function properly. It was never intended to be asbestos. There was a carve-out that Grinnell made at one point, and it was on a one-off basis, and we never agreed to continue to defend Rayloc, Genuine Parts, NAPA for such matters.

Q. Okay. The two letters then marked as Exhibits 24 and 25 are ultimately not consistent with Abex's position as it relates to NAPA and the issues raised in these letters, correct?

MS. VELLUCCI: Object to form.

A. I think they were consistent. Here's one that says we're suggesting Rayloc -- NAPA and NAPA's attorneys are saying, Why don't we see if Abex will step up. Grinnell gives them

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a carve-out for a very specific and narrow situation. Sometime after this NAPA, Genuine Parts started to interpret that as a broader agreement on Abex's behalf or that Abex would extend. And I got to be the guy that went down

and straighten it out and say, no, that was never the intent. We're not going to do it.

MR. FLYNN: No further questions.

MR. JONES: Nothing.

MR. FLYNN: While we are on the record, before we go off the record, the witness wishes to read and sign the transcript.

THE VIDEOGRAPHER: The time is 6:11, and the deposition has concluded. We are now off the record.

(Whereupon, the deposition concluded 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

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AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet has been
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ATTACH TO THE DEPOSITION OF ALBERT INDELICATO

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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

