

|    |                                              |                      |    |                                             |          |
|----|----------------------------------------------|----------------------|----|---------------------------------------------|----------|
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| 2  | EXHIBITS: 1-48                               |                      | 2  | (Via Telephone)                             |          |
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| 16 |                                              |                      | 16 |                                             |          |
| 17 | AUDIOVISUAL DEPOSITION OF PNEUMO ABEX        |                      | 17 |                                             |          |
| 18 | Monday, September 26, 2011                   |                      | 18 |                                             |          |
| 19 | 588 Wentworth Road                           |                      | 19 | National Video Reporters                    |          |
| 20 |                                              |                      | 20 |                                             |          |
| 21 |                                              |                      | 21 |                                             |          |
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| 5  | BY: JONATHAN A. GEORGE, ESQ.                 |                      | 5  |                                             |          |
| 6  | JGeorge@waterskraus.com                      |                      | 6  | Examination by Mr. Caron                    | 193, 240 |
| 7  |                                              |                      | 7  |                                             |          |
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| 15 | BY: JASON CARON, ESQ.                        |                      | 15 | 1 Response of Defendant Pneumo              |          |
| 16 | JCaron@pondnorth.com                         |                      | 16 | Set of Interrogatories                      | 14       |
| 17 |                                              |                      | 17 | 2 Letter to Samuel Lawton, 10.8.71          | 29       |
| 18 | successor in interest, BorgWarner Morse TEC, |                      | 18 | 3 Industrial Dust - The                     |          |
| 19 | Wylain Co.; and Warren Pumps, LLC.           |                      | 19 | .                                           |          |
| 20 | PIERCE, DAVIS & PERRITANO, LLP               |                      | 20 | L.E. Hamlin                                 | 47       |
| 21 | Boston, MA 02114-2018                        |                      | 21 | 5 Letter to S. Simpson, 12.2.46             | 48       |
| 22 | 617.350.0950 617.350.7760 (Fax)              |                      | 22 | 6 Industrial Hygiene Digest, March,         |          |
| 23 |                                              |                      | 23 | .                                           |          |
| 24 |                                              |                      | 24 | Meeting                                     | 52       |

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| <div>6</div> <div> <p>1 8 Letter, November 3, 1948,</p> <p>2 Medical Department 57</p> <p>3 9 Letter to Vandiver Brown, 10.6.48 57</p> <p>4 10 Letter to W.T. Kelly, Jr.,</p> <p>5 .</p> <p>6 .</p> <p>7 Experiments 65</p> <p>8 13 Letter to Vandiver Brown,</p> <p>9 .</p> <p>10 .</p> <p>11 10.13.64 81</p> <p>12 16 Letter to R.B. Parker, 10.20.64 85</p> <p>13 17 Memo to J.D. Henderson, 3.25.68 88</p> <p>14 18 Report On FMSI Asbestos Study</p> <p>15 .</p> <p>16 Exhibit Marked 95</p> <p>17 20 Letter to Milton Pogsin, 8.13.71 95</p> <p>18 21 Letter to D.K. Rennie, 5.10.72 103</p> <p>19 22 Friction Material Standard</p> <p>20 Committee Minutes, 6.20.72 105</p> <p>21 23 Minutes of the Meeting of the</p> <p>22 .</p> <p>23 American Brake Shoe, Winchester,</p> <p>24</p> </div> | <div>8</div> <div> <p>1 43 American Brakeblok Advertisement,</p> <p>2 .</p> <p>3 Hubbard, etc., 4.14.77 181</p> <p>4 45 Advertisement, Commercial Car</p> <p>5 .</p> <p>6 Journal, July 1966 190</p> <p>7 47 National Cancer Council, 1.8.44 219</p> <p>8 48 Letter to L.W. Moore 5.20.75 225</p> <p>9</p> <p>10</p> <p>11 with copies distributed to counsel)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> </div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <div>7</div> <div> <p>1 25 Letter to Asbestos Study</p> <p>2 .</p> <p>3 Study Committee, 2.16.73 121</p> <p>4 27 Asbestos and the Friction</p> <p>5 .</p> <p>6 Committee, 12.26.73 129</p> <p>7 29 Letter to Asbestos Study</p> <p>8 .</p> <p>9 Exhibit Marked 132</p> <p>10 31 Friction Material Board of</p> <p>11 .</p> <p>12 .</p> <p>13 Feierabend 139</p> <p>14 34 Memo to John Marsh, 7.22.76 143</p> <p>15 35 Current Intelligence Bulletin 5,</p> <p>16 .</p> <p>17 Lining Maintenance and Repair 152</p> <p>18 37 Letter to E.P. Hoff, 9.5.78 162</p> <p>19 39 Advertisements 167</p> <p>20 40 Photocopy of Commercial Car</p> <p>21 .</p> <p>22 BSE-72R Catalog 174</p> <p>23 42 Abex 614EF 177</p> <p>24</p> </div>                                                                        | <div>9</div> <div> <p>1 -----</p> <p>2 P R O C E E D I N G S</p> <p>3 11:15 a.m.</p> <p>4 -----</p> <p>5 THE VIDEOGRAPHER: We are now</p> <p>6 recording and on the record. My name is Kevin</p> <p>7 J. Harrington. I'm a certified legal video</p> <p>8 specialist for National Video Reporters, Inc.</p> <p>9 Our business address is a 7 Cedar Drive, Woburn</p> <p>10 Massachusetts, 01801.</p> <p>11 Today is September 26, 2011, and the</p> <p>12 time is 11:15 a.m. This is the deposition of</p> <p>13 Albert D. Indelicato in the matter of Maureen</p> <p>14 Tavaglione, individually and as executrix of</p> <p>15 the estate of Robert Tavaglione, plaintiff,</p> <p>16 versus 3M Company, et al, defendants in the</p> <p>17 Commonwealth of Massachusetts, Middlesex</p> <p>18 Superior Court, Department of the Trial Court,</p> <p>19 Civil Action No. 08- 0489. This deposition is</p> <p>20 being taken at 588 Wentworth Road, New Castle,</p> <p>21 New Hampshire 03854 on behalf of the plaintiff.</p> <p>22 The court reporter is Darlene Caiazzo</p> <p>23 Sousa of Eppley Court Reporting, LLC. Counsel,</p> <p>24 please state your appearances, and the court</p> </div> |

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| <p style="text-align: right;">10</p> <p>1 reporter will administer the oath.</p> <p>2 MR. GEORGE: My name is Jonathan</p> <p>3 George. I'm an attorney at Waters &amp; Kraus, and</p> <p>4 I represent the plaintiff.</p> <p>5 MR. RADCLIFFE: Tom Radcliffe, Pneumo</p> <p>6 Abex, LLC.</p> <p>7 MR. CARON: Jason Caron, Genuine Parts</p> <p>8 Company.</p> <p>9 MR. GEORGE: You guys want to do your</p> <p>10 appearances.</p> <p>11 MR. BJORNLUND: Kyle Bjornlund for</p> <p>12 Honeywell International as successor in</p> <p>13 interest to Bendix Corporation and Pneumo Abex,</p> <p>14 LLC.</p> <p>15 MR. ZAYOTTI: This is Matt Zayotti.</p> <p>16 I'm representing Kaiser-Gypsum, Parker Hannifin</p> <p>17 and Cleaver-Brooks.</p> <p>18 MR. FLORES: This is Javier Flores</p> <p>19 representing Georgia-Pacific, LLC.</p> <p>20 MR. WOLBERT: This is Clint Wolbert</p> <p>21 for Warren Pumps, LLC, Weil-McLain and</p> <p>22 Borg-Warner.</p> <p>23 MR. GEORGE: Anybody else?</p> <p>24 ALBERT INDELICATO,</p>          | <p style="text-align: right;">12</p> <p>1 A. I do.</p> <p>2 Q. Now, I want to talk very briefly about</p> <p>3 your work background. As I understand your</p> <p>4 background, you began working for Abex</p> <p>5 Corporation in 1970?</p> <p>6 A. That's correct.</p> <p>7 Q. You joined them at their corporate</p> <p>8 research center in Mahwah, New Jersey, as a lab</p> <p>9 technician and ultimately progressed at the</p> <p>10 research center to the position of development</p> <p>11 engineer, correct?</p> <p>12 A. That's right.</p> <p>13 Q. And around 1972 you were assigned as a</p> <p>14 liaison engineer responsible for the Friction</p> <p>15 Products Group wherein you would travel to the</p> <p>16 friction division headquarters in Winchester,</p> <p>17 Virginia?</p> <p>18 A. That's correct.</p> <p>19 Q. In 1974 you worked at the new</p> <p>20 manufacturing facility in Salisbury, North</p> <p>21 Carolina?</p> <p>22 A. That's right.</p> <p>23 Q. '75 to '76 you worked quality</p> <p>24 assurance programs for both the Winchester and</p> |
| <p style="text-align: right;">11</p> <p>1 having first been duly sworn by the Notary</p> <p>2 Public, was examined and testified as follows:</p> <p>3 EXAMINATION CONDUCTED</p> <p>4 BY MR. GEORGE:</p> <p>5 Q. Can you please introduce yourself for</p> <p>6 the ladies and gentlemen of the jury?</p> <p>7 A. Sure. I'm Albert D. Indelicato.</p> <p>8 Q. And you are currently the president of</p> <p>9 Pneumo Abex, LLC, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And your current stint as president of</p> <p>12 Pneumo Abex, LLC began in May of 2011?</p> <p>13 A. That's correct.</p> <p>14 Q. You understand that you've been</p> <p>15 designated to testify today as a representative</p> <p>16 for Pneumo Abex?</p> <p>17 A. That's right.</p> <p>18 Q. And you understand that your testimony</p> <p>19 here today can and will bind that company?</p> <p>20 A. I do.</p> <p>21 Q. And you've been deposed previously,</p> <p>22 correct?</p> <p>23 A. I have.</p> <p>24 Q. You understand the process?</p> | <p style="text-align: right;">13</p> <p>1 Salisbury plants, correct?</p> <p>2 A. That's right.</p> <p>3 Q. And Winchester manufactured asbestos</p> <p>4 brakes for passenger cars, light trucks and</p> <p>5 heavy trucks, and Salisbury was exclusively</p> <p>6 heavy trucks?</p> <p>7 MR. RADCLIFFE: Object to form.</p> <p>8 A. That's correct.</p> <p>9 Q. In 1976 to 1984 you were the director</p> <p>10 of product engineering and development?</p> <p>11 A. That's right.</p> <p>12 Q. Eventually you were given a vice</p> <p>13 president's title?</p> <p>14 A. That's right.</p> <p>15 Q. And from 1987 to 1993 you were the</p> <p>16 president of Abex Friction Products?</p> <p>17 A. That's right.</p> <p>18 Q. From 1993 to 1995, you were the</p> <p>19 president and CEO, chief executive officer, of</p> <p>20 Abex, Inc.?</p> <p>21 A. That's right.</p> <p>22 Q. And you've been designated as the</p> <p>23 person most knowledgeable based on your 25</p> <p>24 years of working in the friction business?</p>                                                |

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| <p style="text-align: right;">14</p> <p>1 A. That's right.</p> <p>2 MR. RADCLIFFE: Object to form.</p> <p>3 Q. Your job duties as current president</p> <p>4 is to assist in litigation, testifying and</p> <p>5 helping with documents, correct?</p> <p>6 A. That's right.</p> <p>7 Q. And for this you are paid \$10,000 per</p> <p>8 month?</p> <p>9 A. That's right.</p> <p>10 Q. Now, in order to offer testimony as</p> <p>11 the person most knowledgeable, you've had the</p> <p>12 opportunity, have you not, to review the</p> <p>13 historical documents of Abex?</p> <p>14 A. Yes.</p> <p>15 Q. And you're familiar with the corporate</p> <p>16 history of Abex?</p> <p>17 A. Generally, yes.</p> <p>18 Q. Now, the documents are contained in a</p> <p>19 repository in New York?</p> <p>20 A. Brooklyn, New York.</p> <p>21 Q. And as president you are also</p> <p>22 responsible for signing sworn Answers to</p> <p>23 Interrogatories?</p> <p>24 A. Yes, verifications, certifications,</p>                                                                                           | <p style="text-align: right;">16</p> <p>1 Pneumo Abex, LLC to Plaintiff's First Set of</p> <p>2 Interrogatories so marked)</p> <p>3 Q. I notice that these aren't signed, but</p> <p>4 you have provided a signed copy?</p> <p>5 A. That's right.</p> <p>6 Q. And those are questions you've read,</p> <p>7 answers that you've read and verified?</p> <p>8 A. That's right.</p> <p>9 Q. Okay. Now, let's talk briefly about</p> <p>10 the corporate history of Abex. You agree that</p> <p>11 the business started in the early 1900s</p> <p>12 principally as a railroad brake and component</p> <p>13 manufacturer?</p> <p>14 A. That's right.</p> <p>15 Q. And at some point in the early 1900s</p> <p>16 it was known as the American Brake Shoe and</p> <p>17 Foundry Company?</p> <p>18 A. Yes.</p> <p>19 Q. And in 1926 the company incorporated</p> <p>20 in New York and became American Brake Materials</p> <p>21 Corporation?</p> <p>22 A. I believe that to be true.</p> <p>23 Q. And that's when Abex first began</p> <p>24 producing asbestos linings that were used to</p>    |
| <p style="text-align: right;">15</p> <p>1 that sort of thing.</p> <p>2 Q. And by verifying a set of</p> <p>3 interrogatories, what interrogatories are, are</p> <p>4 a set of questions that Abex is asked by</p> <p>5 various plaintiff's attorneys, correct?</p> <p>6 A. That's right.</p> <p>7 Q. And Abex responds to them based on</p> <p>8 their historical knowledge, and you verify</p> <p>9 those answers by reviewing them and making sure</p> <p>10 the information contained therein is --</p> <p>11 A. As correct --</p> <p>12 Q. -- accurate?</p> <p>13 A. -- as possible, yes.</p> <p>14 Q. In fact, you've verified a set of</p> <p>15 interrogatories in this case, correct?</p> <p>16 A. I have.</p> <p>17 Q. And do you have that with you?</p> <p>18 A. I do.</p> <p>19 MR. GEORGE: We're going to make that</p> <p>20 Exhibit 1 to this deposition. And these are</p> <p>21 responses of defendant Pneumo Abex, LLC,</p> <p>22 successor in interest to Abex Corporation to</p> <p>23 plaintiff's first set of interrogatories.</p> <p>24 (Exhibit No. 1, Response of Defendant</p> | <p style="text-align: right;">17</p> <p>1 line brake shoes?</p> <p>2 A. About that time.</p> <p>3 Q. And in 1933 the company changed its</p> <p>4 name to American Brakeblok Corporation?</p> <p>5 A. I believe that to be true.</p> <p>6 Q. In 1937 American Brakeblok Corporation</p> <p>7 merged with American Brake Shoe and Foundry</p> <p>8 Company and thereafter operated as American</p> <p>9 Brakeblok Division?</p> <p>10 A. I'm not sure I understand that. If</p> <p>11 you could read that again or --</p> <p>12 Q. Sure. Let me just see what I have</p> <p>13 here. In 1937, as I understand the corporate</p> <p>14 history, American Brakeblok Corporation merged</p> <p>15 with American Brake Shoe Foundry Company and</p> <p>16 thereafter operated as American Brakeblok</p> <p>17 Division?</p> <p>18 A. I think that's right.</p> <p>19 Q. Okay. And in 1943 the company again</p> <p>20 changed its name this time to American Brake</p> <p>21 Shoe Corporation?</p> <p>22 A. Correct.</p> <p>23 Q. In 1966 they changed its name to Abex</p> <p>24 Corporation?</p> |

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| <p style="text-align: right;">18</p> <p>1 A. That's right.</p> <p>2 Q. And in 1978 Abex became a wholly-owned</p> <p>3 subsidiary of Illinois Central Industries?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And in 1970 when you joined Abex,</p> <p>6 there were four business units, a railroad</p> <p>7 products group, a friction products group, a</p> <p>8 castings business, and a hydraulics division?</p> <p>9 A. That's right.</p> <p>10 Q. And the one that we're going to be</p> <p>11 talking about mostly today is the Friction</p> <p>12 Products Group?</p> <p>13 A. Okay.</p> <p>14 Q. And you understand when we talk about</p> <p>15 friction products, we're talking about material</p> <p>16 that was put on metal foundations to be either</p> <p>17 drum brake linings or disc brake linings?</p> <p>18 A. I mean, I'll accept that as our</p> <p>19 definition for today, except that Abex</p> <p>20 generally didn't put brake linings onto those</p> <p>21 metal carriers. That was either a brake</p> <p>22 manufacturer's responsibility or rebuilder's</p> <p>23 responsibility.</p> <p>24 Q. What Abex did is they manufactured the</p> | <p style="text-align: right;">20</p> <p>1 nonasbestos-containing brake linings that Abex</p> <p>2 manufactured for passenger cars and light</p> <p>3 trucks and heavy-duty trucks was the Velvet</p> <p>4 Touch line of product?</p> <p>5 MR. RADCLIFFE: Objection to form.</p> <p>6 A. Yes.</p> <p>7 Q. And that was a product that was first</p> <p>8 introduced in the marketplace in 1965?</p> <p>9 A. I don't know when the actual</p> <p>10 introduction was. I thought it was earlier</p> <p>11 than that but....</p> <p>12 Q. And how successful was that line of</p> <p>13 nonasbestos brake products?</p> <p>14 A. It was pretty well accepted for severe</p> <p>15 duty applications, police, ambulance, taxis,</p> <p>16 that sort of thing.</p> <p>17 Q. And how applicable was that product to</p> <p>18 ordinary uses, passenger cars, heavy-duty</p> <p>19 trucks, that kind of thing?</p> <p>20 A. I think the general driving public</p> <p>21 found them to be noisy and aggressive and wore</p> <p>22 out prematurely.</p> <p>23 Q. If you had to put a percentage of how</p> <p>24 much asbestos-containing product versus</p> |
| <p style="text-align: right;">19</p> <p>1 actual asbestos material that was then sent to</p> <p>2 others, and they incorporated it into either</p> <p>3 the drum brake or the disc brake as a complete</p> <p>4 unit?</p> <p>5 A. Others did --</p> <p>6 MR. RADCLIFFE: Objection.</p> <p>7 A. -- the incorporation, and Abex also</p> <p>8 sold nonasbestos brake lining. It wasn't only</p> <p>9 asbestos.</p> <p>10 Q. You would agree with me that as of the</p> <p>11 19 -- well, prior to 1980 the vast majority of</p> <p>12 the brake linings that Abex manufactured</p> <p>13 contained asbestos for passenger cars and</p> <p>14 light- and heavy-duty trucks?</p> <p>15 MR. CARON: Objection.</p> <p>16 A. Yes.</p> <p>17 Q. In fact, Abex has a very limited</p> <p>18 amount of nonasbestos brakes for passenger cars</p> <p>19 and trucks in 1965?</p> <p>20 MR. RADCLIFFE: Object to form.</p> <p>21 A. I don't know what your definition of</p> <p>22 limited is, but I would agree the majority of</p> <p>23 production was asbestos containing.</p> <p>24 Q. Would you agree with me that the only</p>                                      | <p style="text-align: right;">21</p> <p>1 nonasbestos-containing product that Abex</p> <p>2 manufactured during the 1960s, what would that</p> <p>3 percentage be?</p> <p>4 A. Ninety plus percent</p> <p>5 asbestos-containing.</p> <p>6 Q. Would that be true of the 1970s as</p> <p>7 well?</p> <p>8 A. No.</p> <p>9 Q. How much would the percentage be in</p> <p>10 the 1970s?</p> <p>11 A. It varied a lot because as we got</p> <p>12 closer to being totally out of asbestos there</p> <p>13 was an, you know, ever increasing percent of</p> <p>14 asbestos free, so I couldn't answer your</p> <p>15 question with a definitive amount.</p> <p>16 Q. You sold your last asbestos brake</p> <p>17 linings in 1987?</p> <p>18 A. That's right.</p> <p>19 Q. And when did you begin phasing out</p> <p>20 asbestos as a corporate policy?</p> <p>21 A. It really wasn't a corporate policy</p> <p>22 until, you know, 1986 or 1987. It was -- you</p> <p>23 know, we had gotten to about, I would say,</p> <p>24 nominally 85 percentile of nonasbestos. There</p>                                                                           |

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| <p style="text-align: center;">22</p> <p>1 was still some asbestos-containing product, and</p> <p>2 senior management made the decision that it</p> <p>3 just didn't make sense to continue.</p> <p>4 Q. Now, you agree with me that prior to</p> <p>5 the 1980s the vast majority of the brake</p> <p>6 linings Abex manufactured for passenger cars</p> <p>7 and light- and heavy-duty trucks contained</p> <p>8 asbestos, correct?</p> <p>9 A. Yes.</p> <p>10 Q. What would that percentage be?</p> <p>11 A. Again, I don't know the exact</p> <p>12 percentage. Vast majority I would agree with.</p> <p>13 Q. Eighty-five?</p> <p>14 A. If that's your definition of vast</p> <p>15 majority, I'll accept that.</p> <p>16 Q. I'm really looking for your definition</p> <p>17 of vast majority?</p> <p>18 A. Eighty-five.</p> <p>19 Q. Okay. Would you agree that when Abex</p> <p>20 sold friction material that contained asbestos,</p> <p>21 typically the percentage of asbestos ranged</p> <p>22 from approximately 25 to 70 percent?</p> <p>23 A. I would say that out of all the</p> <p>24 formulations to encompass every formulation</p> | <p style="text-align: center;">24</p> <p>1 might have, you know, a three-pound asbestos</p> <p>2 load that's reasonable. But it's certainly not</p> <p>3 a reasonable number for all asbestos brake</p> <p>4 lining products.</p> <p>5 Q. Do you agree that that's a number that</p> <p>6 has been used in the past to estimate the</p> <p>7 amount of asbestos that is emitted from the use</p> <p>8 of brakes in the environment?</p> <p>9 MR. RADCLIFFE: Object to form.</p> <p>10 A. I've never used that as an estimate.</p> <p>11 Q. Are you familiar with a document that</p> <p>12 is entitled Memorandum: Subject: Asbestos</p> <p>13 Fiber Emissions Friction Materials from June</p> <p>14 19, 1972, that's on American Brakeblok Division</p> <p>15 Winchester office letterhead signed by E.H.</p> <p>16 Feierabend, F-E-I-E-R-A-B-E-N-D? Is that a</p> <p>17 document you've seen before?</p> <p>18 MR. RADCLIFFE: I'm going to object to</p> <p>19 that characterization. That's a multiple page</p> <p>20 document. Only the first page is an Abex</p> <p>21 document. The rest of it is not an Abex</p> <p>22 document. It's incomplete.</p> <p>23 MR. GEORGE: We'll be talking about</p> <p>24 it, don't you worry.</p> |
| <p style="text-align: center;">23</p> <p>1 that Abex manufactured that would be an</p> <p>2 accurate range. I would tell you that the</p> <p>3 majority of product was probably in the 30 to</p> <p>4 35 percent asbestos range.</p> <p>5 Q. Is that true for both disc brakes and</p> <p>6 drum brakes?</p> <p>7 A. Yes.</p> <p>8 Q. Did one type of product have more</p> <p>9 asbestos than the other?</p> <p>10 A. When you say "type of product," disc</p> <p>11 versus drum?</p> <p>12 Q. Correct.</p> <p>13 A. No. They were essentially the same.</p> <p>14 Q. Would you agree with me that there</p> <p>15 were about three pounds of asbestos per set of</p> <p>16 brake linings?</p> <p>17 MR. RADCLIFFE: Object to form.</p> <p>18 A. No, that seems awfully high, and I</p> <p>19 think a lot depends on the type of product. I</p> <p>20 mean, there were drum brake products that would</p> <p>21 go on, let's say, a small Chevrolet car that</p> <p>22 the entire -- all of the brake lining</p> <p>23 themselves probably didn't weigh more than two</p> <p>24 pounds. And yet, on a heavy-duty truck, you</p>                       | <p style="text-align: center;">25</p> <p>1 A. Mr. Feierabend's letter is simply a</p> <p>2 transmittal cover letter that says, "Referring</p> <p>3 to an enclosed mailing from FMSI."</p> <p>4 Q. Is the enclosed mailing attached?</p> <p>5 MR. RADCLIFFE: Object to form.</p> <p>6 A. I don't know. I mean, there's two</p> <p>7 members of -- yeah, it certainly comes from the</p> <p>8 friction or from -- yeah, from the Friction</p> <p>9 Material Standard Institute. Whether or not</p> <p>10 this is the memorandum that Mr. Feierabend is</p> <p>11 referring, I really couldn't say.</p> <p>12 Q. Well, he says, "The enclosed mailing</p> <p>13 from the FMSI" -- now, that's the Friction</p> <p>14 Material Standard Institute, correct?</p> <p>15 A. That's right.</p> <p>16 Q. That's an organization that Abex had</p> <p>17 been a member of for many years at this point</p> <p>18 in time?</p> <p>19 A. Yes.</p> <p>20 Q. And then they say that "The enclosed</p> <p>21 mailing from the FMSI Asbestos Study Committee</p> <p>22 has great interest now that the EPA emission</p> <p>23 study report is about to be released. Note</p> <p>24 that the item on brakes page 28. The</p>                               |

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| <p style="text-align: right;">26</p> <p>1 assumption appears to be disc brakes will be<br/> 2 cure-all. We will attend the next meeting of<br/> 3 the committee and report further findings."<br/> 4 Now, what is attached is a June --<br/> 5 this letter is dated June 19, 1972, correct?<br/> 6 MR. RADCLIFFE: Object to form.<br/> 7 A. I'm sorry?<br/> 8 Q. This is dated June 19, 1972?<br/> 9 A. Mr. Feierabend's letter is.<br/> 10 Q. And what is attached is a June 6,<br/> 11 1972, memorandum from E.W. Drislane, the<br/> 12 executive secretary of the FMSI, to members of<br/> 13 the Asbestos Study Committee, correct?<br/> 14 MR. RADCLIFFE: Object to form.<br/> 15 A. That's right.<br/> 16 Q. And Abex was one of the founding<br/> 17 members of the Asbestos Study Committee,<br/> 18 correct?<br/> 19 MR. RADCLIFFE: Object to form.<br/> 20 A. I know we were a member. I don't know<br/> 21 if we were a founding member.<br/> 22 Q. What this memorandum sent to the<br/> 23 members of Asbestos Study Committee were<br/> 24 various pages from an IRTRI paper, correct?</p>                                                      | <p style="text-align: right;">28</p> <p>1 correct?<br/> 2 A. It does say that.<br/> 3 Q. Okay. You'd agree with me that<br/> 4 there's more asbestos in a drum brake than in a<br/> 5 disc break?<br/> 6 MR. RADCLIFFE: Object to form.<br/> 7 A. I don't agree with you. It depends on<br/> 8 the size of the brake, the size of the vehicle.<br/> 9 Q. Would you agree with me that prior to<br/> 10 the mid 1970s most brakes -- most cars<br/> 11 contained four-wheel drum brakes?<br/> 12 MR. RADCLIFFE: Object to form.<br/> 13 MR. CARON: Object to form.<br/> 14 A. Yes, most cars did.<br/> 15 Q. Starting in the early/mid '70s onward,<br/> 16 technology was developed for disc brakes?<br/> 17 MR. RADCLIFFE: Object to form.<br/> 18 A. Technology was adapted. The Europeans<br/> 19 had been using disc brake for many years before<br/> 20 they were used in the United States, but<br/> 21 technology was adopted to North American<br/> 22 vehicles.<br/> 23 Q. And when disc brakes were introduced,<br/> 24 they were typically disc brakes in the front of</p> |
| <p style="text-align: right;">27</p> <p>1 MR. RADCLIFFE: Object to form.<br/> 2 A. I don't know. I mean, there's several<br/> 3 pages here.<br/> 4 Q. If you look at the second paragraph of<br/> 5 the June 6, 1972, letter from E.W. Drislane, it<br/> 6 says, "The pages from the IRI paper are" -- and<br/> 7 they list the pages enclosed, 2225, 2627?<br/> 8 A. I see that. I do see that.<br/> 9 Q. And if you look at page 25 of the<br/> 10 enclosure, they're talking about sources of<br/> 11 emissions from friction materials from the<br/> 12 results of normal day-to-day usage, correct?<br/> 13 A. What page are you on, 25?<br/> 14 Q. Twenty-five of the enclosure?<br/> 15 A. Yes.<br/> 16 Q. And it says that "Data concerning<br/> 17 motor vehicle brake linings for the whole of<br/> 18 the United States are given in the following,"<br/> 19 and it has some data with regard to the number<br/> 20 of vehicles and brake linings and the pounds of<br/> 21 asbestos per set of brake linings, correct?<br/> 22 A. Yes.<br/> 23 Q. And it says, "for pounds of asbestos<br/> 24 per set of brake linings," it indicates three,</p> | <p style="text-align: right;">29</p> <p>1 the car but drum brakes still on the back of<br/> 2 the car?<br/> 3 A. That's right.<br/> 4 Q. The first all-wheel disc brake car<br/> 5 first came on the market when?<br/> 6 A. I wouldn't know that offhand.<br/> 7 Q. Sometime in the late '70s, early '80s?<br/> 8 A. Probably mid '70s for sports cars.<br/> 9 Again, it depends if you're limiting our<br/> 10 discussion to cars manufactured in North<br/> 11 America. I mean, I think cars like Porsche,<br/> 12 Ferrari, high-performance cars had four-wheel<br/> 13 disc brakes earlier than that.<br/> 14 Q. Would you agree with me that European<br/> 15 cars had nonasbestos brakes earlier than<br/> 16 American cars?<br/> 17 A. No, I do not agree with that.<br/> 18 Q. Are you familiar with Scan-Pac?<br/> 19 A. Yes, I've heard of the company.<br/> 20 Q. A company out of Scandinavia?<br/> 21 A. No. Actually, I thought the company<br/> 22 was out of the midwest.<br/> 23 Q. Do you know when Scan-Pac first went<br/> 24 all asbestos-free?</p>              |

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| <p style="text-align: right;">30</p> <p>1 A. No, I don't.</p> <p>2 Q. May I ask you this: Would you agree</p> <p>3 that in 1971 after you had joined Abex, it was</p> <p>4 one of the major suppliers of friction material</p> <p>5 for brake and clutch use in the United States?</p> <p>6 A. That Abex was?</p> <p>7 Q. Yes.</p> <p>8 A. No.</p> <p>9 Q. Would you agree that in 1971 Abex</p> <p>10 sales of asbestos-containing friction material</p> <p>11 for use in vehicles operating in the United</p> <p>12 States was projected to be in excess of \$20</p> <p>13 million?</p> <p>14 A. That seems like a reasonable estimate.</p> <p>15 MR. GEORGE: Let me show you what I'll</p> <p>16 mark as Exhibit 2.</p> <p>17 (Exhibit No. 2, Letter to Samuel</p> <p>18 Lawton, 10.8.71 so marked)</p> <p>19 Q. This is a letter from G.R. Graham,</p> <p>20 director of friction materials research, to</p> <p>21 Samuel T. Lawton, State of Illinois Pollution</p> <p>22 Control, dated November 8, 1971, and ask you if</p> <p>23 that's a document you've seen before?</p> <p>24 A. Do you want this document back, try to</p>                                                     | <p style="text-align: right;">32</p> <p>1 A. '40s.</p> <p>2 Q. And is it correct that NAPA was a</p> <p>3 trade organization that was composed of</p> <p>4 companies that manufactured and sold various</p> <p>5 automotive parts?</p> <p>6 MR. CARON: Object to form.</p> <p>7 A. It's my understanding NAPA was a trade</p> <p>8 organization.</p> <p>9 Q. One of the members of that trade</p> <p>10 organization was a company called Genuine</p> <p>11 Parts?</p> <p>12 A. That's correct.</p> <p>13 Q. Genuine Parts manufactured a product</p> <p>14 called Rayloc brakes?</p> <p>15 MR. CARON: Object to form.</p> <p>16 Q. Right?</p> <p>17 A. A product? I mean, I knew Rayloc as</p> <p>18 an operating entity of Genuine Parts.</p> <p>19 Q. And as an operating entity, what did</p> <p>20 that entity do?</p> <p>21 A. They rebuilt a variety of products,</p> <p>22 brakes being one of them.</p> <p>23 Q. And Abex would sell to Genuine Parts</p> <p>24 the asbestos linings that would go into the</p>                                                                                                                                          |
| <p style="text-align: right;">31</p> <p>1 keep them straight? Yeah, I've seen this</p> <p>2 document before.</p> <p>3 Q. And in that document can you read for</p> <p>4 me the first sentence of the second paragraph?</p> <p>5 A. The one that you've highlighted.</p> <p>6 Q. Correct?</p> <p>7 A. "The Abex Corporation, through its</p> <p>8 American Brakeblok Division, is one of the</p> <p>9 major suppliers of friction material for brake</p> <p>10 and clutch use in the United States. During</p> <p>11 1971, our sales of asbestos-containing friction</p> <p>12 material for use in vehicles operating in the</p> <p>13 United States will be in excess of \$20</p> <p>14 million."</p> <p>15 Q. Can you tell me when Abex first had a</p> <p>16 relationship with the National Auto Parts</p> <p>17 Association?</p> <p>18 MR. CARON: Object to form.</p> <p>19 A. To my knowledge I can't give you an</p> <p>20 exact date, but it was my understanding that</p> <p>21 Abex and NAPA, if you will, went back to the</p> <p>22 origins of NAPA. I don't know exactly what</p> <p>23 year that was, but it goes back a long time.</p> <p>24 Q. Can you tell us a decade?</p> | <p style="text-align: right;">33</p> <p>1 rebuilt brakes?</p> <p>2 MR. RADCLIFFE: Object to form.</p> <p>3 MR. CARON: Object to form.</p> <p>4 A. Abex would sell asbestos or</p> <p>5 asbestos-free linings to Rayloc.</p> <p>6 Q. But if we're talking about any time</p> <p>7 prior to the mid 1980s, you would agree that a</p> <p>8 majority of what Abex was selling to Genuine</p> <p>9 Parts was asbestos-containing material?</p> <p>10 MR. CARON: Object to form.</p> <p>11 A. No. If you say mid 1980s, no, I</p> <p>12 wouldn't agree with that. Again, there's a</p> <p>13 point in time where asbestos-free is introduced</p> <p>14 and continues to grow and grow and grow until</p> <p>15 1986 or so where it's probably 90 percent of</p> <p>16 Abex's business, approximately.</p> <p>17 Q. You would agree with me that prior to</p> <p>18 1970s almost all of the material that Abex sold</p> <p>19 to Genuine Parts would be asbestos-containing</p> <p>20 linings?</p> <p>21 MR. CARON: Object to form.</p> <p>22 A. Yes, I would.</p> <p>23 Q. Let me ask you: Would you agree that</p> <p>24 the safety of the consumer should be the</p> |

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| <p style="text-align: right;">34</p> <p>1 primary concern of Abex when selling its<br/>2 products?</p> <p>3 A. Yes.</p> <p>4 Q. Would you agree that any risk of<br/>5 serious injury or death is always unreasonable<br/>6 if there are reasonable means to reduce or<br/>7 eliminate that risk?</p> <p>8 MR. RADCLIFFE: Object to form.</p> <p>9 A. Yes.</p> <p>10 Q. Would you agree that Abex should<br/>11 become aware of any potential hazards<br/>12 associated with the contents of the products<br/>13 that they sell?</p> <p>14 MR. RADCLIFFE: Object to form.</p> <p>15 A. I'm not sure I understand in the<br/>16 context of should. I mean, Abex always tried<br/>17 to understand the limitations of its product<br/>18 and appropriately deal with it.</p> <p>19 Q. Before a company puts a product in the<br/>20 stream of commerce, would you agree that they<br/>21 have an obligation to investigate the<br/>22 components of that product to make sure that<br/>23 there aren't any potential hazards associated<br/>24 with the normal use of that product?</p> | <p style="text-align: right;">36</p> <p>1 consumers if it learns a component of a product<br/>2 is potentially dangerous even after placing it<br/>3 on the market?</p> <p>4 MR. RADCLIFFE: Object to form.</p> <p>5 A. Yes.</p> <p>6 Q. Now you agree that Abex never went out<br/>7 and did any kind of air sampling in garages<br/>8 where servicemen were working with Abex<br/>9 products?</p> <p>10 A. That's right.</p> <p>11 Q. You agree you've seen documents at<br/>12 least that in 1936 Abex, along with several<br/>13 other manufacturers of asbestos products,<br/>14 agreed to underwrite certain experiments with<br/>15 asbestos dust to be conducted Dr. Leroy U.<br/>16 Gardner at Saranac Laboratory at Saranac Lake<br/>17 in New York?</p> <p>18 A. Yes.</p> <p>19 Q. And you agree that at that time<br/>20 Saranac Laboratories was one of the most<br/>21 prestigious laboratories investigating lung<br/>22 disease?</p> <p>23 A. As I read documents, that's my<br/>24 understanding.</p>                                                                               |
| <p style="text-align: right;">35</p> <p>1 MR. RADCLIFFE: Object to form.</p> <p>2 A. Yes.</p> <p>3 Q. And you would agree that Abex should<br/>4 share knowledge of any potential hazards<br/>5 associated with the contents of their products<br/>6 with the public who is buying their product?</p> <p>7 MR. RADCLIFFE: Object to form.</p> <p>8 A. Yes.</p> <p>9 Q. You would agree that Abex should never<br/>10 keep potential hazards of their products<br/>11 secret?</p> <p>12 A. Yes.</p> <p>13 Q. You would agree that Abex should test<br/>14 its products to determine if they are<br/>15 potentially dangerous before selling them?</p> <p>16 MR. RADCLIFFE: Object to form.</p> <p>17 A. Yes.</p> <p>18 Q. You'd agree that as soon as Abex<br/>19 learns its product is dangerous, the company<br/>20 should inform consumers of the potential<br/>21 danger?</p> <p>22 MR. RADCLIFFE: Object to form.</p> <p>23 A. Yes.</p> <p>24 Q. You agree that Abex should inform</p>                                                                                            | <p style="text-align: right;">37</p> <p>1 Q. And one of the lung diseases that<br/>2 Saranac Laboratory investigated was diseases<br/>3 caused by exposure to asbestos?</p> <p>4 A. That was the intent of the study, yes.</p> <p>5 Q. Now, one of the -- Abex had a medical<br/>6 department, correct?</p> <p>7 A. It did.</p> <p>8 Q. And the first medical director of that<br/>9 medical department was Lloyd Hamlin, correct?</p> <p>10 A. I don't believe that to be the case.<br/>11 I think there was someone who predated Dr.<br/>12 Hamlin.</p> <p>13 Q. Let me just make sure I have my<br/>14 information. According to your answers to<br/>15 interrogatories, you were asked to describe<br/>16 your corporate structure concerning medical<br/>17 directors, industrial hygienists, physicians,<br/>18 biological scientists, and consultants in these<br/>19 fields from 1930 to 1980. In your response the<br/>20 first name listed as the medical director is<br/>21 Lloyd Hamlin?</p> <p>22 A. That's right.</p> <p>23 Q. So if there was anybody prior to him,<br/>24 you --</p> |

A. It would have been prior to 1930.

Q. When was your medical department established?

A. I don't know the exact date, but I know that there was a female medical director that preceded Dr. Hamlin; presumably that was before 1930.

Q. The information that you recorded in these interrogatories begins with Dr. Hamlin in 1941, correct?

A. Okay. Yes.

Q. And he was the medical director for about 20 years?

A. That's about right.

Q. And Dr. Hamlin was an expert on pneumoconiosis diseases caused by exposure to dust?

MR. RADCLIFFE: Object to form.

A. I would say that he was knowledgeable. I think he was an advocate for studying it. To call him an expert, I think his expertise was developed over time because there wasn't anything known about that at that time in history.

Q. Would you agree that Abex was generally aware that sometimes a certain amount of grinding or sanding takes place prior to the installation of brake shoes on a car?

A. You know, depending, again, on the time frame. Years ago, I think that was a little more common. I know during my employ with Abex starting in 1970 that we made every effort to work with rebuilders to try to give them -- and original equipment brake manufacturers as well, to give them a friction article that was ready to install without any further machining or sanding or grinding.

Q. Prior to the 1970s, you would agree that it was fairly common for mechanics to properly fit a brake shoe, particularly in an instance where there was a turned drum, to have to do some manipulation of the surface of that shoe to make sure that there was proper contact?

MR. RADCLIFFE: Object to form.

A. I wouldn't say the majority. I mean, I know that there were instances where that happened, but I didn't -- I never associated

that with the majority of the time.

Q. Were you aware that from your review of company documents and your experience that there were mechanics that had to grind, sand or otherwise manipulate the surface of brake shoes prior to their installation?

A. From --

MR. RADCLIFFE: Object to form.

A. -- time to time.

Q. Now, you agree that in 1944 Dr. Hamlin wrote a paper entitled Industrial Dust, the Pneumoconiosis, that appeared in the Industrial Medicine Journal in March 1944?

A. Your question is?

Q. You're aware of that document?

A. Yes. I've not read it, but I am aware that he published it.

Q. That document on the bottom of it has a Bates stamp numbering that says "SPNY" followed by six digits. You understand that to be a document that comes from the Abex document depository, correct?

MR. RADCLIFFE: Object to form.

A. I don't know that SPNY means that.

Q. You've never been told that the documents in the depository have all been Bates stamped?

A. Yeah, but I don't recognize that serialization, if you will, or sequencing as one of the ones I'm more familiar with things that literally say Bates number. So I don't know the origin of this document.

Q. In your review of documents that are from the Abex document depository, have you seen the SPNY nomenclature used?

A. I don't remember seeing it before.

Q. Now, in this paper that was published in 1944, Dr. Hamlin is listed as the medical director for American Brake Shoe Company Chicago, correct?

A. Yes.

Q. If you turn to the second page of the document, he indicates that the simplest way of understanding the term "pneumoconiosis" is stating that the term refers to a condition of the lungs resulting from the prolonged inhalation of dust, whether harmful or inert. Do you see that?

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| <p style="text-align: right;">42</p> <p>1 A. I don't. This is, you know, kind of<br/> 2 an eye test. If you'd like to take a break and<br/> 3 give me a chance to read this, I'll be happy to<br/> 4 do that and try to intelligently answer your<br/> 5 questions.<br/> 6 Q. How about I just give you my<br/> 7 highlighted copy, and you'll be able to see?<br/> 8 A. Okay. Is this from what page in that<br/> 9 document?<br/> 10 Q. Second page. It is the --<br/> 11 A. It says it covers a variety of<br/> 12 conditions. It's defined as chronically -- as<br/> 13 a chronic pulmonary fibrosis due to the<br/> 14 inhalation of irritating dust.<br/> 15 Q. Among the pneumoconiosis is<br/> 16 asbestosis, correct?<br/> 17 A. Yes.<br/> 18 Q. Asbestosis is a disease of the lungs<br/> 19 caused by exposure to asbestos?<br/> 20 MR. RADCLIFFE: Object to form.<br/> 21 MR. CARON: Object to form.<br/> 22 A. Yes.<br/> 23 Q. Now, it indicates, does it not, that<br/> 24 asbestos and silica are the only two dusts that</p>                                                             | <p style="text-align: right;">44</p> <p>1 does it not, that "The greatest occupational<br/> 2 hazard exists in mining, handling and crushing<br/> 3 crude asbestos, making insulation and the<br/> 4 cardigan weaving of asbestos. In other<br/> 5 industries, such as the compounding of<br/> 6 materials for brake linings, the hazard is<br/> 7 recognized but the disease is uncommon."<br/> 8 Is that what he says?<br/> 9 A. I'm not seeing what you read.<br/> 10 Q. Starting right here.<br/> 11 A. You know, really, I really want to try<br/> 12 to be helpful and answer your questions to the<br/> 13 best of my ability, but having pages out of<br/> 14 context I'm really uncomfortable. I mean, I<br/> 15 don't even know that is part of Hamlin's<br/> 16 article at this point so.....<br/> 17 Q. Nevertheless, this document right<br/> 18 there says exactly what I said it said,<br/> 19 correct?<br/> 20 MR. RADCLIFFE: Object to form.<br/> 21 A. I'm reading from a document that says<br/> 22 SPNY 000230. What the context of that page is,<br/> 23 it's out the context, but what is highlighted<br/> 24 is "In other industries such as the compounding</p> |
| <p style="text-align: right;">43</p> <p>1 had the capacity to produce fibrosis?<br/> 2 A. I don't see where it says that. I see<br/> 3 it referring to pneumoconiosis includes<br/> 4 specific diseases, and it goes on to say<br/> 5 asbestosis, siderosis, silicosis, etcetera.<br/> 6 Q. The first sentence on the second<br/> 7 column --<br/> 8 A. Uh-huh.<br/> 9 Q. -- what does that say?<br/> 10 A. "Of the dust studied up to the present<br/> 11 time, only silica and asbestos contain" or, I'm<br/> 12 sorry -- "produce definitive pulmonary<br/> 13 fibrosis."<br/> 14 Q. I'm going to show you the second page<br/> 15 of Dr. Hamlin's article. Would you agree with<br/> 16 me that Dr. Hamlin was aware when he wrote this<br/> 17 article in 1944 that there were 41 deaths from<br/> 18 asbestosis that had been reported in England up<br/> 19 to 1934?<br/> 20 A. Forty-one deaths were reported from<br/> 21 the cause -- from this cause in England up to<br/> 22 1934.<br/> 23 Q. And let me show you the next page, the<br/> 24 document which is page three. He indicates,</p> | <p style="text-align: right;">45</p> <p>1 of materials for automotive brake lining, the<br/> 2 hazard is recognized but the disease is<br/> 3 uncommon."<br/> 4 Q. In fact, in this article Dr. Hamlin<br/> 5 actually talked about experiences that were had<br/> 6 at the Abex plant, correct?<br/> 7 MR. RADCLIFFE: Object to form.<br/> 8 A. In one of our plants where<br/> 9 considerable asbestos is used in the<br/> 10 manufacture of automotive brake lining, a<br/> 11 recent survey of 189 employees exposed to<br/> 12 various amounts of dust revealed that no actual<br/> 13 cases of fibrosis." Would you like me to go<br/> 14 on?<br/> 15 Q. Sure.<br/> 16 A. "A few men's films" -- presumably<br/> 17 referring to the x-rays -- "showed haziness<br/> 18 which suggested evidence of the disease, but<br/> 19 they were not significantly typical to warrant<br/> 20 diagnosis of asbestosis. However, it should be<br/> 21 noted that the hazard in this particular plant<br/> 22 was well controlled by adequate exhaust<br/> 23 ventilation."<br/> 24 Q. One of the things that Abex knew as</p>                                                                |

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| <p style="text-align: center;">46</p> <p>1 far as back as 1940s was that one way that you<br/> 2 can prevent disease is to lessen exposure by<br/> 3 using adequate exhaust ventilation?<br/> 4 A. Yes. As well as other means, but that<br/> 5 was certainly a principal one used in a<br/> 6 manufacturing environment where raw asbestos<br/> 7 fiber was used.<br/> 8 Q. And one of the sources for Dr.<br/> 9 Hamlin's knowledge as contained in the<br/> 10 bibliography is a paper by Merewether and Price<br/> 11 that was published in 1930, correct?<br/> 12 A. That's what's referenced here, yes.<br/> 13 Q. Now, in 1947 Dr. Hamlin wrote another<br/> 14 paper entitled Industrial Diseases of the<br/> 15 Chest. Let me just show you that document. Is<br/> 16 that a document you've seen before?<br/> 17 A. Just before the deposition today, you<br/> 18 showed it to me, but I hadn't had a chance to<br/> 19 read it.<br/> 20 MR. GEORGE: I'm going to make as<br/> 21 Exhibit 3 the prior paper by Dr. Hamlin.<br/> 22 (Exhibit No. 3, Industrial Dust - The<br/> 23 Pneumoconiosis, L.E. Hamlin so marked)<br/> 24 MR. RADCLIFFE: Can you tell me what</p>        | <p style="text-align: center;">48</p> <p>1 A. Some.<br/> 2 Q. Now, would you agree with me that<br/> 3 during this period of time, the 1940s, Abex was<br/> 4 a member of a group called the Industrial<br/> 5 Hygiene Foundation?<br/> 6 A. I believe that to be the case, yeah.<br/> 7 MR. GEORGE: I'm going to mark the<br/> 8 second Hamlin article as Exhibit 4.<br/> 9 (Exhibit No. 4, Industrial Diseases of<br/> 10 The Chest, L.E. Hamlin so marked)<br/> 11 Q. I think in your responses to<br/> 12 interrogatories in this case --<br/> 13 A. This case being?<br/> 14 Q. Being the Tavaglione case?<br/> 15 A. Okay.<br/> 16 Q. -- you indicated that Abex was a<br/> 17 member of the Air Hygiene Foundation of America<br/> 18 which later became the Industrial Hygiene<br/> 19 Foundation from 1937 to 1961?<br/> 20 A. That's right.<br/> 21 Q. Now, would you agree with me that the<br/> 22 Industrial Hygiene Foundation is an<br/> 23 organization that was touted as the only<br/> 24 national association of private industries for</p>                                                                                |
| <p style="text-align: center;">47</p> <p>1 Exhibit 2 was?<br/> 2 MR. GEORGE: Exhibit 2 was the Abex<br/> 3 letter of November 8, 1971. And Exhibit 1 is<br/> 4 the Answers to Interrogatories.<br/> 5 MR. RADCLIFFE: Okay. Thank you.<br/> 6 Q. I just want to ask you one question<br/> 7 about this document. If you look at the<br/> 8 highlighted portion of that -- I'll give it to<br/> 9 you to make it easier for you -- which is on<br/> 10 page six, Dr. Hamlin talks about the fact that<br/> 11 occupational fibrosis can result from the<br/> 12 inhalation of asbestos fibers and that he<br/> 13 references a 1940 paper from Dr. Gardner that<br/> 14 stated that 27 percent of exposed workers were<br/> 15 involved, and those with more than 15 years<br/> 16 experience the percentage rose to 60. That's<br/> 17 what he wrote, correct?<br/> 18 A. Yeah, but, again, I believe that this<br/> 19 was in reference to workers of raw asbestos<br/> 20 fiber, not automobile guys or even people<br/> 21 within the Abex factories.<br/> 22 Q. Well, in your Abex factory you had<br/> 23 individuals, did you not, that were using raw<br/> 24 asbestos fibers?</p> | <p style="text-align: center;">49</p> <p>1 the advancement of employee health?<br/> 2 MR. RADCLIFFE: Object to form.<br/> 3 A. I had no personal knowledge of that.<br/> 4 I don't know what their charter was or how they<br/> 5 were recognized.<br/> 6 MR. GEORGE: I'm going to show you a<br/> 7 document that we'll mark as Exhibit 5.<br/> 8 (Exhibit No. 5, Letter to S. Simpson,<br/> 9 12.2.46 so marked)<br/> 10 Q. I'm just going to provide you with my<br/> 11 highlighted copy because it's easier for<br/> 12 reference for you?<br/> 13 A. Okay.<br/> 14 Q. And ask you if this is a document that<br/> 15 you have seen before. The heading is<br/> 16 Industrial Hygiene Foundation of America, Inc.<br/> 17 It's dated December 2, 1946, and it's from John<br/> 18 F. McMahon, managing director.<br/> 19 A. I have not seen this document before.<br/> 20 And yes, it is a letter from John F. McMahon.<br/> 21 It's dated December 2, 1946, and it's on<br/> 22 letterhead from the Industrial Hygiene<br/> 23 Foundation of America to one Mr. S. Simpson,<br/> 24 president of Raybestos-Manhattan, Incorporated.</p> |

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| <p style="text-align: center;">50</p> <p>1 Q. Now in this letter they indicate that</p> <p>2 W.B. Given, Jr., the president of the American</p> <p>3 Brake Shoe Company was being elected as a new</p> <p>4 trustee of the organization. Is that</p> <p>5 information that you had gleaned from your</p> <p>6 experience with Abex?</p> <p>7 A. I know Mr. Given was president about</p> <p>8 that time. I had no knowledge that he was a</p> <p>9 trustee of the Industrial Hygiene Foundation.</p> <p>10 Q. From your review of documents for</p> <p>11 Abex, were you aware that the Industrial</p> <p>12 Hygiene Foundation was an association of</p> <p>13 industries for the advancement of healthful</p> <p>14 working conditions?</p> <p>15 A. That was my nominal understanding of</p> <p>16 their purpose, yes.</p> <p>17 Q. Did you agree with me that as part of</p> <p>18 the -- part of your membership to the</p> <p>19 Industrial Hygiene Foundation, members were</p> <p>20 allowed or permitted to subscribe to the</p> <p>21 Industrial Hygiene Digest?</p> <p>22 A. I wouldn't know. I mean, again, all</p> <p>23 of these things predate my birth by a good</p> <p>24 number of years.</p>                           | <p style="text-align: center;">52</p> <p>1 of the years of membership of Abex and the</p> <p>2 Industrial Hygiene Foundation?</p> <p>3 A. Through documents review and with the</p> <p>4 help of counsel.</p> <p>5 Q. And through that document review and</p> <p>6 the help of counsel, you've never been shown</p> <p>7 any of the Industrial Hygiene Digests that were</p> <p>8 published by the Industrial Hygiene Foundation?</p> <p>9 MR. RADCLIFFE: Object to form.</p> <p>10 A. I don't recall ever seeing anything</p> <p>11 that looks like that.</p> <p>12 Q. I understand from your responses to</p> <p>13 interrogatories in this case that Abex never</p> <p>14 maintained a library of periodicals or books on</p> <p>15 any subject related to their manufacture of</p> <p>16 asbestos products?</p> <p>17 MR. RADCLIFFE: Object to form.</p> <p>18 Q. Is that accurate?</p> <p>19 MR. RADCLIFFE: Object to form.</p> <p>20 A. Well, we didn't maintain any kind of</p> <p>21 central library. I mean, I know as an</p> <p>22 executive and an engineer at Abex, I had my own</p> <p>23 little personal library of books that I would</p> <p>24 refer to, but there wasn't any librarian.</p> |
| <p style="text-align: center;">51</p> <p>1 Q. Well, but as the person who is being</p> <p>2 offered as the one most knowledgeable of the</p> <p>3 corporation, have you done any investigation to</p> <p>4 see what the historical knowledge was of Abex</p> <p>5 with regard to asbestos?</p> <p>6 A. Well, I have no way to find out</p> <p>7 whether or not we were entitled to a</p> <p>8 subscription to a particular periodical. I</p> <p>9 mean, there's nobody that's alive that could</p> <p>10 answer that question for me, and I haven't seen</p> <p>11 any documents that say one of your benefits for</p> <p>12 being a member is that you get this document.</p> <p>13 MR. GEORGE: I'm going to show you</p> <p>14 what I'll mark as Exhibit 6.</p> <p>15 (Exhibit No. 6, Industrial Hygiene</p> <p>16 Digest, March, 1947 so marked)</p> <p>17 Q. And just ask you: In your review of</p> <p>18 the documents that were kept by Abex whether</p> <p>19 you've seen any documents similar to that which</p> <p>20 is -- this is an excerpt from an Industrial</p> <p>21 Hygiene Digest?</p> <p>22 A. I have not seen anything that looks</p> <p>23 like this before.</p> <p>24 Q. How did you get your information that</p> | <p style="text-align: center;">53</p> <p>1 There wasn't a central place where these kinds</p> <p>2 of periodicals were kept.</p> <p>3 MR. GEORGE: Let me show you what I'll</p> <p>4 mark as Exhibit 7.</p> <p>5 (Exhibit No. 7, Industrial Wastes,</p> <p>6 14th Annual Meeting so marked)</p> <p>7 Q. This is an excerpt from Industrial</p> <p>8 Wastes, 14th annual meeting from the Industrial</p> <p>9 Hygiene Foundation. It's a transactions</p> <p>10 bulletin No. 13 dated 1949. And listed as an</p> <p>11 officer of the Industrial Hygiene Foundation is</p> <p>12 William B. Given, Jr., president American Brake</p> <p>13 Shoe Company, New York, New York.</p> <p>14 And the reason why I'm offering that</p> <p>15 to you, I just want to see if that's a document</p> <p>16 that you've seen before in your quest to</p> <p>17 determine Abex's membership to this</p> <p>18 organization?</p> <p>19 A. No, I've never seen this document</p> <p>20 before.</p> <p>21 Q. In the 1940s and forward, would you</p> <p>22 agree that one of the jobs of the medical</p> <p>23 department at Abex was to conduct annual</p> <p>24 examinations of its employees?</p>                           |

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| <p style="text-align: center;">54</p> <p>1 A. One of its tasks was to do that, yes.</p> <p>2 Q. And this would include taking chest</p> <p>3 x-rays, doing pulmonary function studies and</p> <p>4 physical examinations, correct?</p> <p>5 A. Yeah, as well as other testing, yes.</p> <p>6 Q. And, in fact, at some point in the</p> <p>7 1950s or earlier, Abex had a van that was</p> <p>8 equipped with chest x-ray machinery so that it</p> <p>9 can bring it to the gates of the facility and</p> <p>10 run its employees through it to take</p> <p>11 appropriate x-rays?</p> <p>12 A. Yes, as well as vans for hearing</p> <p>13 tests, pulmonary function and so on, yes.</p> <p>14 Q. One of the purposes for chest x-rays</p> <p>15 and breathing tests was the fact that Abex was</p> <p>16 aware that exposure to asbestos and other dust</p> <p>17 can cause lung diseases?</p> <p>18 A. Well, it was broader than that because</p> <p>19 Abex -- again, you started out the deposition</p> <p>20 talking about other divisions of Abex. We had</p> <p>21 castings and -- so there was concern about dust</p> <p>22 in general, silicosis, lead at the bronze</p> <p>23 foundries.</p> <p>24 So chest x-rays were typically used at</p> | <p style="text-align: center;">56</p> <p>1 Q. You were aware that Abex was one of</p> <p>2 the companies that sponsored the study?</p> <p>3 A. Yes.</p> <p>4 Q. And you were aware also from your</p> <p>5 review of historic documents that the sponsors</p> <p>6 of the study had an opportunity to comment on</p> <p>7 the study prior to its publication?</p> <p>8 A. Yes.</p> <p>9 Q. And, in fact, Dr. Hamlin offered</p> <p>10 specific comments about that study in writing</p> <p>11 prior to the meeting because he couldn't be</p> <p>12 present at the meeting, correct?</p> <p>13 A. That's not quite the way I remember</p> <p>14 it. I think Dr. Hamlin had some observations,</p> <p>15 but I think I recall seeing a document that</p> <p>16 said, yeah, I can't attend and another document</p> <p>17 that said, fine, publish it the way you see</p> <p>18 fit. So I don't think any of Dr. Hamlin -- I</p> <p>19 don't think Dr. Hamlin ever really changed the</p> <p>20 wording of the report.</p> <p>21 Q. But he did offer comments with regard</p> <p>22 to his perceptions of the report, the proposed</p> <p>23 report?</p> <p>24 A. I'll accept that he offered comments,</p>                     |
| <p style="text-align: center;">55</p> <p>1 all of the different businesses of Abex in a</p> <p>2 quest to try to safeguard our employees' health</p> <p>3 and to give heads-up if there were any kinds of</p> <p>4 issues that rose.</p> <p>5 Q. At least as it applies to the friction</p> <p>6 materials division, one of the occupational</p> <p>7 hazards that Abex was aware of and was</p> <p>8 screening its employees for was diseases caused</p> <p>9 by exposure to asbestos, correct?</p> <p>10 A. One of, yes.</p> <p>11 Q. And, in fact, Abex first started doing</p> <p>12 air sampling for asbestos dust in its plants in</p> <p>13 the 1940s at the Detroit plant, correct?</p> <p>14 A. That's right.</p> <p>15 Q. And the Detroit plant is where they</p> <p>16 made passenger car, light truck and heavy truck</p> <p>17 friction material?</p> <p>18 A. That's right.</p> <p>19 Q. We talked earlier about the fact that</p> <p>20 in 1936 Abex participated in asbestos dust</p> <p>21 studies at Saranac Lake, correct?</p> <p>22 A. We didn't participate. We were a</p> <p>23 funder. I think we funded \$200 to help Dr.</p> <p>24 Gardner progress his research on that topic.</p>                                           | <p style="text-align: center;">57</p> <p>1 yes.</p> <p>2 Q. And there's a letter that's dated</p> <p>3 November 3, 1948, that's on American Brake Shoe</p> <p>4 Company letterhead medical department that's</p> <p>5 computer -- not -- didn't have computers back</p> <p>6 then, but it's a typewritten signed by L.E.</p> <p>7 Hamlin. I'm just asking you if that's a letter</p> <p>8 you've seen before in this litigation with</p> <p>9 regard to the Saranac studies?</p> <p>10 A. I believe I have, but this copy is so</p> <p>11 poor that I can't really read it at all. If</p> <p>12 you have a better copy or --</p> <p>13 Q. I just want to make sure that that's</p> <p>14 what we're talking about.</p> <p>15 A. I think there were a series of letters</p> <p>16 that went back and forth between a Vandiver</p> <p>17 Brown at Johns Manville and, quote, Abex that</p> <p>18 dealt with that topic, but, ultimately, it was</p> <p>19 like, you know, fine, publish it.</p> <p>20 MR. GEORGE: We'll mark this as</p> <p>21 Exhibit 8.</p> <p>22 Q. I'm just going to turn your attention</p> <p>23 to the first sentence that says, "I have read</p> <p>24 carefully the report you've forwarded and am</p> |

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| <p style="text-align: right;">58</p> <p>1 returning it with my comments." And then he<br/> 2 goes on to give his comments.<br/> 3 (Exhibit No. 8, Letter, November 3,<br/> 4 1948, American Brake Shoe Company, Medical<br/> 5 Department so marked)<br/> 6 A. I agree that that's what the first<br/> 7 sentence says, and, honestly, I can't make out<br/> 8 the rest of the document at all. I don't even<br/> 9 know what the next line says.<br/> 10 Q. Now that was November 3, 1948. On<br/> 11 November 8, 1948, in a document that we'll mark<br/> 12 as Exhibit 9, there's a letter from the<br/> 13 executive vice president of the American<br/> 14 Brakeblok Division to Vandiver Brown that's<br/> 15 dated, like I said, November 8, 1948. This is<br/> 16 a letter that you've seen correspondence with<br/> 17 regard to Abex's sponsorship of Saranac Lake<br/> 18 studies, correct?<br/> 19 A. Yes.<br/> 20 (Exhibit No. 9, Letter to Vandiver<br/> 21 Brown, 10.6.48 so marked)<br/> 22 A. Again, that's hardly legible, but I do<br/> 23 recognize the letter.<br/> 24 Q. It says, "Thank you for your letter of</p> | <p style="text-align: right;">60</p> <p>1 thought you'd be interested in the remarks of<br/> 2 our medical director Dr. L.E. Hamlin in<br/> 3 connection with this report, and I am,<br/> 4 therefore, attaching a copy."<br/> 5 MR. RADCLIFFE: Object to form.<br/> 6 A. Yes, that's what it says.<br/> 7 Q. Now, there's a Bates stamping on the<br/> 8 bottom of this one that says CRMC 002653. Do<br/> 9 you have any idea what that Bates stamp is?<br/> 10 A. I do not.<br/> 11 Q. Now the meeting with regard to this<br/> 12 publication was held on November 11 in New York<br/> 13 City, correct?<br/> 14 A. November 11 when?<br/> 15 Q. 1948?<br/> 16 A. Okay.<br/> 17 Q. You've seen --<br/> 18 MR. GEORGE: Do you have a better copy<br/> 19 of the November 12 letter?<br/> 20 MR. RADCLIFFE: Yeah, but it's got<br/> 21 highlighting on it.<br/> 22 MR. GEORGE: That's okay.<br/> 23 Q. What you have in your hand is a letter<br/> 24 dated November 12, 1948, from Vandiver Brown to</p>                                                                                             |
| <p style="text-align: right;">59</p> <p>1 October 27, which has been reviewed by our<br/> 2 medical department, and while Dr. Hamlin would<br/> 3 like very much to be in attendance at the<br/> 4 meeting that you've scheduled for November 11,<br/> 5 it is impossible for him to do so. We would,<br/> 6 therefore, like to ask that you" something "for<br/> 7 us." You have a better copy of that right<br/> 8 there. "That you act for us in connection with<br/> 9 any decisions that have to be made." I'm just<br/> 10 going to --<br/> 11 MR. GEORGE: Is it all right if I mark<br/> 12 this?<br/> 13 MR. RADCLIFFE: Yes.<br/> 14 MR. GEORGE: It's a much cleaner copy.<br/> 15 MR. RADCLIFFE: I gave it to him so he<br/> 16 could read along, and you took it from him.<br/> 17 MR. GEORGE: I'll just read it, and<br/> 18 when I'm done, give it right back to him.<br/> 19 A. I'm not sure of the protocol.<br/> 20 MR. RADCLIFFE: I gave him another<br/> 21 copy.<br/> 22 (Exhibit No. 10, Letter to W.T. Kelly,<br/> 23 Jr., 11.12.48 so marked)<br/> 24 Q. And then he says at the end of it, "I</p>                   | <p style="text-align: right;">61</p> <p>1 Mr. Kelly, the executive vice president of<br/> 2 American Brakeblok, correct?<br/> 3 A. That's right.<br/> 4 Q. And what he's doing is reporting to<br/> 5 Mr. Kelly about the meeting since Abex was<br/> 6 unable to attend, correct?<br/> 7 A. That's right.<br/> 8 Q. And what he says is they've looked at<br/> 9 -- "We've read Dr. Hamlin's memorandum of<br/> 10 November 3, and it was the consensus that his<br/> 11 judgment was correct concerning the references<br/> 12 to pneumonia among the experimental animals."<br/> 13 Correct?<br/> 14 A. Yes.<br/> 15 Q. It goes on to to say that, "It was the<br/> 16 unanimous opinion, however, that the reference<br/> 17 to cancer and tumors should be deleted, and<br/> 18 this is a point we would insist upon for the<br/> 19 following reasons." Correct?<br/> 20 A. Yes.<br/> 21 Q. And what that means is when Dr.<br/> 22 Gardner had done his preliminary draft of the<br/> 23 Saranac experiments, he found that a number of<br/> 24 the mice had lung cancer or lung tumors that</p> |

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| <p style="text-align: right;">62</p> <p>1 were cancerous?</p> <p>2 A. That's not my understanding.</p> <p>3 Q. Well, he goes on to say, does he not,</p> <p>4 that the reason why they wanted to delete</p> <p>5 references to cancer and tumors were that the</p> <p>6 experiments were not directed toward</p> <p>7 determining the incidence, if any, of cancer as</p> <p>8 a result of asbestos exposure, correct?</p> <p>9 MR. RADCLIFFE: Object to form.</p> <p>10 A. It says, "And that the strain of the</p> <p>11 mice" -- "white mice."</p> <p>12 Q. We'll go through each one of them.</p> <p>13 That's the first one, correct?</p> <p>14 A. Yes.</p> <p>15 Q. The second one was "Dr. Gardner</p> <p>16 indicated prior to his death that he believed</p> <p>17 this aspect should be made the subject of a</p> <p>18 separate study which would take from to two</p> <p>19 three years." Correct?</p> <p>20 A. That's my understanding, and, in fact,</p> <p>21 Dr. Gardner went for funding from the</p> <p>22 government to study that and was rejected.</p> <p>23 Q. Dr. Gardner was the one that was</p> <p>24 originally contracted to do these experiments,</p>                                                     | <p style="text-align: right;">64</p> <p>1 these studies?</p> <p>2 A. It says "to be conducted by Leroy</p> <p>3 Gardner at the Saranac Laboratories." We got</p> <p>4 enough lawyers in the room. You guys can tell</p> <p>5 me the contract law. Whether it was Saranac</p> <p>6 Labs or Dr. Gardner, I can't tell you.</p> <p>7 Q. Now, I just want to finish with regard</p> <p>8 to the cancer references. The third reason why</p> <p>9 they made a unanimous opinion to delete</p> <p>10 references to cancer and tumors was that Dr.</p> <p>11 Gardner also indicated that he believed the</p> <p>12 question of cancer susceptibility would be</p> <p>13 omitted from the report. "This statement is</p> <p>14 contained in his letter to me of February 24,</p> <p>15 1943, with which he enclosed his outline of a</p> <p>16 proposed monograph on asbestosis." That's what</p> <p>17 it says, correct?</p> <p>18 A. It does say that.</p> <p>19 Q. It also appears from Dr. Gardner's</p> <p>20 outline that certain strains of white mice</p> <p>21 developed tumors without apparent cause and</p> <p>22 that such a strain of white mice was</p> <p>23 unintentionally used in three inhalation</p> <p>24 experiments with asbestos. Correct?</p>         |
| <p style="text-align: right;">63</p> <p>1 correct?</p> <p>2 A. Well, again, you know, from a legal</p> <p>3 point of view, I don't know if the contract was</p> <p>4 with the Saranac Laboratories or Dr. Gardner,</p> <p>5 so I don't know. It was Gardner who worked at</p> <p>6 Saranac labs. Upon his death one of his</p> <p>7 colleagues finished up his work. I presume the</p> <p>8 contract, quote, was with Saranac Laboratories.</p> <p>9 Q. Dr. Gardner died in 1946, correct?</p> <p>10 A. I think that's correct.</p> <p>11 Q. Just to clarify that earlier point</p> <p>12 that you made -- and we'll mark this as Exhibit</p> <p>13 No. 11 -- this is the memorandum of agreement</p> <p>14 dated November 20, 1936. And it is signed --</p> <p>15 one of the signatories is the vice president of</p> <p>16 American Brakeblok Corporation. Let me just</p> <p>17 show you that memoranda and agreement and ask</p> <p>18 if you've seen that before.</p> <p>19 (Exhibit No. 11, Memorandum of</p> <p>20 Agreement, 11.20.36 so marked)</p> <p>21 A. Yes.</p> <p>22 Q. And that memorandum agreement</p> <p>23 indicates, does it not, that these entities</p> <p>24 were contracting with Dr. Gardner to conduct</p> | <p style="text-align: right;">65</p> <p>1 A. Yes.</p> <p>2 Q. Would you agree with me that the tenor</p> <p>3 of this letter suggests that during his</p> <p>4 experimentation Dr. Gardner determined that</p> <p>5 some of the mice in the experiment developed</p> <p>6 lung cancers or tumors of the lung?</p> <p>7 A. Well, I don't agree with you. I think</p> <p>8 it's absolutely out of context. From other</p> <p>9 documents that I've read I've gleaned and have</p> <p>10 the position that there was no controlled</p> <p>11 animals. The whole study was flawed, and I</p> <p>12 think there's a lot of speculation that that</p> <p>13 was probably why Dr. Gardner was turned down</p> <p>14 for additional funding when he went to, I</p> <p>15 believe it was, the National Cancer Society, or</p> <p>16 some entity like that, for additional funding.</p> <p>17 Q. Have you seen the proposed monograph</p> <p>18 from Dr. Gardner and the revised monograph?</p> <p>19 A. I don't believe I have, no.</p> <p>20 Q. Okay. Now, you would agree with me --</p> <p>21 and I'm going to show you a letter from October</p> <p>22 27, 1948, that occurred prior to this meeting.</p> <p>23 MR. GEORGE: And we'll mark this as</p> <p>24 Exhibit 12.</p> |

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| <p style="text-align: right;">66</p> <p>1 (Exhibit No. 12, Saranac Laboratory<br/>2 Asbestos Dust Experiments so marked)</p> <p>3 Q. That the companies that sponsored this<br/>4 research were given copies of the draft of what<br/>5 purported to be part one of a report from<br/>6 Saranac Laboratories entitled Pneumoconiosis.<br/>7 Let me just first show you this<br/>8 correspondence which I'll mark as Exhibit 12.<br/>9 This is from Vandiver Brown, secretary and<br/>10 general attorney to American Brakeblok Division<br/>11 of A.B.S.A.P and others, October 27, 1948?</p> <p>12 A. Let's clarify, Vandiver Brown was not<br/>13 with Abex. He was --</p> <p>14 Q. Understood.</p> <p>15 A. Okay. Well, the way you said it, it<br/>16 sounded like you were saying he was from Abex.</p> <p>17 Q. He was general counsel from<br/>18 Raybestos-Manhattan?</p> <p>19 A. I believe that's correct, yes.</p> <p>20 Q. Raybestos-Manhattan was --</p> <p>21 MR. RADCLIFFE: He was general counsel<br/>22 to Johns Manville.</p> <p>23 THE WITNESS: You're right. I'm<br/>24 sorry.</p> | <p style="text-align: right;">68</p> <p>1 Saranac Laboratory entitled, 'Asbestos<br/>2 Pneumoconiosis.'" That's what the opening<br/>3 paragraph says, correct?</p> <p>4 A. Yes.</p> <p>5 Q. In his correspondence that we've<br/>6 looked at previously from November 12, 1948, he<br/>7 states that after talking about the unanimous<br/>8 opinion to omit references to cancer and<br/>9 tumors --</p> <p>10 A. What document are you looking at?</p> <p>11 Q. The November 12, 1948, the one we<br/>12 marked previously, on the back side he says<br/>13 that "We have retrieved all the copies of this<br/>14 tentative and confidential report except the<br/>15 one we sent you." And he's writing to Mr.<br/>16 Kelly who is the executive vice president of<br/>17 Abex, correct?</p> <p>18 A. That's right, yes.</p> <p>19 Q. "Which I note Dr. Hamlin would like to<br/>20 keep. I wish, however, you would prevail upon<br/>21 him to return it to us. Everyone felt that it<br/>22 would be most unwise to have any copies of the<br/>23 draft report outstanding if the final report is<br/>24 to be different in any substantial respect.</p> |
| <p style="text-align: right;">67</p> <p>1 Q. Johns Manville at the time was of one<br/>2 the leading manufacturers of asbestos products<br/>3 in the United States, correct?</p> <p>4 MR. RADCLIFFE: Object to form.</p> <p>5 A. They were a principal miner of<br/>6 asbestos.</p> <p>7 Q. What Vandiver Brown did is he sent<br/>8 copies -- well, first of all, have you seen<br/>9 that correspondence before?</p> <p>10 A. I don't believe I have.</p> <p>11 Q. According to that letter, he sent<br/>12 copies of the proposed publication for review<br/>13 by the committee members, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And he wanted them to keep it<br/>16 confidential, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Let me see that for just a second.</p> <p>19 A. (Witness complies)</p> <p>20 Q. In fact, he said, "With the request<br/>21 that you treat with it with the utmost<br/>22 confidence and make it available to no one<br/>23 outside your organization, I'm enclosing what<br/>24 purports to be part one of a report by the</p>                                         | <p style="text-align: right;">69</p> <p>1 The feeling of the representatives of the<br/>2 various companies was very emphatic on this<br/>3 point." Correct?</p> <p>4 MR. RADCLIFFE: Object to form.</p> <p>5 A. That's what Vandiver Brown wrote to<br/>6 Mr. Kelly at Abex, yes.</p> <p>7 Q. He also sent a copy of the letter to<br/>8 Dr. Hamlin, correct?</p> <p>9 A. I don't see that.</p> <p>10 Q. "I'm enclosing an extra copy of this<br/>11 letter in case you wish to send it to Dr.<br/>12 Hamlin"?</p> <p>13 A. Okay, yeah, last sentence. I'm sorry.</p> <p>14 Q. And then on November 16, 1948, a<br/>15 document we'll mark as Exhibit 13, then Mr.<br/>16 Kelly acknowledges receiving that letter and<br/>17 says, "Since we have the only stray copy of the<br/>18 tentative report, I am asking Dr. Hamlin to<br/>19 return it directly to you."</p> <p>20 A. Yes, I'm familiar with that document.</p> <p>21 (Exhibit No. 13, Letter to Vandiver<br/>22 Brown, 11.16.48 so marked)</p> <p>23 Q. Okay. This report was ultimately<br/>24 published in 1951, correct?</p>                                                                   |

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| <p style="text-align: right;">70</p> <p>1 A. Yes.</p> <p>2 Q. And at the time it was published,</p> <p>3 there was no reference to cancer in the report,</p> <p>4 correct?</p> <p>5 MR. RADCLIFFE: Objection to form.</p> <p>6 A. That's right.</p> <p>7 Q. Let me ask you: Have you ever seen --</p> <p>8 this is a document, it says copy. It's</p> <p>9 confidential. It's dated March 19, 1949. It</p> <p>10 says Saranac report. It's from Kenneth W.</p> <p>11 Smith, M.D., and the only recipient that's not</p> <p>12 Xed out, if there was any others, George K.</p> <p>13 Foster. And it's a report on experimental</p> <p>14 asbestosis has been reviewed, and attached are</p> <p>15 some summary of findings. I'm just curious as</p> <p>16 to whether you have seen that document in the</p> <p>17 files of Abex?</p> <p>18 A. I don't recall seeing this document.</p> <p>19 I have no knowledge as to who Foster or Smith</p> <p>20 are either.</p> <p>21 Q. After Mr. Hamlin the next medical</p> <p>22 director of Abex was Dr. Blackwell, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And Dr. Blackwell started in 1961.</p> | <p style="text-align: right;">72</p> <p>1 Manville, yes.</p> <p>2 Q. You also were supplied from Lake</p> <p>3 Asbestos in Quebec, Canada, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Bell Asbestos Mines in Quebec?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Asbestos Corporation in Quebec?</p> <p>8 A. Yes, sir.</p> <p>9 Q. The GAF Corporation in Vermont?</p> <p>10 A. Yes.</p> <p>11 Q. And the Vermont Asbestos Group?</p> <p>12 A. Yes.</p> <p>13 Q. I'm going to show you a letter -- it's</p> <p>14 actually two letters. The first one is from</p> <p>15 Anthony Lanza to Mr. Arthur Fiske of the legal</p> <p>16 department of Johns Manville. It's dated March</p> <p>17 5, 1952. The second is his response dated</p> <p>18 February 20, 1952.</p> <p>19 Actually, the first one was February</p> <p>20 20, 1952, and the response is March 5, 1952,</p> <p>21 both deal with the labelling of asbestos fiber.</p> <p>22 MR. RADCLIFFE: Object to form.</p> <p>23 Q. My first question is whether you've</p> <p>24 seen either one of those letters prior to</p>                                                                                                                                             |
| <p style="text-align: right;">71</p> <p>1 His name was Charles C. Blackwell, correct?</p> <p>2 A. That's right.</p> <p>3 Q. Now, the office of the medical</p> <p>4 director was in Chicago, correct?</p> <p>5 A. Yes, in the greater Chicago area.</p> <p>6 Q. Dr. Blackwell was the medical director</p> <p>7 of Abex from 1961 until 1976, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Is Dr. Blackwell still alive?</p> <p>10 A. Not to my knowledge. I mean, I don't</p> <p>11 know. I really just don't know. Although, I</p> <p>12 think -- can I see our interrogatories</p> <p>13 because --</p> <p>14 Q. It doesn't say anything. It just says</p> <p>15 deceased for the other two, but it doesn't have</p> <p>16 anything.</p> <p>17 A. I knew one of them was showing</p> <p>18 deceased. I thought it might have been</p> <p>19 Blackwell. If it doesn't say in there, then my</p> <p>20 answer stands. I'm not sure if he's alive or</p> <p>21 not.</p> <p>22 Q. Would you agree that Abex purchased</p> <p>23 asbestos fiber from Johns Manville since 1950?</p> <p>24 A. One of our suppliers was Johns</p>                      | <p style="text-align: right;">73</p> <p>1 today?</p> <p>2 MR. RADCLIFFE: Object to form.</p> <p>3 A. No. You showed them to me just before</p> <p>4 the deposition started, but I hadn't seen them</p> <p>5 prior to that.</p> <p>6 Q. What those letters indicate is that</p> <p>7 Johns Manville was consulting with Dr. Lanza</p> <p>8 with regard to cautionary language to put on</p> <p>9 its bags of asbestos, correct?</p> <p>10 MR. RADCLIFFE: Object to form.</p> <p>11 A. I don't know. I mean, these weren't</p> <p>12 Abex documents. I've not seen them before.</p> <p>13 You're asking me for an interpretation of a</p> <p>14 letter from a physician to a corporate guy. I</p> <p>15 don't know.</p> <p>16 Q. I want you to assume that this letter</p> <p>17 from Arthur Fiske, who is with the legal</p> <p>18 department of Johns Manville, asks -- tells Dr.</p> <p>19 Lanza that "It is our intention to label our</p> <p>20 bags containing asbestos fiber using the</p> <p>21 following: Caution, asbestos fiber.</p> <p>22 Inhalation of asbestos fiber over long periods</p> <p>23 may be harmful. The materials should be used</p> <p>24 as not to create dust or if this is not</p> |

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| <p style="text-align: right;">74</p> <p>1 possible, employees should be equipped with</p> <p>2 adequate protective devices."</p> <p>3 With that assumption, can you tell me</p> <p>4 when Abex first realized that there were</p> <p>5 cautionary labels on the bags of asbestos that</p> <p>6 it was being provided from those companies that</p> <p>7 we discussed earlier?</p> <p>8 MR. RADCLIFFE: Object to form.</p> <p>9 A. Well, irrespective of those letters,</p> <p>10 based on my personal knowledge, I believe that</p> <p>11 we started to see some bags of asbestos appear</p> <p>12 at the Winchester plant in the very early 1970s</p> <p>13 with some labels on them like that similar to</p> <p>14 that. Whether they were exactly the same as</p> <p>15 that, I couldn't say for sure.</p> <p>16 Q. Have you done any investigation to</p> <p>17 determine when Johns Manville, GAF or these</p> <p>18 other companies first put warnings on their</p> <p>19 bags -- not warnings, cautionary language on</p> <p>20 their bags of asbestos?</p> <p>21 A. I haven't found any documents that</p> <p>22 would support a firm position. I can tell you</p> <p>23 from my personal knowledge having been at the</p> <p>24 Winchester plant, I started to see them on some</p> | <p style="text-align: right;">76</p> <p>1 were in the 19 -- very early 1970s, and I</p> <p>2 remember seeing a hand rubber stamp going on</p> <p>3 boxes of Abex product that had a warning or</p> <p>4 cautionary statement and that was about the</p> <p>5 same time as I recall seeing some bags of</p> <p>6 asbestos containing that warning or similar</p> <p>7 warning.</p> <p>8 Q. You just said that you saw them in the</p> <p>9 early '70s. I'm looking at your sworn Answers</p> <p>10 to Interrogatories in this case, and you stated</p> <p>11 that "Due to concerns of the use of asbestos</p> <p>12 and regulatory action for some products that</p> <p>13 contained asbestos, starting in the early to</p> <p>14 mid 1970s Abex commenced the placement of</p> <p>15 warning labels on those friction materials that</p> <p>16 contained asbestos." That's what you wrote,</p> <p>17 correct?</p> <p>18 A. Yeah. And I guess the only difference</p> <p>19 from what I'm saying today is today I'm saying</p> <p>20 early 1970s, and there I'm saying early to mid.</p> <p>21 Q. You would agree with me that you have</p> <p>22 no documentation that pinpoints the exact point</p> <p>23 in time when Abex first placed any cautionary</p> <p>24 language on any product that it sold that</p> |
| <p style="text-align: right;">75</p> <p>1 bags in the early 1970s.</p> <p>2 Q. And by that statement you're saying</p> <p>3 some bags had cautionary language and other</p> <p>4 bags didn't?</p> <p>5 A. Well, from some suppliers because we</p> <p>6 would have comingling of some fiber that was</p> <p>7 procured from Johns Manville, other from Bell,</p> <p>8 other from Lake, other from GAF, and I don't</p> <p>9 remember if the warnings were on one brand of</p> <p>10 asbestos, if you will, or another.</p> <p>11 Q. And the reason why I call them</p> <p>12 cautionary language is because the word</p> <p>13 "warning" wasn't used on those labels, correct?</p> <p>14 A. Okay. Again, I don't recall the exact</p> <p>15 wording, but materially that was the warning</p> <p>16 that I recall. Whether it was called a warning</p> <p>17 or cautionary label, I can't tell you.</p> <p>18 Q. Would you agree with me that</p> <p>19 cautionary labels were on the bags of asbestos</p> <p>20 fibers received from Abex before Abex ever put</p> <p>21 any cautionary labels on asbestos products that</p> <p>22 it manufactured?</p> <p>23 A. I see the time very close and somewhat</p> <p>24 overlapping. My first visits to Winchester</p>                             | <p style="text-align: right;">77</p> <p>1 contained asbestos?</p> <p>2 A. I have not come across a document that</p> <p>3 pinpoints the specific date that it started,</p> <p>4 but I can tell you from my own personal</p> <p>5 knowledge and being in that factory and when I</p> <p>6 was certainly in the quality assurance area,</p> <p>7 part of our responsibility was to put warnings</p> <p>8 on the boxes so....</p> <p>9 Q. You continue to use the terminology</p> <p>10 "warnings." You would agree with me that the</p> <p>11 language that was put on the packages of</p> <p>12 materials that were manufactured by Abex simply</p> <p>13 stated "caution, contains asbestos fiber,"</p> <p>14 correct?</p> <p>15 A. Yes. In my definition of that is a</p> <p>16 warning.</p> <p>17 Q. Okay. It doesn't contain the word</p> <p>18 "warning"?</p> <p>19 A. The word "warning," no, it does not.</p> <p>20 Q. Is also doesn't contain any</p> <p>21 information with regard to cancer, correct?</p> <p>22 A. That's right.</p> <p>23 MR. RADCLIFFE: Object to form.</p> <p>24 Q. And, in fact, while it states that the</p>                                                                                                                                                                       |

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| <p style="text-align: center;">78</p> <p>1 product contains asbestos fibers, it tells the</p> <p>2 user to avoid creating dust, correct?</p> <p>3 A. Yes.</p> <p>4 Q. But it doesn't tell the user how to</p> <p>5 avoid creating dust, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. It doesn't tell the user what to do if</p> <p>8 dust is created?</p> <p>9 A. No, it doesn't.</p> <p>10 Q. It says "breathing asbestos dust may</p> <p>11 cause serious bodily harm." Correct?</p> <p>12 A. Yes.</p> <p>13 Q. But it does not define what that</p> <p>14 bodily harm is, correct?</p> <p>15 A. That's right.</p> <p>16 Q. To the best of your knowledge, this</p> <p>17 cautionary language which was put on your</p> <p>18 product sometime starting in early to mid</p> <p>19 1970s, that warning -- that language was never</p> <p>20 changed throughout the time up until 1987 when</p> <p>21 Abex stopped selling asbestos-containing brake</p> <p>22 linings, correct?</p> <p>23 A. To my knowledge we never changed that</p> <p>24 warning statement.</p>             | <p style="text-align: center;">80</p> <p>1 A. I knew Don Rennie in a couple of</p> <p>2 capacities. For a while he was the corporate</p> <p>3 VP for human resources, and for a while he was</p> <p>4 I believe the VP of operations for the friction</p> <p>5 division of Abex.</p> <p>6 Q. And you've seen this letter before,</p> <p>7 correct?</p> <p>8 A. I believe I have.</p> <p>9 Q. This is another document that has that</p> <p>10 SPNY Bates numbering on the bottom, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Now, this is a letter of October 8,</p> <p>13 1964, wherein Mr. Rennie is sending to Dr.</p> <p>14 Blackwell an article from The Pontiac Press</p> <p>15 that was brought to his attention, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And the attached article is entitled</p> <p>18 Medical Specialists Suspect Asbestos As a Cause</p> <p>19 of Cancer. Correct?</p> <p>20 A. Yes.</p> <p>21 Q. It says that "Medical specialists</p> <p>22 pointed a strong finger of suspicion today at</p> <p>23 asbestos as not as a cause not only of lung</p> <p>24 cancer but also of another extremely rare form</p> |
| <p style="text-align: center;">79</p> <p>1 MR. GEORGE: Do you want to take a</p> <p>2 break?</p> <p>3 THE WITNESS: Yeah, I think that would</p> <p>4 be great, sure.</p> <p>5 MR. GEORGE: Why don't we take a</p> <p>6 break.</p> <p>7 THE VIDEOGRAPHER: The time is now</p> <p>8 12:31 p.m. We're going off the record.</p> <p>9 (Recess 12:31 p.m. to 12:40 p.m.)</p> <p>10 THE VIDEOGRAPHER: The time is now</p> <p>11 12:41 p.m. We are back on the record.</p> <p>12 BY MR. GEORGE:</p> <p>13 Q. We were talking about cautionary</p> <p>14 labels that were placed on Abex products in the</p> <p>15 early to mid '70s. I want to go back in time a</p> <p>16 lit bit. I want to show you what we'll mark as</p> <p>17 Exhibit 14, which is a letter from D.K. Rennie,</p> <p>18 R-E-N-N-I-E, to Dr. C. C. Blackwell, medical</p> <p>19 director, American Brake Shoe Company, dated</p> <p>20 October 8, 1964.</p> <p>21 (Exhibit No. 14, Letter to C.C.</p> <p>22 Blackwell, 10.8.64 so marked)</p> <p>23 Q. First of all, can you tell me who D.K.</p> <p>24 Rennie is?</p> | <p style="text-align: center;">81</p> <p>1 of fatal human cancer. This cancer known as</p> <p>2 mesothelioma involves the lining of the</p> <p>3 abdominal and chest cavities," is what the</p> <p>4 article says, correct?</p> <p>5 A. Yes.</p> <p>6 Q. It says after -- the second paragraph</p> <p>7 after "marked increase" says, "Now they also</p> <p>8 find a markedly high incidence among such</p> <p>9 workers of mesothelioma, a cancer so rare it is</p> <p>10 not classed separately as a cause of death in</p> <p>11 international classification of diseases."</p> <p>12 Correct?</p> <p>13 A. Yes.</p> <p>14 Q. At the end of the column entitled High</p> <p>15 Incidence it says, "The cancers may not appear</p> <p>16 until 20 to 30 years after asbestos dust is</p> <p>17 inhaled or swallowed they said," correct?</p> <p>18 A. Yes.</p> <p>19 Q. The "they" that they're referring to</p> <p>20 is Dr. Selikoff and Dr. Churg at the Mount</p> <p>21 Sinai Hospital?</p> <p>22 A. I haven't read this article, so I</p> <p>23 can't say -- okay, I do see Selikoff's name</p> <p>24 referenced here, yes.</p>  |

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| <p style="text-align: right;">82</p> <p>1 Q. The last column says, "Dr. Hammond<br/>2 said one worry is whether a few or even a<br/>3 single past exposure might set the stage for<br/>4 cancer. He said this is a matter calling for<br/>5 more research. Taking precautions to avoid<br/>6 breathing in asbestos dust is a main protection<br/>7 for industrial workers, he and Dr. Selikoff<br/>8 said." That's what that Pontiac Press article<br/>9 that Mr. Rennie was sending to Dr. Blackwell,<br/>10 correct?</p> <p>11 A. That's right. And he was sending it<br/>12 with regard to licensees and presumably having<br/>13 to give him an alert that maybe we should be<br/>14 doing more outside the United States. That's<br/>15 my take on that letter.</p> <p>16 MR. GEORGE: Movie to strike as<br/>17 nonresponsive everything after yes.</p> <p>18 Q. There was a response to that letter by<br/>19 Dr. Blackwell, correct, dated October 13, 1964?</p> <p>20 MR. GEORGE: And we'll mark it as<br/>21 Exhibit 15.</p> <p>22 (Exhibit No. 15, Letter to William<br/>23 Veenstre, 10.13.64 so marked)</p> <p>24 Q. That's a letter you've seen before,</p> | <p style="text-align: right;">84</p> <p>1 also wrote to me at about the same time you did<br/>2 concerning this particular item," which was a<br/>3 clipping concerning asbestosis and<br/>4 mesothelioma, correct?</p> <p>5 A. It doesn't say that.</p> <p>6 Q. Let's just read. For the record, it<br/>7 says, "Dear Bill, thank you for your note of<br/>8 October 7, 1964," which predated Mr. Rennie's<br/>9 by a day, correct?</p> <p>10 A. Yes.</p> <p>11 Q. "And for the clipping concerning<br/>12 asbestosis. The problem of mesotheliomas in<br/>13 individuals exposed to asbestos is pretty well<br/>14 known in industry. It is interesting that Don<br/>15 Rennie also wrote to me at about the same time<br/>16 you did concerning this particular item."<br/>17 That's what it's written, correct?</p> <p>18 A. Yes.</p> <p>19 Q. It says, "Up until the present time,<br/>20 based on our industrial hygiene surveys, we<br/>21 have not had any great concern about asbestos<br/>22 exposure among our employees, but there is<br/>23 certainly the need for continued vigilance."<br/>24 That's what he wrote, correct?</p> |
| <p style="text-align: right;">83</p> <p>1 correct?</p> <p>2 A. No, I don't recall seeing this one.<br/>3 Wait, let me read it first. This letter, I<br/>4 have seen this before, and I don't understand<br/>5 this to have any relation to the previous<br/>6 letters that you've shown me or articles.</p> <p>7 Q. The article that Mr. Rennie said -- he<br/>8 sent it to him October 8, correct, and talked<br/>9 about mesothelioma. And this is a letter that<br/>10 Dr. Blackwell is sending to --</p> <p>11 A. Purchasing department.</p> <p>12 Q. About five days later in 1964,<br/>13 correct?</p> <p>14 A. Right.</p> <p>15 Q. And one of the people that's listed on<br/>16 top is D.K. Rennie -- actually D.R. Rennie?</p> <p>17 A. Somebody wrote that in, but it's not<br/>18 part of the letter. And nor do I see that Dr.<br/>19 Blackwell has officially carbon copied Mr.<br/>20 Rennie. So I have no way to assure that this<br/>21 has anything to do with the Pontiac Press<br/>22 article.</p> <p>23 Q. Other than it says in the third full<br/>24 sentence, "It is interesting that Don Rennie</p>                                              | <p style="text-align: right;">85</p> <p>1 A. Yes.</p> <p>2 Q. One of the reasons why the plant<br/>3 personnel, they didn't have any great concern<br/>4 was because there were industrial hygiene<br/>5 measures that were employed in the plant<br/>6 including exhaust ventilation, correct?</p> <p>7 A. What's your question?</p> <p>8 Q. My question is: One of the reasons<br/>9 why Dr. Blackwell said they didn't have any<br/>10 great concern about asbestos exposure among<br/>11 their employees was the fact that there were<br/>12 industrial hygiene measures that were in place<br/>13 at the plant for people using asbestos?</p> <p>14 A. Yes, that was one.</p> <p>15 MR. RADCLIFFE: Object to form.</p> <p>16 A. One factor.</p> <p>17 Q. So they had exhaust ventilation that<br/>18 reduced the amount of dust that these people<br/>19 were exposed to, correct?</p> <p>20 A. Yes. It was encapsulated in a resin.<br/>21 I mean, there were numerous factors, but that<br/>22 was one factor. If that was your question,<br/>23 yes, that was one factor.</p> <p>24 Q. Now seven days later on October 20,</p>          |

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| <p style="text-align: right;">86</p> <p>1 1964, there was another letter from Dr.<br/> 2 Blackwell to Mr. R.B. Parker management<br/> 3 personnel, New York office.<br/> 4 MR. GEORGE: We'll mark this as<br/> 5 Exhibit 16.<br/> 6 (Exhibit No. 16, Letter to R.B.<br/> 7 Parker, 10.20.64 so marked)<br/> 8 Q. Is that a document that you've seen<br/> 9 before?<br/> 10 A. If you let me see it, I'll tell you.<br/> 11 Yes, I believe I have seen this before.<br/> 12 Q. Who is Mr. Parker?<br/> 13 A. I never knew a Mr. Parker.<br/> 14 Q. Okay. But you did have a New York<br/> 15 office --<br/> 16 A. We did.<br/> 17 Q. -- at Abex? It says in the last<br/> 18 sentence of the first paragraph, "Management<br/> 19 has been aware of the occupational hazards<br/> 20 associated with this material." And they're<br/> 21 talking about asbestos, correct?<br/> 22 A. Yes.<br/> 23 Q. "In the April 6, 1964 issue of the<br/> 24 Journal of American Medical Association,</p>                                                                                                                                                                                | <p style="text-align: right;">88</p> <p>1 the document or comment on it.<br/> 2 Q. Take your time to read it.<br/> 3 A. How about I just read it aloud.<br/> 4 Q. Take your time and read it to<br/> 5 yourself, and I'll ask you questions about it.<br/> 6 MR. GEORGE: We can go off the record<br/> 7 for a second.<br/> 8 THE VIDEOGRAPHER: The time is 10:50<br/> 9 a.m. Going off record.<br/> 10 (Recess 12:50 p.m. to 12:52 p.m.)<br/> 11 THE VIDEOGRAPHER: The time 12:52 p.m.<br/> 12 Back on the record.<br/> 13 BY MR. GEORGE:<br/> 14 Q. You would agree with me that what this<br/> 15 letter is addressing is the fact that these<br/> 16 researchers from Mount Sinai, including Dr.<br/> 17 Selikoff and others, had determined that there<br/> 18 was an increased risk of cancer of the lung and<br/> 19 the pleura in workers exposed to asbestos?<br/> 20 A. I would agree that Dr. Selikoff's<br/> 21 group said essentially what you're saying for<br/> 22 people that were exposed for long periods of<br/> 23 time. Frequent and prolonged exposures is the<br/> 24 terminology that's used in this letter.</p>                     |
| <p style="text-align: right;">87</p> <p>1 there's an article by I.J. Selikoff, M.D., J.<br/> 2 Churg, M.D., E.C. Hammond, D.Sc. on 'asbestos<br/> 3 exposure and neoplasia.' It is this same group<br/> 4 and the findings described in this article<br/> 5 which have prompted numerous newspaper articles<br/> 6 which so many of us are reading." That's what<br/> 7 Dr. Blackwell wrote, correct?<br/> 8 A. Yes.<br/> 9 Q. Basically what he's saying is these<br/> 10 news articles are all based on the fact that<br/> 11 scientists at Mount Sinai have found an<br/> 12 increased risk of mesothelioma among workers<br/> 13 who worked with asbestos?<br/> 14 A. It doesn't say that in this letter<br/> 15 but....<br/> 16 Q. Well, it says, "in the select group of<br/> 17 workers," the first sentence of the third<br/> 18 paragraph?<br/> 19 A. I don't know what select group of<br/> 20 workers -- I mean, I'm just -- I'm really<br/> 21 uncomfortable. I really feel like you're<br/> 22 taking things, a sentence here and a sentence<br/> 23 there and trying to paint a picture that suits<br/> 24 you, and you're not giving me a chance to read</p> | <p style="text-align: right;">89</p> <p>1 Q. Okay. And Dr. Blackwell's comment on<br/> 2 that was, "Despite the fact of this publicity,<br/> 3 I do not feel that there will be further and/or<br/> 4 sufficient publicity on the basis of present<br/> 5 studies on asbestos as it relates to human<br/> 6 health to the point where it would affect the<br/> 7 asbestos brake lining exposure of the general<br/> 8 populous." That's what he wrote, correct?<br/> 9 A. That's right.<br/> 10 Q. Now, as of this time, October 1964,<br/> 11 Abex hasn't put any cautionary language on any<br/> 12 product that it's selling that contained<br/> 13 asbestos, correct?<br/> 14 A. I believe that to be correct, yes.<br/> 15 Q. In fact, at this point in time, the<br/> 16 mid 1960s, at least as of 1964, Abex was only<br/> 17 selling asbestos brake linings and asbestos<br/> 18 clutch face linings because they hadn't yet<br/> 19 developed any nonasbestos product?<br/> 20 A. That's right.<br/> 21 Q. I want to show you what I'll mark as<br/> 22 Exhibit 17.<br/> 23 (Exhibit No. 17, Memo to J.D.<br/> 24 Henderson, 3.25.68 so marked)</p> |

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| <p style="text-align: right;">90</p> <p>1 Q. Which is a letter dated March 25,<br/>2 1968, and it's from G.M. Theodore to J.D.<br/>3 Henderson, and the subject is Liberty Mutual<br/>4 Safety Management Institute. It's an<br/>5 interoffice correspondence of the Abex<br/>6 Corporation.<br/>7 A. Specifically, it's the Denison<br/>8 Hydraulics Division of Abex. It has nothing to<br/>9 do with the brake business of Abex.<br/>10 Q. Well, you would agree this is a<br/>11 business record of the Abex Corporation?<br/>12 A. Yes, but not the friction business.<br/>13 Q. And Mr. Theodore, do you know who he<br/>14 was?<br/>15 A. Never heard of him.<br/>16 Q. Mr. Theodore, according to this<br/>17 document, apparently attended a session that<br/>18 was put on by the Liberty Mutual Safety<br/>19 Management Institute, correct?<br/>20 A. That's what it says.<br/>21 Q. And one of the things he learned, one<br/>22 of the things that was discussed was product<br/>23 liability in relation to large lawsuits for<br/>24 improper warnings against hazards on products</p>                             | <p style="text-align: right;">92</p> <p>1 world. And because one guy at one division<br/>2 totally unrelated to what we've been talking<br/>3 about today went to a conference and wrote a<br/>4 memo I think is totally out of context.<br/>5 Q. Is it your testimony as the corporate<br/>6 representative for Abex that the only<br/>7 individual in the Abex Corporation that knew<br/>8 that there was potential product liability when<br/>9 improper warnings were placed on products was<br/>10 Mr. Theodore?<br/>11 MR. RADCLIFFE: Object to form.<br/>12 A. No.<br/>13 Q. I want to show you what we'll mark as<br/>14 Exhibit 18.<br/>15 (Exhibit No. 18, Report On FMSI<br/>16 Asbestos Study Committee Activities so marked)<br/>17 Q. This is a report on the FMSI Asbestos<br/>18 Study Committee activities that's signed by<br/>19 I.H. Weaver, chairman.<br/>20 A. Mr. Weaver wasn't an Abex person.<br/>21 Q. Understood. Mr. Weaver was the<br/>22 president of Raybestos-Manhattan, correct?<br/>23 A. I don't know --<br/>24 MR. RADCLIFFE: Object to form.</p> |
| <p style="text-align: right;">91</p> <p>1 produced?<br/>2 MR. RADCLIFFE: Object to form.<br/>3 Q. That's what he wrote, correct?<br/>4 MR. RADCLIFFE: Object to form.<br/>5 A. "Product liability was also discussed<br/>6 in relation to improper warnings."<br/>7 Q. And as of March 1968, at least some<br/>8 members of the Abex Corporation understood that<br/>9 there was the possibility of product liability<br/>10 if there were improper warnings against hazards<br/>11 that were put on product produced?<br/>12 MR. RADCLIFFE: Object to form.<br/>13 A. Your question, please?<br/>14 Q. My question is: You would agree with<br/>15 me that as of March 25, 1968, there were<br/>16 members of the Abex Corporation that were aware<br/>17 that there was probably product liability for<br/>18 improper warnings against hazards on products<br/>19 produced?<br/>20 MR. RADCLIFFE: Object to form.<br/>21 A. I would agree in the context of the<br/>22 Denison Division of Abex. I mean, Abex was a<br/>23 big corporation, and it had 50 or 60 factories,<br/>24 had four divisions scattered all over the</p> | <p style="text-align: right;">93</p> <p>1 A. -- what his job was. I knew he was on<br/>2 the Asbestos Study Committee.<br/>3 Q. First of all, we talked about it<br/>4 earlier that Abex was a member of an<br/>5 organization called the Friction Materials<br/>6 Standard Institute, correct?<br/>7 A. That's right.<br/>8 Q. Now, the predecessor to that<br/>9 organization was the -- well, strike that.<br/>10 According to your interrogatories,<br/>11 Abex was a member of the Friction Materials<br/>12 Standard Institute from 1949 to 1994, correct?<br/>13 A. Yes.<br/>14 Q. And the Friction Materials Standard<br/>15 Institute was composed of entities that made<br/>16 asbestos friction materials?<br/>17 A. They were composed of entities that<br/>18 made brake lining.<br/>19 Q. And for those entities prior to 1970,<br/>20 the majority of the brake linings they were<br/>21 manufacturing contained asbestos, correct?<br/>22 A. Yes.<br/>23 MR. RADCLIFFE: Object to form.<br/>24 Q. In fact, as of the date of this</p>                                 |

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| <p style="text-align: right;">94</p> <p>1 meeting, September 15, 1971, the overwhelming</p> <p>2 majority of friction materials sold by these</p> <p>3 organizations contained asbestos, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And, in fact, the reason why</p> <p>6 they formed an Asbestos Study Committee was</p> <p>7 because the State of Illinois had indicated</p> <p>8 that it was going to ban asbestos from brake</p> <p>9 linings, correct?</p> <p>10 A. That's true until they realized they</p> <p>11 still had to stop cars, and there was no way to</p> <p>12 do that.</p> <p>13 Q. In July of 1971, with the assigned</p> <p>14 purpose to review and comment on rules and</p> <p>15 regulations promulgated by state and federal</p> <p>16 governments concerning asbestos and its</p> <p>17 applications, the FMSI formed the Asbestos</p> <p>18 Study Committee, correct?</p> <p>19 A. Yes, that's right.</p> <p>20 Q. One of the avowed purposes of the</p> <p>21 committee was the distribution and circulation</p> <p>22 of literature on asbestos and health subjects,</p> <p>23 correct?</p> <p>24 A. That was one of them, yes.</p> | <p style="text-align: right;">96</p> <p>1 A. Yes, there's a listing here, and that</p> <p>2 was No. 8 of that list.</p> <p>3 Q. I'll take that. I want to show you</p> <p>4 what we'll mark as Exhibit 20, which is a</p> <p>5 letter from Charles Blackwell to Milton Pogsin</p> <p>6 dated August 13, 1971.</p> <p>7 (Exhibit No. 19, Exhibit Number</p> <p>8 Skipped - No Exhibit Marked )</p> <p>9 (Exhibit No. 20, Letter to Milton</p> <p>10 Pogsin, 8.13.71 so marked)</p> <p>11 Q. That's a letter that you've been shown</p> <p>12 before, correct?</p> <p>13 A. Yes, I believe I have seen this</p> <p>14 before.</p> <p>15 Q. And this is some seven years after the</p> <p>16 correspondence in October -- well, almost seven</p> <p>17 years since the correspondence in October 1964</p> <p>18 where Dr. Blackwell had addressed the initial</p> <p>19 research of Dr. Selikoff and the scientists at</p> <p>20 Mount Sinai, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Seven years later he says that "Dr.</p> <p>23 Irving Selikoff is well-intentioned, but I</p> <p>24 personally fear that he is a panic or fear</p> |
| <p style="text-align: right;">95</p> <p>1 Q. One of the founding members of the</p> <p>2 Asbestos Study Committee was Abex?</p> <p>3 MR. RADCLIFFE: Object to form.</p> <p>4 A. We were a member. Whether founding</p> <p>5 member, I can't say.</p> <p>6 Q. The first committee meeting was held</p> <p>7 on September 15, 1971, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And Abex was at that first meeting?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. If you turn to the third</p> <p>12 page --</p> <p>13 A. (Witness complies)</p> <p>14 Q. -- it states at the very bottom that</p> <p>15 one --</p> <p>16 A. No. 8 is that?</p> <p>17 Q. Yes. "One of the activities of this</p> <p>18 committee was to follow as closely as possible</p> <p>19 medical and occupational health research</p> <p>20 concerning asbestos and asbestos-related</p> <p>21 diseases and determine whether FMSI or its</p> <p>22 member companies should help sponsor or</p> <p>23 otherwise support work of the nature."</p> <p>24 Correct?</p>                                                                                                                                          | <p style="text-align: right;">97</p> <p>1 peddler so to speak." That's what he wrote,</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. And he said, "There is most certainly</p> <p>5 some or a lot of merit to some of that which he</p> <p>6 promotes, but a lot of physicians object to the</p> <p>7 manner in which he does it, by means of fear</p> <p>8 and a very aggressive policy and especially</p> <p>9 when he admits that neither he nor the</p> <p>10 engineers have the solution to the problems</p> <p>11 attended to or with such utilization of</p> <p>12 asbestos."</p> <p>13 That's what he wrote, correct?</p> <p>14 A. Yes.</p> <p>15 Q. He talked about meeting with some</p> <p>16 union officials. He showed them movies. He</p> <p>17 reportedly left a 45-minute technical medical</p> <p>18 tape on asbestos with the union officials that</p> <p>19 they could study, and Dr. Blackwell's comment</p> <p>20 was, "Can you imagine his misdirected efforts,</p> <p>21 such nerve."</p> <p>22 That's what he wrote, correct?</p> <p>23 A. Yes.</p> <p>24 Q. As of the date, August 13, 1971, Abex</p>       |

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| <p style="text-align: right;">98</p> <p>1 still had not placed any cautionary language on</p> <p>2 any of its products of asbestos-containing</p> <p>3 material, correct?</p> <p>4 MR. RADCLIFFE: Object to form.</p> <p>5 A. I don't know if in August 13 of 1971</p> <p>6 there was a warning label on or not. It was</p> <p>7 about that time. I said to you earlier it was</p> <p>8 the early 1970s, '71, '72. This is the third</p> <p>9 quarter of '71. Possibly there were warnings</p> <p>10 on it. Also, I'd like to point out that Dr.</p> <p>11 Blackwell hadn't signed this letter, and that</p> <p>12 it's simply a response to Milton who sent him</p> <p>13 an article which Dr. Selikoff is expounding</p> <p>14 upon.</p> <p>15 Q. We've looked at other correspondence</p> <p>16 that was not signed by Dr. Blackwell?</p> <p>17 A. Yeah, I should have pointed those out</p> <p>18 because many of them are not signed.</p> <p>19 Q. You're not maintaining, are you, that</p> <p>20 this correspondence is not a business record of</p> <p>21 Abex, are you?</p> <p>22 A. I'm not saying -- I'm saying I'm not</p> <p>23 sure it was ever sent.</p> <p>24 Q. But it contains the SPNY Bates stamp</p> | <p style="text-align: right;">100</p> <p>1 signed, but it contains the Bates stamp</p> <p>2 numbering on the bottom, is it your position</p> <p>3 that this document was not found within the</p> <p>4 business records of Abex?</p> <p>5 A. I'm not saying it wasn't found in the</p> <p>6 business records. I'm not saying -- I'm saying</p> <p>7 I don't know for sure that it was ever sent to</p> <p>8 anyone; that it could have been a draft. It</p> <p>9 could have wound up in a file. It could have</p> <p>10 never been communicated to anybody.</p> <p>11 Q. Would you agree with me that the</p> <p>12 documents that are contained within the</p> <p>13 document repository at Abex were documents that</p> <p>14 were kept by Abex because they were part of</p> <p>15 their business records?</p> <p>16 MR. RADCLIFFE: Object to form.</p> <p>17 A. I can't answer that. I don't know.</p> <p>18 Q. As the corporate representative, do</p> <p>19 you have any knowledge of the origin of the</p> <p>20 document depository?</p> <p>21 A. The origin of it?</p> <p>22 Q. Sure. How did those documents get</p> <p>23 collected?</p> <p>24 A. A bunch of lawyers came in and</p> |
| <p style="text-align: right;">99</p> <p>1 numbering on the bottom, correct?</p> <p>2 A. Well, that's you're telling me that</p> <p>3 means, and I'll accept that. But all I'm</p> <p>4 saying is I get really uncomfortable with</p> <p>5 unsigned memos because I think oftentimes</p> <p>6 letters are written and not sent, and they may</p> <p>7 still be in the file somewhere.</p> <p>8 Q. Is it your position that the previous</p> <p>9 letter of October 8, 1964, which also has the</p> <p>10 Bates stamp numbering and indicates --</p> <p>11 A. Can I see it again?</p> <p>12 Q. -- from Mr. Rennie to Mr. Blackwell,</p> <p>13 but is not signed was not a business record of</p> <p>14 Abex?</p> <p>15 A. I'm saying it's an unsigned copy of a</p> <p>16 letter.</p> <p>17 Q. As the corporate representative for</p> <p>18 Abex, it's not your testimony, is it, that this</p> <p>19 letter is not a business record of Abex</p> <p>20 Corporation that's been kept in their</p> <p>21 repository?</p> <p>22 A. I don't know.</p> <p>23 Q. Similarly, the other letter that we</p> <p>24 looked at from October 20, 1964, again, not</p>                                                                  | <p style="text-align: right;">101</p> <p>1 gathered them up, and that was, you know, the</p> <p>2 business was sold. Many of the records stayed</p> <p>3 with the business purchaser, you know, and</p> <p>4 records were at some point gathered in one</p> <p>5 place and put in Brooklyn.</p> <p>6 Q. Have you ever gone to Brooklyn to look</p> <p>7 at them?</p> <p>8 A. No, I haven't.</p> <p>9 Q. You can't tell whether those documents</p> <p>10 have been indicated in some manner so that in</p> <p>11 subsequent proceedings we can be assured that</p> <p>12 they're documents that came from the</p> <p>13 repository?</p> <p>14 MR. RADCLIFFE: Object to form.</p> <p>15 A. I'm sorry, what's your question?</p> <p>16 Q. Since you've never been to the</p> <p>17 depository --</p> <p>18 A. Right.</p> <p>19 Q. -- repository, you've never seen</p> <p>20 documents as they were taken out of the</p> <p>21 repository?</p> <p>22 A. That's right.</p> <p>23 Q. You don't know if they're marked in</p> <p>24 any manner so that in substance --</p>                                                                                                                           |

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| <p style="text-align: right;">102</p> <p>1 A. I don't know the protocol in terms of</p> <p>2 the markings. You're telling me that's the</p> <p>3 Bates number. I'll willing to accept that,</p> <p>4 but, I mean, I don't know that. I didn't put</p> <p>5 the marking on it.</p> <p>6 Q. Have you read the deposition testimony</p> <p>7 of any of the other designated corporate</p> <p>8 representatives of Abex?</p> <p>9 A. No.</p> <p>10 Q. And you know there have been other</p> <p>11 designated corporate representatives prior to</p> <p>12 you?</p> <p>13 A. Sure. There were people that, you</p> <p>14 know, I worked for that, unfortunately, passed</p> <p>15 on, and you're just asking me to make a lot of</p> <p>16 assumptions, and my knowledge of being a good</p> <p>17 witness is not to assume so....</p> <p>18 Q. Well, is it your position as the</p> <p>19 corporate representative of Abex that Abex was</p> <p>20 unaware of Dr. Selikoff's research in 1964?</p> <p>21 A. No. We knew what Dr. Selikoff was</p> <p>22 publishing. We were aware of it. We certainly</p> <p>23 were concerned about what he was saying and how</p> <p>24 oftentimes it was misquoted because it was my</p>                   | <p style="text-align: right;">104</p> <p>1 A. Yes.</p> <p>2 Q. I'm going to show you what we'll mark</p> <p>3 as Exhibit 21.</p> <p>4 (Exhibit No. 21, Letter to D.K.</p> <p>5 Rennie, 5.10.72 so marked)</p> <p>6 Q. This is a letter from Dr. Blackwell</p> <p>7 copying E.R. Feierabend to Mr. D.K. Rennie</p> <p>8 dated May 10, 1972. Was this a document that</p> <p>9 you've seen before?</p> <p>10 A. I'm not sure. Can I take a minute and</p> <p>11 read it?</p> <p>12 Q. Sure.</p> <p>13 THE WITNESS: Would you like to go off</p> <p>14 the record?</p> <p>15 THE VIDEOGRAPHER: The time is 1:09</p> <p>16 p.m. Going off record.</p> <p>17 (Recess 1:09 p.m. to 1:10 p.m.)</p> <p>18 THE VIDEOGRAPHER: The time is now</p> <p>19 1:10 p.m. We are now back on the record.</p> <p>20 BY MR. GEORGE:</p> <p>21 Q. Having reviewed the document, is it a</p> <p>22 document that you've seen before?</p> <p>23 A. Yes, I believe I have seen this</p> <p>24 before.</p>                                                                                                               |
| <p style="text-align: right;">103</p> <p>1 understanding back then, and it still is today,</p> <p>2 that a lot of Selikoff's work had to do with</p> <p>3 people in the asbestos fiber business and not</p> <p>4 necessarily brake mechanics.</p> <p>5 Yet all of his findings seem to get</p> <p>6 spun in a way that made it sound like it all</p> <p>7 related to automotive brakes. And that wasn't</p> <p>8 at all the case from my knowledge.</p> <p>9 Q. Do you agree with the correspondence</p> <p>10 from Dr. Blackwell in 1964 that mesothelioma as</p> <p>11 a disease was -- the problem mesothelioma in</p> <p>12 individuals exposed to asbestos was pretty well</p> <p>13 known in the industry in 1964?</p> <p>14 MR. RADCLIFFE: Object to form.</p> <p>15 A. You're asking for my medical opinion?</p> <p>16 Q. No. I'm asking as a corporate</p> <p>17 representative of Abex, do you agree that Abex</p> <p>18 had knowledge of mesothelioma in 1964?</p> <p>19 MR. RADCLIFFE: Object to form.</p> <p>20 A. I don't know if we had knowledge in</p> <p>21 1964.</p> <p>22 Q. Yet, you do concede that you are --</p> <p>23 you were aware of Dr. Selikoff's publications?</p> <p>24 MR. RADCLIFFE: Object to form.</p> | <p style="text-align: right;">105</p> <p>1 Q. Do you agree that this is a document</p> <p>2 of Abex Corporation?</p> <p>3 A. Yes.</p> <p>4 Q. This is dated May 10, 1972, correct?</p> <p>5 A. Yes, it is.</p> <p>6 Q. And again Dr. Blackwell is talking</p> <p>7 about Dr. Selikoff, correct?</p> <p>8 A. That's one of the topics, yeah.</p> <p>9 Q. And this is some almost eight years</p> <p>10 after Dr. Selikoff first published on his</p> <p>11 studies in 1964, correct?</p> <p>12 A. That's right.</p> <p>13 Q. And he says that, "Dr. Selikoff,</p> <p>14 unfortunately, I feel has somewhat of a flare</p> <p>15 for creating the sensational type of reporting</p> <p>16 with the news media. Nevertheless, one cannot</p> <p>17 ignore the statistics which he and his</p> <p>18 associates have compiled dealing with</p> <p>19 asbestos."</p> <p>20 That's what he wrote, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And specifically in the last paragraph</p> <p>23 he talks about, "The mesothelioma, a particular</p> <p>24 type of lung cancer, is generally speaking a</p> |

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| <p style="text-align: right;">106</p> <p>1   rarity except among those exposed to asbestos</p> <p>2   where it is much more prevalent." Correct?</p> <p>3       A. The last paragraph talks about the</p> <p>4   smoking in the incidence of.</p> <p>5       Q. Last paragraph on the first page?</p> <p>6       A. Okay. I'm sorry.</p> <p>7       Q. He says, does he not, "Mesothelioma, a</p> <p>8   particular type of lung cancer, is, generally</p> <p>9   speaking, a rarity except among those exposed</p> <p>10   to asbestos where it is much more prevalent"?</p> <p>11      A. Yes.</p> <p>12      MR. RADCLIFFE: Object to form.</p> <p>13      Q. Now this is in May of 1972. I want to</p> <p>14   show you what I'll mark as Exhibit 22, minutes</p> <p>15   of the Friction Material Standard Institute</p> <p>16   Asbestos Study Committee dated June 20, 1972.</p> <p>17      (Exhibit No. 22, Friction Material</p> <p>18   Standard Institute Asbestos Study Committee</p> <p>19   Minutes, 6.20.72 so marked)</p> <p>20      Q. This is a document you've seen before,</p> <p>21   correct?</p> <p>22      A. Only at the beginning of today. I</p> <p>23   haven't had a chance to study it.</p> <p>24      Q. You agree that during this period of</p> | <p style="text-align: right;">108</p> <p>1    OSHA standard," if that's what they're saying</p> <p>2   is in place as of the writing date. So, I</p> <p>3   mean, it's interesting, but I'm not sure what</p> <p>4   it really tells me.</p> <p>5       Q. Were you aware that prior to the</p> <p>6   implementation of the OSHA standards that the</p> <p>7   NIOSH advisory committee was recommending that</p> <p>8   all asbestos-containing products should be</p> <p>9   labeled and carry the words "cancer" and</p> <p>10   "danger"?</p> <p>11      MR. RADCLIFFE: Object to form.</p> <p>12      A. I wasn't aware of that.</p> <p>13      Q. Were you aware that the industry</p> <p>14   position was that the words "cancer" and</p> <p>15   "danger" should not be used on labels?</p> <p>16      MR. RADCLIFFE: Object to form.</p> <p>17      A. No, I didn't know, and I don't know</p> <p>18   when you say -- when this says industry</p> <p>19   position if it's talking about the asbestos</p> <p>20   mining industry, the brake lining industry. I</p> <p>21   just don't know what industry means in this</p> <p>22   context.</p> <p>23      Q. You would agree with me that Abex</p> <p>24   never put the words "cancer" or "danger" on any</p>                  |
| <p style="text-align: right;">107</p> <p>1   time, June 20, 1972, that Abex was a member of</p> <p>2   the Asbestos Study Committee?</p> <p>3      A. Yes.</p> <p>4      Q. And this is a letter from Mr. Drislane</p> <p>5   who is the executive secretary of the FMSI to</p> <p>6   members of the Asbestos Study Committee,</p> <p>7   correct?</p> <p>8      A. Yes. It's a transmittal letter that</p> <p>9   says basically here's this Ike Weaver document,</p> <p>10   and he thought it should be given out to the</p> <p>11   members so here it is.</p> <p>12      Q. What it is is comparing the industry</p> <p>13   position, the NIOSH advisory committee</p> <p>14   recommendation and the final OSHA standard as</p> <p>15   it applies to the regulations on asbestos,</p> <p>16   correct?</p> <p>17      A. That appears to be what it is, yes.</p> <p>18      Q. And you agree that in June 1972 is</p> <p>19   around the time that OSHA was formulating its</p> <p>20   asbestos standards?</p> <p>21      MR. RADCLIFFE: Object to form.</p> <p>22      A. I don't know when they were</p> <p>23   formulating them. I don't know how far back</p> <p>24   that goes. I don't know when it says "final</p>                                             | <p style="text-align: right;">109</p> <p>1   of its labels of asbestos friction materials?</p> <p>2      MR. RADCLIFFE: Object to form.</p> <p>3      A. All I can tell you is that the</p> <p>4   document you showed me earlier that had the</p> <p>5   warning label that I described is the one I</p> <p>6   believe to be true and correct and carried on</p> <p>7   through that period of time and was in effect</p> <p>8   totally in agreement with what was published by</p> <p>9   OSHA in the Federal Register in 1972 I believe.</p> <p>10      Q. You would agree the cautionary</p> <p>11   language that Abex put on its product did not</p> <p>12   contain the words "cancer" or "danger"?</p> <p>13      MR. RADCLIFFE: Object to form.</p> <p>14      Q. Correct?</p> <p>15      A. It had whatever the Federal Register</p> <p>16   had, and it did not contain those words.</p> <p>17      Q. I want to show you what we'll mark as</p> <p>18   Exhibit 23.</p> <p>19      (Exhibit No. 23, Minutes of the</p> <p>20   Meeting of the Asbestos Study Committee,</p> <p>21   8.17.72 so marked)</p> <p>22      Q. Minutes of the Asbestos Study</p> <p>23   Committee from Thursday, August 17, 1972. On</p> <p>24   the face of that document it indicates, does it</p> |

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| <p style="text-align: right;">110</p> <p>1 not, that Abex was a member present during</p> <p>2 these minutes?</p> <p>3 A. Yes.</p> <p>4 Q. I want you to turn to page three --</p> <p>5 A. (Witness complies)</p> <p>6 Q. -- which deals with labeling</p> <p>7 practices?</p> <p>8 A. Okay.</p> <p>9 Q. It says that "It was reported during</p> <p>10 this topic that there was a higher</p> <p>11 concentration of asbestos in the air in the</p> <p>12 inspection department than most members had</p> <p>13 realized. One member indicated that when</p> <p>14 pallets of brake linings were shipped, there</p> <p>15 apparently is additional dust created during</p> <p>16 transportation."</p> <p>17 That's what they wrote, correct?</p> <p>18 MR. RADCLIFFE: Object to form.</p> <p>19 MR. CARON: Object to form.</p> <p>20 A. That's what it says.</p> <p>21 Q. And, in fact, there have been</p> <p>22 industrial hygiene surveys at Abex, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And in the 1971 survey --</p>                                                              | <p style="text-align: right;">112</p> <p>1 Q. I noticed in your responses to</p> <p>2 interrogatories --</p> <p>3 A. I don't dispute the study was done.</p> <p>4 Q. Okay. Because in your responses to</p> <p>5 interrogatories, when asked if there were any</p> <p>6 studies or research concerning the health</p> <p>7 consequences of inhaling asbestos, you state</p> <p>8 that at least one area sampling analysis to</p> <p>9 collect wear product particle during brake</p> <p>10 operations prior to November '71.</p> <p>11 Abex also cooperated with the United</p> <p>12 States Public Health Survey in a study of wear</p> <p>13 debris, and the results are now published by</p> <p>14 the United States Public Health Service?</p> <p>15 A. That has nothing to do with this.</p> <p>16 That was wear debris which was the result of</p> <p>17 dynamometer testing done at the Mahwah research</p> <p>18 center.</p> <p>19 Q. This survey was done by the United</p> <p>20 States Public Health Service, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you're aware that the United</p> <p>23 States Public Health Service did air sampling</p> <p>24 at your plant in Winchester, Virginia?</p>                                                                                         |
| <p style="text-align: right;">111</p> <p>1 A. Are we done with this document?</p> <p>2 Q. Hold on to it for a minute -- they did</p> <p>3 studies, air sampling of various workers at the</p> <p>4 plant, correct?</p> <p>5 A. That was common practice was to</p> <p>6 inspect the entire factory, yes.</p> <p>7 Q. And for those individuals that were</p> <p>8 inspectors at the plant, they found measurable</p> <p>9 amounts of asbestos dust, correct?</p> <p>10 MR. RADCLIFFE: Object to form.</p> <p>11 Q. I'm going to -- this is entitled --</p> <p>12 I'll withdraw that and lay the foundation</p> <p>13 first.</p> <p>14 This is a document entitled Results of</p> <p>15 U.S.P.H.S. Survey of American Brake Shoe,</p> <p>16 Winchester, Virginia.</p> <p>17 MR. GEORGE: We'll mark that Exhibit</p> <p>18 24.</p> <p>19 (Exhibit No. 24, Results of U.S.P.H.S.</p> <p>20 Survey at American Brake Shoe, Winchester,</p> <p>21 Virginia so marked)</p> <p>22 Q. I ask you if you're familiar with that</p> <p>23 document?</p> <p>24 A. I haven't seen it before today.</p> | <p style="text-align: right;">113</p> <p>1 A. Yes. Abex, and specifically the</p> <p>2 Winchester plant, cooperated with them so that</p> <p>3 they could get their arms around what</p> <p>4 industrial exposure was like. And, in fact, I</p> <p>5 think there was a commendation or some such</p> <p>6 commendation to Abex for their corporation.</p> <p>7 And I believe that further that a lot</p> <p>8 of this data was used to actually establish</p> <p>9 standard deviation or error of the counters of</p> <p>10 these asbestos fiber tests.</p> <p>11 Q. When they found -- when they took air</p> <p>12 sampling of workers whose sole job was to</p> <p>13 inspect the final product, they found</p> <p>14 measurable amounts of asbestos dust, correct?</p> <p>15 MR. RADCLIFFE: Object to form.</p> <p>16 A. Again, I know this study was done. I</p> <p>17 haven't had a chance to see the results. And</p> <p>18 I'll be happy to just scan this quickly. I see</p> <p>19 a lot of different operations in the factory,</p> <p>20 but so far -- there we go, inspectors. Yes,</p> <p>21 there was some measurable fiber counts in the</p> <p>22 inspection department.</p> <p>23 Q. Those are not the individuals that</p> <p>24 participated in any sort of drilling or cutting</p> |

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| <p style="text-align: right;">114</p> <p>1 of the asbestos material, correct?</p> <p>2 MR. RADCLIFFE: Object to form.</p> <p>3 A. That's right. And I see numbers like</p> <p>4 ranging from .1 to 1.9 fibers per cubic</p> <p>5 centimeter.</p> <p>6 Q. You're aware that there was some</p> <p>7 concern at a point in time in the Winchester</p> <p>8 plant that some of their shipments were going</p> <p>9 out with excess dust on them?</p> <p>10 A. Yes.</p> <p>11 MR. RADCLIFFE: Object to form.</p> <p>12 A. I'm aware of that.</p> <p>13 Q. Now going back to Exhibit 22, it</p> <p>14 states that it was suggested that a</p> <p>15 notification be put into --</p> <p>16 A. I'm sorry, Exhibit 22? Did I just</p> <p>17 hand that back to you?</p> <p>18 Q. The August --</p> <p>19 A. I may have. That was the FMSI?</p> <p>20 Q. Yes.</p> <p>21 A. Yeah, I handed that back to you.</p> <p>22 Sorry.</p> <p>23 Q. This is still on page three. Going</p> <p>24 down to the middle of the third paragraph --</p>                                                                                                                                                                                               | <p style="text-align: right;">116</p> <p>1 a warning label in the box.</p> <p>2 Q. One of the concerns of the FMSI is</p> <p>3 that there are customers that are going to do</p> <p>4 additional grinding and drilling of the brake</p> <p>5 linings or clutch facings that create work</p> <p>6 conditions where the concentration of asbestos</p> <p>7 would be a hazard?</p> <p>8 MR. RADCLIFFE: Object to form.</p> <p>9 Q. That's what they wrote, correct?</p> <p>10 MR. RADCLIFFE: Same objection.</p> <p>11 A. I'm sorry, I don't see where -- is</p> <p>12 that where Mr. Wagner objected to this</p> <p>13 recommendation? It indicated -- it says, "It</p> <p>14 is not indicated that this was specifically</p> <p>15 required by the OSHA regulation. The concern</p> <p>16 is due to the customers doing additional</p> <p>17 grinding and drilling of the brake linings or</p> <p>18 clutch facings create working conditions where</p> <p>19 the concentration of asbestos would be a</p> <p>20 hazard." Yes, that's what it says.</p> <p>21 Q. What they were concerned about is that</p> <p>22 the OSHA regulations exempted products that</p> <p>23 were locked in, but these manufacturers knew</p> <p>24 that there might be subsequent manipulation of</p>                                          |
| <p style="text-align: right;">115</p> <p>1 A. Okay.</p> <p>2 Q. -- it says, "It was suggested that a</p> <p>3 notification be put in boxes of brake linings</p> <p>4 or clutch facings being shipped to customers.</p> <p>5 A sample of the caution label suggested is</p> <p>6 attached to these minutes. Mr. Feierabend" --</p> <p>7 now, Mr. Feierabend was an employee of Abex?</p> <p>8 A. He was.</p> <p>9 Q. It says, "Mr. Feierabend indicated</p> <p>10 that this recommendation would not be accepted</p> <p>11 warmly by many manufacturers." That's what</p> <p>12 they report, correct?</p> <p>13 A. That's right.</p> <p>14 Q. And, in fact, Abex never put any type</p> <p>15 of cautionary language in a sheet that was</p> <p>16 placed in the boxes of brake linings or clutch</p> <p>17 facings?</p> <p>18 A. No, we didn't. And Mr. Feierabend's</p> <p>19 comment is based on the fact that we had some</p> <p>20 customers who complained to us when we started</p> <p>21 putting the warning labels on the outside of</p> <p>22 the box. So he was taking it to the next step</p> <p>23 of saying, If they complained about that, it's</p> <p>24 highly likely they wouldn't be very happy about</p> | <p style="text-align: right;">117</p> <p>1 the products after it left their control?</p> <p>2 MR. RADCLIFFE: Object to form.</p> <p>3 A. Some of these manufacturers may have</p> <p>4 believed that. Our position was, continues to</p> <p>5 be, that we made every effort to try to deliver</p> <p>6 our product to customers in a form that was</p> <p>7 ready to install without any further machining.</p> <p>8 Q. But you did know that there were</p> <p>9 certain customers that were going to do</p> <p>10 additional grinding or drilling of your brake</p> <p>11 linings?</p> <p>12 A. No, I didn't know that. I mean, we</p> <p>13 talked earlier that some time years ago,</p> <p>14 perhaps in the '60s, '50s, '40s some of that</p> <p>15 went on. When I was at that company, that was</p> <p>16 -- I wouldn't say never, but that certainly was</p> <p>17 much more the exception than the rule. We</p> <p>18 supplied to rebuilders and other sophisticated</p> <p>19 users product that was ready to install.</p> <p>20 Q. I'm going to show you what we'll mark</p> <p>21 as Exhibit 25, and this is August 30, 1972, a</p> <p>22 letter from Mr. Drislane to the Asbestos Study</p> <p>23 Committee which contained an article entitled</p> <p>24 Health Hazards of Asbestos. Is that a document</p> |

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| <p style="text-align: right;">118</p> <p>1 you've seen before?</p> <p>2 (Exhibit No. 25, Letter to Asbestos</p> <p>3 Study Committee, 8.30.72 so marked)</p> <p>4 A. I don't believe I have.</p> <p>5 Q. At the time that that document was</p> <p>6 created in August 30, 1972, Abex was a member</p> <p>7 of the Asbestos Study Committee, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And what this attached article</p> <p>10 indicates is that "By the late 1920s it was</p> <p>11 clear from surveys made in this country and in</p> <p>12 the United States that a high proportion of</p> <p>13 older workers in the asbestos textile</p> <p>14 industries were becoming severely disabled by a</p> <p>15 specific type of chest disease due to the dust.</p> <p>16 This was named asbestosis."</p> <p>17 That's what was written in the</p> <p>18 article, correct?</p> <p>19 A. Right.</p> <p>20 MR. RADCLIFFE: Object to form.</p> <p>21 A. And it's based on reports from France</p> <p>22 and England, and it's specific to the textile</p> <p>23 industry.</p> <p>24 Q. There's also two references to studies</p> | <p style="text-align: right;">120</p> <p>1 friction products, particularly in Europe, were</p> <p>2 of a woven variety in which used a different</p> <p>3 type of asbestos, both in physical nature and</p> <p>4 chemical composition.</p> <p>5 Q. In this article they indicate that --</p> <p>6 under asbestos cancers?</p> <p>7 A. Where are we? Okay.</p> <p>8 Q. It says, "Some years after the</p> <p>9 recognition of asbestosis as an important</p> <p>10 problem in the asbestos textile industry,</p> <p>11 articles began to appear in medical journals</p> <p>12 suggesting an association between asbestosis</p> <p>13 and lung cancer." Correct?</p> <p>14 A. Yes.</p> <p>15 Q. And then the last sentence of that</p> <p>16 page says, "In the last 15 years there has been</p> <p>17 much new information about the link between</p> <p>18 exposure to asbestos and" --</p> <p>19 A. I can't read it.</p> <p>20 Q. -- "previously very rare type of</p> <p>21 cancer affecting the surface of the lung and</p> <p>22 gut. Reports of these mesotheliomas, as they</p> <p>23 are called, has increased steeply over the last</p> <p>24 ten years."</p>                                                           |
| <p style="text-align: right;">119</p> <p>1 in the United States, correct?</p> <p>2 A. I don't see that. Again, you just</p> <p>3 handed me this three-page document with</p> <p>4 micro --</p> <p>5 Q. If you look at the last sentence of</p> <p>6 the second paragraph where it says, "By the</p> <p>7 late 1920s," after it says USA, there are two</p> <p>8 numbers, correct?</p> <p>9 A. I don't see it. If you can point it</p> <p>10 out to me. "From surveys made in this country</p> <p>11 and USA," yes.</p> <p>12 Q. Okay.</p> <p>13 A. But it says textile industries which</p> <p>14 is a different kind of fiber. It's longer in</p> <p>15 length, it's different chemistry. You know,</p> <p>16 that's my comment.</p> <p>17 Q. Well, you knew that -- I'm not done</p> <p>18 with this.</p> <p>19 You knew that in the 1940s that there</p> <p>20 were incidence of asbestosis being reported in</p> <p>21 factories that were making asbestos friction</p> <p>22 products?</p> <p>23 MR. RADCLIFFE: Object to form.</p> <p>24 A. But in the 1940s a lot of asbestos</p>                                  | <p style="text-align: right;">121</p> <p>1 That's what they wrote, correct?</p> <p>2 MR. RADCLIFFE: Object to form.</p> <p>3 A. That's part of what they wrote, yes.</p> <p>4 Q. "A feature of those tumors is the long</p> <p>5 interval between first exposures to asbestos</p> <p>6 dust and the detection of cancer. It is rarely</p> <p>7 less than 20 years and maybe up to 50 or more</p> <p>8 years." Correct?</p> <p>9 A. Yes.</p> <p>10 MR. RADCLIFFE: Object to form.</p> <p>11 Q. Then under the Practical Implications</p> <p>12 of the Biological Affect of Asbestos it says,</p> <p>13 under Inhalation of Fiber, "For all practical</p> <p>14 purposes, the risk from asbestos is limited to</p> <p>15 inhalation of the fibers. Thus, control of the</p> <p>16 airborne dust levels and their monitoring by</p> <p>17 instruments which would measure the part of the</p> <p>18 dust which can gain access to the deeper parts</p> <p>19 of the lung is an essential step in the safe</p> <p>20 use of all types of asbestos."</p> <p>21 That's what they wrote, correct?</p> <p>22 A. Yes, it says safe use is possible.</p> <p>23 Q. That's something that Abex knew since</p> <p>24 the 1940s, correct?</p> |

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| <p style="text-align: right;">122</p> <p>1 A. I believe that to be the case, yes,</p> <p>2 sir.</p> <p>3 Q. If you go to the last page, the first</p> <p>4 full paragraph, the first sentence says, "The</p> <p>5 risk of developing mesotheliomas has a</p> <p>6 different relation to fiber type, is probably</p> <p>7 highest with crocidolite and lowest with</p> <p>8 chrysotile."</p> <p>9 A. Correct.</p> <p>10 Q. As they wrote, right?</p> <p>11 A. That's consistent with what I said</p> <p>12 earlier.</p> <p>13 Q. Let me show you what we'll mark as</p> <p>14 Exhibit 26.</p> <p>15 (Exhibit No. 26, Minutes of the</p> <p>16 Meeting, Asbestos Study Committee, 2.16.73 so</p> <p>17 marked)</p> <p>18 Q. These are, again, minutes of the</p> <p>19 Asbestos Study Committee, Friday, February 16,</p> <p>20 1973. Those are minutes that indicate that</p> <p>21 Abex was present, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And that's Mr. Feierabend?</p> <p>24 A. Feierabend, yes.</p>                                                                  | <p style="text-align: right;">124</p> <p>1 single most significant event that occurred</p> <p>2 during the past year" -- and this is in 1973</p> <p>3 -- "on the subject of asbestos hazards was</p> <p>4 the meeting of the International Agency For</p> <p>5 Research on Cancer that was held at Lyon,</p> <p>6 France last October. This meeting was attended</p> <p>7 by more than 130 medical researchers and</p> <p>8 representatives of government, industry and</p> <p>9 labor from virtually every major</p> <p>10 asbestos-consuming or producing country in the</p> <p>11 world." That's what he wrote, correct?</p> <p>12 A. Yes.</p> <p>13 MR. RADCLIFFE: Object to form.</p> <p>14 Q. One of the first things that he</p> <p>15 reported from this significant event was that</p> <p>16 all major commercial types of asbestos can</p> <p>17 cause cancer, correct?</p> <p>18 MR. RADCLIFFE: Object to form.</p> <p>19 A. I don't see that, I'm sorry.</p> <p>20 Q. Number one?</p> <p>21 A. Okay. Got you.</p> <p>22 Q. He also says in number three on the</p> <p>23 next page that "Evidence has been greatly</p> <p>24 strengthened that all commercial types of</p> |
| <p style="text-align: right;">123</p> <p>1 Q. And in talking about labeling</p> <p>2 practices in the last sentence, it says, "In</p> <p>3 many" --</p> <p>4 A. What page are you on?</p> <p>5 Q. I'm on the first page.</p> <p>6 A. Okay.</p> <p>7 Q. It says, "In many drilling and</p> <p>8 grinding operations without dust collectors,</p> <p>9 committee members indicated that the 10 fiber</p> <p>10 per CC ceiling concentration has been</p> <p>11 exceeded." That's what they reported, correct?</p> <p>12 A. Yes.</p> <p>13 Q. You've also seen the speech that Mr.</p> <p>14 Weaver gave to the Friction Materials Standard</p> <p>15 Institute members on June 27, 1973?</p> <p>16 A. Yes, I've seen this before.</p> <p>17 MR. GEORGE: We'll mark that as</p> <p>18 Exhibit 27.</p> <p>19 (Exhibit No. 27, Asbestos and the</p> <p>20 Friction Material Industry so marked)</p> <p>21 Q. He said that that speech, did he not</p> <p>22 -- looking at the last paragraph?</p> <p>23 A. On the first page?</p> <p>24 Q. On the first page, "Probably the</p> | <p style="text-align: right;">125</p> <p>1 asbestos except anthophyllite may be</p> <p>2 responsible for mesothelioma (risk is greatest</p> <p>3 with crocidolite, less with amosite and</p> <p>4 apparently still less with chrysotile.)"</p> <p>5 Correct?</p> <p>6 MR. RADCLIFFE: Object to form.</p> <p>7 A. Yes.</p> <p>8 Q. In then in the next paragraph it says,</p> <p>9 "The most important item here is the</p> <p>10 incrimination of all major types of asbestos as</p> <p>11 causal agents for carcinoma, particularly</p> <p>12 mesothelioma."</p> <p>13 That's what he wrote, correct?</p> <p>14 MR. RADCLIFFE: Object to form.</p> <p>15 A. Yes.</p> <p>16 Q. He said, "Most of other items only</p> <p>17 confirm or substantiate previous conclusions.</p> <p>18 Since most of us use substantial amounts of</p> <p>19 chrysotile asbestos in our formulations,</p> <p>20 association of this material with mesothelioma</p> <p>21 and other types of cancer is of serious</p> <p>22 concern."</p> <p>23 That's what he wrote, correct?</p> <p>24 MR. RADCLIFFE: Object to form.</p>                                                                                |

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| <p style="text-align: right;">126</p> <p>1 A. Yes.</p> <p>2 Q. And then if we go to page three, in</p> <p>3 the last paragraph he says, "I know of no way</p> <p>4 any of us can be absolutely sure that his</p> <p>5 friction products, regardless of whether they</p> <p>6 are sold as original equipment or on the</p> <p>7 replacement market, will not be subjected to</p> <p>8 additional operations or alterations in the</p> <p>9 field that could result in excessive exposure</p> <p>10 of workers or bystanders to airborne asbestos</p> <p>11 fibers."</p> <p>12 That's what he wrote, correct?</p> <p>13 MR. RADCLIFFE: Object to form.</p> <p>14 A. I believe that's his opinion, yes.</p> <p>15 Q. In fact, on the next page, page four,</p> <p>16 in the middle of the first paragraph he says</p> <p>17 that, "Large volume replacement users present</p> <p>18 major potential hazards, and even small job</p> <p>19 shops can needlessly expose people to high</p> <p>20 fiber concentrations if operations are</p> <p>21 performed without controls."</p> <p>22 That was his opinion, correct?</p> <p>23 MR. RADCLIFFE: Object to form.</p> <p>24 A. Yes, uh-huh.</p>                                                                                                                 | <p style="text-align: right;">128</p> <p>1 requirement as vigorously as it does."</p> <p>2 That's what he told the members of</p> <p>3 FMSI in 1973, correct?</p> <p>4 MR. RADCLIFFE: Object to form.</p> <p>5 A. Yeah, but, I mean, he says "the</p> <p>6 industry," and I'm not sure what he's talking</p> <p>7 about because the time of this writing Abex was</p> <p>8 already putting warnings on. So, you know,</p> <p>9 it's -- again, it's his opinion. I'm sure that</p> <p>10 it probably reflected the beliefs of his</p> <p>11 company Johns Manville, but not Abex.</p> <p>12 Q. Abex was putting cautionary language</p> <p>13 on their products, correct?</p> <p>14 A. We can get into a definitional</p> <p>15 argument all day. I call it a warning. You</p> <p>16 call it a cautionary label. And I'll just</p> <p>17 remind you that it was, in fact, in concert</p> <p>18 with what OSHA required in the Federal Register</p> <p>19 in 1927.</p> <p>20 Q. I understand that. But when we're</p> <p>21 talking about a warning there, you can put the</p> <p>22 actual word "warning" to make it a warning or</p> <p>23 you can use cautionary language by using the</p> <p>24 word "caution," correct?</p> |
| <p style="text-align: right;">127</p> <p>1 Q. What he was talking about is that</p> <p>2 there are instances where these industries,</p> <p>3 these large volume replacement users or even</p> <p>4 small job shops, in working with the asbestos</p> <p>5 friction materials without proper controls can</p> <p>6 expose their workers to various amounts of</p> <p>7 asbestos?</p> <p>8 A. Based on his experience and the</p> <p>9 experience of Johns Manville, not Abex.</p> <p>10 MR. RADCLIFFE: Object to form.</p> <p>11 Q. Then he says in the final part of page</p> <p>12 four, last paragraph, "Keep in mind that NIOSH</p> <p>13 and the OSHA Advisory Committee recommended a</p> <p>14 much more severe label than the one we are</p> <p>15 talking about. This subject was heatedly</p> <p>16 debated during the OSHA Advisory Committee</p> <p>17 deliberation, and their final recommendation</p> <p>18 called for the use of the word 'danger' instead</p> <p>19 of 'caution' and specifically mentioned that</p> <p>20 breathing asbestos caused cancer. Very</p> <p>21 frankly, I was exceedingly surprised when the</p> <p>22 final OSHA standard came out in favor of</p> <p>23 considerably milder working. Now I am</p> <p>24 perplexed that industry resists the OSHA label</p> | <p style="text-align: right;">129</p> <p>1 A. Correct. You can do either.</p> <p>2 Q. What Abex chose to do was to use the</p> <p>3 term "caution," correct?</p> <p>4 A. What Abex chose to do was what the</p> <p>5 federal government had required us to do.</p> <p>6 Q. There was nothing in any of the</p> <p>7 federal regulations that prevented Abex from</p> <p>8 using more restrictive or more descriptive</p> <p>9 language than what OSHA required, correct?</p> <p>10 MR. RADCLIFFE: Object to form.</p> <p>11 A. And your question is?</p> <p>12 Q. There's nothing in any of the federal</p> <p>13 regulation that said, Abex, hey, you can't --</p> <p>14 A. That you can't, of course not.</p> <p>15 Q. -- use the word "danger"?</p> <p>16 MR. RADCLIFFE: Same objection.</p> <p>17 A. Of course not.</p> <p>18 Q. There was no federal regulation that</p> <p>19 said, Abex, you can't use the word "cancer" in</p> <p>20 your label?</p> <p>21 A. Of course not.</p> <p>22 MR. RADCLIFFE: Same objection.</p> <p>23 MR. GEORGE: The next document I'll</p> <p>24 mark as Exhibit 28 --</p>                                                                                                                 |

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| <p style="text-align: right;">130</p> <p>1 (Exhibit No. 28, Letter to Asbestos<br/>2 Study Committee, 12.26.73 so marked)</p> <p>3 Q. -- is minutes of the Asbestos Study<br/>4 Committee dated December 26, 1973. You would<br/>5 agree with me that during this time period,<br/>6 December of 1973, that Abex was a member of the<br/>7 Asbestos Study Committee?</p> <p>8 A. Yes.</p> <p>9 Q. And if Abex received this document,<br/>10 they would have received articles that talk<br/>11 about asbestos, cancer and mesothelioma,<br/>12 correct?</p> <p>13 MR. RADCLIFFE: Object to form.</p> <p>14 A. I don't know how to answer your<br/>15 question.</p> <p>16 Q. Well, it says here that, "Mr. Weaver,<br/>17 the chairman of the committee has kept me<br/>18 abreast on various activities in government,<br/>19 industry and in the press concerning asbestos.<br/>20 Because of the considerable amount of<br/>21 literature, I am forwarding articles that your<br/>22 chairman specifically suggested I send to<br/>23 committee members."</p> <p>24 A. Okay.</p> | <p style="text-align: right;">132</p> <p>1 the FMSI was fulfilling its avowed purpose<br/>2 which was to keep abreast of --</p> <p>3 A. To disseminate information, yes.</p> <p>4 Q. And this is information about<br/>5 mesothelioma and lung cancer that was<br/>6 disseminated to its membership, one of which<br/>7 was Abex?</p> <p>8 MR. RADCLIFFE: Object to form.</p> <p>9 A. Yes.</p> <p>10 Q. Okay.</p> <p>11 MR. GEORGE: I'm going to mark the<br/>12 next exhibit as Exhibit 29.</p> <p>13 (Exhibit No. 29, Letter to Asbestos<br/>14 Study Committee, 3.10.75 so marked)</p> <p>15 Q. This is a letter from Drislane to<br/>16 members of the Asbestos Study Committee of<br/>17 which Abex was a member, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And it indicates that in talking about<br/>20 mesotheliomata in rats that Mr. Weaver -- "This<br/>21 is a British paper that indicated that<br/>22 mesotheliomata was observed in a considerable<br/>23 proportion of animals with all samples of<br/>24 asbestos. Mr. Weaver indicated this was bad</p> |
| <p style="text-align: right;">131</p> <p>1 Q. "These articles are the type of<br/>2 asbestos and respiratory cancer in the asbestos<br/>3 industry (types of asbestos and their<br/>4 carcinogenic potential)." And, two, "Asbestos<br/>5 Health Question Perplexes Experts." He then<br/>6 attaches, does he not --</p> <p>7 A. An index.</p> <p>8 Q. -- a synopsis of articles with regard<br/>9 to asbestos?</p> <p>10 A. Yes.</p> <p>11 Q. And if we look at the second to last<br/>12 page of that document, the first article listed<br/>13 there is, "Asbestos Dust is Linked to Disease<br/>14 (Asbestosis Lung Cancer Mesothelioma and<br/>15 Gastrointestinal - brief summaries of Dr.<br/>16 Selikoff reports)"?</p> <p>17 A. Yes.</p> <p>18 MR. RADCLIFFE: Object to form.</p> <p>19 Q. Then the second to last one says,<br/>20 "Type of Asbestos and Respiratory Cancer in the<br/>21 Asbestos Industry (Types of Asbestos and Their<br/>22 Carcinogenic Potentials)." Correct?</p> <p>23 A. Yes.</p> <p>24 Q. Basically, this is an indication that</p>              | <p style="text-align: right;">133</p> <p>1 news for those hoping that chrysotile would be<br/>2 proven not to be associated with mesothelioma."</p> <p>3 MR. RADCLIFFE: Object to form.</p> <p>4 Q. That's what they wrote in March 1975,<br/>5 correct?</p> <p>6 A. Yes.</p> <p>7 MR. RADCLIFFE: Object to form.</p> <p>8 Q. Now in August of 1975 -- I'm sorry, in<br/>9 June of 1975 --an exhibit that I'll mark as<br/>10 31?</p> <p>11 (Exhibit No. 30, Exhibit Number<br/>12 Skipped - No Exhibit Marked)</p> <p>13 (Exhibit No. 31, Friction Material<br/>14 Board of Directions Meeting Minutes, 6.75 so<br/>15 marked)</p> <p>16 Q. Again, these are minutes of the<br/>17 meeting of the board of directors of Friction<br/>18 Materials Standard Institute and it indicates<br/>19 that an S.S. Conway was present for Abex<br/>20 Corporation?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know who Mr. Conway was?</p> <p>23 A. Yes.</p> <p>24 Q. Who was that?</p>                                                                                              |

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| <p style="text-align: right;">134</p> <p>1 A. Depends on the time frame. I'm not<br/>2 sure. As of 1975 he probably was either vice<br/>3 president of sales or perhaps president of Abex<br/>4 friction.<br/>5 Q. And also present was Mr. Nelson?<br/>6 A. Right.<br/>7 Q. And he was the committee chairman?<br/>8 A. Right.<br/>9 Q. And one of the things that they<br/>10 discussed if you --<br/>11 A. It doesn't say what committee he's<br/>12 chairing.<br/>13 Q. It says (brake performance)?<br/>14 A. Brake performance, okay.<br/>15 Q. Anyway, if you turn to page three of<br/>16 the document?<br/>17 A. (Witness complies)<br/>18 Q. The three on the top.<br/>19 A. It's the last page; is that correct?<br/>20 Q. Yes.<br/>21 A. Okay.<br/>22 Q. Under Medical it says, "Selikoff<br/>23 continues predictions of epidemic of<br/>24 asbestos-related death and disease in years to</p>                                                                                                                                                                                                                                       | <p style="text-align: right;">136</p> <p>1 brake performance committee.<br/>2 Q. If you turn to page -- the second to<br/>3 last page of the document -- well, third to<br/>4 last page.<br/>5 A. (Witness complies) Yeah, that has<br/>6 number 59 in the lower right-hand corner?<br/>7 Q. I think it's 54.<br/>8 A. Okay.<br/>9 Q. But it says this is an Asbestos Study<br/>10 Committee report, correct?<br/>11 A. It does, but the cover sheet doesn't<br/>12 say anything about an asbestos cover. It says<br/>13 committee chairman present, R.E. Nelson, brake<br/>14 performance.<br/>15 Q. Let me ask you this --<br/>16 A. Guests present, and it has all of<br/>17 these names, except it doesn't say anything<br/>18 about an Asbestos Study Committee nor does it<br/>19 say anything about Ike Weaver.<br/>20 Q. To the extent that these are documents<br/>21 from June 1975 that are part of the Asbestos<br/>22 Study Committee report, Abex was a member of<br/>23 that committee in June 1975, correct?<br/>24 MR. RADCLIFFE: Object to form.</p> |
| <p style="text-align: right;">135</p> <p>1 come. He emphasizes that mesothelioma hazard<br/>2 and the fact no known dose level is safe and is<br/>3 pointing to the possible health significance of<br/>4 shorter, smaller fibers or particles not now<br/>5 covered by standards.<br/>6 Selikoff people have been actively<br/>7 promoting hazards associated with asbestos<br/>8 emissions from brake lining wear and from brake<br/>9 service operations. Acknowledgement of<br/>10 association between asbestos exposure and<br/>11 increased GI cancer has become accepted<br/>12 practice during the past year."<br/>13 That's what was reported to the<br/>14 members of the FMSI, correct?<br/>15 MR. RADCLIFFE: Object to form.<br/>16 MR. CARON: Object to form.<br/>17 A. Honestly, I'm not sure. I mean, I'm<br/>18 reading this cover letter, and then it goes to<br/>19 page 10 and then it goes to an Asbestos Study<br/>20 Committee report.<br/>21 Q. Well, if it's --<br/>22 A. And I don't know that -- I mean, the<br/>23 cover letter doesn't say anything about the<br/>24 Asbestos Study Committee. It talks about the</p> | <p style="text-align: right;">137</p> <p>1 A. Yes, we were.<br/>2 Q. And those final three pages appear to<br/>3 be contiguous, correct?<br/>4 MR. RADCLIFFE: Object to form.<br/>5 A. I believe they appear to be<br/>6 contiguous, yes, but who -- I mean, I don't<br/>7 know who it was reported to.<br/>8 Q. This is the same Dr. Selikoff that<br/>9 first came to the attention of Dr. Blackwell in<br/>10 1964, correct?<br/>11 A. Yes.<br/>12 Q. And so it's now nine years after he<br/>13 first heard about Dr. Selikoff's research,<br/>14 correct? No, it's actually 11 years?<br/>15 A. Who is "he"?<br/>16 Q. Dr. Blackwell?<br/>17 A. Dr. Blackwell doesn't have anything to<br/>18 do with that.<br/>19 Q. I understand that, but Dr. Blackwell<br/>20 first heard of Dr. Selikoff's studies in 1964<br/>21 and it's now 1975?<br/>22 A. That's right.<br/>23 Q. So that's 11 years after that<br/>24 research, correct?</p>                                                                                                                           |

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| <p style="text-align: right;">138</p> <p>1 A. Yes.</p> <p>2 MR. RADCLIFFE: Object to form.</p> <p>3 Q. I want to show you what we'll mark as</p> <p>4 Exhibit 32.</p> <p>5 (Exhibit No. 32, Letter to D.K.</p> <p>6 Rennie, 8.22.75 so marked)</p> <p>7 Q. It's dated August 22, 1975, that's a</p> <p>8 letter from Dr. Blackwell to Mr. Rennie,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Is this a letter you've seen before?</p> <p>12 A. I'm not sure.</p> <p>13 Q. Okay.</p> <p>14 A. Yes, I have seen this before.</p> <p>15 Q. This has various Bates numbers at the</p> <p>16 bottom of it, correct?</p> <p>17 A. It has more numbers than I can</p> <p>18 decipher. SPNY numbers, KWHLL number, KAZ</p> <p>19 numbers, exhibit numbers.</p> <p>20 Q. This has as an exhibit number for one</p> <p>21 of your prior depositions?</p> <p>22 A. Okay.</p> <p>23 Q. And in this letter Mr. Blackwell says,</p> <p>24 "In the most recent Occupational Safety &amp;</p>                                                                                                                                           | <p style="text-align: right;">140</p> <p>1 Q. I want to show you what we'll mark as</p> <p>2 Exhibit 33.</p> <p>3 (Exhibit No. 33, Memo to C.C.</p> <p>4 Blackwell and E.H. Feierabend so marked)</p> <p>5 Q. This is a memo from Don Rennie to Mr.</p> <p>6 Blackwell and Mr. Feierabend. Have you seen</p> <p>7 that before?</p> <p>8 A. I don't believe I have.</p> <p>9 Q. It has the SPNY Bates numbering at the</p> <p>10 bottom, correct?</p> <p>11 A. It has an SPNY number, yes.</p> <p>12 Q. Are you familiar with Mr. Rennie's</p> <p>13 handwriting?</p> <p>14 A. No, I'm not. I mean, I've seen his</p> <p>15 handwriting. I can't say that is or isn't. I</p> <p>16 just don't know.</p> <p>17 Q. What this memo purports to do is to</p> <p>18 send to Dr. Blackwell and Mr. Feierabend an</p> <p>19 article from the New York Daily News, correct?</p> <p>20 A. Somebody wrote that in. I don't know</p> <p>21 that it's from the New York Daily News.</p> <p>22 Q. The article is entitled, Cancer Kills</p> <p>23 1 in 5 asbestos workers, says Doc. Correct?</p> <p>24 A. That's what the headline says.</p>                                                                                                            |
| <p style="text-align: right;">139</p> <p>1 Health Reporter, there's a brief comment</p> <p>2 quoting Dr. Selikoff regarding mesotheliomas.</p> <p>3 Apparently, several cases have been noted in</p> <p>4 automobile repair workers."</p> <p>5 That's what he wrote, correct?</p> <p>6 A. Yes.</p> <p>7 MR. RADCLIFFE: Object to form.</p> <p>8 Q. "Additionally, in thinking of product</p> <p>9 liability, do we need to look upon the friction</p> <p>10 product brakes as requiring any label regarding</p> <p>11 potential hazard?"</p> <p>12 That's the question that he asks,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. And to the extent that he was asking</p> <p>16 whether we should put on our label</p> <p>17 mesothelioma, that never occurred, right?</p> <p>18 A. That's not what he was asking. He was</p> <p>19 unaware that we had labels on our products.</p> <p>20 Q. To the extent that you had cautionary</p> <p>21 labels on your product, they didn't mention</p> <p>22 anything about mesothelioma, correct?</p> <p>23 MR. RADCLIFFE: Object to form.</p> <p>24 A. No, they didn't.</p> | <p style="text-align: right;">141</p> <p>1 Q. Under it, "It's Simply a Disaster.</p> <p>2 Selikoff considered to be one of the world's</p> <p>3 leading experts on cancer-causing chemicals</p> <p>4 said, 'It now seems clear that one out of every</p> <p>5 five workers exposed to asbestos will die of</p> <p>6 cancer and probably cancer of the lung. It's</p> <p>7 simply a disaster."</p> <p>8 That's what's recorded, correct?</p> <p>9 A. Yes.</p> <p>10 MR. RADCLIFFE: Object to form.</p> <p>11 Q. He says on the next column that first</p> <p>12 paragraph, "However, he said an additional 35</p> <p>13 of the cancer deaths were from mesothelioma, a</p> <p>14 type of tumor that is almost unheard of in the</p> <p>15 absence of exposure to asbestos."</p> <p>16 That's what he wrote -- what was</p> <p>17 written about him, correct?</p> <p>18 MR. RADCLIFFE: Object to form.</p> <p>19 A. Written about asbestos workers, yes.</p> <p>20 Q. And then under "Risk Cited For Others,</p> <p>21 Selikoff told the meeting that insulation</p> <p>22 workers are not the only people at risk. It is</p> <p>23 apparent, he said, that people living near an</p> <p>24 asbestos plant or with an asbestos worker in</p> |

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| <p style="text-align: right;">142</p> <p>1 the household has greater chances of getting</p> <p>2 cancer.</p> <p>3 Selikoff also expressed concern for</p> <p>4 the hundred thousand men in this country who</p> <p>5 work in garages repairing or lining brakes.</p> <p>6 While it was once thought that the heat used in</p> <p>7 the process eliminated the risk from asbestos</p> <p>8 dust, it is now clear that this is untrue, he</p> <p>9 said."</p> <p>10 That's what they reported, correct?</p> <p>11 MR. RADCLIFFE: Object to form.</p> <p>12 A. Who are "they"?</p> <p>13 Q. The New York Daily News?</p> <p>14 A. You know, again, I can't substantiate</p> <p>15 it says New York Daily News other than somebody</p> <p>16 handwrote it on the top, but the article says</p> <p>17 Washington, February 25, and the news bureau.</p> <p>18 And it talks about New York and New Jersey</p> <p>19 insulation workers so....</p> <p>20 Q. That article quotes Dr. Selikoff --</p> <p>21 A. It does, but --</p> <p>22 Q. -- as expressing concern for the</p> <p>23 hundred thousand men in the country working in</p> <p>24 garages repairing or lining brakes?</p> | <p style="text-align: right;">144</p> <p>1 Q. When we left, we were talking about an</p> <p>2 article that was sent to Dr. Blackwell and Mr.</p> <p>3 Feierabend in the late '70s. The next exhibit</p> <p>4 I'd like to show you is a document that we'll</p> <p>5 mark as 34.</p> <p>6 (Exhibit No. 34, Memo to John Marsh,</p> <p>7 7.22.76 so marked)</p> <p>8 Q. This is a letter from R.H. Mereness,</p> <p>9 M-E-R-E-N-E-S-S, executive director. It's on</p> <p>10 Asbestos Information Association letterhead.</p> <p>11 It's dated July 22, 1976. First of all, I want</p> <p>12 to ask you if you've seen that document before?</p> <p>13 A. I don't recall it.</p> <p>14 Q. First of all, you would agree with me</p> <p>15 that Abex was a member of the Asbestos</p> <p>16 Information Association, correct?</p> <p>17 A. It was.</p> <p>18 Q. And, in fact, I think in your</p> <p>19 interrogatory responses you told us that it was</p> <p>20 a member from, let's see, 1975 to 1980?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Now, one of the memorandum four</p> <p>23 is to Eric Feierabend, correct?</p> <p>24 A. Yes.</p>      |
| <p style="text-align: right;">143</p> <p>1 MR. RADCLIFFE: Object to form.</p> <p>2 A. It doesn't express his opinion, yes.</p> <p>3 Q. That certainly would be an opinion</p> <p>4 that Dr. Blackwell and Mr. Feierabend would be</p> <p>5 interested in since Abex was manufacturing</p> <p>6 asbestos brake products in 1976?</p> <p>7 MR. RADCLIFFE: Object to form.</p> <p>8 A. Since Abex was trying to garner as</p> <p>9 much information about the topic as it possibly</p> <p>10 could, yes.</p> <p>11 MR. GEORGE: Do you want to keep</p> <p>12 going?</p> <p>13 THE WITNESS: I'd like to take a lunch</p> <p>14 break, frankly.</p> <p>15 MR. RADCLIFFE: How much longer do you</p> <p>16 think you'll be?</p> <p>17 MR. GEORGE: Probably half hour, 45</p> <p>18 minutes.</p> <p>19 THE VIDEOGRAPHER: The time is now</p> <p>20 1:51. We're going off the record.</p> <p>21 (Recess 1:51 p.m. to 2:48 p.m.)</p> <p>22 THE VIDEOGRAPHER: The time is 2:48</p> <p>23 p.m. We're back on the record.</p> <p>24 BY MR. GEORGE:</p>                                                                                                                                     | <p style="text-align: right;">145</p> <p>1 Q. And that would be an employee of Abex?</p> <p>2 A. Yes.</p> <p>3 Q. What this memo does is to send to Mr.</p> <p>4 Feierabend and others a galley proof of an</p> <p>5 article prepared by Mount Sinai School of</p> <p>6 Medicine on asbestos dust during the servicing</p> <p>7 of brake and clutch assemblies. Do you agree</p> <p>8 that's what the memo indicates?</p> <p>9 A. Yes.</p> <p>10 MR. RADCLIFFE: Object to form.</p> <p>11 Q. It says that "This study was cited as</p> <p>12 the primary reference for the NIOSH alert</p> <p>13 issued August 1975 (distributed to members)</p> <p>14 calling attention to potential health hazards</p> <p>15 to workers exposed to asbestos dust during the</p> <p>16 servicing of brake and clutch assemblies."</p> <p>17 Are you familiar with the NIOSH alert</p> <p>18 from August 1975?</p> <p>19 A. Not offhand, I don't recall it.</p> <p>20 Q. Let me show you what we'll mark as</p> <p>21 Exhibit 35.</p> <p>22 (Exhibit No. 35, Current Intelligence</p> <p>23 Bulletin 5, 8.8.75 so marked)</p> <p>24 Q. This is the Current Intelligence</p> |

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| <p style="text-align: right;">146</p> <p>1 Bulletin No. 5 dated August 8, 1975, entitled</p> <p>2 Asbestos Exposure During the Servicing of Motor</p> <p>3 Vehicle Brake and Clutch Assemblies.</p> <p>4 Is that document that you've seen</p> <p>5 before?</p> <p>6 A. I don't recall seeing this before</p> <p>7 today.</p> <p>8 Q. Do you know whether that's a document</p> <p>9 that was received by Abex through its</p> <p>10 association with the Asbestos Information</p> <p>11 Association?</p> <p>12 A. I don't know. We were members. It's</p> <p>13 probable that we did get a copy, but I can't</p> <p>14 say that I know for sure we did.</p> <p>15 Q. What that says -- what this is is from</p> <p>16 the Department of Health Education and Welfare,</p> <p>17 and it says, "This communication is intended to</p> <p>18 alert you to recently gathered information</p> <p>19 indicating a potential health hazard for</p> <p>20 persons exposed to asbestos during the</p> <p>21 servicing of motor vehicle brake and clutch</p> <p>22 assemblies" is what the alert says, correct?</p> <p>23 A. Yes.</p> <p>24 MR. RADCLIFFE: Object to form.</p>                                                          | <p style="text-align: right;">148</p> <p>1 Sinai?</p> <p>2 A. Yes.</p> <p>3 MR. RADCLIFFE: Object to form.</p> <p>4 Q. One of the other things that this</p> <p>5 alert told people that received it is that --</p> <p>6 in the third paragraph, last sentence, "The</p> <p>7 present findings indicate that enough asbestos</p> <p>8 is preserved to produce significant exposures</p> <p>9 during certain brake servicing procedures,"</p> <p>10 correct?</p> <p>11 MR. RADCLIFFE: Object to form.</p> <p>12 A. I'm sorry -- oh, I do see it. Third</p> <p>13 paragraph?</p> <p>14 Q. Correct.</p> <p>15 A. Yes.</p> <p>16 Q. And what they're saying is that</p> <p>17 although there is a chemical transformation of</p> <p>18 the majority of the asbestos, once the brakes</p> <p>19 are put in use that there still is some amount</p> <p>20 of asbestos that survives the brake operation?</p> <p>21 MR. RADCLIFFE: Object to form.</p> <p>22 MR. CARON: Object to form.</p> <p>23 Q. Do you agree with that?</p> <p>24 A. No, I don't really see that. I</p>                                                                                                                                        |
| <p style="text-align: right;">147</p> <p>1 Q. Is it says, "The data was presented by</p> <p>2 investigators from the Mount Sinai School of</p> <p>3 Medicine in New York City indicating that</p> <p>4 workers engaged in the maintenance and repair</p> <p>5 of automobile and truck brake linings are</p> <p>6 exposed to potentially hazardous levels of</p> <p>7 airborne asbestos dust."</p> <p>8 MR. RADCLIFFE: Object to form.</p> <p>9 Q. That's what's written in the second</p> <p>10 sentence of the second paragraph there?</p> <p>11 A. Yes.</p> <p>12 Q. And that's certainly consistent with</p> <p>13 the cover letter from the Asbestos Information</p> <p>14 Association saying that Mount Sinai was the</p> <p>15 basis for the data that was contained within</p> <p>16 the alert?</p> <p>17 MR. RADCLIFFE: Object to form.</p> <p>18 A. I don't understand your question.</p> <p>19 Q. All I'm saying is that the fact that</p> <p>20 the alert is referencing Mount Sinai is</p> <p>21 consistent with the cover letter from the</p> <p>22 Asbestos Information Association which says</p> <p>23 that the alert issued in August 1975 was based</p> <p>24 on information from Dr. Selikoff and Mount</p> | <p style="text-align: right;">149</p> <p>1 mean --</p> <p>2 Q. It says, "Previous studies of the</p> <p>3 extent of asbestos emissions from automobile</p> <p>4 brake lining wear showed that only a very small</p> <p>5 fraction of the original asbestos content of</p> <p>6 the brake lining is found in brake drum dust.</p> <p>7 It was presumed this is due to the thermal</p> <p>8 degradation of the fibers during braking. The</p> <p>9 present findings indicate that enough asbestos</p> <p>10 is preserved to produce significant exposures</p> <p>11 during certain brake servicing procedures."</p> <p>12 A. That's what it says.</p> <p>13 MR. RADCLIFFE: Object to form.</p> <p>14 Q. Have you seen the paper that</p> <p>15 the Asbestos Information Association is sending</p> <p>16 to its members as a galley proof from the</p> <p>17 researchers at Mount Sinai entitled Asbestos</p> <p>18 Exposure During Brake Lining Maintenance and</p> <p>19 Repair?</p> <p>20 A. No, I have not seen that.</p> <p>21 Q. Do you know if this article is within</p> <p>22 the business records of Abex in the document</p> <p>23 depository?</p> <p>24 A. I haven't seen it, so at this point</p> |

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| <p style="text-align: right;">150</p> <p>1 I'd have to say no.</p> <p>2 Q. I noticed in one of your depositions</p> <p>3 that you disagreed with the concept that some</p> <p>4 of the brake wear debris dust contains</p> <p>5 unaltered chrysotile fibers?</p> <p>6 MR. RADCLIFFE: Object to form.</p> <p>7 Q. Is that your opinion?</p> <p>8 A. Could you say that again?</p> <p>9 Q. Sure. Let me just ask you: Do you</p> <p>10 agree that even though a significant portion of</p> <p>11 the chrysotile that starts in the brake lining</p> <p>12 converts to a substance known as Fosterite --</p> <p>13 A. Fosterite.</p> <p>14 Q. -- during the braking process?</p> <p>15 A. Right.</p> <p>16 Q. That there are free floating</p> <p>17 chrysotile asbestos fibers that survive that</p> <p>18 process intact?</p> <p>19 MR. RADCLIFFE: Object to form.</p> <p>20 A. It's kind of a compound point that</p> <p>21 you're trying to make. I don't dispute that</p> <p>22 there might be some very short fiber</p> <p>23 chrysotile, your term "free floating" makes it</p> <p>24 difficult for me to answer your question</p> | <p style="text-align: right;">152</p> <p>1 Fosterization process?</p> <p>2 MR. RADCLIFFE: Object to form.</p> <p>3 A. When you say "manipulation," what are</p> <p>4 you talking about?</p> <p>5 Q. If you have to grind, drill or sand --</p> <p>6 A. No.</p> <p>7 Q. -- a new brake lining?</p> <p>8 A. No. We're talking about wear debris</p> <p>9 which is totally different than that.</p> <p>10 Q. Now, have you seen photomicrographs of</p> <p>11 brake wear debris where they have demonstrated</p> <p>12 the existence of Chrysotile fibers that are</p> <p>13 uncoated and unconverted into --</p> <p>14 A. No.</p> <p>15 Q. -- the Fosterite process?</p> <p>16 MR. RADCLIFFE: Object to form.</p> <p>17 A. I've never seen any such photographs.</p> <p>18 Q. Am I correct that, for example, on</p> <p>19 page 124 of the Rohl article -- which we'll</p> <p>20 make as the next exhibit, which will be 36 --</p> <p>21 you haven't seen a photograph like that that</p> <p>22 indicates that there are in effect chrysotile</p> <p>23 fibers still present in the wear debris?</p> <p>24 A. No, I have not.</p>                                                                              |
| <p style="text-align: right;">151</p> <p>1 directly.</p> <p>2 Q. Let me remove that term and address it</p> <p>3 this way. You're aware that as part of --</p> <p>4 well, are you aware that as part of the paper</p> <p>5 that Dr. Selikoff and others at Mount Sinai did</p> <p>6 is they examined what we call brake wear debris</p> <p>7 under a microscope?</p> <p>8 A. I understand that Dr. Selikoff and</p> <p>9 many other have studied wear debris over the</p> <p>10 years.</p> <p>11 Q. And what wear debris is is that</p> <p>12 material that remains in the drum brake housing</p> <p>13 after the brakes have been applied?</p> <p>14 A. I didn't know it was limited to drum</p> <p>15 brakes, but are we limiting it to drum brakes?</p> <p>16 Q. No. Also it can be around where the</p> <p>17 disc brakes are?</p> <p>18 A. Okay.</p> <p>19 Q. You agree with that?</p> <p>20 A. Yeah, I agree that wear debris is wear</p> <p>21 debris.</p> <p>22 Q. You also agree that when we talked</p> <p>23 earlier about manipulation of brakes prior to</p> <p>24 installation, that doesn't involve this</p>            | <p style="text-align: right;">153</p> <p>1 (Exhibit No. 36, Asbestos Exposure</p> <p>2 During Brake Lining Maintenance and Repair so</p> <p>3 marked)</p> <p>4 Q. And there are -- I'm going to show you</p> <p>5 page 116 of the same document and ask you</p> <p>6 whether those photomicrographs indicate that</p> <p>7 there are chrysotile fibers that survived</p> <p>8 intact the braking process?</p> <p>9 MR. RADCLIFFE: Object to form.</p> <p>10 A. I couldn't say from these photographs.</p> <p>11 Q. What does the caption say on the</p> <p>12 bottom of those?</p> <p>13 A. If you want me to read the caption,</p> <p>14 that's one thing. If you want my</p> <p>15 interpretation of a photomicrograph, that's</p> <p>16 entirely something else. There are four</p> <p>17 figures on this page. Figure 3 says, "Electron</p> <p>18 microphotographs of brake drum dust.</p> <p>19 Chrysotile is present in both free fiber and</p> <p>20 fibril form. Opaque granular material is road</p> <p>21 dust or phenolic binder. A x 10,800; B x 9300;</p> <p>22 C x 30,000; D x 30,000."</p> <p>23 Q. Okay. Now, you indicated in a prior</p> <p>24 deposition that you had at least on one</p> |

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| <p style="text-align: right;">154</p> <p>1 occasion had the opportunity to look at brake<br/>2 wear debris under a microscope?</p> <p>3 A. I believe I saw brake wear debris and<br/>4 brake lining under an electron microscope, yes.</p> <p>5 Q. And that was only one occasion,<br/>6 correct?</p> <p>7 A. No, I think it was more than one<br/>8 occasion.</p> <p>9 Q. How many occasions was it?</p> <p>10 A. I don't remember. I mean, I've been<br/>11 in that business for most of my life. And<br/>12 using microscopes, both optical and electron<br/>13 microscopes were I wouldn't say routine, but it<br/>14 was certainly something I'd done numerous<br/>15 times.</p> <p>16 Q. And why would you be looking at brake<br/>17 wear debris?</p> <p>18 A. Well, in one case to find out why the<br/>19 opposing surface, the brake drum, was being<br/>20 worn prematurely. In other cases to understand<br/>21 structural failures of brake lining. Many<br/>22 reasons why we would have done that.</p> <p>23 Q. The significance of anything you saw<br/>24 under the electron microscope would have been</p>                                                                                            | <p style="text-align: right;">156</p> <p>1 review of the scientific literature on the<br/>2 association between asbestos exposure and<br/>3 mesothelial tumors of the pleura and peritoneum<br/>4 has revealed at least four cases of these rare<br/>5 tumors in person who were employed in jobs<br/>6 involving automobile brick service."</p> <p>7 That's what was reported, correct?</p> <p>8 A. I don't see that on this page. Can<br/>9 you help me?</p> <p>10 Q. Last sentence of the first -- of the<br/>11 last paragraph?</p> <p>12 A. The first paragraph?</p> <p>13 Q. Of the last paragraph?</p> <p>14 A. Okay. I see it, yes.</p> <p>15 Q. And to the extent that Abex received<br/>16 this alert, they were on at least notice that<br/>17 there were some -- there was some scientific<br/>18 literature that showed the association between<br/>19 asbestos exposure and mesothelial tumors in<br/>20 automobile brake servicing personnel?</p> <p>21 MR. RADCLIFFE: Object to form.</p> <p>22 Q. Would you agree with that?</p> <p>23 A. I don't know what your question is,<br/>24 I'm sorry.</p> |
| <p style="text-align: right;">155</p> <p>1 pointed out to you by the operator of the<br/>2 electron microscope, correct?</p> <p>3 A. Well, it's kind of -- you know, I<br/>4 wasn't a qualified electron microscope<br/>5 operator, so it was not uncommon that the<br/>6 operator and the scientist or engineer would<br/>7 sit with the operator, and they would kind of<br/>8 collaborate on what they were seeing and trying<br/>9 to deduce and garner information from the<br/>10 image.</p> <p>11 Q. When NIOSH or the director of the<br/>12 Occupational Health and Surveillance in<br/>13 Biometrics of the Department of Health and<br/>14 Human Services wrote to individuals in this<br/>15 August 1975 letter and indicated that the<br/>16 present findings indicate that enough asbestos<br/>17 is preserved to produce significant exposures<br/>18 during certain brake surfacing procedures, do<br/>19 you believe that that information is incorrect?</p> <p>20 MR. RADCLIFFE: Object to form.</p> <p>21 A. I'm not saying it's incorrect. It's<br/>22 inconsistent with my understanding.</p> <p>23 Q. One of the other things that was<br/>24 communicated in this alert was the fact that "A</p> | <p style="text-align: right;">157</p> <p>1 Q. My question is: If Abex as a member<br/>2 the Asbestos Information Association received<br/>3 this alert in 1975 --</p> <p>4 A. Okay.</p> <p>5 Q. -- then they would be on notice<br/>6 that --</p> <p>7 A. What do you mean by "on notice"? Can<br/>8 you define "on notice" for me? I guess that's<br/>9 the problem.</p> <p>10 Q. Well, they certainly were --</p> <p>11 A. Did they have knowledge?</p> <p>12 Q. They were aware of the existence of<br/>13 scientific literature that showed an<br/>14 association of mesothelial tumors and brake<br/>15 service personnel?</p> <p>16 A. I would have --</p> <p>17 MR. RADCLIFFE: Object to form.</p> <p>18 A. -- to say as members they would have<br/>19 garnered that information in the normal course<br/>20 of their business.</p> <p>21 Q. There was also certain recommended<br/>22 practices that were part of the alert. I'm<br/>23 going to show them to you. One of the<br/>24 recommended practices says that -- and this is</p>                                                                     |

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| <p style="text-align: right;">158</p> <p>1 the first one. "If possible, an area shall be<br/>2 designated for all brake and clutch repairs.<br/>3 Entrances into this area shall be posted with<br/>4 an asbestos exposure warning sign as follows."<br/>5 And the last part of that warning sign was<br/>6 "Breathing asbestos dust may cause asbestosis<br/>7 and cancer."<br/>8 That's what was recommended by NIOSH<br/>9 in 1975, correct?<br/>10 A. Yes.<br/>11 Q. And that's not a statement that ever<br/>12 appeared on any cautionary language that Abex<br/>13 put on any of its products?<br/>14 MR. RADCLIFFE: Object to form.<br/>15 A. That's not what this says. This says<br/>16 that the area shall be designated and labeled<br/>17 this way. It doesn't say anything about using<br/>18 this on the product.<br/>19 Q. But the fact that breathing asbestos<br/>20 dust can cause asbestosis or cancer was not<br/>21 information that Abex provided to the consumers<br/>22 of its products either through an insert in the<br/>23 product itself or by labeling on the packaging<br/>24 of its product?</p>                                    | <p style="text-align: right;">160</p> <p>1 it to the persons that would be doing the<br/>2 installation. I contend that that -- that we<br/>3 would rely on the brake manufacturers, the<br/>4 vehicle manufacturers, the rebuilders. We had<br/>5 no way to do that.<br/>6 Q. You certainly didn't pass any of the<br/>7 information that you had gleaned to your<br/>8 customers?<br/>9 MR. RADCLIFFE: Objection.<br/>10 Q. Other than what was in your<br/>11 cautionary --<br/>12 A. I disagree --<br/>13 MR. RADCLIFFE: Objection.<br/>14 A. -- because a lot of these warnings and<br/>15 recommendations and so on were, in fact,<br/>16 incorporated into FMSI catalog which ultimately<br/>17 got to the end users.<br/>18 Q. And that was not until the late '70s<br/>19 and early '80s, correct?<br/>20 A. That's the time period we're talking<br/>21 about here.<br/>22 Q. This is 1975, and the FMSI catalog was<br/>23 not available until 1978, correct?<br/>24 MR. RADCLIFFE: Object to form.</p>                                                                                                                |
| <p style="text-align: right;">159</p> <p>1 MR. RADCLIFFE: Object to form.<br/>2 A. No, we did not.<br/>3 Q. It also indicates that "During brake<br/>4 services air purifying respirators, either<br/>5 single use or with replacement of particular<br/>6 dust filters, shall be worn during all<br/>7 procedures following removal of the wheels,<br/>8 including reassembly." Again, that's not a<br/>9 procedure that Abex communicated to any<br/>10 consumers of its products either through an<br/>11 insert or through cautionary language on its<br/>12 packaging, correct?<br/>13 MR. RADCLIFFE: Object to form.<br/>14 A. Our customers were not the installers<br/>15 of brakes. I mean, our product has to be<br/>16 handled and assembled to something else before<br/>17 it can be put in the hands of someone who<br/>18 assembles brakes so....<br/>19 Q. For that person that eventually gets<br/>20 your product and has to install or handle it,<br/>21 Abex did not communicate the fact that<br/>22 respirators should be worn during that process?<br/>23 MR. RADCLIFFE: Object to form.<br/>24 A. There's no way for Abex to communicate</p> | <p style="text-align: right;">161</p> <p>1 A. I don't recall it being that late. I<br/>2 thought it was like about 1976, but I don't<br/>3 happen to have a ready reference for that date.<br/>4 Q. According to your answers to<br/>5 interrogatory responses, you indicate that "In<br/>6 1979 and 1982 Abex participated in the<br/>7 preparation and distribution of a pamphlet<br/>8 published by the Friction Materials Standard<br/>9 Institute entitled Recommended Procedures For<br/>10 Reducing Asbestos Dust During Brake Service."<br/>11 A. I stand corrected. Those are the<br/>12 dates.<br/>13 Q. 1979 was the first time that type of<br/>14 information was communicated by Abex, correct?<br/>15 A. Yes.<br/>16 MR. RADCLIFFE: Object to form.<br/>17 Q. You would agree with me that by that<br/>18 period of time, 1979, Abex had been subject to<br/>19 -- had already been sued in at least four<br/>20 occasions in different states with regard to<br/>21 allegations that individuals had developed an<br/>22 asbestos disease from the use of Abex's<br/>23 products?<br/>24 A. Can I refer to --</p> |

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| <p style="text-align: right;">162</p> <p>1 MR. RADCLIFFE: Object to form.</p> <p>2 Q. Sure.</p> <p>3 A. The first one was 1977.</p> <p>4 Q. Then there was one in 1978 and two in</p> <p>5 1979?</p> <p>6 MR. RADCLIFFE: Object to form.</p> <p>7 A. Correct.</p> <p>8 Q. Also in 1979 Abex received an</p> <p>9 allegation that one of its workers was</p> <p>10 diagnosed with asbestosis, correct?</p> <p>11 A. Yeah. I'm very familiar with that</p> <p>12 case. It was an employee in our Salisbury</p> <p>13 plant, and it turned out that he had been</p> <p>14 exposed to asbestos in the shipbuilding</p> <p>15 industry. And under North Carolina workers'</p> <p>16 comp law, last injurious exposure date was what</p> <p>17 mattered, and that was why Abex was named in</p> <p>18 that suit.</p> <p>19 MR. RADCLIFFE: Object to form.</p> <p>20 Q. You've also indicated that a review of</p> <p>21 Abex's records demonstrated that there were a</p> <p>22 few claimed cases of asbestosis among its</p> <p>23 employees, correct?</p> <p>24 A. Yes. Claimed being the operative</p> | <p style="text-align: right;">164</p> <p>1 Q. -- "Please do not, under any</p> <p>2 circumstances, distribute our blue booklets to</p> <p>3 our customers." What were the blue booklets?</p> <p>4 MR. RADCLIFFE: Object to form.</p> <p>5 A. The blue booklets were informational</p> <p>6 booklets that were distributed to our workers</p> <p>7 in our factory as part of their asbestos</p> <p>8 education and had a little tear-off thing where</p> <p>9 they signed and acknowledged receipt of the</p> <p>10 training booklet.</p> <p>11 Q. The blue information booklets were</p> <p>12 internal documents that --</p> <p>13 A. Dealt with.</p> <p>14 Q. -- educated your workers to the</p> <p>15 hazards associated with working with asbestos?</p> <p>16 A. With raw asbestos fiber in their</p> <p>17 environment.</p> <p>18 Q. Do you have any exemplars of that blue</p> <p>19 booklet?</p> <p>20 A. No. I'm sorry to say we have not been</p> <p>21 able to produce such a copy.</p> <p>22 Q. What this letter says is that, "The</p> <p>23 blue information booklets are strictly for</p> <p>24 internal use and should not be considered to</p> |
| <p style="text-align: right;">163</p> <p>1 word.</p> <p>2 Q. I want to show you a document dated</p> <p>3 September 5, 1978.</p> <p>4 MR. GEORGE: We'll mark this as</p> <p>5 Exhibit 37.</p> <p>6 (Exhibit No. 37, Letter to E.P. Hoff,</p> <p>7 9.5.78 so marked)</p> <p>8 Q. This is a letter from a B. Iwarsson,</p> <p>9 I-W-A-R-S-S-O-N?</p> <p>10 A. Yes.</p> <p>11 Q. Who is Mr. Iwarsson?</p> <p>12 A. He was an executive at Friction</p> <p>13 Products Group of Abex.</p> <p>14 Q. And he's writing to a Mr. E.P. Hoff?</p> <p>15 A. Right, who is sales manager.</p> <p>16 Q. And this is under the Friction</p> <p>17 Products Group Winchester letterhead, correct?</p> <p>18 A. That's right.</p> <p>19 Q. Is this -- first of all, is this an</p> <p>20 authentic record of Abex?</p> <p>21 A. I believe it be to, yes.</p> <p>22 Q. In this letter it says talking about</p> <p>23 asbestos booklets --</p> <p>24 A. Yes.</p>                                                                                                                                                     | <p style="text-align: right;">165</p> <p>1 inform our customers of the potential hazards</p> <p>2 of asbestos. The FMSI booklet would be quite</p> <p>3 sufficient."</p> <p>4 That's what he wrote, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did Abex itself ever publish any kind</p> <p>7 of safe handling bulletin or brochures to its</p> <p>8 customers?</p> <p>9 A. No.</p> <p>10 Q. Abex did, however, provide MSDS</p> <p>11 sheets, correct?</p> <p>12 A. Yes.</p> <p>13 Q. An MSDS sheet is a material safety</p> <p>14 data sheet?</p> <p>15 A. That's right.</p> <p>16 Q. It was required by OSHA?</p> <p>17 A. That's right.</p> <p>18 Q. That a manufacturer of a product</p> <p>19 needed to alert the consumers of that product</p> <p>20 or the people who purchased that product of the</p> <p>21 contents of that product and any potential</p> <p>22 hazards that may be associated with the use of</p> <p>23 that product, correct?</p> <p>24 MR. RADCLIFFE: Object to form.</p>                                                                                                                                                              |

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| <p style="text-align: right;">166</p> <p>1 A. Yes.</p> <p>2 Q. I want to show you a document that is</p> <p>3 from a document that's entitled Asbestos</p> <p>4 Corporate Friction Product Group Brake Lining,</p> <p>5 and it is an August 1, 1986, MSDS date, and ask</p> <p>6 you if you're familiar with this document?</p> <p>7 A. I'm not familiar with this document.</p> <p>8 Q. Let me ask you about the document</p> <p>9 itself. Would you agree with me that the Abex</p> <p>10 company name in 1986 was Abex Corp. Friction</p> <p>11 Products Group?</p> <p>12 MR. RADCLIFFE: Object to form. Let</p> <p>13 me just object also this is not an Abex</p> <p>14 document.</p> <p>15 MR. GEORGE: I'm going ask some</p> <p>16 questions about it.</p> <p>17 MR. RADCLIFFE: Well, you can ask</p> <p>18 questions about it. I don't know where you got</p> <p>19 it. I don't know who prepared it.</p> <p>20 MR. GEORGE: That's why I'm going ask</p> <p>21 questions about it.</p> <p>22 MR. RADCLIFFE: Can I have an</p> <p>23 continuing objection to all your questions?</p> <p>24 MR. GEORGE: You may.</p> | <p style="text-align: right;">168</p> <p>1 sold any of its asbestos material to the</p> <p>2 government?</p> <p>3 A. I'm not sure. I don't think so.</p> <p>4 Q. Did Abex sell any of its material to</p> <p>5 someone who incorporated that asbestos material</p> <p>6 into a product that was sold to the government?</p> <p>7 A. Entirely possible.</p> <p>8 Q. Do you have any exemplars of MSDS</p> <p>9 sheets that Abex gave to its customers?</p> <p>10 A. I believe that I've seen one as an</p> <p>11 exhibit in some other litigation, but to my</p> <p>12 knowledge we haven't been able to find any</p> <p>13 MSDSes in our repository.</p> <p>14 Q. Do you know what date the MSDS that</p> <p>15 you saw was from --</p> <p>16 A. No, I don't.</p> <p>17 Q. -- what year? I want to show you a</p> <p>18 series of advertisements we'll mark as Exhibit</p> <p>19 39.</p> <p>20 (Exhibit No. 39, Advertisements so</p> <p>21 marked)</p> <p>22 Q. I think you've seen these</p> <p>23 advertisements before?</p> <p>24 A. I'll tell you when you show them to</p> |
| <p style="text-align: right;">167</p> <p>1 A. The name of the company was not Abex</p> <p>2 Corp. Friction Products Group.</p> <p>3 Q. Was it located at 2610 Paper Mill</p> <p>4 Road, Winchester, Virginia?</p> <p>5 A. Was the company?</p> <p>6 Q. Correct?</p> <p>7 A. Or was there a factory at that</p> <p>8 location?</p> <p>9 Q. Did Abex have a facility that address?</p> <p>10 A. Yes.</p> <p>11 Q. Was Eaton Corporation in Kalamazoo,</p> <p>12 Michigan, one of Abex's customers?</p> <p>13 A. Well, Eaton Corp. in Kalamazoo, no.</p> <p>14 Eaton was a customer, but I don't recognize</p> <p>15 Kalamazoo, Michigan, as a location for Eaton</p> <p>16 Corp.</p> <p>17 Q. Are you familiar with the Hazardous</p> <p>18 Material Information System of the federal</p> <p>19 government?</p> <p>20 A. The MSDS system?</p> <p>21 Q. No, the HMIS system of the federal</p> <p>22 government?</p> <p>23 A. No, I'm not.</p> <p>24 Q. Are you aware of whether Abex ever</p>                                                                                                                              | <p style="text-align: right;">169</p> <p>1 me.</p> <p>2 Q. These are advertisements from the</p> <p>3 various issues of The Saturday Evening Post?</p> <p>4 A. Yeah, I've seen some of these, not</p> <p>5 necessarily all of them but...okay.</p> <p>6 Q. These are -- take the first one from</p> <p>7 April 30, 1955?</p> <p>8 A. I can't even read the dates on these.</p> <p>9 Q. The first page.</p> <p>10 A. Okay.</p> <p>11 Q. In that one there's a picture of a</p> <p>12 revolver, correct?</p> <p>13 A. Uh-huh.</p> <p>14 Q. It says, "Brakes can become just as</p> <p>15 deadly," correct?</p> <p>16 A. Yes.</p> <p>17 Q. It says, "When you handle a loaded</p> <p>18 revolver, you treat it with care and respect.</p> <p>19 It's a deadly weapon and you know it. Brakes</p> <p>20 can be just as lethal, but, unfortunately, you</p> <p>21 may not know they have become potential</p> <p>22 killers," correct?</p> <p>23 A. Yes.</p> <p>24 Q. It says --</p>                                                                                                  |

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| <p style="text-align: right;">170</p> <p>1 MR. RADCLIFFE: Object to form.</p> <p>2 Q. It says, "American Brakeblok, American</p> <p>3 Safety brake lining." Is the way that American</p> <p>4 Brakeblok is scripted there something that is a</p> <p>5 historical trademark of American Brakeblok?</p> <p>6 A. Yes.</p> <p>7 Q. It says, "A Product of Brake Shoe</p> <p>8 distributed nationally by" and then it has a</p> <p>9 symbol for NAPA, correct?</p> <p>10 A. I can't read that.</p> <p>11 MR. CARON: Object to form.</p> <p>12 A. I see a product of brake shoe</p> <p>13 distributed something nationally.</p> <p>14 Q. Okay. Let's look at the second one.</p> <p>15 This is from August 27, 1955.</p> <p>16 A. Uh-huh.</p> <p>17 Q. This is a picture of two sticks of</p> <p>18 dynamite, correct?</p> <p>19 A. That appears to be. I'm not sure.</p> <p>20 It's really a bad image.</p> <p>21 Q. It says, "Brakes can be become just as</p> <p>22 deadly. Handling dynamite can be a risky</p> <p>23 operation. It's a deadly explosive and</p> <p>24 everyone knows it. Brakes can be just as</p>              | <p style="text-align: right;">172</p> <p>1 A. Yes.</p> <p>2 Q. We talked earlier about the</p> <p>3 relationship between NAPA and Abex, and you</p> <p>4 said you believe that that relationship went</p> <p>5 back sometime into the '40s?</p> <p>6 A. I think even before that as I thought</p> <p>7 about it.</p> <p>8 Q. Now, do you know whether Genuine Parts</p> <p>9 had any other supplier of asbestos linings for</p> <p>10 its brakes other than Abex?</p> <p>11 A. Yes, I know they did.</p> <p>12 Q. Okay. And how much of Genuine Parts'</p> <p>13 business did Abex have?</p> <p>14 MR. RADCLIFFE: Object to form.</p> <p>15 MR. CARON: Object to form.</p> <p>16 A. I don't know at what point in time</p> <p>17 we're talking, but while I was active in the</p> <p>18 business, I would say I'd estimate our market</p> <p>19 share at NAPA to be about 30, 35 percent.</p> <p>20 Q. Who else would supply linings for</p> <p>21 Genuine Parts to put on its product?</p> <p>22 MR. CARON: Object to form.</p> <p>23 A. I don't know all the potential</p> <p>24 suppliers over the years, but certainly</p> |
| <p style="text-align: right;">171</p> <p>1 deadly, but, unfortunately, you may not know</p> <p>2 that they've become potential killers"?</p> <p>3 A. "That's why regular periodic brake</p> <p>4 inspection is so important."</p> <p>5 Q. The next -- it's from July 1955, and</p> <p>6 it has a photograph of a dagger, correct?</p> <p>7 A. Yes.</p> <p>8 Q. It says, "Brakes can become just as</p> <p>9 deadly. An ancient dagger can be an</p> <p>10 interesting relic or a deadly weapon.</p> <p>11 Fortunately, you know it. Brakes can be</p> <p>12 equally deadly," is what they write, correct?</p> <p>13 MR. CARON: Object to form.</p> <p>14 A. Yes.</p> <p>15 Q. Then the last one is a photograph of a</p> <p>16 few bullets, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And it says, "Loaded cartridges can be</p> <p>19 a means of protection or deadly killers, and</p> <p>20 you know it. Brakes can also protect you or be</p> <p>21 just as fatal as a bullet, but, unfortunately,</p> <p>22 you may not know they have become potential</p> <p>23 killers," correct?</p> <p>24 MR. CARON: Object to form.</p> | <p style="text-align: right;">173</p> <p>1 Raybestos, Eckland at the time, Bendix, now</p> <p>2 Honeywell, Virginia Friction. I mean, there</p> <p>3 was a couple of Canadian companies I know they</p> <p>4 sourced product from.</p> <p>5 Q. You've seen, have you not, various</p> <p>6 advertisements from NAPA?</p> <p>7 A. I mean --</p> <p>8 MR. CARON: Object to form.</p> <p>9 A. -- I saw one yesterday for wiper</p> <p>10 blades.</p> <p>11 Q. Let me show you these. This one is</p> <p>12 from Commercial Car Journal July 1966?</p> <p>13 MR. GEORGE: And we'll mark that as</p> <p>14 Exhibit 40.</p> <p>15 (Exhibit No. 40, Photocopy of</p> <p>16 Commercial Car Journal Page 182-183, July 1966</p> <p>17 so marked)</p> <p>18 Q. In that advertisement they associate</p> <p>19 products with specific manufacturers, correct?</p> <p>20 MR. CARON: Object to form.</p> <p>21 A. Well, there's images of various</p> <p>22 products and various product types, and, I</p> <p>23 mean, there's a line here for it looks like</p> <p>24 suspension parts, that's NAPA Allied. There's</p>                    |

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| <p style="text-align: right;">174</p> <p>1 one for lamps and tubes, but it doesn't -- I</p> <p>2 guess it's Balkamp. There's one for bearings,</p> <p>3 one for emission parts, one for brakes.</p> <p>4 Q. What does it have for brakes?</p> <p>5 A. American Brakeblok, but it's limited</p> <p>6 to in this case thick blocks and heavy-duty</p> <p>7 linings, and the image is for a commercial</p> <p>8 vehicle type of brake lining.</p> <p>9 Q. Now, you are familiar, are you not,</p> <p>10 that there were Rayloc relined brake shoe</p> <p>11 catalogs that contained American Brakeblok</p> <p>12 products?</p> <p>13 MR. CARON: Object to form.</p> <p>14 MR. RADCLIFFE: Object to form.</p> <p>15 A. Catalogs contained products? I'm not</p> <p>16 sure I understand what you're saying.</p> <p>17 Q. I'm going to show you -- and I don't</p> <p>18 have the whole catalog, but I'm going to show</p> <p>19 you an excerpt from one. This is a BSE-72R</p> <p>20 catalog, and it has that SPNY number at the</p> <p>21 bottom, and it talks about Rayloc relined brake</p> <p>22 shoes. It has the NAPA logo, and then it says</p> <p>23 American Brakeblok?</p> <p>24 A. Okay.</p>                               | <p style="text-align: right;">176</p> <p>1 Abex?</p> <p>2 A. Not necessarily.</p> <p>3 MR. CARON: Object to form.</p> <p>4 MR. RADCLIFFE: Object to form.</p> <p>5 A. The trade name American Brakeblok at</p> <p>6 some point in the corporate history was the</p> <p>7 company name, but in this time frame American</p> <p>8 Brakeblok was just a product trademark that we</p> <p>9 let NAPA use. And we had a verbal agreement</p> <p>10 with them that we wouldn't use it on anything</p> <p>11 else. That's not to the say that every piece</p> <p>12 of brake lining they bought from us or that was</p> <p>13 implied in their catalog came from us.</p> <p>14 Q. So when -- what you're saying is that</p> <p>15 American Brakeblok, even though it's a</p> <p>16 registered trademark, that was a registered</p> <p>17 trademark of your company, correct?</p> <p>18 A. Yes, it was.</p> <p>19 Q. Okay. So you lent your registered</p> <p>20 trademark to NAPA to put on any brake material</p> <p>21 that they sold?</p> <p>22 A. No, it was --</p> <p>23 MR. CARON: Object to form.</p> <p>24 Q. I'm just trying to understand what</p>                 |
| <p style="text-align: right;">175</p> <p>1 Q. And if we go into the next page, it</p> <p>2 talks about NAPA American Brakeblok relined</p> <p>3 brake shoes, and in the table of contents -- I</p> <p>4 didn't bring all the associated lists -- but</p> <p>5 they talk about domestic cars, foreign cars,</p> <p>6 relined brake shoe sets, and this is a catalog</p> <p>7 that NAPA put out. I'm just asking --</p> <p>8 MR. GEORGE: We'll mark this as 41.</p> <p>9 (Exhibit No. 41, Rayloc Relined Brake</p> <p>10 Shoes, BSE-72R Catalog so marked)</p> <p>11 Q. Is this something that you're familiar</p> <p>12 with?</p> <p>13 A. Not offhand. I've seen similar kind</p> <p>14 of catalog covers.</p> <p>15 MR. CARON: I'm just going to object</p> <p>16 to the form of the last question. I'm also</p> <p>17 just going to make an objection to the use of</p> <p>18 these documents. They're unauthenticated. I</p> <p>19 don't think the foundation has been laid for</p> <p>20 use of any of them.</p> <p>21 Q. Let me ask you this: As the corporate</p> <p>22 spokesman for Abex, are you aware of any</p> <p>23 relined brake catalogs from Rayloc that</p> <p>24 indicate that the linings were provided by</p> | <p style="text-align: right;">177</p> <p>1 your testimony is.</p> <p>2 A. We gave them the use of that market,</p> <p>3 all right. Our intent was to try to get as</p> <p>4 much business from Rayloc, NAPA, Genuine Parts</p> <p>5 as we possibly could. Not always did they buy</p> <p>6 their brake lining from us, and it was a source</p> <p>7 of many discussions of, Hey, guys, we're</p> <p>8 letting you use the mark. You really shouldn't</p> <p>9 be using somebody else's brake lining but, in</p> <p>10 fact, they did. And they were an important and</p> <p>11 big and a good customer, and we just kind of</p> <p>12 let it go on.</p> <p>13 Q. Do you have any documentation from</p> <p>14 that depository that would substantiate that</p> <p>15 testimony?</p> <p>16 A. I believe we do.</p> <p>17 Q. Okay. Have you produced any of that</p> <p>18 material?</p> <p>19 A. Did you ask for it?</p> <p>20 Q. I'm sure we asked for it. Let me ask</p> <p>21 this way: When did you first assign your</p> <p>22 registered trademark to NAPA?</p> <p>23 A. I have no idea when it first started.</p> <p>24 Q. When did NAPA first sell a brake</p> |

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| <p style="text-align: right;">178</p> <p>1 product as an American Brakeblok material that</p> <p>2 did not contain an asbestos lining from an Abex</p> <p>3 entity? And by that I mean any of the</p> <p>4 formulations of American Brakeblok?</p> <p>5 A. I don't know when it started.</p> <p>6 MR. CARON: Object to form.</p> <p>7 A. It was certainly when I joined the</p> <p>8 company in 1970 and got involved with the</p> <p>9 friction business directly in '71 or '72 there</p> <p>10 was brake linings that was not Abex's that was</p> <p>11 being used in the NAPA Genuine Parts</p> <p>12 distribution.</p> <p>13 Q. How would anybody who was purchasing</p> <p>14 that product know that it was not, in fact, an</p> <p>15 American Brakeblok Corporation lining on that</p> <p>16 product?</p> <p>17 A. I don't know.</p> <p>18 MR. CARON: Object to form.</p> <p>19 A. Perhaps by the edge coding that was on</p> <p>20 the brake lining.</p> <p>21 Q. Your edge coding -- you mentioned</p> <p>22 them. Let me just show you what we'll mark as</p> <p>23 Exhibit 42.</p> <p>24 (Exhibit No. 42, Abex 614EF so marked)</p> | <p style="text-align: right;">180</p> <p>1 Vehicle Administrators nationally, and they</p> <p>2 would assign or you would request an edge code</p> <p>3 nomenclature.</p> <p>4 And they would grant it, and then you</p> <p>5 put that on brake lining along with a</p> <p>6 two-letter designation at the end here. It's</p> <p>7 like EF which was a describer of the friction</p> <p>8 performance in the brake.</p> <p>9 Q. Now, were there instances where Abex</p> <p>10 and its various prior entities, actually put</p> <p>11 its name on the edge code like is depicted in</p> <p>12 Exhibit 42?</p> <p>13 MR. RADCLIFFE: Object to form.</p> <p>14 MR. CARON: Object to form.</p> <p>15 A. Every manufacturer had a different</p> <p>16 methodology. Abex only used the term "Abex" on</p> <p>17 its heavy-duty products.</p> <p>18 Q. From your review of the corporate</p> <p>19 records of Abex, did it ever put American</p> <p>20 Brakeblok or any other identifying company name</p> <p>21 on any of the edge codes of its passenger</p> <p>22 brakes?</p> <p>23 MR. RADCLIFFE: Object to form.</p> <p>24 MR. CARON: Object to form.</p> |
| <p style="text-align: right;">179</p> <p>1 Q. And this is an advertisement from Abex</p> <p>2 an IC Industries Company Friction Products</p> <p>3 Group and from Commercial Car Journal, October</p> <p>4 1976. Have you seen that before?</p> <p>5 A. I mean, it's familiar to me. I</p> <p>6 probably remember seeing it back when it ran in</p> <p>7 the ad.</p> <p>8 Q. And that is a picture of some truck</p> <p>9 brake segments, correct?</p> <p>10 A. Yes. That has nothing to do with NAPA</p> <p>11 or Genuine Parts.</p> <p>12 Q. Correct. I'm just asking you -- you</p> <p>13 talked about an edge code?</p> <p>14 A. Right. That's typical of an edge code</p> <p>15 on a truck block.</p> <p>16 Q. No. 41 is an example of what --</p> <p>17 A. 42.</p> <p>18 Q. 42 is an example of what an edge code</p> <p>19 is which is on the edge of the brakes. You</p> <p>20 would put your company's name, right?</p> <p>21 MR. RADCLIFFE: Object to form.</p> <p>22 A. Well, you came up with a series of</p> <p>23 letters or numbers that were registered with</p> <p>24 AAMVA, which was an Association of Motor</p>             | <p style="text-align: right;">181</p> <p>1 Q. The linings that went on passenger</p> <p>2 brakes?</p> <p>3 A. When you say "name," no. A name like</p> <p>4 American Brakeblok or -- no.</p> <p>5 Q. It always just had numbers?</p> <p>6 A. Or letters. It might have had ABB or</p> <p>7 ABX or COM.</p> <p>8 Q. I want to show you what we'll mark as</p> <p>9 43. This is what appears to be an</p> <p>10 advertisement from Motor Age, April 1950. It</p> <p>11 says, "Costs Up Profits Down. American</p> <p>12 Brakeblok registered US patent office." And</p> <p>13 then it says "NAPA jobbers everywhere and 39</p> <p>14 warehouses have all the details. See your NAPA</p> <p>15 jobber salesmen, Brake Shoe, American Brakeblok</p> <p>16 Division."</p> <p>17 (Exhibit No. 43, American Brakeblok</p> <p>18 Advertisement, Motor Age, April 1950 so marked)</p> <p>19 MR. CARON: Object to form.</p> <p>20 Q. Is that an advertisement that's</p> <p>21 consistent with the type of advertising that</p> <p>22 Abex did in the 1950s?</p> <p>23 MR. CARON: Object to form.</p> <p>24 A. I really couldn't say. I have never</p>             |

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| <p style="text-align: right;">182</p> <p>1 seen this before. I mean, I'm -- you know,</p> <p>2 certainly it looks like it says American</p> <p>3 Brakeblok. It says Detroit. It says Brake</p> <p>4 Shoe. It says NAPA, American Brakeblok Brake</p> <p>5 Lining. I mean, I don't know what you want me</p> <p>6 to say about it.</p> <p>7 Q. Would you agree with me, number one,</p> <p>8 that the depictions of the name are consistent</p> <p>9 with the trademarks and other licenses?</p> <p>10 A. At the time, yeah, those are pretty</p> <p>11 consistent with 1950s vintage signage, if you</p> <p>12 will.</p> <p>13 Q. I wanted to ask you -- I'm going to</p> <p>14 show you a letter that we'll mark as Exhibit</p> <p>15 44.</p> <p>16 (Exhibit No. 44, Letter to Messrs.</p> <p>17 Challinor, Hubbard, etc., 4.14.77 so marked)</p> <p>18 Q. This is dated April 14, 1977, and it's</p> <p>19 a letter from A.P. Schmaltz, S-C-H-M-A-L-T-Z,</p> <p>20 of the Friction Products Group to a number of</p> <p>21 different individuals and ask if you've seen</p> <p>22 that before?</p> <p>23 A. I have.</p> <p>24 Q. Now, in that letter there's an</p>                                                                                       | <p style="text-align: right;">184</p> <p>1 propose appear on the box and cartons is as</p> <p>2 follows: Caution, contains asbestos fibers.</p> <p>3 Avoid creating dust. Breathing asbestos dust</p> <p>4 may cause serious bodily harm. Please review</p> <p>5 this with each of your customers and give us a</p> <p>6 report advising what we should do."</p> <p>7 Q. The one customer that you have</p> <p>8 personal experience with who did not want to</p> <p>9 have cautionary language placed on your product</p> <p>10 was Ford, correct?</p> <p>11 A. That's right.</p> <p>12 MR. RADCLIFFE: Object to form.</p> <p>13 Q. So for those shipments that went to</p> <p>14 Ford, Abex, up until the time frame mentioned</p> <p>15 in this letter, did not put the cautionary</p> <p>16 language on there at their request?</p> <p>17 A. At whose request?</p> <p>18 Q. At Ford's request?</p> <p>19 A. No. We managed -- by the time this</p> <p>20 letter was written the Ford issue was resolved.</p> <p>21 Q. When was that issue resolved?</p> <p>22 A. I don't remember exactly, but it was,</p> <p>23 I think in like '76 or something.</p> <p>24 Q. What other companies are you aware of</p>        |
| <p style="text-align: right;">183</p> <p>1 indication that certain customers of Abex did</p> <p>2 not want to be provided with cautionary</p> <p>3 information of product hazards, correct?</p> <p>4 A. Why don't I just read the letter.</p> <p>5 Q. Okay.</p> <p>6 A. It says, "We recently decided that the</p> <p>7 caution information required by OSHA should be</p> <p>8 imprinted on all of our boxes and carton. Our</p> <p>9 carton and box vendors have been so notified"</p> <p>10 -- or "so advised, and this will become a</p> <p>11 running change.</p> <p>12 The only remaining boxes and cartons</p> <p>13 not so imprinted are those made and printed by</p> <p>14 customer specifications. Attached is a list"</p> <p>15 -- which is not attached by the way -- "of</p> <p>16 those involved. We would appreciate your</p> <p>17 approaching these customers with the fact that</p> <p>18 caution information is required by law and</p> <p>19 whether or not they elect to abide by it is</p> <p>20 their decision.</p> <p>21 If they do not want this data on their</p> <p>22 boxes, we would request that they send us a</p> <p>23 written statement to that effect." The</p> <p>24 following -- I'm sorry. "The wording which we</p> | <p style="text-align: right;">185</p> <p>1 that did not want to be advised of the</p> <p>2 potential hazards associated with the use of</p> <p>3 your asbestos linings?</p> <p>4 MR. CARON: Object to form.</p> <p>5 A. I don't know of anyone else who</p> <p>6 objected to us doing it. There were companies</p> <p>7 -- and I think in the case of Schmaltz,</p> <p>8 Schmaltz's letter, there were companies that</p> <p>9 supplied us boxes. So this is simply a letter</p> <p>10 to them to say, hey, we're requiring that that</p> <p>11 warning goes on. You need to have it added to</p> <p>12 your boxes or contact us and we'll work</p> <p>13 something out, like we'll put the stickers on</p> <p>14 for you.</p> <p>15 Q. Do you know when Ford first put</p> <p>16 warnings or cautionary language on the cartons</p> <p>17 of brakes that it distributed in the stream of</p> <p>18 commerce?</p> <p>19 A. I do not know.</p> <p>20 Q. Do you have any documents that Abex</p> <p>21 may use to dispute that the plaintiff decedent,</p> <p>22 Robert Tavaglione, worked with or was exposed</p> <p>23 to asbestos using products manufactured,</p> <p>24 marketed, sold or distributed by Abex?</p> |

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| <p style="text-align: right;">186</p> <p>1 A. No, I do not.</p> <p>2 Q. Would you agree that during the period</p> <p>3 of 1950 through the 1980s that Abex sold</p> <p>4 asbestos-containing brake linings that were</p> <p>5 distributed throughout Massachusetts and</p> <p>6 Connecticut?</p> <p>7 MR. RADCLIFFE: Object to form.</p> <p>8 A. It's possible that they were.</p> <p>9 Q. There wasn't any geographic limitation</p> <p>10 of where Abex's products ended up, was there?</p> <p>11 You were a nationwide company?</p> <p>12 A. Right.</p> <p>13 MR. GEORGE: Give me just one second.</p> <p>14 Q. In your interrogatory responses, you</p> <p>15 indicate that Abex has been advised through</p> <p>16 historical documents from other parties that</p> <p>17 certain individuals at American Brake Shoe and</p> <p>18 Foundry Company or its employees were members</p> <p>19 of the National Safety Council, correct?</p> <p>20 A. That's right.</p> <p>21 Q. Do you know the dates that those</p> <p>22 employees were members of that organization?</p> <p>23 A. No, I don't. I do not.</p> <p>24 Q. They also -- you indicate that</p> | <p style="text-align: right;">188</p> <p>1 Commercial Car Journal, February 1968 so</p> <p>2 marked)</p> <p>3 THE VIDEOGRAPHER: The time is 3:44</p> <p>4 p.m. We're back on the record.</p> <p>5 BY MR. GEORGE:</p> <p>6 Q. I put before you -- I'm going to</p> <p>7 switch -- an advertisement I've marked as</p> <p>8 Exhibit 45. This is from Commercial Car</p> <p>9 Journal February 1968. And it says, "Why we're</p> <p>10 No. 1 in safety"?</p> <p>11 A. And it talks about how American</p> <p>12 Brakeblok has more heavy-duty original</p> <p>13 equipment applications, heavy-duty meaning</p> <p>14 commercial vehicles. And Abex engineers who</p> <p>15 also make brake materials for jet planes work</p> <p>16 on their brake linings for their trucks and</p> <p>17 buses and earth moving equipment. It's just a</p> <p>18 broad here's all the things we can do.</p> <p>19 Q. As of 1968 at least in this</p> <p>20 advertisement when it has the NAPA and American</p> <p>21 Brakeblok what it's referring to is Abex,</p> <p>22 correct?</p> <p>23 MR. CARON: Object to form.</p> <p>24 MR. RADCLIFFE: Object to form.</p>                  |
| <p style="text-align: right;">187</p> <p>1 historical documents indicate that some</p> <p>2 employees of American Brake Shoe and Foundry</p> <p>3 might have been trustees of the National Safety</p> <p>4 Council. Do you know when?</p> <p>5 A. In fact, I think one of the documents</p> <p>6 you produced today talked about one of our</p> <p>7 executives being a trustee. I think it was</p> <p>8 Given, that's the first I'd seen that.</p> <p>9 Q. The Industrial Hygiene Foundation?</p> <p>10 A. I think so.</p> <p>11 Q. What I'm asking about is the National</p> <p>12 Safety Council?</p> <p>13 A. Don't know.</p> <p>14 Q. Do you know what type of organization</p> <p>15 the National Safety Council is?</p> <p>16 A. It is or was or -- well, I'm really</p> <p>17 not sure. I'm really not sure what their</p> <p>18 charge or charter was.</p> <p>19 MR. GEORGE: Why don't we go off for</p> <p>20 just two minutes.</p> <p>21 THE VIDEOGRAPHER: The time is now</p> <p>22 3:39 p.m. Going off the record.</p> <p>23 (Recess 3:38 p.m. to 3:44 p.m.)</p> <p>24 (Exhibit No. 45, Advertisement,</p>                                       | <p style="text-align: right;">189</p> <p>1 A. I'm not sure I understand your</p> <p>2 question.</p> <p>3 Q. It's certainly not referring to</p> <p>4 American Brakeblok as a service mark for</p> <p>5 another corporation?</p> <p>6 MR. RADCLIFFE: Object to form.</p> <p>7 A. It's referring to American Brakeblok,</p> <p>8 the mark that we let NAPA use.</p> <p>9 Q. Okay. But it was referring to the</p> <p>10 company itself?</p> <p>11 A. No, I don't believe it is.</p> <p>12 Q. When it says, "American Brakeblok has</p> <p>13 been America's heavy-duty safety brake lining</p> <p>14 for over 40 years," it's referring to?</p> <p>15 A. Yeah, in that case in the context of</p> <p>16 the text, it's referring to American Brakeblok</p> <p>17 the corporation. But the ad is a NAPA American</p> <p>18 Brakeblok ad. And in 1968 the company's name</p> <p>19 was Abex, not American Brakeblok.</p> <p>20 Q. But you used the American Brakeblok</p> <p>21 trade name in certain applications throughout</p> <p>22 the 1960s, correct?</p> <p>23 A. There was a point in time when it was</p> <p>24 analogous to the company name. After that</p> |

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| <p style="text-align: right;">190</p> <p>1 point then the trademark American Brakeblok was</p> <p>2 essentially loosely assigned to NAPA.</p> <p>3 Q. In 1968 in this advertisement there is</p> <p>4 underneath the American Brakeblok NAPA symbols</p> <p>5 in parenthesis American Safety Brake Lining for</p> <p>6 over 40 years. That is a phrase that's</p> <p>7 associated with American Brakeblok Abex</p> <p>8 products, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. That's your service mark,</p> <p>11 correct? "Yours" being Abex?</p> <p>12 A. I can't say that. I'm not sure if</p> <p>13 that was assigned to NAPA as well, but it</p> <p>14 certainly implies the use of Abex brake lining.</p> <p>15 Q. In your interrogatories you were asked</p> <p>16 about the trade names of the various products</p> <p>17 that were used by Abex and its various</p> <p>18 predecessor corporations, correct?</p> <p>19 A. Yes.</p> <p>20 Q. This is an interrogatory that you've</p> <p>21 been asked in prior cases, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Now you indicate that the American</p> <p>24 Brakeblok as -- the first year registration of</p> | <p style="text-align: right;">192</p> <p>1 Q. And among the products listed for NAPA</p> <p>2 is thick blocks and heavy-duty linings. Do you</p> <p>3 see that up in the --</p> <p>4 A. Yes.</p> <p>5 MR. CARON: Object to form.</p> <p>6 Q. First of all, was this the type of</p> <p>7 advertisement that would have appeared in the</p> <p>8 1960s?</p> <p>9 A. I've never seen an advertisement like</p> <p>10 this before.</p> <p>11 Q. The way that American Brakeblok is</p> <p>12 depicted in that advertisement, does that lead</p> <p>13 you to believe that they were referring to an</p> <p>14 Abex lining as opposed to some generic service</p> <p>15 mark lining?</p> <p>16 MR. CARON: Object to form.</p> <p>17 A. No, I believe it's for an Abex</p> <p>18 produced heavy truck commercial brake lining</p> <p>19 product.</p> <p>20 Q. It even indicates where that lining is</p> <p>21 going to come from, correct?</p> <p>22 A. No, it doesn't.</p> <p>23 Q. Well, it indicates where it's</p> <p>24 produced, underneath?</p>                                                |
| <p style="text-align: right;">191</p> <p>1 use was 1938, correct?</p> <p>2 A. I believe that to be the case, yes,</p> <p>3 sir.</p> <p>4 Q. And Abex, the first year of registered</p> <p>5 use was 1941?</p> <p>6 A. Can I see that, please?</p> <p>7 Q. Sure.</p> <p>8 A. It seems a little early to me but</p> <p>9 okay.</p> <p>10 Q. Now, both those trade names were used</p> <p>11 simultaneously throughout the '40s, '50s and</p> <p>12 '60s, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know the last date that the</p> <p>15 trade name American Brakeblok was last used to</p> <p>16 indicate a product that was manufactured by</p> <p>17 Abex or one of its predecessor corporations?</p> <p>18 A. I do not know.</p> <p>19 MR. RADCLIFFE: Object to form.</p> <p>20 Q. I want to show you one last</p> <p>21 advertisement from what we'll mark as 46. This</p> <p>22 is from Commercial Car Journal July of 1966.</p> <p>23 (Exhibit No. 46, Advertisement,</p> <p>24 Commercial Car Journal, July 1966 so marked)</p>                                                                                                                              | <p style="text-align: right;">193</p> <p>1 A. No, it doesn't.</p> <p>2 Q. Doesn't give an address?</p> <p>3 A. It says, "American Brakeblok Division,</p> <p>4 Birmingham, Michigan." We had no manufacturing</p> <p>5 facility or warehouse in Birmingham, Michigan.</p> <p>6 Q. Did you have any sort of distributor</p> <p>7 or other entity in Birmingham, Michigan?</p> <p>8 A. Not that I know of.</p> <p>9 Q. Okay.</p> <p>10 MR. GEORGE: I have nothing further.</p> <p>11 Thank you. I appreciate your time.</p> <p>12 THE WITNESS: Sure, you bet.</p> <p>13 MR. RADCLIFFE: Do you have any</p> <p>14 questions?</p> <p>15 MR. CARON: I'm going to look at my</p> <p>16 notes for a minute. I don't think I'm going to</p> <p>17 have much, if anything.</p> <p>18 MR. RADCLIFFE: Anybody have any</p> <p>19 questions on the phone? You don't have to say</p> <p>20 no questions. If you have them, speak up.</p> <p>21 Let's go off the record.</p> <p>22 THE VIDEOGRAPHER: The time is now</p> <p>23 3:50 p.m. Let's go off the record.</p> <p>24 (Recess 3:50 p.m. to 4:00 p.m.)</p> |

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| <p style="text-align: right;">194</p> <p>1 THE VIDEOGRAPHER: The time is now</p> <p>2 4:01 p.m. We're back on the record.</p> <p>3 EXAMINATION CONDUCTED</p> <p>4 BY MR. CARON:</p> <p>5 Q. Good afternoon, sir. My name is Jason</p> <p>6 Caron. I represent Genuine Parts Company. I</p> <p>7 just have a few short questions to try to</p> <p>8 clarify some of your testimony. The first, as</p> <p>9 I understand it, and I think you testified that</p> <p>10 some brakes were sold through NAPA using the</p> <p>11 American Brakeblok name that didn't contain</p> <p>12 linings that were supplied by Abex. Is that --</p> <p>13 A. Well, yeah.</p> <p>14 Q. -- accurate?</p> <p>15 A. Just to kind of get the terminology</p> <p>16 straight, we never sold brakes. We sold brake</p> <p>17 lining.</p> <p>18 Q. Agreed. Thank you for correcting me.</p> <p>19 A. Sure. And it is my contention that</p> <p>20 while Abex had a significant amount of NAPA,</p> <p>21 Genuine Parts, Rayloc, whatever entity you want</p> <p>22 to call it, business, there were purchases of</p> <p>23 brake lining from other brake lining companies</p> <p>24 other than Abex.</p>                                                                                                             | <p style="text-align: right;">196</p> <p>1 Q. Okay. Was there any sort of written</p> <p>2 agreement reflecting that assignment?</p> <p>3 A. I don't believe so.</p> <p>4 Q. Okay. Was this just a verbal</p> <p>5 agreement?</p> <p>6 A. Yeah. There were a lot of -- I mean,</p> <p>7 NAPA, Genuine Parts and Abex were, quote, old</p> <p>8 corporate friends going back to the beginning</p> <p>9 of time. And there were a lot of handshake</p> <p>10 kind of deals, and I think that was the way</p> <p>11 that GPC and Abex did business for many, many</p> <p>12 years.</p> <p>13 Q. Okay. When -- if you answered this, I</p> <p>14 apologize. When did NAPA's use of the American</p> <p>15 Brakeblok name begin?</p> <p>16 A. I don't know.</p> <p>17 Q. Do you know -- to the extent this was</p> <p>18 a verbal agreement, do you know any of the</p> <p>19 people that had the conversations?</p> <p>20 A. Steve Conway would have been the one</p> <p>21 that I would have relied on.</p> <p>22 Q. Can you tell me who Steve Conway is?</p> <p>23 A. He was the president of Abex</p> <p>24 ultimately. He was the VP of sales for Abex</p>         |
| <p style="text-align: right;">195</p> <p>1 Q. Okay. And understanding there were</p> <p>2 purchases from other companies, purchases of</p> <p>3 brake linings from other companies, is it your</p> <p>4 contention that those brake linings purchased</p> <p>5 from other companies were incorporated into</p> <p>6 brakes that were sold using the American</p> <p>7 Brakeblok name as opposed to some other brand</p> <p>8 name or trade name?</p> <p>9 A. It's a fine point. We never contended</p> <p>10 or alleged that NAPA's organization would have</p> <p>11 put American Brakeblok on the actual friction</p> <p>12 product, but it might have been included in a</p> <p>13 product offering that was in a brochure, let's</p> <p>14 say, that was entitled American Brakeblok.</p> <p>15 Q. I guess what I'm getting at is this:</p> <p>16 Do you have any evidence that a brake that came</p> <p>17 in a package that had the American Brakeblok</p> <p>18 name somewhere on it contained linings other</p> <p>19 than those supplied by Abex?</p> <p>20 A. No, I don't.</p> <p>21 Q. You talked about the American</p> <p>22 Brakeblok name being assigned to NAPA?</p> <p>23 A. I said loosely assigned. I don't</p> <p>24 think there was a legal assignment of the mark.</p> | <p style="text-align: right;">197</p> <p>1 Friction. He was on the railroad side of the</p> <p>2 business for a number of years. He became</p> <p>3 ultimately president of Abex Friction Products</p> <p>4 and then president of Abex Corp.</p> <p>5 Q. Okay. I think you said that there was</p> <p>6 a verbal agreement not to use the American</p> <p>7 Brakeblok name elsewhere, and by that I took to</p> <p>8 mean that Abex wasn't going to use the American</p> <p>9 Brakeblok name elsewhere?</p> <p>10 A. Right.</p> <p>11 Q. Is that true?</p> <p>12 A. Yes.</p> <p>13 Q. Who was that verbal agreement between?</p> <p>14 A. I think it was Conway and I'm not</p> <p>15 positive, but I think it would have been with</p> <p>16 Wilton Looney, is I believe his name or I</p> <p>17 believe he's deceased now. But I think at the</p> <p>18 time Mr. Looney was either the chairman or</p> <p>19 president of Genuine Parts.</p> <p>20 Q. Okay. Do you know when this verbal</p> <p>21 agreement took place?</p> <p>22 A. No. I think it you, know predated, me</p> <p>23 being involved in management, early '70s, late</p> <p>24 '60s perhaps.</p> |

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| <p style="text-align: right;">198</p> <p>1 Q. Will you agree with me that you don't</p> <p>2 have any personal knowledge of this verbal</p> <p>3 agreement, right? You weren't there?</p> <p>4 A. Well, only that Conway, you know, when</p> <p>5 I got into more of a management role and less</p> <p>6 of an engineering role, you know, Mr. Conway</p> <p>7 sat me down a number of times explaining kind</p> <p>8 of the relationship, the long-lasting</p> <p>9 relationship between NAPA and Abex. And, you</p> <p>10 know, things that, you know, we just didn't do.</p> <p>11 These were our friends, and we weren't going</p> <p>12 to, you know, sell product that we sell to NAPA</p> <p>13 to somebody else and, you know, that sort of</p> <p>14 thing.</p> <p>15 Q. Will you agree with me that to the</p> <p>16 extent there was a verbal agreement, your</p> <p>17 knowledge of it comes from your discussions</p> <p>18 with Mr. Conway?</p> <p>19 A. Yes.</p> <p>20 Q. You don't have some independent basis?</p> <p>21 A. No.</p> <p>22 Q. Now I understand there may have been a</p> <p>23 verbal agreement for Abex not to use the</p> <p>24 American Brakeblok name independently of its</p> | <p style="text-align: right;">200</p> <p>1 the American Brakeblok name other than through</p> <p>2 the Genuine Parts Company or NAPA distribution?</p> <p>3 A. No. And I would qualify that to say</p> <p>4 for passenger cars or light trucks. We may</p> <p>5 have used the American Brakeblok name on some</p> <p>6 select heavy-duty products.</p> <p>7 Q. Okay. Do you believe you did?</p> <p>8 A. I'm not positive.</p> <p>9 Q. And I know you don't have personal</p> <p>10 knowledge of this, but prior to 1970, do you</p> <p>11 have any knowledge from any source of how long</p> <p>12 Abex was continuing to use the American</p> <p>13 Brakeblok name on products it sold other than</p> <p>14 through a Genuine Parts Company or NAPA</p> <p>15 network?</p> <p>16 A. I don't know for sure. I know that I</p> <p>17 can frame out some things. There were some</p> <p>18 really heavy expensive advertising programs</p> <p>19 done to build the alliance between NAPA and</p> <p>20 Abex that go into the early '60s.</p> <p>21 And it was -- in fact, I remember</p> <p>22 specifically it used Ronald Regan as a</p> <p>23 spokesperson, and that was the first -- the</p> <p>24 oldest thing that I saw that really linked the</p> |
| <p style="text-align: right;">199</p> <p>1 relationship with NAPA, but do you know one way</p> <p>2 or the other whether Abex actually did use the</p> <p>3 American Brakeblok name on products that it</p> <p>4 sold through channels other than Genuine Parts</p> <p>5 Company or NAPA?</p> <p>6 A. I think many years ago certainly</p> <p>7 because American Brakeblok was the name of the</p> <p>8 company, so it would only stand to reason that</p> <p>9 we would have sold product branded American</p> <p>10 Brakeblok to people other than NAPA. But there</p> <p>11 was some point in time during my tenure that we</p> <p>12 didn't use the American Brakeblok mark on</p> <p>13 anything other than products that we sold</p> <p>14 through NAPA.</p> <p>15 Q. Okay. And did that change? You said</p> <p>16 it just happened during your tenure so after --</p> <p>17 A. During my tenure. It happened</p> <p>18 sometime before that; I just can't tell you</p> <p>19 when.</p> <p>20 Q. As of -- I think you said you started</p> <p>21 in 1971, correct?</p> <p>22 A. 1970, right.</p> <p>23 Q. As of 1970 and going forward, you</p> <p>24 don't know of an instance in which Abex used</p>      | <p style="text-align: right;">201</p> <p>1 American Brakeblok brand to NAPA.</p> <p>2 Q. Okay. I think you said at some point</p> <p>3 that Abex had a 35 to 40 percent share of</p> <p>4 Genuine Parts Company brake lining business?</p> <p>5 A. It could have been higher at some</p> <p>6 points in time. Market shares that I remember</p> <p>7 typically were around, you know, mid 30s.</p> <p>8 Q. Okay.</p> <p>9 A. We always strived to get more but for</p> <p>10 whatever reason we couldn't.</p> <p>11 Q. Let me ask first: When we're talking</p> <p>12 -- when you said 35 to 40, was that during your</p> <p>13 tenure? Was there a particular decade you</p> <p>14 associate that with?</p> <p>15 A. I'd say during my tenure, from, you</p> <p>16 know, the mid '70s until I sold the company in</p> <p>17 1994.</p> <p>18 Q. Okay. How would you determine that</p> <p>19 number? How did you know how much --</p> <p>20 A. Well, market shares were always, you</p> <p>21 know, kind of reasonable estimates using some</p> <p>22 form of analytics, but at best they were</p> <p>23 educated estimates.</p> <p>24 Q. All right. You mentioned that Genuine</p>                                                                     |

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| <p style="text-align: right;">202</p> <p>1 Parts Company had other suppliers of brake<br/>2 linings. You gave us a list of a few that you<br/>3 knew?<br/>4 A. Right.<br/>5 Q. Generally speaking, what's the basis<br/>6 of your knowledge of those other suppliers?<br/>7 A. Again, NAPA was one of our largest<br/>8 customers. They were one of our most important<br/>9 customers. They were, you know, talked about<br/>10 big time by our senior management staff. They<br/>11 got the white-glove treatment by us in terms of<br/>12 sales coverage.<br/>13 Any issue that came up an appropriate<br/>14 representative from our company would go in.<br/>15 Oftentimes it was me, being in the quality<br/>16 assurance department, whether it was a brake<br/>17 noise issue or gee, we found some dust in the<br/>18 box or whatever.<br/>19 So, I mean, I used to go to Rayloc<br/>20 Atlanta, you know, very, very often. I've<br/>21 probably been to, you know, Payson, Utah,<br/>22 Morganfield, Kentucky, and Hancock, Maryland,<br/>23 more times than I can remember.<br/>24 Q. Then based on that would it be fair to</p> | <p style="text-align: right;">204</p> <p>1 Q. I'd like to refer you to Exhibit 44<br/>2 which was -- I may have lost it. I apologize.<br/>3 MR. CARON: Exhibit 45 is a letter or<br/>4 memo. Is it over there?<br/>5 Q. You were shown -- I don't know how far<br/>6 I can walk with this microphone. You were<br/>7 shown that memo earlier, and I think it<br/>8 references in the first paragraph that<br/>9 customers and vendors were made aware of -- I'm<br/>10 sorry --<br/>11 A. Parts and carton vendors had also been<br/>12 advised what it was referring to.<br/>13 Q. Do you have any -- other than that<br/>14 statement, do you have any knowledge that<br/>15 Genuine Parts Company or NAPA was actually<br/>16 advised as that first paragraph references?<br/>17 A. Well, it really wouldn't have applied<br/>18 to NAPA because we shipped to NAPA in bigger<br/>19 boxes that would have hundreds or 50 pieces of<br/>20 brake lining, and then NAPA would -- or Rayloc<br/>21 would put them on their production line, take<br/>22 them out of the boxes, rivet them through a<br/>23 brake shoe and send them on.<br/>24 Q. So --</p>     |
| <p style="text-align: right;">203</p> <p>1 say that your knowledge of the identity of<br/>2 Genuine Parts Company's other suppliers comes<br/>3 from discussions with people at Genuine Parts<br/>4 Company or NAPA?<br/>5 A. Yeah. And also some Abex people. I<br/>6 mean, there were times when we'd get a call<br/>7 from, you know, one of our sales guys that<br/>8 said, hey, you know, I was in a NAPA jobber,<br/>9 and he had a bunch of Raybestos stuff in there.<br/>10 What's going on?<br/>11 Q. I just want to refer you to Exhibit 39<br/>12 really quickly, and I won't go through every<br/>13 single document, but you were shown several<br/>14 documents of some -- what looked like some<br/>15 advertisement materials, one with the picture<br/>16 of a gun on it and another with dynamite?<br/>17 A. Right.<br/>18 Q. Will you agree with me that the<br/>19 dangers that these advertising materials are<br/>20 addressing are dangers of brake failure from<br/>21 not having the brakes maintained properly?<br/>22 A. Absolutely.<br/>23 Q. This has nothing to do with asbestos?<br/>24 A. Absolutely not.</p> | <p style="text-align: right;">205</p> <p>1 A. We're talking about, in this case, set<br/>2 boxes which would have been labeled with the<br/>3 warning.<br/>4 Q. So that --<br/>5 A. This letter has absolutely nothing to<br/>6 do with NAPA, nothing whatsoever. In fact,<br/>7 there's some handwritten annotations on here,<br/>8 Volkswagen, Alfa, which means mean Alfa Romeo,<br/>9 and Renault, those were some of the customers<br/>10 that were supplying boxes to us for packaging.<br/>11 Q. You talked before about edge codes.<br/>12 And without going into that in too much detail,<br/>13 was that something that was applied to a brake<br/>14 lining prior to it being shipped by Abex?<br/>15 A. Yeah. The brake lining manufacturer<br/>16 was the person responsible to put edge codes on<br/>17 them.<br/>18 Q. And was the edge code on every brake<br/>19 lining that went out?<br/>20 A. Well, it should be. You know, we did<br/>21 see, from time to time, product in the<br/>22 aftermarket from, let's call it, lesser quality<br/>23 suppliers that didn't have any coding on it.<br/>24 MR. CARON: Sir, I think's all I have.</p> |

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| <p style="text-align: right;">206</p> <p>1 Thanks for your time.</p> <p>2 THE WITNESS: You bet.</p> <p>3 EXAMINATION CONDUCTED</p> <p>4 BY MR. RADCLIFFE:</p> <p>5 Q. Mr. Indelicato, I've got a couple of</p> <p>6 questions for you. As you know my name is Tom</p> <p>7 Radcliffe. I'm going to try to cover a number</p> <p>8 of the issues that Mr. Smith covered with you</p> <p>9 earlier so --</p> <p>10 MR. GEORGE: Mr. George.</p> <p>11 MR. RADCLIFFE: Excuse me, Mr. George.</p> <p>12 I apologize.</p> <p>13 MR. GEORGE: No problem.</p> <p>14 Q. I may bounce around a little bit.</p> <p>15 A. Okay.</p> <p>16 Q. First of all, you're the president for</p> <p>17 Abex right now?</p> <p>18 A. I am.</p> <p>19 Q. Does Abex have any operating</p> <p>20 facilities?</p> <p>21 A. No, it doesn't.</p> <p>22 Q. Are there any employees of Abex?</p> <p>23 A. No.</p> <p>24 Q. Are there any other officers of Abex?</p>                                                                                                                                                                                                                                                        | <p style="text-align: right;">208</p> <p>1 the noise coming from brakes? But first and</p> <p>2 foremost was safely stopping the vehicle;</p> <p>3 that's what the business was all about.</p> <p>4 Q. Did Abex make a friction material that</p> <p>5 could safely stop vehicles?</p> <p>6 A. Absolutely. That was the nature of a</p> <p>7 lot of those ads where there were bullets and</p> <p>8 things. It was really trying to, you know, get</p> <p>9 your attention and say, look, you know, safe</p> <p>10 braking system is very important.</p> <p>11 Q. I'm going to come back to those ads.</p> <p>12 Did Abex use quality material in the</p> <p>13 manufacture of a friction term?</p> <p>14 A. The best we could procure.</p> <p>15 Q. You've already testify that asbestos</p> <p>16 was used in some friction materials. Why was</p> <p>17 asbestos used in some friction materials in the</p> <p>18 past?</p> <p>19 A. Because we couldn't come up with a</p> <p>20 satisfactorily safe product that met customers'</p> <p>21 requirements without using asbestos.</p> <p>22 Q. Let's take 1975, was there an ability</p> <p>23 to produce a friction material to stop an -- I</p> <p>24 don't think we had minivans in 1975, did we?</p> |
| <p style="text-align: right;">207</p> <p>1 A. I'm the only one.</p> <p>2 Q. Okay. And when is the last time that</p> <p>3 Abex was involved with the manufacture of a</p> <p>4 friction material?</p> <p>5 A. It would have been sometime in 1994.</p> <p>6 Q. And when was the last time that Abex</p> <p>7 was involved with the manufacture of friction</p> <p>8 materials that contained asbestos?</p> <p>9 A. 1987.</p> <p>10 Q. You were asked questions from Mr. --</p> <p>11 by Mr. George about safety being an important</p> <p>12 concept, primary concern. Do you remember</p> <p>13 those types of questions?</p> <p>14 A. Absolutely.</p> <p>15 Q. And when Abex was concerned with the</p> <p>16 safety of its friction materials, tell me some</p> <p>17 of the concerns that Abex had?</p> <p>18 A. First and foremost, was would it</p> <p>19 safely stop a car. And not only in terms of</p> <p>20 stopping distance, but would repeated brakings</p> <p>21 cause the brakes to fail? Would it cause the</p> <p>22 car to pull in one direction or another? Would</p> <p>23 the longevity of the brake lining be</p> <p>24 satisfactory? Would customers complain about</p> | <p style="text-align: right;">209</p> <p>1 A. If we did we probably could have come</p> <p>2 up with something. No. In the '70s we made</p> <p>3 some semi-metallic brake lining that worked</p> <p>4 really well for severe-duty applications, but</p> <p>5 mom driving to the grocery store wouldn't have</p> <p>6 been a happy camper.</p> <p>7 Q. So could you have done something</p> <p>8 without asbestos --</p> <p>9 A. No.</p> <p>10 Q. -- at that time?</p> <p>11 A. (Witness nods)</p> <p>12 Q. Who are Abex's customers?</p> <p>13 A. They were primarily brake</p> <p>14 manufacturers, what we term in the business as</p> <p>15 foundation brake manufacturers that would make</p> <p>16 the physical mechanical brake, its actuation</p> <p>17 system, the rotor, the drum, the caliper, wheel</p> <p>18 cylinder and kind of all the mechanical</p> <p>19 components that the brake lining would go into</p> <p>20 to fit into an axle and ultimately onto a</p> <p>21 vehicle.</p> <p>22 Q. Did these customers know about brakes?</p> <p>23 Were they sophisticated companies when it came</p> <p>24 to understanding how brakes worked?</p>                                                                                            |

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| <p style="text-align: right;">210</p> <p>1 MR. CARON: Object to form.</p> <p>2 A. Very much so. I mean, there were</p> <p>3 varying degrees. I think, you know, when you</p> <p>4 looked at companies like Rockwell and Eaton on</p> <p>5 the heavy-duty side or Ford on the passenger</p> <p>6 car side, GM had their own brake lining</p> <p>7 business, so they were pretty knowledgeable</p> <p>8 folks.</p> <p>9 There was a very high level of</p> <p>10 expertise. In fact, we used to rely a lot on</p> <p>11 people at Ford that had probably the best brake</p> <p>12 engineering laboratory on the planet. You</p> <p>13 know, rebuilders, a little less sophisticated</p> <p>14 but nonetheless knew a lot about brake systems</p> <p>15 because they supplied all the componentry that</p> <p>16 was required to safely stop a vehicle.</p> <p>17 Q. When Abex was making a friction</p> <p>18 material, were there specifications for the</p> <p>19 material?</p> <p>20 A. It varied. The original equipment</p> <p>21 manufacturers would be very, very specific in</p> <p>22 their specifications. The aftermarket guys a</p> <p>23 little less so, but they would, nonetheless,</p> <p>24 specify a particular formula. And oftentimes</p> | <p style="text-align: right;">212</p> <p>1 leading and to lack of foundation.</p> <p>2 A. It's my strong opinion that it's an</p> <p>3 entirely different animal. The people that</p> <p>4 worked at the mines up in Quebec versus the</p> <p>5 people that processed the asbestos rock into</p> <p>6 fibers and then in varying degrees through our</p> <p>7 manufacturing environment, the guys that opened</p> <p>8 the bales of asbestos were probably at a higher</p> <p>9 level of concern to us.</p> <p>10 And, consequently, we had more dust</p> <p>11 collection in that area of our plant than the</p> <p>12 folks further downstream once the asbestos</p> <p>13 fiber got mixed with other ingredients, so its</p> <p>14 concentration was down. It was coated with</p> <p>15 polymers, and it was held together with other</p> <p>16 things. It was finally compression molded or</p> <p>17 extruded to make essentially a nonfriable</p> <p>18 article where the fibers themselves were pretty</p> <p>19 well tied up.</p> <p>20 MR. GEORGE: Move to strike as</p> <p>21 nonresponsive.</p> <p>22 Q. Do you believe that the friction</p> <p>23 materials that Abex manufactured up until 1987</p> <p>24 were hazardous to end users?</p> |
| <p style="text-align: right;">211</p> <p>1 they would rely on engineering data or test</p> <p>2 data that we supplied them, and then they would</p> <p>3 augment it with their own testing.</p> <p>4 Q. Did Abex perform tests and analysis on</p> <p>5 its friction material?</p> <p>6 A. Yes. We had an engineering test</p> <p>7 center which was the size of a few football</p> <p>8 fields filled with machines call dynamometers</p> <p>9 that simulate braking in a laboratory</p> <p>10 environment. And we also ran a fleet of test</p> <p>11 vehicles around the entire country and for</p> <p>12 different things, mountain testing, traffic</p> <p>13 testing, that sort of thing.</p> <p>14 Q. You were asked a lot of questions that</p> <p>15 dealt with asbestos and not necessarily</p> <p>16 asbestos in friction materials. Do you recall</p> <p>17 some of those questions?</p> <p>18 A. Yes.</p> <p>19 Q. The fact that asbestos could be</p> <p>20 hazardous to people like an insulator or a</p> <p>21 shipyard worker or textile worker, does that</p> <p>22 mean that asbestos is hazardous once it's put</p> <p>23 into a friction material?</p> <p>24 MR. GEORGE: Object to form both to</p>                                     | <p style="text-align: right;">213</p> <p>1 MR. GEORGE: Object to form. Leading.</p> <p>2 A. No.</p> <p>3 Q. Why not?</p> <p>4 A. I think there were a lot of basis for</p> <p>5 my opinion, and it's not just my opinion. I</p> <p>6 think there's a lot of evidence even, you know,</p> <p>7 going into the 2000 time frame, 2004, 2006</p> <p>8 perhaps, that suggests that the amount of</p> <p>9 asbestos fiber or the asbestos wear debris, in</p> <p>10 fact, gets transformed to Fosterite for the</p> <p>11 vast majority of it.</p> <p>12 That fiber length has a lot to do with</p> <p>13 it. The concentration has a lot to do with it,</p> <p>14 the time-weighted average. I mean, people in</p> <p>15 our plants were dealing with this stuff eight</p> <p>16 hours a day, 240 days a year compared to, you</p> <p>17 know, someone who occasionally does a brake</p> <p>18 job.</p> <p>19 So, you know, it's dosage, it's</p> <p>20 latency, it's quantity. It's -- there's just</p> <p>21 so many factors that enter into the equation</p> <p>22 that -- and, you know, I think that from our</p> <p>23 perspective all along was that while we had a</p> <p>24 couple of workers' comp cases, you know, the</p>                         |

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| <p style="text-align: right;">214</p> <p>1 business, Abex had been in that business since<br/> 2 the mid 1920s and never had any appreciable<br/> 3 amount of issues. So if people that are<br/> 4 dealing with raw fiber and so on aren't having<br/> 5 those kinds of problems, why would it be<br/> 6 reasonable to assume that people further<br/> 7 downstream would. That was kind of my view and<br/> 8 I think was substantiated by fact.</p> <p>9 Q. Let's talk about the Abex<br/> 10 manufacturing facilities for a moment.</p> <p>11 A. Okay.</p> <p>12 Q. Winchester in 1965 -- well, Winchester<br/> 13 in 1970, approximately how many friction pieces<br/> 14 a day was Winchester manufacturing?</p> <p>15 A. 30,000 or more per day.</p> <p>16 Q. And there was grinding there?</p> <p>17 A. There was grinding. There was<br/> 18 drilling. There was edging. There was<br/> 19 printing. There was packaging, I mean, mixing<br/> 20 of raw materials. It was a pretty<br/> 21 comprehensive process and had probably at that<br/> 22 time around just short of a thousand employees.</p> <p>23 Q. And we heard a little bit about<br/> 24 environmental controls, dust collection and</p>         | <p style="text-align: right;">216</p> <p>1 that literally drove around the aisles of the<br/> 2 factory all day to keep the environment in good<br/> 3 shape.</p> <p>4 Q. All right. Now, again, pardon me for<br/> 5 bouncing around. You were asked some questions<br/> 6 about Dr. Gardner's work at Saranac. Do you<br/> 7 remember that?</p> <p>8 A. Yes.</p> <p>9 Q. And Exhibit 9 was a memo from Dr.<br/> 10 Hamlin. I'm going to hand you a slightly<br/> 11 better copy. Mr. George asked you some<br/> 12 questions. I want to point out some other<br/> 13 things. This is dated November 3, 1948, right?</p> <p>14 A. Yes.</p> <p>15 Q. The third paragraph, can you read<br/> 16 starting with the first sentence?</p> <p>17 A. "I gain"?</p> <p>18 Q. No. "While admitting"?</p> <p>19 A. I'm sorry, third paragraph.</p> <p>20 Q. Can you --</p> <p>21 A. "While admitting the advisability of<br/> 22 reconciling the two, it must be remembered that<br/> 23 any animal experimentation cannot be absolutely<br/> 24 conclusive. Observations on the tissue</p>                                                                                                                     |
| <p style="text-align: right;">215</p> <p>1 things of that nature. Did those controls<br/> 2 remove every single asbestos fiber from the<br/> 3 environment?</p> <p>4 A. No. And that's why when you see some<br/> 5 dust sample studies that were done over the<br/> 6 years, one was done pretty much every year,<br/> 7 give or take. You know, there would be<br/> 8 instances where we were in excess of the TLV,<br/> 9 and we, you know, go to work diligently to<br/> 10 improve the engineering controls. But it<br/> 11 wasn't a perfect environment. We did the very<br/> 12 best we could, and I think did a pretty good<br/> 13 job.</p> <p>14 Q. In addition to dust collection, what<br/> 15 else -- was there any other part of the program<br/> 16 for employee health for looking after the<br/> 17 employees?</p> <p>18 A. Well, if we had an area of the plant<br/> 19 that had any concern, we would fit employees<br/> 20 with appropriate respirators and dust masks and<br/> 21 that sort of thing. We abandoned sweeping with<br/> 22 a broom and went with vacuum systems. We<br/> 23 actually had -- we bought a couple of giant<br/> 24 almost like small city street cleaning machines</p> | <p style="text-align: right;">217</p> <p>1 reactions to various substances can mean<br/> 2 nothing more than reasonably accurate<br/> 3 supportive evidence that the effect noted is<br/> 4 what is likely to occur in man after similar<br/> 5 exposure.</p> <p>6 The report notes that the same result<br/> 7 is not always obtained in each species of<br/> 8 experimental animals used. It is, therefore,<br/> 9 only possible to employ such phraseology as<br/> 10 the dust apparently does not alter<br/> 11 significantly the course of experimental<br/> 12 Tuberculosis in guinea pigs, etcetera.</p> <p>13 Possibly similar experiment carried<br/> 14 out over a longer period of time could produce<br/> 15 an entirely different result. There are two<br/> 16 many intangibles to allow dogmatic or other<br/> 17 definitive statements. This is true of any<br/> 18 experimental work in animals or humans.</p> <p>19 The value of the experimental work<br/> 20 lies in the fact that it forms a reasonable<br/> 21 basis for study of characteristic tissue<br/> 22 changes which were similar to those seen in<br/> 23 units."</p> <p>24 Q. Thank you. You've seen this letter</p> |

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| <p style="text-align: right;">218</p> <p>1 before, right?</p> <p>2 A. Yes, I have.</p> <p>3 Q. And your understanding is that this is</p> <p>4 Dr. Hamlin writing about Dr. Gardner's report?</p> <p>5 A. Yes.</p> <p>6 Q. In essence, to your understanding,</p> <p>7 what did Dr. Hamlin say in terms of the report?</p> <p>8 A. You can't draw a conclusion from your</p> <p>9 observations without further study.</p> <p>10 Q. Did Dr. Hamlin, nevertheless, say</p> <p>11 publish it, don't publish it?</p> <p>12 A. He said publish it.</p> <p>13 Q. There was evidently a meeting, and I</p> <p>14 think you were shown a different exhibit,</p> <p>15 Exhibit No. 9, that Dr. Hamlin was unable to</p> <p>16 attend the meeting?</p> <p>17 A. Yes.</p> <p>18 Q. All right. And although Dr. Hamlin</p> <p>19 was unable to attend -- strike that.</p> <p>20 Dr. Hamlin was unable to attend.</p> <p>21 There was a letter from Mr. Brown to Abex to</p> <p>22 give him the results of the meeting, right?</p> <p>23 A. Yes.</p> <p>24 Q. That's Exhibit 10. And so --</p>        | <p style="text-align: right;">220</p> <p>1 MR. RADCLIFFE: This should be 47.</p> <p>2 (Exhibit No. 47, National Cancer</p> <p>3 Council, 1.8.44 so marked)</p> <p>4 Q. I'm going to hand you Exhibit 47.</p> <p>5 Have you seen this document before?</p> <p>6 A. I believe I have.</p> <p>7 Q. This is the proceedings from the</p> <p>8 Advisory Cancer Council at the National Cancer</p> <p>9 Institute; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And it's dated 1944?</p> <p>12 A. Yes, January 8, 1944.</p> <p>13 Q. If you turn to the page that's</p> <p>14 numbered 21 at the bottom?</p> <p>15 A. Yes.</p> <p>16 Q. Does it start to talk about an</p> <p>17 application from the Saranac Laboratory?</p> <p>18 A. Yeah. It says, "You find under 213 an</p> <p>19 application from the Saranac Laboratory of</p> <p>20 Trudeau Foundation in New York."</p> <p>21 Q. And read the next two sentences.</p> <p>22 A. "The project is the relationship of</p> <p>23 asbestos to pulmonary carcinoma. The director</p> <p>24 of the project is Leroy U. Gardner. The amount</p> |
| <p style="text-align: right;">219</p> <p>1 A. I'm sorry, is this Exhibit 10?</p> <p>2 Q. No, the -- yes, the results?</p> <p>3 A. This is 9.</p> <p>4 Q. Yes, the results. And so we went into</p> <p>5 this a little bit. Mr. George went into it a</p> <p>6 little bit. There was an agreement of the</p> <p>7 folks at the meeting that the cancer references</p> <p>8 would be deleted, right?</p> <p>9 A. Yes.</p> <p>10 Q. The reasons are given here one, two,</p> <p>11 three, four, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Reason No. 2, "Dr. Gardner indicated</p> <p>14 prior to his death that he believed this aspect</p> <p>15 should be made the subject of a separate study</p> <p>16 which would take from two or three years."</p> <p>17 Have you seen documents about that?</p> <p>18 A. Yes.</p> <p>19 Q. And were you aware that Dr. Gardner</p> <p>20 applied for funding?</p> <p>21 A. I was, and I understand he was denied.</p> <p>22 MR. RADCLIFFE: Do we have the exhibit</p> <p>23 labels, Mr. George?</p> <p>24 MR. GEORGE: I don't have any left.</p> | <p style="text-align: right;">221</p> <p>1 requested is \$10,000 for a period of two</p> <p>2 years."</p> <p>3 Q. That's the same Dr. Gardner that was</p> <p>4 doing the test that was discussed yearly,</p> <p>5 right?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And these folks then go on to talk</p> <p>8 about the test, right?</p> <p>9 A. Yes.</p> <p>10 Q. Page 23?</p> <p>11 THE WITNESS: I'm sorry, can you just</p> <p>12 excuse me for a second?</p> <p>13 MR. RADCLIFFE: Sure.</p> <p>14 THE WITNESS: I always wanted to have</p> <p>15 that videotaped.</p> <p>16 MR. RADCLIFFE: We'll see if we can</p> <p>17 get it taken out.</p> <p>18 THE WITNESS: Excuse me. I'm sorry.</p> <p>19 Q. Let's go to page 24?</p> <p>20 A. Okay.</p> <p>21 Q. Dr. Murphy, what does he say?</p> <p>22 A. "You notice he calls it an</p> <p>23 uncontrolled experiment, so I doubt if he knows</p> <p>24 the normal lung tumor rate for his animals. He</p>                                                                                                                                        |

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| <p style="text-align: right;">222</p> <p>1 gives 18 percent in 143 animals. It is very</p> <p>2 hard to get a strain of mice that gives much</p> <p>3 lower than 3 or 4 percent, and we have some</p> <p>4 strains that give as high as 50 to 80 percent</p> <p>5 normality.</p> <p>6 I wouldn't consider that figure</p> <p>7 uncontrolled as of any other significance,</p> <p>8 however, unless I knew the strain of the</p> <p>9 animals. When it was a low strain, and, of</p> <p>10 course, that is the whole danger in having a</p> <p>11 project of this kind carried on in an</p> <p>12 institution where they have absolutely no</p> <p>13 experience with animals in planning cancer</p> <p>14 experiments."</p> <p>15 Shall I go on or is that fine?</p> <p>16 Q. No, that's good. All right. Then</p> <p>17 page 25 if you can find that?</p> <p>18 A. (Witness complies) Got it.</p> <p>19 Q. Again, this is Dr. Murphy. He speaks</p> <p>20 of an -- do you see that he speaks of an</p> <p>21 uncontrolled experiment right there in the</p> <p>22 middle?</p> <p>23 A. "It doesn't mean anything"?</p> <p>24 Q. Then "Dr. Dyer: An incidence of 81.8</p> | <p style="text-align: right;">224</p> <p>1 A. Okay. Does this need a label?</p> <p>2 Q. No, it doesn't. There's another one</p> <p>3 that's labeled.</p> <p>4 A. Okay.</p> <p>5 Q. Grab that one. That's still No. 10.</p> <p>6 So that was just point No. 2, and point No. 3,</p> <p>7 "Dr. Gardner also indicated that he believed</p> <p>8 the question of cancer susceptibility should be</p> <p>9 omitted from the report." Do you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And have you seen other correspondence</p> <p>12 where Dr. Gardner, the author of this report,</p> <p>13 actually said, I think it should be omitted.</p> <p>14 A. I thought I saw some of Gardner's</p> <p>15 colleagues say that it should be omitted.</p> <p>16 Q. Okay. Well, I was --</p> <p>17 A. I might be mistaken, but there were</p> <p>18 folks at Saranac that I remember seeing some</p> <p>19 documents that suggest that it should be</p> <p>20 omitted.</p> <p>21 Q. That's fine. I was unable to print</p> <p>22 the document, so we'll just have to deal with</p> <p>23 that later. So to sum up Saranac, what was</p> <p>24 Abex's position on publication of the document</p>       |
| <p style="text-align: right;">223</p> <p>1 percent in 11 white mice is not very</p> <p>2 impressive"?</p> <p>3 A. Right.</p> <p>4 Q. "Dr. Murphy: "It doesn't mean</p> <p>5 anything"?</p> <p>6 A. Mean anything.</p> <p>7 Q. That's what these folks were saying,</p> <p>8 right?</p> <p>9 A. That's right.</p> <p>10 Q. And do you understand that they</p> <p>11 refused to fund Dr. Gardner for these reasons?</p> <p>12 A. Yes, that was my understanding.</p> <p>13 Q. Okay.</p> <p>14 MR. RADCLIFFE: Let me have that back</p> <p>15 so we don't lose it since it's marked.</p> <p>16 A. (Witness complies)</p> <p>17 Q. Thank you.</p> <p>18 A. Sure.</p> <p>19 Q. So going back to -- did you give me</p> <p>20 back both?</p> <p>21 A. Here's 9, and this is the one you said</p> <p>22 was 10.</p> <p>23 Q. Hold on to that one. Let me have 9</p> <p>24 for just a moment.</p>                                                                                                                                                                                                                                                                                | <p style="text-align: right;">225</p> <p>1 with cancer?</p> <p>2 A. We made some comments, but we said,</p> <p>3 hey, you know, if you want to publish it the</p> <p>4 way it is, that's fine with us.</p> <p>5 Q. What was the position of the other</p> <p>6 folks who sponsored the study?</p> <p>7 A. They wanted it out. They wanted more</p> <p>8 significant change to the document.</p> <p>9 Q. And did they give reasons for that?</p> <p>10 A. I believe they did.</p> <p>11 Q. Have you seen documentation to support</p> <p>12 the reasons they gave?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. You were asked questions about</p> <p>15 whether Abex should warn of all potential</p> <p>16 hazards of brakes. Can you give me an idea of</p> <p>17 what you considered to be a potential hazard of</p> <p>18 brakes or friction materials?</p> <p>19 A. I mean, perhaps a logical place to</p> <p>20 start is potentially if the brakes don't work,</p> <p>21 you're going to crash into the car in front of</p> <p>22 you. Perhaps if you go down a hill too fast</p> <p>23 and repeatedly stand on your brakes without</p> <p>24 allowing them to cool, the brakes will fade and</p> |

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| <p style="text-align: right;">226</p> <p>1 fail. Perhaps you should inspect your brakes</p> <p>2 at some regular interval to be sure that</p> <p>3 they're adequate. I mean, there's so many</p> <p>4 potentials; I don't know where to start or</p> <p>5 stop, frankly.</p> <p>6 Q. So is it -- which is more accurate to</p> <p>7 say; that Abex should warn of all potential</p> <p>8 hazards or Abex should warn of hazards that are</p> <p>9 foreseeable and likely under the circumstances?</p> <p>10 MR. GEORGE: Objection to form.</p> <p>11 Leading.</p> <p>12 A. Foreseeable and likely would be</p> <p>13 infinitely more logical than any potential.</p> <p>14 Q. You were asked some questions about</p> <p>15 warnings before. I'll give you Exhibit 48.</p> <p>16 (Exhibit No. 48, Letter to L.W. Moore</p> <p>17 5.20.75 so marked)</p> <p>18 Q. Have you seen this document before?</p> <p>19 A. I have.</p> <p>20 Q. What's the date?</p> <p>21 A. May 20, 1975.</p> <p>22 Q. And who is the author of the letter?</p> <p>23 A. Harry Jones, sales manager for Abex.</p> <p>24 Q. Did you know Mr. Jones?</p> | <p style="text-align: right;">228</p> <p>1 stenciling the segment boxes?</p> <p>2 A. When Abex first started putting</p> <p>3 warnings on boxes, it started out in a very</p> <p>4 simplistic way. They had big rubber stamps</p> <p>5 made, and the boxes were stamped. And then on</p> <p>6 larger boxes they actually used a stencil.</p> <p>7 We had a machine that would make up a</p> <p>8 stencil. We may have used them as kids, and</p> <p>9 then you take kind of a brushy article and</p> <p>10 stencil on the box. So that evolved ultimately</p> <p>11 to the boxes being preprinted with this warning</p> <p>12 as was referenced in Mr. Schmaltz's memo that</p> <p>13 we talked about a few moments ago.</p> <p>14 Q. The letter goes on to state, "I know</p> <p>15 you have taken steps to protect your people.</p> <p>16 However, it comes to mind that you may have</p> <p>17 some responsibility to your customers and might</p> <p>18 consider including the same caution on your</p> <p>19 boxes or labels. This could also be used as</p> <p>20 another strong reason for discouraging field</p> <p>21 grinding of brake shoes by the jobbers and/or</p> <p>22 brake shops?"</p> <p>23 Is that consistent with what you</p> <p>24 understand Abex was saying to its customers in</p> |
| <p style="text-align: right;">227</p> <p>1 A. I did.</p> <p>2 Q. And who is the recipient?</p> <p>3 A. Mr. Moore of Rayloc who at the time</p> <p>4 was either sales manager or sales VP for Rayloc</p> <p>5 NAPA.</p> <p>6 Q. Did you know Mr. Moore?</p> <p>7 A. I did.</p> <p>8 Q. The letter reads, "The other day" --</p> <p>9 this is Abex writing to Rayloc.</p> <p>10 A. Right.</p> <p>11 Q. Is Rayloc part of Genuine Parts?</p> <p>12 A. Yes.</p> <p>13 Q. The letter reads, "The other day I</p> <p>14 read in the Wall Street Journal where Raybestos</p> <p>15 was being sued by 168 employees due to the fact</p> <p>16 that they were not properly notified of the</p> <p>17 hazards of working around asbestos. As you</p> <p>18 know, we stencil our segment boxes as a warning</p> <p>19 of the hazards as follows: Caution, contains</p> <p>20 asbestos fibers, avoid creating dust.</p> <p>21 Breathing asbestos dust may cause serious</p> <p>22 bodily harm." With me so far?</p> <p>23 A. Absolutely.</p> <p>24 Q. What does that mean that you were</p>                                                 | <p style="text-align: right;">229</p> <p>1 this time frame, 1975?</p> <p>2 A. Yes.</p> <p>3 Q. There's a -- further down there's a</p> <p>4 BCC. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. It says R.G.?</p> <p>7 A. Lindley.</p> <p>8 Q. Lindley?</p> <p>9 A. Yeah.</p> <p>10 Q. Who is that?</p> <p>11 A. Bob Lindley was a sales manager</p> <p>12 responsible for rebuilders other than NAPA and</p> <p>13 GPC.</p> <p>14 Q. Okay. Let me take that from you so I</p> <p>15 can put it in the pile of all these other</p> <p>16 exhibits?</p> <p>17 A. Sure.</p> <p>18 Q. If someone working at a gas station</p> <p>19 called Abex and said, I need a set of brakes,</p> <p>20 not friction material, but a set of brakes for</p> <p>21 a car, what would Abex have said?</p> <p>22 A. You've got the wrong number. I mean,</p> <p>23 chances are the receptionist would have handled</p> <p>24 it and just explained to them that we didn't</p>                                                                                                                                                                                                                                                                                                                                                   |

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| <p style="text-align: right;">230</p> <p>1 sell retail. We didn't sell brakes. We sold</p> <p>2 just brake lining, and we didn't sell to</p> <p>3 consumers.</p> <p>4 Q. Would that have been true in the '60s</p> <p>5 and '50s?</p> <p>6 A. Yeah. As far as I know, we never,</p> <p>7 ever made brakes for passenger cars or light</p> <p>8 trucks or heavy trucks.</p> <p>9 Q. The advertisements that you were</p> <p>10 shown, there was a gun, a revolver, I think.</p> <p>11 There might have been some dynamite. Do you</p> <p>12 remember those?</p> <p>13 A. I do.</p> <p>14 Q. If it's argued that Abex could have</p> <p>15 used that same sort of advertising to warn</p> <p>16 folks about the hazards of asbestos, not the</p> <p>17 hazards of asbestos generally, but the hazards</p> <p>18 of asbestos specifically with regard to brakes,</p> <p>19 do you think that would have been an</p> <p>20 appropriate way for Abex to communicate the</p> <p>21 warning to its customers?</p> <p>22 MR. GEORGE: Objection to form.</p> <p>23 Leading. Calls for speculation. Lack of</p> <p>24 foundation. Argumentative.</p> | <p style="text-align: right;">232</p> <p>1 proceedings, correct?</p> <p>2 A. No, it's not.</p> <p>3 Q. When is the first time you saw this</p> <p>4 document?</p> <p>5 A. Probably a month or so ago.</p> <p>6 Q. This isn't a document that came out of</p> <p>7 Abex's files, is it?</p> <p>8 A. No. I believe it kind of came about</p> <p>9 as a result of some other litigation we were</p> <p>10 involved with.</p> <p>11 Q. You got this from your attorneys?</p> <p>12 A. I did.</p> <p>13 Q. Okay. Because on page one where they</p> <p>14 have the people that were present during this</p> <p>15 meeting, none of those are Abex employees, are</p> <p>16 they?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Okay. I just wanted to ask you, you</p> <p>19 read some portions of the document. I want to</p> <p>20 turn your attention to page 23 wherein Dr.</p> <p>21 Murphy said -- and just tell me if I read that</p> <p>22 correctly -- "This is the first time I have</p> <p>23 seen this application. I think it is bringing</p> <p>24 a very big gun to bear on a subject that will</p>                                                                                                             |
| <p style="text-align: right;">231</p> <p>1 MR. CARON: I'm going to join all of</p> <p>2 those.</p> <p>3 A. No, I don't think that would be an</p> <p>4 appropriate forum to educate people about</p> <p>5 anything.</p> <p>6 Q. And, again, were Abex's customers</p> <p>7 skilled and knowledgeable in brakes and how</p> <p>8 they were remanufactured or manufactured and</p> <p>9 what functions the various parts of the brake</p> <p>10 system performed?</p> <p>11 A. Yeah.</p> <p>12 MR. GEORGE: Objection. Leading.</p> <p>13 Asked and answered.</p> <p>14 MR. CARON: Form.</p> <p>15 MR. RADCLIFFE: I think those are all</p> <p>16 the questions I have for you. Thank you.</p> <p>17 THE WITNESS: Okay.</p> <p>18 EXAMINATION CONDUCTED</p> <p>19 BY MR. GEORGE:</p> <p>20 Q. I just wanted to ask you a couple of</p> <p>21 questions about some of the documents that Mr.</p> <p>22 Radcliffe showed you. Let's go back to the</p> <p>23 proceedings which I believe is Exhibit 47.</p> <p>24 First of all, this is not the complete</p>                                                                                    | <p style="text-align: right;">233</p> <p>1 probably be settled in a very short time with a</p> <p>2 very slight expenditure of money."</p> <p>3 Isn't that what he said according to</p> <p>4 this transcript?</p> <p>5 A. More or less, yeah.</p> <p>6 Q. He said, "I believe the question can</p> <p>7 be settled in one comprehensive experiment with</p> <p>8 a modest outlay of cost. It is a problem that</p> <p>9 you could do here, for instance, at a cost of</p> <p>10 perhaps \$20 or \$30. I think we are hardly</p> <p>11 justified in appropriating \$10,000 for it in a</p> <p>12 laboratory that isn't experienced in cancer</p> <p>13 research or in handling this particular type of</p> <p>14 material."</p> <p>15 That's what he says, right?</p> <p>16 A. Yeah.</p> <p>17 Q. So, in fact, the reason why -- one of</p> <p>18 the reasons why they declined this application</p> <p>19 is not because they didn't think it was</p> <p>20 worthwhile to investigate whether cancer is a</p> <p>21 consequence of exposure to asbestos, but rather</p> <p>22 because Dr. Gardner was simply asking for too</p> <p>23 much money to perform the experiment?</p> <p>24 A. Well, I think it further --</p> |

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| <p style="text-align: right;">234</p> <p>1 MR. RADCLIFFE: Object to form.</p> <p>2 A. -- it implies to me that they also had</p> <p>3 question about his expertise in methodology.</p> <p>4 Q. Well, isn't there also --</p> <p>5 A. It says, "Isn't experienced in cancer</p> <p>6 research." So you can, you know, you can say</p> <p>7 it's too expensive. I say equally as important</p> <p>8 they didn't have confidence in the guy that was</p> <p>9 making the pitch.</p> <p>10 Q. Dr. Hektoen was talking on page 21,</p> <p>11 correct?</p> <p>12 A. I don't know. Hang on a second.</p> <p>13 Q. And that's H-E-K-T-O-E-N?</p> <p>14 A. Yes.</p> <p>15 Q. He says on page 22 that he reviewed a</p> <p>16 letter from Dr. Gardner, correct?</p> <p>17 A. I'm sorry, where are you?</p> <p>18 Q. Page 22?</p> <p>19 A. Second paragraph, "In a letter from</p> <p>20 Dr. Gardner."</p> <p>21 Q. Correct.</p> <p>22 A. Okay.</p> <p>23 Q. And that apparently is something that</p> <p>24 went along with the application, correct?</p>                                                                                                                                                                                     | <p style="text-align: right;">236</p> <p>1 A. Right.</p> <p>2 Q. Okay. And Dr. Gardner in proposing</p> <p>3 this experiment concludes in his letter, "For</p> <p>4 this reason I do not believe we can afford to</p> <p>5 neglect the matter much longer."</p> <p>6 That's what his letter was purporting</p> <p>7 to say, correct?</p> <p>8 A. Yes.</p> <p>9 Q. I did want to ask you one clarifying</p> <p>10 question about -- well, let me just turn to</p> <p>11 page 24 of the same transcript. You referenced</p> <p>12 Dr. Murphy's comments, and isn't it true that</p> <p>13 on page 24 Dr. Murphy says, his concluding</p> <p>14 sentence is, "It may be well worth doing, but I</p> <p>15 doubt if this is quite the way to do it."</p> <p>16 A. It does say that.</p> <p>17 Q. Okay. Now, I want a clarification on</p> <p>18 this issue of the American Brakeblok trademark</p> <p>19 and whatever assignment was made to NAPA.</p> <p>20 If in 1960 an individual went to a</p> <p>21 NAPA store and purchased a set of brakes that</p> <p>22 came in a carton that had American BrakeBlok's</p> <p>23 name on it, would that set of brakes more</p> <p>24 likely than not be composed of linings that</p> |
| <p style="text-align: right;">235</p> <p>1 A. I presume.</p> <p>2 Q. And he said that "Dr. Gardner wrote</p> <p>3 that I've always felt that asbestosis probably</p> <p>4 created" -- and then somebody hand wrote in</p> <p>5 there "no specific predisposition to pulmonary</p> <p>6 cancer. However, evidence to the contrary</p> <p>7 continues to accumulate. In the last number of</p> <p>8 the American Journal of Pathology, Homberger</p> <p>9 reports 19 new cases making a total of 19 in</p> <p>10 which the conditions were associated."</p> <p>11 When he's talking about conditions</p> <p>12 associated, he's talking about asbestosis and</p> <p>13 lung cancer, correct?</p> <p>14 MR. RADCLIFFE: Object to form.</p> <p>15 A. I don't know. You know, again, when</p> <p>16 somebody stroked this, wrote the word "no" in</p> <p>17 there. I don't know what it means, I really</p> <p>18 don't.</p> <p>19 Q. He's talking about the asbestosis</p> <p>20 probably created no specific predisposition to</p> <p>21 pulmonary cancer. This whole paragraph deals</p> <p>22 with and, in fact, Dr. Gardner's application</p> <p>23 deals with whether asbestosis predisposed one</p> <p>24 to cancer, correct?</p> | <p style="text-align: right;">237</p> <p>1 were manufactured by Abex or one of its</p> <p>2 predecessor entities?</p> <p>3 MR. RADCLIFFE: Object to form. Also</p> <p>4 it's beyond the scope of cross.</p> <p>5 MR. CARON: Objection.</p> <p>6 A. First of all, there's two parts to</p> <p>7 your question. I don't know that they would</p> <p>8 have come in a box back in 1960, and, number</p> <p>9 two, if they did come in a box that said</p> <p>10 American Brakeblok, it's most plausible that</p> <p>11 the brake lining was made by Abex.</p> <p>12 Q. Okay. Same thing, 1970s, assume</p> <p>13 somebody went into a NAPA store in the 1970s.</p> <p>14 They purchased a set of brake shoes that were</p> <p>15 in a box, and on the that box was written</p> <p>16 American Brakeblok. More likely than not would</p> <p>17 you agree that the linings of those shoes were</p> <p>18 probably manufactured by Abex or one of its</p> <p>19 predecessor entities?</p> <p>20 MR. RADCLIFFE: Same objection.</p> <p>21 MR. CARON: Object to form.</p> <p>22 A. Probably.</p> <p>23 Q. Are you saying more likely than not</p> <p>24 that it was --</p>                                                         |

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| <p style="text-align: right;">238</p> <p>1 A. I'd say more.</p> <p>2 MR. RADCLIFFE: Same objections.</p> <p>3 A. I would say more likely that it was</p> <p>4 not.</p> <p>5 Q. So you're saying that in the 1970s</p> <p>6 Abex allowed NAPA to put into commerce brake</p> <p>7 shoes that had the American Brakeblok</p> <p>8 trademark, but they would have contained more</p> <p>9 likely than not linings from some other</p> <p>10 entities?</p> <p>11 A. Yes.</p> <p>12 MR. RADCLIFFE: Object to form.</p> <p>13 MR. CARON: Object to form.</p> <p>14 Q. What's your basis for that?</p> <p>15 A. Observing it firsthand and having</p> <p>16 various arguments and discussions with the</p> <p>17 people at NAPA GPC about the fact that, hey,</p> <p>18 guys, you can't continue to do this.</p> <p>19 Q. Now, when you say observing it</p> <p>20 firsthand, are you telling me that you'd gone</p> <p>21 into NAPA's stores and in the 1970s; that you</p> <p>22 picked up a carton that had American Brakeblok</p> <p>23 on it, and you determined independently that</p> <p>24 the linings on those brake shoes were not</p>                                                                                                                                                             | <p style="text-align: right;">240</p> <p>1 many of the boxes said NAPA -- sorry -- NAPA</p> <p>2 Rayloc or they would have said NAPA Genaut.</p> <p>3 Q. If it said --</p> <p>4 A. If it said American Brakeblok, it</p> <p>5 probably was for a class seven or eight truck</p> <p>6 and not for a passenger car or a light truck.</p> <p>7 Q. So you're saying that there were no</p> <p>8 boxes of brakes in the 1970s that contained the</p> <p>9 name American Brakeblok on them?</p> <p>10 A. I'm not saying --</p> <p>11 MR. RADCLIFFE: Object to form.</p> <p>12 Q. I'm just trying to find out what the</p> <p>13 scope --</p> <p>14 A. I just gave you the answer.</p> <p>15 Q. Are you saying that there were no</p> <p>16 boxes in NAPA's stores of passenger brake shoes</p> <p>17 that had the name American Brakeblok on them?</p> <p>18 MR. RADCLIFFE: Object to form.</p> <p>19 MR. CARON: Same objection to form.</p> <p>20 A. It's possible there would have been</p> <p>21 some that had it. I don't know how quickly</p> <p>22 they turned their inventory. There may have</p> <p>23 been stuff there that still had NAPA -- I'm</p> <p>24 sorry, American Brakeblok branding on the box,</p> |
| <p style="text-align: right;">239</p> <p>1 manufactured by Abex or any one of its entity?</p> <p>2 MR. RADCLIFFE: Same objections.</p> <p>3 A. I've answered this question before.</p> <p>4 I'm telling you that I know for a fact that our</p> <p>5 salespeople in the field reported back to me</p> <p>6 and other executives that this was going on.</p> <p>7 Q. And this is something that was totally</p> <p>8 verbal communications to you, correct?</p> <p>9 A. There may be some documents. I'm sure</p> <p>10 I've seen at least one that talks about issues</p> <p>11 where people were using or NAPA was using other</p> <p>12 than Abex brake lining.</p> <p>13 Q. I want to be specific in my</p> <p>14 questioning. I'm not really asking you whether</p> <p>15 NAPA used American Brakeblok trademark material</p> <p>16 in advertising. I'm talking about cartons of</p> <p>17 brakes that contained the American Brakeblok</p> <p>18 trademark, whether those brakes --</p> <p>19 A. For what time period are you talking?</p> <p>20 Q. Let's talk about 1970s?</p> <p>21 A. Okay. 1970s American Brakeblok,</p> <p>22 chances are you wouldn't have seen much for</p> <p>23 passenger cars or light trucks that had an</p> <p>24 American Brakeblok brand because at that point</p> | <p style="text-align: right;">241</p> <p>1 I can't tell you. But to say never, I never</p> <p>2 say never.</p> <p>3 Q. When did Abex stop using the trademark</p> <p>4 name of American Brakeblok to describe linings</p> <p>5 that it manufactured that contained asbestos?</p> <p>6 MR. RADCLIFFE: Object to form.</p> <p>7 MR. CARON: Object to form.</p> <p>8 A. For passenger cars and light trucks?</p> <p>9 Q. Yes.</p> <p>10 A. I don't know the exact date, but it</p> <p>11 was before 1970.</p> <p>12 Q. Before 1970?</p> <p>13 A. Yes.</p> <p>14 Q. Do you have any documentation that</p> <p>15 supports that?</p> <p>16 A. No.</p> <p>17 MR. GEORGE: I don't think I have any</p> <p>18 further questions.</p> <p>19 EXAMINATION CONDUCTED</p> <p>20 BY MR. CARON:</p> <p>21 Q. Sir, Jason Caron again. Earlier today</p> <p>22 plaintiff's attorney showed you a number of</p> <p>23 different pieces of correspondence that were</p> <p>24 unsigned. One of the things you said was that</p>                                                                                                                                                                                                      |

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| <p style="text-align: right;">242</p> <p>1 you were uncomfortable answering questions</p> <p>2 about them because you didn't know whether they</p> <p>3 were sent. Do you remember that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Would you take a look at the?</p> <p>6 MR. RADCLIFFE: 48.</p> <p>7 Q. Exhibit 48 this letter is unsigned,</p> <p>8 right?</p> <p>9 A. Yeah.</p> <p>10 Q. So we don't know whether this letter</p> <p>11 was ever sent?</p> <p>12 A. I know it was.</p> <p>13 Q. And how do you know it was?</p> <p>14 A. Because I was actively involved in the</p> <p>15 business at that time, and I know that there</p> <p>16 were discussions surrounding Mr. Jones' letter</p> <p>17 to Toby Moore based on conversations I had with</p> <p>18 Toby. And I believe it might have even been at</p> <p>19 a NASCAR race in Charlotte.</p> <p>20 Q. So Toby told you this letter was sent?</p> <p>21 A. No, there was discussion about it.</p> <p>22 There were a group of us that went down to</p> <p>23 NAPA. We talked about it. It was conversation</p> <p>24 that went on more than once. There was</p> | <p style="text-align: right;">244</p> <p>1 was unsigned. I mean, this copy is underlined.</p> <p>2 Q. In 1975 the practice was not to keep</p> <p>3 copies of signed letters? Is that what you're</p> <p>4 saying?</p> <p>5 A. I can tell you that I signed all of my</p> <p>6 letters, and it's unusual that letters weren't</p> <p>7 signed. But I can also tell you by the fact</p> <p>8 that this was discussed in my presence the fact</p> <p>9 that Phil Grim's name is underlined suggests</p> <p>10 that this was probably Phil Grim's copy, and</p> <p>11 that, in fact, it was sent.</p> <p>12 Q. Did you see the letter signed and</p> <p>13 sent? Do you have personal knowledge it was</p> <p>14 sent? I understand there were people</p> <p>15 discussing the letter.</p> <p>16 A. I don't know. No, I haven't seen a</p> <p>17 signed version of this.</p> <p>18 Q. Who is Harry Jones?</p> <p>19 A. Harry Jones was the sales guy that was</p> <p>20 responsible for the NAPA Rayloc account.</p> <p>21 Q. Did he draft this letter or is that</p> <p>22 just his name on it? Did somebody else draft</p> <p>23 it?</p> <p>24 A. I don't know if he would have drafted</p> |
| <p style="text-align: right;">243</p> <p>1 conversation within Rayloc with John Aderhold</p> <p>2 and Toby Moore about what they were going to</p> <p>3 do. And it was clearly it was their decision</p> <p>4 to make. All we could do is give them our</p> <p>5 guidance and advice and thoughts.</p> <p>6 Q. Okay. Now, I see there are six</p> <p>7 different people copied on this letter?</p> <p>8 A. Can I have it back?</p> <p>9 Q. Right.</p> <p>10 A. Let me see. Yeah.</p> <p>11 Q. Do you have a signed version of the</p> <p>12 letter?</p> <p>13 A. Do I?</p> <p>14 Q. Yes.</p> <p>15 A. Not with me. I don't know if one</p> <p>16 exists, frankly.</p> <p>17 Q. Would it be fair so assume with six</p> <p>18 people copied, there would have been at least</p> <p>19 six or seven signed versions of this letter if,</p> <p>20 indeed, it was signed and sent?</p> <p>21 MR. RADCLIFFE: Object to form.</p> <p>22 A. Probably not in 1975. Chances are</p> <p>23 there would have been one original signed and</p> <p>24 copies made. So maybe it just went out and it</p>                                 | <p style="text-align: right;">245</p> <p>1 it himself.</p> <p>2 Q. Did you draft any portion of the</p> <p>3 letter?</p> <p>4 A. No, I did not.</p> <p>5 Q. What was your relationship to Harry</p> <p>6 Jones? Did you have regular --</p> <p>7 A. In 1975 we would have been somewhat</p> <p>8 contemporaries I think. '75 I was in quality</p> <p>9 assurance.</p> <p>10 Q. What's your understanding of who L.W.</p> <p>11 Moore?</p> <p>12 A. Ron Moore. Well, I'm sorry, Toby</p> <p>13 Moore. I don't know what L.W. stood for. It</p> <p>14 was Toby Moore was the individual this letter</p> <p>15 went to.</p> <p>16 Q. Okay. What was his position?</p> <p>17 A. He was either general sales manager or</p> <p>18 I believe maybe vice president for NAPA Rayloc.</p> <p>19 Q. Okay. I noticed the letter doesn't</p> <p>20 have any letterhead. Do you know why that is?</p> <p>21 A. I don't.</p> <p>22 Q. All right. Do you remember ever</p> <p>23 seeing a copy that did have letterhead?</p> <p>24 A. No.</p>                                                                                                                                                             |

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| <p style="text-align: right;">246</p> <p>1 Q. Do you know specifically when this<br/>2 letter was created?</p> <p>3 A. May 20, 1975.</p> <p>4 Q. I understand it says that, but that --<br/>5 will you agree with me that date could have<br/>6 been put there at any time?</p> <p>7 A. I guess we can conclude that for any<br/>8 of these documents, but, you know, I think<br/>9 that's about the right time frame for what I<br/>10 recall. Whether it was May 19 or 20 or I don't<br/>11 know if that's a 20 or 28, but, I mean, May<br/>12 1975 I think is reasonable.</p> <p>13 Q. You mentioned having personal<br/>14 discussions with folks at Rayloc about the<br/>15 subject of this letter?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay. Who did you talk to at Rayloc?</p> <p>18 A. I know it was Toby. There's another<br/>19 guy that I just -- I can't think of his name<br/>20 offhand. His name surfaced in another document<br/>21 today, but I can't recall his name right now.<br/>22 But Toby and he went to the NASCAR race with<br/>23 me, and that's this conversation came up there.<br/>24 And I also had that conversation with John</p> | <p style="text-align: right;">248</p> <p>1 A. I think it happened in '75 and again<br/>2 in '76 and then probably on and off, but '77 it<br/>3 happened again. I know there was another<br/>4 flurry of what are we going to do? And, can<br/>5 you help us out? Can you print labels for us?<br/>6 Which we did. Apparently, they decided to put<br/>7 the same warning on their product, and as I<br/>8 recall, our print shop actually printed labels<br/>9 for them.</p> <p>10 Q. Okay.</p> <p>11 MR. GEORGE: I don't have anything<br/>12 further. Thank you.</p> <p>13 MR. RADCLIFFE: It looks like we're<br/>14 all done.</p> <p>15 THE VIDEOGRAPHER: The time is 4:56<br/>16 p.m. The deposition is concluded. We are now<br/>17 going off the record.</p> <p>18 (Discussion off the record)</p> <p>19 MR. GEORGE: In reviewing the exhibit<br/>20 numbers for the exhibits that were attached to<br/>21 the deposition, there is no exhibit that<br/>22 corresponds with Exhibit 19 and Exhibit No. 30,<br/>23 just in case.</p> <p>24 (Whereupon, the deposition was</p> |
| <p style="text-align: right;">247</p> <p>1 Aderhold and Toby Moore at Rayloc's<br/>2 headquarters in Atlanta.</p> <p>3 Q. And you actually discussed this<br/>4 letter?</p> <p>5 A. No. We discussed specifically the<br/>6 idea that NAPA needs to decide whether or not<br/>7 it was going to put warnings on its finished<br/>8 brake lining sets.</p> <p>9 Q. Okay. And can you tell me what you<br/>10 said during those discussions and what the<br/>11 individuals from Rayloc said?</p> <p>12 A. You know, I just was part of the<br/>13 conversation telling him what we were doing,<br/>14 what our plans were. And that all the boxes<br/>15 that they were receiving and would continue to<br/>16 receive would have it. That if, in fact, they<br/>17 asked us to package anything in set boxes or it<br/>18 was our position that we would use the same<br/>19 warning. And you guys need to decide what<br/>20 you're going to do.</p> <p>21 Q. What was the response to that?</p> <p>22 A. We'll consider it.</p> <p>23 Q. When did those discussion take place?<br/>24 Was it sometime in 1975?</p>                                           | <p style="text-align: right;">249</p> <p>1 concluded at 4:56 p.m.)<br/>2<br/>3<br/>4<br/>5<br/>6<br/>7<br/>8<br/>9<br/>10<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

C E R T I F I C A T E

STATE OF NEW HAMPSHIRE

I, Darlene Calazzo Sousa, a Certified Shorthand Reporter, 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 Monday, September 26, 2011, 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                  day of  
                                             , 2011.

Commissioner of Deeds

My commission expires: November 15, 2014

ATTACH TO THE DEPOSITION OF ALBERT INDELICATO

your deposition, note any change or correction  
this sheet. DO NOT make any marks or notations  
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DEPONENT'S ERRATA SHEET  
AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet has been delivered to Thomas Radcliffe, Esq.

When the Errata Sheet has been completed by the deponent and signed, a copy thereof should be delivered to each party of record and the ORIGINAL delivered to Jonathan George, Esq. to whom the original deposition transcript was delivered.

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