

1 SUPREME COURT OF THE STATE OF NEW YORK
EIGHTH JUDICIAL DISTRICT
2 COUNTY OF ERIE
3

4 In Re: EIGHTH JUDICIAL DISTRICT ASBESTOS
LITIGATION

5
6 MICHAEL JOSEPH KOLASINSKI

Plaintiff

7 -v-

Index No. 2008-405

8 ACME LIQUIDATING CORPORATION,
successor in interest to
9 LIPE AUTOMATION CORPORATION
f/k/a LIPE-ROLLWAY TECHNOLOGY, INC., et al.

10
Defendants

11 _____
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13 Videotaped Deposition Under
14 Oral Examination
of ROGER HOBBIE
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1 Transcript of the videotaped deposition of
2 ROGER HOBBIE, called for Oral Examination in the
3 above-captioned matter, said deposition being
4 taken pursuant to the Federal Rules of Civil
5 Procedure by and before Victoria Rohl, Court
6 Reporter and Notary Public in and for the State
7 of New York; taken at the Hilton El Conquistador
8 Golf and Tennis Resort, 10000 North Oracle Road,
9 Tucson, Arizona 85737, on September 8, 2008,
10 commencing at 10:19 a.m.

EXHIBIT INDEX

HOBBIE EXHIBITS	PAGE
1, a CV	19
2, a document pulled off the Internet via Google regarding MacKay's Web site	24
3, a document	28
4, a summary of the 1980 price increases from vendors that were used to make up the various components that went into the brake assembly	35
5, a document to inform the customers of the various specifications of shoe and lining assemblies that were available to them	41
6, a document entitled 1985 Trailer Axle Markets	51
7, a document dated October 1st, 1985	63
8, a document dated February 1st, 1985, an Eaton internal correspondence	69
9, a document dated May 1st, 1985	74
10, a document entitled Eaton Brake Shipping Schedule 9/1/78 to 1/26/78	81
11, a document dated November 21st, 1986	86
12, a copy of the witness's deposition from last July	91
13, a document dated February 18th, 1987	96

1	HOBBIE EXHIBITS (CONT.)	
2	14, a document entitled Asbestos	99
3	Versus Non-Asbestos Distributor	
4	Aftermarket Sales Prepared for	
5	Robert VanWormer	
6	15, a letter dated October 20th,	103
7	1987	
8	16, an internal correspondence from	103
9	Eaton dated December 3rd, 1987	
10	17, an interoffice correspondence	111
11	from Eaton Corp. Dated December 2nd,	
12	1985	
13	18, a document entitled Internal	119
14	Correspondence from Eaton,	
15	February 28th, 1986	
16	19, a marketing department monthly	122
17	report for November 1986, axle brake	
18	division	
19	20, an internal correspondence from	124
20	Eaton dated January 6th, 1987	
21	21, a letter to Mr. Barry Sengewalt,	130
22	the Eaton account manager for	
23	Oshkosh Truck, from Michael Brooks,	
24	chief engineer, vehicle components	
25	at Oshkosh Truck	
	22, a data sheet, Molded Materials	134
	Company, division of Carlisle	
	Corporation, preliminary	
	engineering, product data sheet,	
	Carlisle K-79, asbestos-free brake	
	block	
	23, an informative request from Ford	142
	to Eaton talking about willingness	
	to work in a joint program	
	24, an interoffice correspondence	145
	dated December 14th, 1982	

1	HOBBIIE EXHIBITS (CONT.)	
2	25, an internal Eaton program to	150
3	qualify non-asbestos linings	
4	26, a document concerning the lining	155
5	grind elimination program	
6	27, a document concerning a field	163
7	visit report, Certified Grocers,	
8	Trailmobile grinding brake linings	
9	to fit drums on the trailer axles	
10	28, a document entitled Employee	168
11	Training Program For Asbestos, Eaton	
12	Corporation, Gallatin, Tennessee	
13	29, a document concerning going to	179
14	the Department of Labor, dealing	
15	with the Occupational Safety and	
16	Health Administration, Docket Number	
17	H033, Occupational Exposure to	
18	Asbestos, Comments of the American	
19	Trucking Association, Incorporated	
20	30, a document concerning part of	190
21	the American Trucking Association	
22	tag group	
23	31, a document received July 20th,	200
24	1979, brake division, product	
25	engineering, Friction Materials Work	
	Practices Guide	
	32, a letter from Bruce L. Webb	207
	33, an interoffice correspondence,	207
	July 1980, subject matter, asbestos	
	brake lining	
	34, a document concerning a training	226
	program regarding asbestos	
	35, a portion of the answers to	238
	interrogatories propounded by	
	defendant Abex in this case for	
	Eighth Judicial District Asbestos	
	Litigation	

HOBBIE EXHIBITS (CONT.)

36, a portion of a deposition of 241
Ronald Creamer

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24
25

1 IT IS HEREBY STIPULATED AND
2 AGREED by and between the attorneys
3 for the respective parties hereto
4 that filing, sealing and
5 certification of the within
6 Examination Before Trial be waived;
7 that all objections, except as to
8 form, are reserved to the time of
9 trial.

10 IT IS FURTHER STIPULATED AND
11 AGREED that the transcript may be
12 signed before a Notary Public with
13 the same force and effect as if
14 signed before a Clerk or Judge of the
15 Court.

16 IT IS FURTHER STIPULATED AND
17 AGREED that the within examination
18 may be utilized for all purposes as
19 provided by the CPLR.

20 IT IS FURTHER STIPULATED AND
21 AGREED that all rights provided to
22 all parties by the CPLR shall not be
23 deemed waived and the appropriate
24 sections of the CPLR shall be
25 controlling with respect thereto.

1 IT IS FURTHER STIPULATED AND
2 AGREED by and between the attorneys
3 for the respective parties hereto
4 that a copy of the Examination shall
5 be furnished, without charge, to the
6 attorney representing the witness
7 testifying herein.

1 MR. CAPRIOTTI: An objection by one is
2 good for all. That's fine? Just note our
3 appearance. That's fine.

4 MR. PETTICORD: Bonnie, any other
5 stipulations we need to put on the record?

6 MS. O'CONNOR: You know, I really did
7 not hear what you were talking about. Basically
8 we have the usual stipulations which here
9 involve waiving the signing -- reading and
10 signing of the deposition by the witness,
11 waiving the filing, and then the usual asbestos
12 stipulation which provides that an objection by
13 one defendant can be relied on by any other
14 defendant.

15 MR. PETTICORD: Those are the only ones
16 that I need to know about. I appreciate it.

17 (Discussion off the record.)

18 THE VIDEOGRAPHER: Please stand by. We
19 are on the record at 10:22 a.m. My name is Don
20 G. East, a certified legal video specialist
21 representing Veritext of Florham Park, New
22 Jersey. The date today is September 8th, 2008,
23 and the time is approximately 10:22 a.m.

24 This deposition is being held at the
25 Hilton El Conquistador Golf and Tennis Resort

1 located at 10000 North Oracle Road, Tucson,
2 Arizona, 85737. The caption of this case is
3 Michael Joseph Kolasinski versus Acme, et al. in
4 the Supreme Court, State of New York, County of
5 Erie.

6 The name of the witness is Mr. Roger
7 Hobbie, a representative of Eaton Corporation.
8 At this time will the attorneys please identify
9 themselves and the parties they represent?

10 MR. VONA: Keith Vona from the law firm
11 of Lipsitz Ponterio on behalf of Michael Joseph
12 Kolasinski.

13 MR. PETTICORD: Dan Petticord, Brzytwa
14 Quick & McCrystal on behalf of Eaton.

15 MR. LEONHARDT: Shanks Leonhardt from
16 Sanders & Parks on behalf of Bendix.

17 MR. BURCH: Tom Burch, Dehay &
18 Elliston, Pneumo Abex.

19 THE VIDEOGRAPHER: Will those appearing
20 by telephone please identify yourselves?

21 MS. O'CONNOR: Bonnie O'Connor,
22 Smith, Murphy & Schoepperle, appearing for
23 defendant ArvinMeritor, Inc.

24 MR. DAVOLI: Steve Davoli, Sugarman Law
25 Firm, appearing for Southside Trailer.

1 MR. CAPRIOTTI: Steve Capriotti from
2 Wilson Elser representing Trailmobile Parts &
3 Services.

4 MR. HAGERTY: Tom Hagerty from Hagerty
5 & Brady representing Acme Liquidating Company.

6 MR. LEIBECK: Jeff Leibeck from Damon &
7 Morey representing National Automotive Parts
8 Association and Great Dane Limited Partnership.

9 MR. STILLWELL: Dave Stillwell,
10 Anspach Meeks & Ellenberger, Kelsey-Hayes.

11 MR. DOYLE: Richard Doyle, Labatt Smith
12 Hill representing Mack trucks and Volvo trucks.

13 MR. BRIDGE: Chris Bridge, Gibson
14 McAskill & Crosby, Ford Motor, General Motors.

15 MR. PETTICORD: Is that it? Going
16 once, going twice. Everybody is here.

17 THE VIDEOGRAPHER: The court reporter
18 is Vicki Rohl representing Veritext. Will the
19 court reporter please swear in the witness?

20
21 ROGER HOBBIE, 1489 East Tascal Loop, Oro Valley,
22 Arizona 85737, after being duly called and
23 sworn, testified as follows:

24
25 MR. PETTICORD: Before we start, usual

1 stipulations apply in New York. Objection by
2 one is an objection by all.

3 MR. VONA: Agreed.

4 MR. PETTICORD: We're going to waive
5 reading and signing, timeliness, and we're going
6 to waive filing.

7 MR. VONA: Yes.

8 MR. PETTICORD: Is that correct?

9 MR. VONA: That is correct.

10 MR. PETTICORD: And as we discussed off
11 the record, when we talk about Eaton here today,
12 we're referring to the current and former
13 business operations known as Eaton Truck
14 Components.

15 MR. VONA: Very good.

16 MR. PETTICORD: And no other entity or
17 part or piece of Eaton. Is that accurate?

18 MR. VONA: That sounds about right.

19 MR. PETTICORD: Let's do it.

20
21 EXAMINATION BY MR. VONA:

22
23 Q. Okay. Good afternoon, Mr. Hobbie.

24 A. Good afternoon -- morning.

25 Q. Yeah, you're right. Morning. I'm

1 sorry. Afternoon everybody on the phone. And
2 obviously where are we right now?

3 A. In Oro Valley, Arizona.

4 Q. Okay. Therefore, there's the problem
5 with the time. You've given a deposition
6 before. I'm aware of that.

7 A. Yes.

8 Q. How many depositions have you given?

9 A. All told, about half a dozen.

10 Q. Okay. And how many of those were in
11 the context of asbestos litigation?

12 A. Three.

13 Q. Okay. This being the third or were
14 there three prior?

15 A. This is the third one.

16 Q. Okay. I won't go over too much of the
17 rules for the deposition, but obviously we can't
18 speak over each other because we'll have
19 difficulties there. Also, if you need a break,
20 let me know. If at any time you don't
21 understand one of my questions, please let me
22 know. If you do answer my question, I'll assume
23 that you did understand it. Is that fair?

24 A. That's fair.

25 Q. Okay. And last year you gave a

1 deposition. You were earning about \$85 an hour;
2 is that correct?

3 A. That's correct.

4 Q. I'm hoping maybe you've gone up because
5 of inflation or anything, or not?

6 A. No, frozen.

7 Q. Okay. Now, Mr. Hobbie, in anticipation
8 of this deposition, who, if anyone, did you
9 speak to?

10 A. Just Dan Petticord.

11 Q. Okay. And I don't want to ask you
12 about the context of that, but how many times
13 had you spoken to him since you were advised
14 that you had to give this deposition?

15 MR. PETTICORD: Objection.

16 THE WITNESS: I'd say twice, plus a
17 couple e-mails.

18 BY MR. VONA:

19 Q. Okay. And also in anticipation of this
20 deposition, what, if anything, did you review?

21 A. Several other depositions by other
22 witnesses.

23 Q. Okay. Which witnesses?

24 A. Let's see. Regan, the guy from Ford.
25 I can't remember his name right now. And the

1 one from Rockwell.

2 Q. Okay. And when you say Regan, you're
3 referring to Michael Regan?

4 A. Yes.

5 Q. Did you have an opportunity to review
6 Mr. Kolasinski's testimony?

7 A. No, I didn't.

8 Q. Okay. When did you first hear about
9 this deposition?

10 A. I would say maybe two weeks ago.

11 Q. Do you know anything about
12 Mr. Kolasinski?

13 A. Just what was mentioned in the other
14 depositions.

15 Q. Okay. So you're familiar what disease
16 he's suffering from?

17 MR. PETTICORD: Objection.

18 THE WITNESS: Yes.

19 BY MR. VONA:

20 Q. Are you -- do you know where this case
21 is filed?

22 A. In New York State.

23 Q. And for approximately how long have you
24 been assisting Eaton in the defense of asbestos
25 litigation?

1 A. Oh, a little over two years.

2 Q. And aside from testimony, did you
3 provide any other services in that defense?

4 MR. PETTICORD: Objection. Go ahead.

5 THE WITNESS: Just reviewing documents.

6 BY MR. VONA:

7 Q. Okay. And do you help answer
8 interrogatories at all?

9 A. Not really.

10 Q. Did you -- just so we're clear, you're
11 appearing on behalf of Eaton today, correct?

12 A. Yes, that's correct.

13 Q. Did you have an opportunity to review
14 any of the documents that were provided to my
15 office by Mr. Petticord?

16 A. Yes.

17 MR. PETTICORD: Hold on. Go ahead.

18 Answer it.

19 THE WITNESS: If they came out of the
20 Eaton files in Cleveland, yes.

21 BY MR. VONA:

22 Q. And that's what I was referring to.

23 A. Okay.

24 Q. Okay. Have you ever testified in
25 court?

1 A. No.

2 Q. Did you talk to any current employees
3 of Eaton?

4 MR. PETTICORD: Objection. About this
5 case?

6 MR. VONA: Yeah.

7 THE WITNESS: No.

8 BY MR. VONA:

9 Q. Okay. How about any retirees with
10 respect to this case?

11 A. No.

12 Q. Did you do any additional research to
13 prepare yourself for this deposition besides
14 what we've talked about?

15 A. Nope.

16 Q. Okay. And I'm not going to spend a lot
17 of time on it, but if we could have your -- I'm
18 not sure you have the CV -- the CV marked real
19 quick as Hobbie 1.

20 (Whereupon, Hobbie Exhibit 1, a CV, was
21 then received and marked for identification.)

22 BY MR. VONA:

23 Q. Mr. Hobbie, is that CV up to date as
24 far as you know?

25 A. Yes.

1 Q. Okay. And I won't -- like I said, I
2 won't spend a lot of time on this because it's
3 been covered, but I want to ask you and I
4 can't -- I'm looking under industrial
5 professional associations. What is the, the
6 third one on the bottom that's kind of blurred?

7 A. It's Old Club O Trolley. It's a local
8 Tucson organization, a non-profit organization
9 that runs a historical trolley system in Tucson,
10 and I volunteer as a restoration person and
11 helping rebuild antique coaches.

12 Q. Very good. Let me ask you a little bit
13 about the Society of Automotive Engineers. When
14 did you first -- it says 31 years. When did you
15 first become a member of that?

16 MR. PETTICORD: Objection. I don't
17 think that's accurate.

18 MR. VONA: I'm sorry. 38 years. I
19 apologize.

20 THE WITNESS: It was early '70s. I
21 think '71 probably.

22 BY MR. VONA:

23 Q. Okay. And did you become a member of
24 that association pursuant to Eaton's request?

25 A. Yes. It was part of my job to belong

1 to it.

2 Q. Okay. And are you still currently a
3 member?

4 A. Yes, retired member, but I'm still an
5 active member.

6 Q. Okay. During your time with that
7 association, did you ever hold any board
8 positions?

9 A. I -- let's see. I held committee
10 positions, but not strictly board positions as
11 far as management boards or anything like that.

12 Q. Did you ever write any articles for
13 them?

14 A. Yes.

15 Q. Okay. What articles did you write?

16 A. Historical article that was basically
17 on the history of the Eaton axle.

18 Q. Okay. And I saw that one.

19 A. Did you?

20 Q. Are there any others?

21 A. No, that's the only one.

22 Q. All right. Fair enough. Let me ask
23 you a little bit about the American Trucking
24 Association. Okay. When did you first become a
25 member of that association?

1 A. Let's see. That would have been about
2 1978, I believe.

3 Q. Okay. And was that pursuant to Eaton,
4 as well?

5 A. Yes, uh-huh.

6 Q. Okay. Now, it says 31 years as a
7 member. This CV was produced in 2007. By my
8 math, that would put it at 1976. Is that
9 accurate?

10 A. It could be, yes.

11 Q. Okay. Did you ever hold any executive
12 or board positions with that association?

13 A. Yes. For a while, I was on the board
14 of the ATA Foundation.

15 Q. What is that?

16 A. It was a foundation that did basically
17 research for the trucking industry.

18 Q. Okay. What kind of research?

19 A. Basically on truck operations, fleet
20 operations, those types of things.
21 Transportation laws.

22 Q. Anything ever with regard to asbestos?

23 MR. PETTICORD: Objection.

24 THE WITNESS: No, no.

25 BY MR. VONA:

1 Q. All right. Did you ever write any
2 articles for that association?

3 A. I think I wrote one article that was
4 published in one of their publications. I don't
5 recall what -- exactly what year it was, but --

6 Q. What did it concern anyway?

7 A. I think it concerned -- it was either
8 concerning the use of synthetic lubricants in
9 vehicles or -- I believe that's what it was.

10 Q. Okay. Now, let's take a look here. I
11 want to talk to you about your current
12 employment, and I'm correct that you're retired
13 from Eaton?

14 A. Yes.

15 Q. And you do some consulting?

16 A. Yes.

17 Q. We have three companies listed here
18 under current consulting companies. Do you
19 still consult for all three of those companies?

20 A. Yes.

21 Q. Any additional ones?

22 A. No.

23 Q. All right. I want to ask you a little
24 bit about MacKay.

25 MR. PETTICORD: Objection.

1 MR. VONA: Okay. Actually, I'm going
2 to have something marked real quick.

3 (Whereupon, Hobbie Exhibit 2, a
4 document pulled off the Internet via Google
5 regarding MacKay's Web site, was then received
6 and marked for identification.)

7 BY MR. VONA:

8 Q. We'll mark this as Exhibit 2 there, and
9 if you take a quick look at this, and I'll
10 represent to you that this is something I pulled
11 off the Internet via Google regarding MacKay's
12 Web site, and I just have a few question
13 questions about it.

14 MR. PETTICORD: Hold on. Before we
15 start here, I'm going to object to any
16 questioning at all about MacKay & Company. I'm
17 going to object to this exhibit. I don't know
18 what it is. He's not here on behalf of McKay.
19 MacKay has nothing to with this case. McKay has
20 nothing to do with why he's being produced. Ask
21 your questions, but every time you ask a
22 question, me jump up and down, do you agree that
23 I object to everything you say about MacKay?

24 MR. VONA: Dan, I'll give you a
25 standing objection to this entire exhibit.

1 MR. PETTICORD: Well, not the exhibit,
2 the questioning about it.

3 MR. VONA: And the questioning.

4 MR. PETTICORD: Fair enough.

5 BY MR. VONA:

6 Q. As I mentioned before, this is
7 something I pulled off the Internet, and it has
8 a listing of clients of MacKay. Would you agree
9 with me on that?

10 A. Yes.

11 Q. And I just want to run through the
12 names really quickly, and it's going to be the
13 same question for every company. And that
14 question is have you ever done any consulting
15 work for that company?

16 A. Right.

17 Q. Okay. ArvinMeritor?

18 A. No.

19 Q. Bendix?

20 A. No.

21 Q. Borg-Warner?

22 A. No.

23 Q. Honeywell International?

24 A. No.

25 Q. For Bendix Heavy Vehicle?

1 A. No.

2 Q. Kelsey-Hayes Company?

3 A. No.

4 Q. Maremont Corporation?

5 A. No.

6 Q. Obviously Eaton Corporation. We'll
7 skip that one. Ford Motor Company?

8 A. No.

9 Q. Fruehauf Corporation?

10 A. No.

11 Q. General Motors Corporation?

12 A. I'd say no.

13 Q. Okay. Motion Control Industries?

14 A. No.

15 Q. National Automobile Dealers
16 Association?

17 A. No.

18 Q. Newturn Corporation?

19 A. No.

20 Q. Okay. Fair enough. Okay. Looking
21 back at Hobbie 1, I'm just going to read a
22 summary of your work history with Eaton. You
23 just tell me if I'm missing anything if it's
24 correct based on your prior deposition. It will
25 speed things along. 1959 to 1970, engineer test

1 technician.

2 A. Uh-huh.

3 Q. Okay. You have to say yes.

4 A. Yes.

5 Q. Okay. And you did test brakes in that
6 capacity?

7 A. Yes.

8 Q. Okay. 1970 to 1974, sales and
9 engineering manager?

10 A. Yes.

11 Q. 1974 to 1977, manager of engineering
12 test facilities?

13 A. Yes.

14 Q. 1977 to 1980, manager technical
15 services and warranty for axle division?

16 A. Yes.

17 Q. Okay. 1980 to 1983, manager of service
18 and parts for Eaton Truck Marketing?

19 A. East Truck Components.

20 Q. Thank you. And then 1983 to '91,
21 general service manager, Eaton Truck Components
22 marketing?

23 A. Yes.

24 Q. Okay. Mr. Hobbie, do you believe you
25 are in the best position -- the best person to

1 discuss Eaton's business practices between 1980
2 and 1990?

3 MR. PETTICORD: Objection. Go ahead.

4 THE WITNESS: I'd say yes.

5 MR. VONA: Okay.

6 MR. PETTICORD: I'm sorry. You said
7 '80 to '90?

8 MR. VONA: Can I have this marked as 3?

9 (Whereupon, Hobbie Exhibit 3, a
10 document, was then received and marked for
11 identification.)

12 BY MR. VONA:

13 Q. Sir, I'm handing you what's been marked
14 as Hobbie 3. Take a minute to take a look at it
15 before I ask any questions. Let me know when
16 you're ready.

17 MR. PETTICORD: Off for a second.

18 MR. VONA: Do you want to go off the
19 record?

20 MR. PETTICORD: Do you want to go off
21 for a second, or do you want to let him go
22 through this on the record?

23 MR. VONA: That's fine.

24 BY MR. VONA:

25 Q. Well, let me just ask you this: Have

1 you seen that document before?

2 A. No, not per se.

3 Q. Okay.

4 MR. PETTICORD: Can I see the document
5 for a second, please?

6 BY MR. VONA:

7 Q. And counsel has referred you to the
8 last page which is where I was going to go.

9 A. Okay. Yes, I must have.

10 Q. Okay.

11 A. I know some of the information. I
12 guess the cover letter --

13 Q. You might want to hold on a second.
14 Your counsel stepped outside the room for a
15 minute. We'll just break for a sec. Okay, sir,
16 if you could refer back to that last page.

17 A. Yes.

18 Q. Okay.

19 A. Yes, I did sign it, and I do recognize
20 it.

21 Q. That is your signature?

22 A. Yes, it is.

23 Q. Okay. Could you read the verification
24 to yourself --

25 A. The verification. It says --

1 Q. -- that you signed?

2 A. Comes now, Roger Hobbie states that he
3 authorized to make said answers to
4 interrogatories and requests to produce, and
5 that said answers are true and correct to the
6 best of his knowledge, information and belief,
7 signed Roger Hobbie.

8 Q. And you agree with that statement, sir?

9 A. Yes.

10 Q. Now that you do recognize the document,
11 I'd ask you, have you had an opportunity to
12 review the document in its entirety?

13 A. Yes, I believe I did read the whole
14 thing.

15 Q. Okay.

16 A. The cover letter threw me.

17 Q. I apologize for that.

18 A. I didn't see the cover letter before.

19 MR. PETTICORD: That's his.

20 BY MR. VONA:

21 Q. Anyway, sir, did Eaton ever sell
22 asbestos-containing brakes?

23 A. Yes.

24 Q. Okay. During what time frame did Eaton
25 sell asbestos-containing brakes?

1 A. To the best of my recollection,
2 probably from, I would say, the late 1940s until
3 approximately mid 1980s.

4 Q. Okay. You can't nail that down any
5 more specific with a date other than mid '80s?

6 A. No, not specifically.

7 Q. Okay. Well, then let me -- so then
8 it's fair to say that between 1980 and at least
9 the mid 1980s that Eaton did sell
10 asbestos-containing brakes?

11 A. Yes.

12 Q. For what types of vehicles did they
13 sell them?

14 A. Primarily heavy-duty trucks and a few
15 trailer manufacturers and some medium,
16 medium-duty manufacturers.

17 Q. Okay. And based on your prior
18 testimony, I'm assuming -- strike that.

19 Based on your prior testimony, you
20 stated that these were primarily OEM sales to
21 manufacturers for assembly?

22 A. Yes.

23 Q. That would go into brand-new equipment?

24 A. Yes.

25 Q. Did Eaton sell replacement

1 asbestos-containing brakes between 1980 and
2 1990?

3 A. Yes.

4 MR. PETTICORD: Objection.

5 BY MR. VONA:

6 Q. Okay. Can you tell me what, what sizes
7 of asbestos brakes Eaton sold during that time
8 period?

9 A. Yes. Primarily sixteen and a half inch
10 diameter, seven-inch wide brakes. That was the
11 primary product.

12 MR. PETTICORD: When you say time
13 period, are you talking to '80 to '86, or '80 to
14 the mid '80s, or '80 to '90?

15 MR. VONA: We can just use the 1980 to
16 1990 time frame with the understanding that his
17 testimony is the mid '80s.

18 MR. PETTICORD: Fair enough. Thank
19 you.

20 THE WITNESS: And there was also a
21 steer axle brake that was introduced which was
22 at that time, I believe, a fifteen -- I think it
23 was a fifteen by four-inch brake that was
24 introduced to the market.

25 BY MR. VONA:

1 Q. And educate me a little bit. I'm new
2 to this tractor trailer. Is that the front
3 wheel on the tractor?

4 A. Yeah, steering axle.

5 Q. Okay. That's what I thought. What --
6 under what name did Eaton sell
7 asbestos-containing brakes between 1980 and
8 1990?

9 A. Under the name Eaton Self-Contained
10 Brake.

11 Q. Okay. Do you know how much asbestos
12 was in the brakes that was sold during that time
13 period?

14 A. No, I don't.

15 Q. And by the way, most of my questions,
16 and in fact, all of my questions will pretty
17 much deal with 1980 for 1990 unless I otherwise
18 specify.

19 MR. PETTICORD: Fair enough.

20 BY MR. VONA:

21 Q. Do you know, do you know what type of
22 asbestos was used during that time period?

23 A. No, I don't.

24 Q. Okay. Did Eaton ever manufacture the
25 brakes it sold?

1 MR. PETTICORD: Objection.

2 THE WITNESS: They manufactured the
3 brakes but not the linings.

4 BY MR. VONA:

5 Q. Okay. Explain that just briefly for
6 me.

7 A. Well, the -- Eaton manufactured --
8 designed and manufactured all the hard parts;
9 the steel brake shoes, the steel cam shafts, the
10 bracketry, and purchased all the brake lining
11 from various lining manufacturers.

12 Q. That leads me to my next question, and
13 this is going to be pretty easy, I think, but
14 where did Eaton obtain their brake linings, and
15 I'm going to vary this question between, we'll
16 say, 1940s, when they first started using it,
17 and 1990?

18 A. I'd say primarily from, from Abex and
19 Carlisle, and then probably some Raybestos
20 thrown in there earlier on.

21 Q. Okay. When you say earlier on, what do
22 you mean?

23 A. I would say back -- to my knowledge,
24 going back to the beginning in the late '40s,
25 probably Raybestos was more of a major supplier

1 in that era, I would think.

2 Q. Okay. Now, dealing with the time
3 period of say 1980 to 1990, do you know who
4 supplied the asbestos-containing brake linings
5 to Eaton?

6 A. Primarily Carlisle and Abex.

7 Q. Okay. Do you know how much for either
8 one?

9 A. Not specifically, but if -- I would
10 guess that probably Carlisle was probably -- it
11 sort of varied back and forth, but Carlisle was
12 probably the majority of the, the share. And it
13 varied by customers as to what, what lining they
14 specified and what lining met certain test
15 criteria and specifications.

16 Q. Okay.

17 MR. VONA: I'm just going to have
18 something else marked real quick. I think we're
19 on 4.

20 (Whereupon, Hobbie Exhibit 4, a summary
21 of the 1980 price increases from vendors that
22 were used to make up the various components that
23 went into the brake assembly, was then received
24 and marked for identification.)

25 BY MR. VONA:

1 Q. And I'm going to hand you what's been
2 marked as Hobbie 4, and just if you could take a
3 brief second, just take a look at that. And
4 I'll have some questions for you. All set?

5 A. Yes.

6 Q. I'll ask you, have you ever seen that
7 particular document before?

8 A. No.

9 Q. Okay. Have you seen documents like
10 that before during your career?

11 A. Similar.

12 Q. Okay. Would you be able to explain
13 what that is at all for us?

14 A. It's a summary of the 1980 price
15 increases from vendors that we used to make up
16 the various components that went into the brake
17 assembly.

18 Q. Fair enough. That's what I took it to
19 be. I'm more interested with the first thing
20 listed under commodity which is brake
21 components. Do you see that?

22 A. Yes.

23 Q. And under source, could you just please
24 tell us the sources that are listed?

25 A. Abex, Carlisle, Raybestos-Manhattan.

1 Q. And then there's something next to that
2 that says percentage of C. Do you know what
3 that means?

4 A. Percentage of C.

5 MR. PETTICORD: If you know.

6 BY MR. VONA:

7 Q. If you know.

8 A. No.

9 Q. All right.

10 A. Oh --

11 Q. Yeah, go ahead.

12 MR. PETTICORD: He's asking for your
13 best recollection.

14 THE WITNESS: To the best of my
15 knowledge, it would be content. Percent of
16 content.

17 BY MR. VONA:

18 Q. Okay. Thank you. During the
19 deposition, if something comes back to you like
20 that, you can stop me and, you know, it's fine.

21 A. Right.

22 Q. And could you read the percentages for
23 us?

24 A. Here it says 63 percent Abex; Carlisle,
25 31 percent; Raybestos-Manhattan, 6 percent.

1 Q. And would you agree with me then that
2 at least in 1980, Abex was the largest supplier?

3 A. Yes.

4 MR. PETTICORD: Of what?

5 THE WITNESS: Of brake linings.

6 MR. BURCH: Objection. Form.

7 MR. PETTICORD: Objection. Go ahead.

8 THE WITNESS: Yes, I'd agree.

9 BY MR. VONA:

10 Q. Okay. And at least in 1980, would you
11 agree with me that Abex and Carlisle made up for
12 94 percent of brake components that were sold?

13 A. Yes.

14 MR. BURCH: Objection. Form.

15 BY MR. VONA:

16 Q. And also there's a column that says
17 contract date next to it. Do you know what
18 that, what that corresponds to?

19 MR. PETTICORD: Again, to the best of
20 your knowledge.

21 BY MR. VONA:

22 Q. If you know.

23 A. To the best of my knowledge, it would
24 probably be when a supply contract was signed.

25 Q. Was that a common practice, that Eaton

1 engaged in having contracts with, say, their
2 brake suppliers, brake lining suppliers?

3 A. I believe it was, yes.

4 Q. Do you know when that started?

5 A. No, I don't.

6 Q. Okay. Do you know when it ceased?

7 A. No, I don't.

8 Q. Okay. Fair enough. All right. Now,
9 the brake linings that we were discussing were
10 supplied to Eaton, what did Eaton do with them
11 at that point?

12 A. Basically riveted them onto a steel
13 brake shoe.

14 Q. Okay. And where was that done?

15 A. Oh, various places. Started out in
16 Cleveland.

17 MR. PETTICORD: During this time frame.

18 THE WITNESS: Oh, during this time
19 frame.

20 BY MR. VONA:

21 Q. Well, let me strike that.

22 You're right, it was a bad question,
23 Dan.

24 Let me just ask you, we'll say from the
25 time -- we'll just use 19 -- when did you start?

1 1951?

2 A. '59.

3 Q. We'll use the time frame from 1959
4 until 1990.

5 A. Okay. Started in Cleveland, Ohio.

6 Q. Well, let me just -- you know, I'll
7 make this easier for you. Was it done at
8 Eaton's facilities --

9 A. Yes.

10 Q. -- during that time period?

11 A. Yes.

12 Q. Okay. See, we're getting there. Okay.
13 And those lined shoes, would they then be
14 incorporated into Eaton's axles during that time
15 frame?

16 MR. PETTICORD: Objection.

17 THE WITNESS: Yes and no.

18 BY MR. VONA:

19 Q. Explain.

20 A. Some were bolted onto Eaton axles, and
21 others were sold separately to the original
22 equipment manufacturer who bolted them onto
23 Eaton axles or other axles.

24 Q. So is it a replacement part?

25 A. No, not necessarily, even for the

1 original equipment manufacturer.

2 Q. I see.

3 A. Basically they --

4 Q. So they may actually assemble it then
5 at the site?

6 A. Yes.

7 Q. Did they -- did Eaton during the period
8 1959 to 1990 sell asbestos-containing brake
9 linings attached to shoes as replacement parts?

10 A. Yes.

11 Q. All right. Do you know -- did Eaton
12 during that same time period, 1959 to 1990, ever
13 sell just linings?

14 A. No.

15 Q. No, you don't know --

16 MR. PETTICORD: Objection.

17 THE WITNESS: No, they did not.

18 MR. VONA: They did not. Okay. I'm
19 going to have something else marked real quick.
20 Six?

21 (Whereupon, Hobbie Exhibit 5, a
22 document to inform the customers of the various
23 specifications of shoe and lining assemblies
24 that were available to them, was then received
25 and marked for identification.)

1 BY MR. VONA:

2 Q. Sir, I'm going to hand you what's been
3 marked as Hobbie 5 for today's deposition and
4 ask you have you ever seen this document before?

5 A. Looks familiar, yes.

6 Q. And in fact, it was an exhibit at your
7 deposition last year, correct?

8 A. Yes.

9 Q. Okay. And sir, what I'd like to do is
10 I'd like to point you to the second page, and
11 looking at the second page, can you tell us when
12 this document was created?

13 MR. PETTICORD: Bottom right.

14 THE WITNESS: 1984.

15 BY MR. VONA:

16 Q. Okay. And was this document something
17 that was created by Eaton?

18 A. Yes.

19 Q. Okay. And what was this document
20 created for?

21 A. Basically to inform the customers of
22 the various specifications of shoe and lining
23 assemblies that were available to them.

24 Q. And these would be for replacement
25 parts?

1 A. Yes.

2 Q. Okay. Now, if you could take a look up
3 near the top, and basically, it says this -- the
4 chart below shows brake components match
5 specific friction materials and shoe assemblies.
6 Do you see that?

7 A. Yes.

8 Q. What I'm more interested with is below
9 that where it says locate this number in the
10 chart, shoe-only column, and read across the
11 select friction material and match components or
12 kits. Do you see that? It's just below there.

13 A. Yeah, I guess I think I know what you
14 mean.

15 Q. Right up here. That sentence.

16 A. Oh, that.

17 Q. There you go.

18 A. Yes.

19 Q. Okay. How would a, how would a
20 customer use this chart to, to determine what
21 they wanted to order?

22 A. Because certain applications were
23 initially approved in engineering and with the
24 truck manufacturer, this was an effort to be
25 sure to match the original equipment shoe and

1 lining assemblies in the -- with the correct
2 replacement part.

3 Q. Okay. Now, these, these numbers that
4 we see in here, and I'm referring to the numbers
5 in the middle.

6 MR. PETTICORD: Okay. Can you get a
7 little more specific?

8 MR. VONA: Yeah, you're right. That's
9 bad. Strike that, Dan.

10 BY MR. VONA:

11 Q. Actually, why don't I refer you to --
12 and I know it's a little dark, but pretty much
13 in the middle, there's columns that say shoe
14 only and shoe lining. Do you see that?

15 A. Uh-huh, yes.

16 Q. Those numbers that are underneath
17 there, do you know what those numbers correspond
18 to?

19 A. Shoe only would be probably the bare
20 shoe.

21 Q. Okay.

22 A. And the one next to it, shoe lining,
23 would be lining.

24 Q. Okay. Would that be a lining by
25 itself, or would that be --

1 A. It would be the part number -- the
2 Eaton part number of the lining by itself, yes.

3 Q. So those are Eaton part numbers?

4 A. Look like it, yes.

5 Q. Okay. To the best of your knowledge?

6 A. To the best of my knowledge.

7 Q. Now, if you go, if you go back to the
8 left as you're looking at the document, there's
9 a column that says lining block. Do you see
10 that?

11 A. Yes.

12 Q. Okay. And those numbers underneath
13 that are -- to the best of your knowledge, are
14 those Eaton part numbers, as well?

15 A. They look like it, yes.

16 Q. Okay. So my question is to you then is
17 as a customer, would I not be able to order
18 lining block from Eaton under that part number?

19 A. No.

20 MR. PETTICORD: Objection.

21 BY MR. VONA:

22 Q. Why not?

23 A. Because we didn't sell it separately.
24 That's only showing them what the Eaton part
25 number is of the lining block that would be on

1 the shoe.

2 Q. Okay.

3 A. And I think -- it's a little confusing.

4 The other column that we were talking about

5 earlier, the shoe lining numbers --

6 Q. Yeah.

7 A. -- I'm not sure what that is now

8 looking at the other number.

9 MR. PETTICORD: If you know.

10 BY MR. VONA:

11 Q. And that's really where my, my question

12 ends up is that we have a column for shoe lining

13 and a column for shoe only. So my assumption

14 was that the shoe lining was a shoe with the

15 lining attached.

16 A. Yeah, I think that is correct. That's

17 what it looks like.

18 Q. Okay. All right.

19 MR. PETTICORD: Can -- off the record.

20 MR. VONA: Do you want to go off the

21 record?

22 MR. PETTICORD: I want to go off the

23 record.

24 MR. VONA: Is it all right if we go off

25 the record on the phone?

1 MR. PETTICORD: Two seconds.

2 THE VIDEOGRAPHER: Counsel? One
3 moment, please.

4 (Discussion off the video record.)

5 MR. PETTICORD: I know you don't like
6 speaking objections, so we're going off the
7 record. If you look at the column you're
8 looking at, which is the one, two, three, four,
9 five, six -- seventh column over, under both the
10 sixteen by five and the sixteen and a half by
11 seven, it actually says shoe, and then there's a
12 slash lining.

13 MR. VONA: Yeah.

14 THE WITNESS: Yeah, there is.

15 MR. PETTICORD: What I'm doing -- and I
16 know you're not doing this intentionally, but
17 the way you read it makes the question appear to
18 be shoe lining. It doesn't imply that there's a
19 hash mark in between them. I want to make sure
20 the record is clear that what you're asking him
21 about is the --

22 MR. VONA: The document speaks for
23 itself, I think.

24 MR. PETTICORD: But the question you
25 asked wasn't shoe slash lining. It was shoe

1 lining. And before we start getting into what
2 the lining block number is and the shoe lining
3 block -- I don't want to get into an argument
4 with you, but I know what you're trying to do.
5 I want to make sure the record is clear about
6 it, and I want to make sure the witness knows --
7 or the record said shoe --

8 MR. VONA: That's fine. I'm just
9 asking questions.

10 MR. PETTICORD: I know you are. I'm
11 just giving you a speaking objection off the
12 record.

13 MR. VONA: Fair enough. Ready to go
14 back on.

15 (Whereupon, the proceedings resumed on
16 the video record.)

17 THE VIDEOGRAPHER: Please stand by. We
18 are back on the record at 10:59 a.m. Please
19 proceed.

20 BY MR. VONA:

21 Q. Okay. Thank you. And I just have one
22 more question about this document. If you --
23 the column all the way on the left with all the
24 letters in it and numbers, what does that
25 indicate?

1 A. That is the specification for the
2 various lining material that was approved.

3 Q. Okay. And do those letters indicate
4 anything?

5 A. Various things; coefficient of
6 friction, lining -- evidently lining specs as
7 far as materials is concerned.

8 Q. I'll just ask you real quick about the
9 last two on the bottom. MM8C5. Do you see
10 that?

11 A. Yes.

12 Q. Okay.

13 A. Yeah.

14 MR. PETTICORD: Bottom of the page, all
15 the way down at the bottom.

16 MR. VONA: Yeah.

17 BY MR. VONA:

18 Q. You see MM8C5 at the bottom left?

19 A. Yes.

20 Q. Do you, do you recognize that code
21 number at all?

22 A. MM8C5. I don't know. I really don't
23 remember.

24 MR. PETTICORD: That's fine.

25 THE WITNESS: I'll comment there are

1 some non-asbestos linings also listed.

2 BY MR. VONA:

3 Q. That's fine, but that wasn't my
4 question. So -- well, actually, let's -- since
5 you brought that up, how many of those are -- of
6 those listed are -- it's by asterisks, correct?

7 A. Yes.

8 Q. How many of those listed are
9 non-asbestos?

10 A. Three.

11 Q. Okay. And is it safe to assume then
12 that the other ones are not -- are
13 asbestos-containing?

14 A. Yes.

15 DEFENSE COUNSEL: Objection to form.

16 BY MR. VONA:

17 Q. Okay. Does MM8C5 -- I know I asked
18 this, but does it have meaning to you at all?
19 Can you tell anything from it?

20 A. It rings a bell as to a spec that was
21 probably, I'm guessing, fairly common at the
22 time. It was a -- as you see, a high
23 coefficient lining.

24 Q. Okay. Now, a minute ago you mentioned
25 that Eaton sold asbestos-containing brakes to

1 trailer manufacturers.

2 MR. PETTICORD: Are we done with this
3 exhibit?

4 MR. VONA: Yes, you can put that down,
5 sir. I apologize.

6 BY MR. VONA:

7 Q. What manufacturers did Eaton sell
8 asbestos-containing brakes to -- I'm speaking
9 about trailers -- between 1980 and 1990?

10 A. To the best of my recollection, I would
11 say probably Trailmobile, Monon, Pines, and
12 possibly a few to Fruehauf, not many.

13 Q. Not many?

14 A. Yeah, probably for specialty orders.

15 Q. Okay. Do you know who Eaton's biggest
16 trailer customer would have been during that
17 time frame?

18 MR. PETTICORD: Objection.

19 THE WITNESS: No.

20 MR. VONA: All right. I'm going to
21 keep the court reporter busy today.

22 (Whereupon, Hobbie Exhibit 6, a
23 document entitled 1985 Trailer Axle Markets, was
24 then received and marked for identification.)

25 BY MR. VONA:

1 Q. I'm going to hand you what's been
2 marked as Hobbie 6, and have you seen that
3 document before?

4 A. Probably, yes.

5 Q. Okay. Do you know when you saw it?

6 A. Probably the last time it would have
7 been a couple years ago.

8 Q. Okay. You didn't review that document
9 in anticipation for this deposition, did you?

10 A. No.

11 Q. Okay. All right. If you could, I'd
12 like to direct your attention the -- well, let's
13 see. Count the pages to the fifth page.

14 MR. PETTICORD: Give us the page
15 number.

16 MR. VONA: Do you want the Bates
17 number? Will that work?

18 MR. PETTICORD: Just the last two
19 digits.

20 MR. VONA: 677.

21 MR. PETTICORD: Got it.

22 MR. VONA: That will work better.

23 BY MR. VONA:

24 Q. Let me know when you're there.

25 A. Okay.

1 Q. Okay. And first off, is there, is
2 there any way to indicate the date this was
3 created?

4 A. It's listed as February 7th, 1985.

5 Q. What's the title of this page?

6 A. 1985 Trailer Axle Markets.

7 Q. Okay. And now, this is a document that
8 was supplied by Eaton to my office? Do you
9 agree with that?

10 A. Yes, probably.

11 Q. Okay. And does it list the OEMs for
12 the 1985 trailer axle market for Eaton?

13 A. Yes. I'd say it lists the potential
14 market.

15 Q. Okay. What do you base that, that
16 answer on?

17 A. Well, it doesn't sound like any
18 production sales that we ever had. It looks to
19 me like it's just talking about the total market
20 and who makes up that market.

21 Q. Okay. Well, would you -- if you could,
22 if you could take a look at the next column next
23 to OEM. It says units. Do you see that?

24 A. Yes.

25 Q. Do you have any idea what that stands

1 for; what that means?

2 A. Trailers, numbers of trailer.

3 Q. Numbers of trailers from --

4 A. Built, built by those manufacturers.

5 Q. I see. Okay.

6 A. And the next would be total number of
7 axles, because some trailers only had one axle,
8 some trailers have two axles, and some have
9 three axles.

10 Q. I see. So this is going to be a little
11 bit of a learning experience for me, as well. I
12 thought this document was something else.
13 That's going to happen from time to time.

14 With that being said, I don't have any
15 questions about that page right now. If you
16 could go to Bates number 675, which is back --
17 it's the third page. Okay. And would you be
18 willing to agree with me that this is also from
19 1985?

20 A. Yes.

21 Q. All right. And what's the title of
22 this page?

23 A. OEM trailer axle status.

24 Q. Okay. And above that it says Eaton?

25 A. Yes, Eaton.

1 Q. Okay. And under OEM is Pines listed?

2 A. Yes, it is.

3 Q. Okay. And then there's another column.

4 It says Eaton position. Do you know what that
5 means?

6 A. Yeah. That means probably in the
7 trailer manufacturer's sales data book, what
8 different axle models -- make and model was
9 standard equipment, but that also doesn't say
10 who was optional.

11 Q. I see, but would it be fair to -- would
12 you agree with me that it would be fair to say
13 that at least in 1985, the Eaton position was
14 that it was a standard axle on Pines?

15 A. Yes, yes.

16 Q. And also under OEM, there's
17 Trailmobile. Do you see that?

18 A. Yes.

19 MR. CAPRIOTTI: Objection.

20 BY MR. VONA:

21 Q. And let me ask you, is Trailmobile
22 listed under OEM?

23 MR. CAPRIOTTI: Objection.

24 THE WITNESS: Yes.

25 BY MR. VONA:

1 Q. Okay. And what was Eaton's position
2 with regard to Trailmobile?

3 MR. PETTICORD: In '85?

4 MR. VONA: In 1985.

5 MR. CAPRIOTTI: Objection.

6 THE WITNESS: In '85, it's standard.

7 BY MR. VONA:

8 Q. Thank you. You can put that one down.
9 We're moving along.

10 MR. PETTICORD: We're done with that
11 document?

12 BY MR. VONA:

13 Q. Okay. Now we'll jump around a little
14 bit, but sir, if you could take a look at the
15 answers to interrogatories which were marked
16 under there, and I'll direct you -- I think it's
17 3, Hobbie 3. Hobbie 3. I'm sorry. I'll do
18 that more than once. And page 65. Let me know
19 when you're there.

20 A. I got it.

21 Q. Okay.

22 MR. PETTICORD: Hold on a second. Read
23 it, and then I want to see it because we don't
24 have another copy. I want to see it before --

25 MR. VONA: Do you want him to read it

1 out loud?

2 MR. PETTICORD: No. I want to see it
3 when he's done with it. I'm just looking for an
4 electronic copy, but I don't know that I have
5 it.

6 MR. VONA: If we go on break, I have it
7 in my thumb drive. We can put it on there if
8 you want.

9 MR. PETTICORD: Are we going to be on
10 it for awhile?

11 MR. VONA: I'm going to use it a few
12 times.

13 MR. PETTICORD: Then let's take a break
14 and let's do that.

15 THE VIDEOGRAPHER: Counsel by phone?

16 MR. VONA: Does anybody have any
17 objections if we go off the record here
18 momentarily?

19 MR. CAPRIOTTI: No objection. That's
20 fine.

21 THE VIDEOGRAPHER: We'll be off the
22 record at 11:08 a.m. Please stand by.

23 (Discussion off the record.)

24 (Whereupon, a recess was then taken at
25 11:08 a.m.)

1 (Whereupon, proceedings resumed at
2 11:13 a.m.)

3 THE VIDEOGRAPHER: Plead stand by. We
4 are back on the record at 11:13 a.m. Please
5 proceed.

6 BY MR. VONA:

7 Q. Okay. We took a short break, and we're
8 back on, Mr. Hobbie, and I apologize, but I got
9 to go backwards a little bit before we go into
10 that.

11 If you can go back to the last exhibit,
12 the 1985 trailer axle document that we were
13 talking about, and I've got to clean this up a
14 little bit. Back on 675, okay? All right. And
15 we were discussing that in 1985, the Eaton
16 position with Pines is listed as standard?

17 A. Yes.

18 Q. What does that mean?

19 A. That means that in the -- in their
20 sales data book that for a given model trailer,
21 the Eaton axle would have been the standard. In
22 other words, if you said I want a, a Pines model
23 XYZ and didn't say anything else, it would come
24 with a -- an Eaton trailer axle.

25 Q. And Eaton would supply that axle,

1 correct?

2 A. Correct.

3 Q. Okay. And do you know if Eaton
4 supplied axles to Pines outside of 1985?

5 MR. CAPRIOTTI: Objection.

6 BY MR. VONA:

7 Q. You can answer.

8 A. Yes.

9 Q. Okay. Do you know when they first
10 started?

11 MR. PETTICORD: When Eaton first
12 started supplying to Pines?

13 MR. VONA: Yeah, yeah.

14 THE WITNESS: No, I don't.

15 BY MR. VONA:

16 Q. Okay. Do you know if they were
17 supplying axles to Pines in 1980?

18 A. Yes.

19 Q. They were? Okay. How about 1980
20 through 1990 time frame?

21 A. I can't answer that because I don't
22 know when Pines went out of business. I don't
23 remember.

24 Q. Fair enough. Would it be fair to say
25 that Eaton sold axles to Pines up until the

1 point they went out of business?

2 A. Yes.

3 Q. And during that time frame, 1980 until
4 whenever they went out of business, did Eaton
5 ever sell asbestos-containing brake assemblies
6 in their axles to Pines?

7 A. I'd say yes.

8 MR. CAPRIOTTI: Objection.

9 BY MR. VONA:

10 Q. Let me move to Trailmobile. What was
11 Eaton's position once again in 1985?

12 A. Standard.

13 Q. Okay. And would that be the same as
14 what we were talking about with Pines? Did they
15 sell -- did Eaton sell axles to Pines or to
16 Trailmobile?

17 MR. CAPRIOTTI: Objection.

18 THE WITNESS: Yes.

19 BY MR. VONA:

20 Q. Outside of 1985, let's talk about 1980
21 to 1990 time frame, did Eaton sell axles to
22 Trailmobile?

23 MR. CAPRIOTTI: Objection.

24 THE WITNESS: Yes.

25 BY MR. VONA:

1 Q. Okay. And did any of those axles
2 contain asbestos-containing brake components?

3 A. Yes.

4 MR. CAPRIOTTI: Objection.

5 BY MR. VONA:

6 Q. Do you know during -- what -- well,
7 strike that.

8 Would you agree with me that between
9 1980 and 1990, that axles sold by Eaton to
10 Trailmobile did contain asbestos-containing
11 brake linings?

12 MR. PETTICORD: Objection.

13 MR. CAPRIOTTI: Objection.

14 THE WITNESS: Yes.

15 BY MR. VONA:

16 Q. Okay. Fair enough. All right. Now we
17 can go to the next document.

18 A. Okay.

19 Q. And we were looking at the
20 interrogatories, I believe, page 65.

21 A. Yes.

22 Q. And you had an opportunity to take a
23 quick look at that? Have you read the question?

24 MR. PETTICORD: Interrogatory number
25 twenty-eight is the question?

1 MR. VONA: Yes, that's correct.

2 THE WITNESS: Yes.

3 BY MR. VONA:

4 Q. Okay. If you could go to the next
5 page, have you had an opportunity to read the
6 answer?

7 A. Yes.

8 Q. Okay.

9 MS. O'CONNOR: Keith?

10 MR. VONA: Yes.

11 MR. PETTICORD: Guys, just so -- we're
12 getting some static back through the line here,
13 and I know there's some objections, but if
14 you're not actively objecting, if you could put
15 it on mute, it might help us here. We're
16 getting some funny noises through the phone.

17 BY MR. VONA:

18 Q. Okay. And do you agree with the
19 statement that's made in that answer?

20 A. Yes, I do.

21 Q. Okay. That Eaton would not have sold
22 re-lined kits to either Southside Trailer or
23 Roadway Express?

24 A. Yes.

25 Q. And that Eaton's brake assemblies were

1 limited to the -- I'll say OEM with heavy-duty
2 equipment in the heavy-duty industry?

3 A. Yes.

4 MR. VONA: Okay. Let me just mark
5 something else.

6 (Whereupon, Hobbie Exhibit 7, a
7 document dated October 1st, 1985, was then
8 received and marked for identification.)

9 BY MR. VONA:

10 Q. Showing you what's been marked as
11 Hobbie -- Hobbie Exhibit 7. I'll get it right
12 by the end of the day. I promise.

13 MR. VONA: Is there an objection?

14 MR. PETTICORD: I want to read it first
15 before you start questioning. It's a large
16 document, and I don't recognize it off the top
17 of my head, so --

18 MR. VONA: I think Mr. Hobbie will.

19 THE WITNESS: Yes, I've seen it.

20 MR. VONA: It was an exhibit last year.

21 MR. PETTICORD: I'm sure it was, but I
22 still would like to read it.

23 MR. VONA: Let me know when you're
24 ready.

25 MR. PETTICORD: I will. Go ahead.

1 BY MR. VONA:

2 Q. All set, sir? With regard to Hobbie 7,
3 this was an exhibit last year at your
4 deposition, correct?

5 A. Correct.

6 Q. And your name actually appears on the
7 cover page, correct?

8 A. Yes.

9 Q. Okay. When's this document from?

10 A. October 1st, 1985.

11 Q. Okay. And -- okay. If you'd be so
12 kind, on the second page, 303 is the stamped
13 number there, going down to the last paragraph
14 where it says "We continue to get reports that
15 would indicate a decline in 1986 class 8 truck
16 sales. The following are a few examples."

17 What companies are listed under there?

18 A. Gelco which is a, a fleet -- leasing
19 fleet that was located, I think, out of
20 St. Louis, Missouri; Yellow Freight out of
21 Kansas City; Roadway Express out of Akron, Ohio;
22 Lend Lease out of Minneapolis; and Ruan out of,
23 out of -- I think it was, it was Iowa, state of
24 Iowa.

25 Q. With regard to Roadway, was Roadway a

1 customer of Eaton's?

2 A. Not a direct customer, but yes, we
3 basically -- this is a national account report.
4 They were a national account -- national fleet
5 account that basically we called on to try to
6 pull through specifications of our products
7 through the various OEMs, both tractor and
8 trailer manufacturers.

9 Q. Okay. Did Eaton, between 1980 and
10 1990, ever sell anything to Roadway?

11 MR. PETTICORD: Objection.

12 THE WITNESS: Directly, no.

13 BY MR. VONA:

14 Q. Not directly? Indirectly?

15 MR. PETTICORD: Same objection.

16 THE WITNESS: No, not indirectly other
17 than through an OEM.

18 BY MR. VONA:

19 Q. Do you know what OEMs Eaton sold
20 through to get to Roadway?

21 MR. PETTICORD: Same objection.

22 THE WITNESS: White, White, Volvo,
23 Ford, Mack. That's probably about it.

24 BY MR. VONA:

25 Q. Do you know where or how Eaton would

1 have obtained this information regarding
2 Roadway?

3 MR. PETTICORD: Objection.

4 THE WITNESS: By contacting Roadway
5 management and basically feedback from them as
6 to -- and basically they provided that type of
7 information to help suppliers know how to plan
8 their businesses as far what production
9 capacities might be in the various given years.

10 BY MR. VONA:

11 Q. Okay. With that being said, would you
12 agree with me then in 1985 that, that Eaton was
13 in a position to contact Roadway?

14 MR. PETTICORD: Objection.

15 BY MR. VONA:

16 Q. Regarding anything?

17 A. Yes.

18 Q. Okay. Do you know how long that type
19 of arrangement or relationship existed between
20 Eaton and Roadway?

21 MR. PETTICORD: Time out.

22 MR. VONA: That's a fair question.

23 MR. PETTICORD: Can you be a little bit
24 more specific? What type of relationship? That
25 they can talk to each other?

1 MR. VONA: Yes.

2 MR. PETTICORD: How long Eaton could
3 contact Roadway?

4 BY MR. VONA:

5 Q. That's it. I mean, when was the
6 first -- let me, let me back up. Strike the
7 last question.

8 When was the first time to your
9 knowledge that Eaton had direct contact with
10 Roadway?

11 A. 1959.

12 Q. Okay. So is it fair to say -- well,
13 let me -- before I even get into that, did Eaton
14 continue to have contact with Roadway up through
15 1990?

16 A. Yes.

17 Q. Okay. Is it fair to say then from 1959
18 to 1990, Eaton could call up Roadway and talk to
19 them about just about anything they wanted to?

20 MR. PETTICORD: Objection.

21 THE WITNESS: Yes.

22 BY MR. VONA:

23 Q. All right. I think -- all right. I'm
24 done with that exhibit. So just to go forward
25 on that a little bit, though, between 1980 and

1 1990, if Eaton wanted to warn Roadway of the
2 hazards or potential hazardous of asbestos --

3 MR. PETTICORD: Same objection.

4 MR. VONA: Could I finish my question,
5 please?

6 MR. PETTICORD: You sure can.

7 BY MR. VONA:

8 Q. Okay. Between 1980 and 1990, if Eaton
9 wanted to contact Roadway to advise them of the
10 potential health hazards of asbestos, would they
11 be able to?

12 MR. PETTICORD: Objection.

13 THE WITNESS: I'd say yes.

14 BY MR. VONA:

15 Q. Thank you. I think we got into this a
16 little bit before, but can you just tell me who
17 Eaton's OEM customers were between 1980 and
18 1990?

19 A. Kenworth, Peterbilt, Western Star,
20 Freightliner, Mack, Volvo, and whatever part of
21 White was still in existence then, Ford, General
22 Motors, International.

23 Q. That's fine.

24 A. International to the best of my
25 knowledge.

1 Q. That's fine. You did a great job. Do
2 you know between that same time frame who
3 Eaton's biggest customer would have been?

4 MR. PETTICORD: Objection.

5 THE WITNESS: I'd say PACCAR which
6 includes both Kenworth and Peterbilt.

7 BY MR. VONA:

8 Q. Okay. During the 1980 to 1990 time
9 frame, did Eaton, did Eaton sell
10 asbestos-containing brakes to the entities you
11 just described, or listed, I should say?

12 A. Yes.

13 Q. Okay. Where would Ford fall in as far
14 as size of customer between the 1980 and 1990
15 time frame?

16 MR. PETTICORD: To the best of your
17 knowledge.

18 BY MR. VONA:

19 Q. Yeah, if you know.

20 A. To the best of my knowledge, I would
21 say somewhere in the middle.

22 Q. Okay.

23 MR. VONA: I'm going to have something
24 else marked here.

25 (Whereupon, Hobbie Exhibit 8, a

1 document dated February 1st, 1985, an Eaton
2 internal correspondence, was then received and
3 marked for identification.)

4 BY MR. VONA:

5 Q. Sir, I'm going to hand you what's been
6 marked as Hobbie number 8 and just take a minute
7 to, to review that document, and I only have
8 some limited questions about it, but feel free
9 to read as much as you want.

10 A. Sure.

11 MR. PETTICORD: If you want to direct
12 him to one part.

13 BY MR. VONA:

14 Q. Yeah. Why don't we do that. It will
15 probably be a little easier, and if at any point
16 you need to read something, just let me know.

17 MR. PETTICORD: Go back and say for
18 context --

19 BY MR. VONA:

20 Q. Let's just look at the cover page
21 really quick, and I want to ask you if you've
22 ever seen any document like this before.

23 A. Yes.

24 Q. Have you ever seen this document?

25 A. Probably.

1 Q. Okay. And when's it dated?

2 A. February 1st, 1985.

3 Q. And this is an Eaton internal
4 correspondence?

5 A. Yes.

6 Q. Okay. What's it with regard to?

7 A. Looks like it's regard to month end
8 report as far as status of the brake business.

9 Q. All right. And if I could direct your
10 attention to -- it's going to be Bates 42389.
11 It's a number of pages back. The title of the
12 page is Brake Forecast. Let me know when you're
13 there.

14 A. I got it.

15 Q. Okay. You got it. And all the way on
16 the left, there's a column that says customer
17 and application, correct?

18 A. Yes.

19 Q. What's the first customer listed?

20 A. Ford.

21 Q. Okay. And then going across, are there
22 a number of months listed?

23 A. Yes.

24 Q. Okay. And would you agree with me
25 that's a six-month time period?

1 A. Yes.

2 Q. If you could, could you read the four
3 totals for each month?

4 A. It looks like roughly seven thousand --
5 between low seven thousands and high seven
6 thousands.

7 Q. Okay. Now, if you could, could you
8 take a moment to look at the remaining customers
9 and their total sales for that same time period?

10 A. Yes.

11 MR. PETTICORD: Just on that page?
12 Just on that page?

13 MR. VONA: Yeah. Actually, the second
14 page, as well. The -- strike that.

15 The page following, 423090, also lists
16 some, I believe.

17 THE WITNESS: Yes.

18 BY MR. VONA:

19 Q. Okay. All right. Let me know when
20 you're set.

21 A. Got it.

22 Q. Okay. Would you, would you agree with
23 me, sir, that at least during this six-month
24 time frame in 1985, Ford was the largest --

25 A. Yes, sir.

1 Q. -- customer?

2 A. Yes, it was.

3 Q. Okay. Do you know -- is this an
4 isolated thing in 1985, or does this refresh
5 your recollection as to the size of Ford as a
6 customer?

7 A. Well, yes. Ford was one of the larger
8 customers, but then along in that time frame,
9 they got out of the heavy-duty truck business.

10 Q. Okay. Approximately when was that? Do
11 you know?

12 A. Specifically, I can't recall.

13 Q. I'm assuming it would have been after
14 1985.

15 A. After this, yes.

16 Q. Okay. All right. And did Eaton --
17 during the time frame 1980 to whenever Ford got
18 out of heavy trucks, did Eaton sell
19 asbestos-containing brake linings or brake
20 assemblies to Ford?

21 A. Yes.

22 Q. All right. Let me --

23 MR. PETTICORD: Are you done with this?

24 MR. VONA: I think so, yeah.

25 BY MR. VONA:

1 Q. Would you agree with me then between
2 1980 and whenever they stopped with the heavy
3 trucks that Ford was one of Eaton's biggest
4 customers for axles?

5 A. Yes.

6 MR. BRIDGE: Objection.

7 MR. VONA: 9.

8 (Whereupon, Hobbie Exhibit 9, a
9 document dated May 1st, 1985, was then received
10 and marked for identification.)

11 BY MR. VONA:

12 Q. Handing you what's been marked as
13 Hobbie 9, and I'm getting it right now. And I
14 believe you recognize this document, do you not?

15 A. Yes.

16 Q. It was an exhibit last year at your
17 deposition.

18 A. Yes.

19 Q. Just briefly, the date on this?

20 A. May 1st, 1985.

21 Q. And it's an Eaton internal
22 correspondence?

23 A. Yes.

24 Q. And you were copied on this, correct?

25 A. Yes.

1 Q. So you have personal knowledge about
2 this document?

3 A. Yes.

4 Q. Okay. I want you to -- well, first of
5 all, the second sentence on the first page, it
6 says "attached is a matrix listing the standard
7 lining on Eaton brakes at the OEM level."

8 A. Yes.

9 Q. Can you explain what that means?

10 A. Basically, the standard linings that
11 each OEM on an Eaton brake would be offering in
12 their sales data book.

13 Q. Okay. Would that necessarily then
14 be -- well, strike that.

15 Would that be the, the brake lining
16 that Eaton would use then for that customer?

17 A. Yes.

18 MR. PETTICORD: Objection.

19 BY MR. VONA:

20 Q. Okay. If you could turn to the third
21 page, the last page --

22 MR. PETTICORD: 572?

23 MR. VONA: Yes, sir.

24 MR. PETTICORD: Thank you.

25 BY MR. VONA:

1 Q. And what is that, that chart titled?

2 A. Standard lining used at Gallatin by OEM
3 for fifteen and sixteen-and-a-half-inch brakes.

4 Q. Okay. And I believe we discussed
5 earlier, the fifteen-inch for the --

6 A. Steer.

7 Q. Steer axle. The sixteen-and-a-half,
8 what's that for?

9 A. That's for drive axles -- trailer
10 axles. Well, probably in this case, trailer --
11 drive axles, not trailer axles.

12 Q. Okay. And under -- well, we've got a
13 bunch of names there. Actually, let's do, let's
14 do it a different way. Under lining mix
15 industry number, do you see that MM8C5 again?

16 A. Are you sure that's MM8?

17 Q. Yeah.

18 A. Could it be MMB?

19 Q. You know, I don't know for sure, but
20 we're looking at the same thing.

21 A. Yeah. That's sort of what I recall,
22 MMB.

23 Q. C5?

24 A. Well, yeah. You know, I guess to the
25 best of my recollection, sure, I knew it was a

1 lining that was available.

2 Q. Okay. And does it indicate whether or
3 not that's asbestos?

4 A. Yes.

5 Q. Okay.

6 A. It does.

7 Q. Okay. And does it indicate where you
8 would have obtained that lining from?

9 A. Carlisle --

10 Q. Okay.

11 A. -- motion Control.

12 Q. All right. And bear with me. If you
13 slide over on that same line the MM, say, BC5,
14 does it list which OEM used that lining?

15 A. Yes.

16 MR. PETTICORD: Objection.

17 BY MR. VONA:

18 Q. Okay.

19 A. Yes, it does.

20 Q. Which one?

21 A. Ford.

22 Q. Okay. And they mark that with a little
23 X; is that correct?

24 A. Yes.

25 Q. Are there any other Xs for that lining?

1 A. No.

2 Q. And what does that X indicate?

3 A. The X indicates that Ford uses, uses
4 Eaton brakes with that lining in it.

5 Q. Okay. And if you look towards the
6 bottom, there's a little ledger that says what
7 the X means. Do you see that?

8 A. Standard lining, yes.

9 Q. All right. Thank you. And going back
10 to the previous page, that would be 571, okay,
11 I'd like to ask you -- if you go -- it's close
12 to the bottom, and you see it again, MMBC5 or
13 8C5.

14 A. Yes.

15 Q. If you go all the way over to the
16 right, under application, what does it list?

17 A. Tractor trailer.

18 Q. Now, does that mean it could be used
19 for the tractor and the trailer?

20 A. And the trailer, yes.

21 Q. Versus above it says trailer only. Do
22 you see that --

23 A. Yes.

24 Q. -- in one of the other ones?

25 A. Right.

1 Q. Okay. And now, bear with me a second.
2 Mr. Hobbie, would you agree with me, sir, that
3 we've established that the brake lining MMBC5
4 was asbestos-containing at certain times?

5 MR. PETTICORD: Objection. Form.

6 THE WITNESS: Yes.

7 BY MR. VONA:

8 Q. Do you know when it was asbestos
9 containing?

10 A. I don't understand.

11 Q. Do you know during what time frame that
12 that particular lining was asbestos-containing?

13 A. Well, I'd have to say that basically it
14 was asbestos-containing when that spec was
15 introduced until when it was removed.

16 Q. Okay.

17 A. Now, I don't know the specific dates.

18 Q. Would you agree with me then at least
19 in May of 1985 it was asbestos-containing?

20 A. Yes.

21 Q. Would you agree with me that prior to
22 that date it was asbestos-containing?

23 A. Yes.

24 Q. Okay. And would you also agree with me
25 that this was the standard lining used by Ford

1 on Eaton axles in 1985?

2 MR. PETTICORD: Objection.

3 THE WITNESS: Yes.

4 MR. PETTICORD: If you have something
5 else to tell him, tell him.

6 BY MR. VONA:

7 Q. Do you have something to add to that,
8 if it's responsive to my, my question?

9 A. It is responsive to your question in
10 that I guess I would have to question because
11 I'm not sure whether the Eaton brake necessarily
12 was standard on the Eaton axle at that time.

13 Q. Okay. And what other brakes would
14 Eaton use for their axles?

15 MR. PETTICORD: Objection.

16 THE WITNESS: Eaton would not use any
17 other brakes, but Ford would on Eaton axles.

18 BY MR. VONA:

19 Q. I see. So what you're saying then is
20 that if -- let me just strike that.

21 Let me, let me ask you this way: If
22 Eaton sold an axle with a brake assembly
23 attached to it, would it have contained that
24 lining?

25 A. Yes.

1 MR. PETTICORD: Objection.

2 BY MR. VONA:

3 Q. During that time frame?

4 A. For that specification, yes.

5 Q. Okay. I think I'm all set with that
6 one, sir. And do you have any idea or any
7 personal knowledge as to what the duration of
8 that particular lining, this MM8C5, when, when
9 that was used by Ford?

10 A. Not specifically.

11 Q. Okay.

12 A. It was a, a high friction --

13 THE VIDEOGRAPHER: We've had a tape
14 failure. Can we hold on that question, please?

15 MR. VONA: Sure.

16 MR. PETTICORD: We're going off the
17 record for a second. This one wasn't our fault.
18 Blame somebody else.

19 THE VIDEOGRAPHER: We are off the
20 record at 11:37 a.m.

21 (Whereupon, a recess was then taken at
22 11:37 a.m.)

23 (Whereupon, proceedings resumed at
24 11:45 a.m.)

25 (Whereupon, Hobbie Exhibit 10, a

1 document entitled Eaton Brake Shipping Schedule
2 9/1/78 to 1/26/78, was then received and marked
3 for identification.)

4 THE VIDEOGRAPHER: This is the
5 beginning of tape number two in the deposition
6 of Mr. Roger Hobbie. We are back on the record
7 at 11:45 a.m. Please proceed.

8 MR. VONA: Thank you. Getting little
9 bumps in the road here. Before we went on the
10 break, I asked you a question, and just so the
11 record is clear, I'm going to have the reporter
12 read it back and then I'll allow you to answer
13 because I'm not sure we got the full answer.

14 (Whereupon, the above-requested answer
15 was then read by the reporter.)

16 THE WITNESS: High friction lining that
17 Ford specified.

18 BY MR. VONA:

19 Q. Okay. So this is something that Ford
20 would have, would have specified?

21 A. Yes.

22 Q. Okay. From Eaton?

23 A. Yes.

24 Q. Okay. Let me, let me show you Hobbie
25 10 which I should have showed you earlier but I

1 missed it, and do you recognize this document at
2 all?

3 A. Not specifically.

4 Q. Okay. Would you agree with me that it
5 was, it was supplied by Eaton to my office?

6 A. Yes.

7 Q. All right. What's the title of this
8 page?

9 A. Eaton Brake Shipping Schedule 9/1/78 to
10 1/26/78.

11 MR. PETTICORD: Could you read that
12 again for me, please?

13 THE WITNESS: Eaton Brake Shipping
14 Schedule.

15 MR. PETTICORD: You're missing a word.

16 THE WITNESS: Oh, Ford, excuse me, Ford
17 brake.

18 BY MR. VONA:

19 Q. Thank you for the clarification, Dan.

20 Sir, in -- you just said it. This is
21 from the September '78 to January '79, correct?

22 A. Correct.

23 Q. And do you know what this document is
24 telling us? What are we looking at?

25 MR. PETTICORD: Objection. If you can

1 explain the document, go ahead and explain the
2 document.

3 MR. VONA: Sure, yeah. That's all I'm
4 looking for.

5 THE WITNESS: It just looks like the
6 various part number brake assemblies that were
7 shipped to Ford over that period of time.

8 BY MR. VONA:

9 Q. And with regard to the brake linings
10 that were shipped during that time, can you tell
11 me which ones were shipped or which one -- aside
12 from one? Go ahead.

13 A. It's the MM dash, and I guess it is
14 8C5. That's the, that's the regular production
15 option.

16 Q. As we saw in the chart earlier,
17 correct?

18 A. Right.

19 MR. PETTICORD: Was there a further
20 part to that answer that you wanted to --

21 THE WITNESS: Yeah. The RPO stands
22 for -- that's the regular production options,
23 which means that that's basically what the
24 standard was for Ford. The lower section is the
25 DSO which is the specified options, if you will.

1 The customer basically came in and said I want
2 this lining, blah, blah, blah.

3 BY MR. VONA:

4 Q. Okay.

5 A. So therefore, if it was approved, they
6 could -- as you see, there's a different one at
7 the bottom.

8 Q. On the bottom. I see. So if it's, if
9 it's RPO, the manufacturer -- I'm sorry, the
10 customer doesn't say anything. They get
11 whatever they had listed as standard in
12 Eaton's --

13 A. In Ford's data book.

14 Q. Ford's data book. But Eaton would know
15 what they wanted, correct, in that circumstance?

16 A. Yes, yeah.

17 Q. Similar to what we looked at in that
18 chart?

19 A. Right.

20 Q. So would you agree with me then that at
21 least in September 1978, that the standard
22 lining for Ford was MM8C5?

23 A. Yes.

24 Q. Okay. Was that asbestos-containing?
25 Do you know?

1 A. I believe it was, yes.

2 Q. Okay. I'm done with that one. Thank
3 you.

4 MR. PETTICORD: Excuse me. Sorry.

5 MR. VONA: Sir, I want to show you
6 another document. Let me have it marked real
7 quick.

8 (Whereupon, Hobbie Exhibit 11, a
9 document dated November 21st, 1986, was then
10 received and marked for identification.)

11 BY MR. VONA:

12 Q. I'm handing you what's been marked as
13 Hobbie Number 11. Are you familiar with this
14 document?

15 A. Yes.

16 Q. Okay. What's the date on this
17 document?

18 A. November 21st, 1986.

19 Q. Okay. And is this internal
20 correspondence?

21 A. Yes.

22 Q. Okay.

23 MR. PETTICORD: No.

24 THE WITNESS: No, it isn't. It's an
25 outside --

1 BY MR. VONA:

2 Q. Oh, okay. You're right. All right.

3 What -- where in Eaton did this come from? Who
4 did it come from?

5 A. It came from the axle brake division in
6 Kalamazoo, Michigan. It's from a Mr. Tom
7 Bruggeman.

8 Q. Did you know him?

9 A. Yes, casually.

10 Q. Okay. What was his position?

11 A. He was a purchasing agent and buyer.

12 MR. PETTICORD: In '86?

13 THE WITNESS: Yeah. It's the title.

14 BY MR. VONA:

15 Q. Principal buyer?

16 A. Principal buyer.

17 Q. Would it be his job to obtain
18 asbestos-containing brake linings during the
19 1986 time period?

20 MR. PETTICORD: Objection. Go ahead.

21 THE WITNESS: Yes.

22 BY MR. VONA:

23 Q. Okay. And who's this addressed to?

24 A. Mr. Robert Kickel, vice-president, OE
25 sales, Motion Control Industries, Clarkston,

1 Michigan.

2 Q. Okay. Did you know Mr. Kickel at all?

3 A. No, I did not.

4 Q. Okay. And Motion Control Industries,
5 are they also known as Carlisle?

6 MR. PETTICORD: Objection.

7 THE WITNESS: Yes.

8 BY MR. VONA:

9 Q. Okay. At least during this time frame?

10 A. Yes.

11 Q. Okay. Have you had an opportunity --
12 well, actually, I'll just, I'll just go ahead
13 and -- it says, this letter is written in
14 response to your recent letters of November 6,
15 November 19th, 1986, as well as several
16 telephone conversations with Mr. Tom Sheikh and
17 yourself concerning Carlisle's commitment to
18 satisfy Eaton's asbestos lining block
19 requirements through January 1, 1988. Okay.

20 A. Uh-huh.

21 Q. Who's Mr. Sheikh?

22 A. He was a sales representative for
23 Carlisle.

24 Q. Okay. All right. And the next
25 paragraph down, why don't you just read that to

1 yourself real quick. Okay? Does that indicate
2 that at -- for some reason that Eaton changed
3 their projected asbestos volumes for this
4 particular order?

5 MR. PETTICORD: The letter says what it
6 says. Are you asking him --

7 MR. VONA: If he agrees with me.

8 THE WITNESS: Yes.

9 MR. PETTICORD: If he agrees with you
10 what; that the letter says that the volumes
11 changed?

12 MR. VONA: Yeah.

13 THE WITNESS: Yes, yes.

14 BY MR. VONA:

15 Q. And then there's a list of some, some
16 volumes there, correct?

17 A. Yes.

18 Q. Okay. Now, in particular I want to ask
19 you about -- under description, there's a --
20 four entries for 8C5. Do you see that?

21 A. Uh-huh.

22 Q. Do you know if that's the same as
23 MM8C5?

24 MR. PETTICORD: Point of clarification.
25 Are you asking if --

1 MR. VONA: If it's the same lining.

2 MR. PETTICORD: -- if the descriptive
3 number 8C5 --

4 MR. VONA: Yes.

5 MR. PETTICORD: -- corresponds to what
6 we've seen in other documents listed as MM8C5?

7 MR. VONA: Better question.

8 MR. PETTICORD: Is that what you're
9 asking?

10 MR. VONA: Thank you, Dan.

11 THE WITNESS: I'd say yes.

12 BY MR. VONA:

13 Q. Okay. Good. Would you agree with me
14 that Eaton was attempting to stockpile
15 asbestos-containing linings at this point?

16 MR. PETTICORD: Objection.

17 THE WITNESS: I'd not necessarily.

18 BY MR. VONA:

19 Q. Okay. What do you mean by that?

20 A. It could be that there were orders
21 coming in from the OEMs that projected larger
22 quantities --

23 Q. Okay.

24 A. -- in the future.

25 MR. VONA: Can I have that marked?

1 (Whereupon, Hobbie Exhibit 12, a copy
2 of the witness's deposition from last July, was
3 then received and marked for identification.)

4 BY MR. VONA:

5 Q. Showing you what's been marked as
6 Hobbie 12. It's a copy of his deposition from
7 last July.

8 MR. PETTICORD: In the Acceturo case?

9 MR. VONA: Yes.

10 MR. PETTICORD: Okay. You're familiar
11 with this?

12 THE WITNESS: Uh-huh, yes.

13 BY MR. VONA:

14 Q. This deposition was given in the
15 context of an asbestos case, correct?

16 A. Yes.

17 Q. Okay. And it was given under oath?

18 A. Yes.

19 Q. All right. I'd like to direct your
20 attention to page seventy-five. Okay. And
21 actually -- strike that.

22 Page seventy-four first, and let me
23 know when you're there.

24 MR. PETTICORD: Let me see that first
25 before you read it. Do you have a line

1 designation?

2 MR. VONA: Yeah. I'd like to point out
3 line thirteen, just that we're talking about
4 this particular exhibit at this time, if that's
5 okay, before I ask him the question. Is that
6 fair?

7 MR. PETTICORD: That that letter, that
8 Exhibit 16 identified on page seventy-four of
9 this deposition is the same as Exhibit 11 here?

10 MR. VONA: Yes, but the line of
11 questioning following that, so I don't have to
12 read it, all pertains to that exhibit. Will you
13 stipulate to that?

14 MR. PETTICORD: That's correct.

15 MR. VONA: Okay. Then line
16 designation --

17 MR. PETTICORD: I got you. I'm
18 following you.

19 MR. VONA: Yeah. We'll just go with
20 line twenty-one.

21 MR. PETTICORD: Through, I'm assuming,
22 line one on page seventy-six.

23 MR. VONA: One on -- yeah.

24 MR. PETTICORD: Go ahead.

25 BY MR. VONA:

1 Q. Take a look at that, sir.

2 A. Which one?

3 Q. You're looking at page twenty-one --

4 MR. PETTICORD: Line twenty-one.

5 BY MR. VONA:

6 Q. Yeah. Line twenty-one, page
7 seventy-five.

8 A. Got it.

9 MR. PETTICORD: Up near the top, the
10 first line, the last page.

11 BY MR. VONA:

12 Q. The first line on seventy-six. Let me
13 know when you're set.

14 A. Yeah.

15 Q. Would you agree with me that at least
16 last year during that deposition you indicated
17 that Eaton was stockpiling some material?

18 MR. PETTICORD: Objection. Read it
19 into the record. Read the question and answer
20 into the record.

21 BY MR. VONA:

22 Q. Fine. I'll read the question for you.
23 "What is your understanding of what is being
24 asked of Motion Control in that letter?"

25 And that letter is referring to --

1 MR. PETTICORD: Exhibit 11.

2 BY MR. VONA:

3 Q. -- Hobbie 11.

4 MR. PETTICORD: Two Bs.

5 BY MR. VONA:

6 Q. Two Bs. Hobbie 11. And your answer,
7 "It appears to me they were being asked to meet
8 their original commitment they had made about
9 supplying enough materials to meet the needs;
10 i.e., stockpiling some material and not cause a
11 shortage or to stop production."

12 Did I read that correctly?

13 A. Yes, you did.

14 Q. So you did say last year that they were
15 stockpiling?

16 MR. PETTICORD: Form.

17 THE WITNESS: Yes, I did. And
18 essentially, it's the same thing I just about
19 the other one.

20 BY MR. VONA:

21 Q. What did you say?

22 A. Well, I didn't use the term stockpiling
23 or necessarily agree with that at this time, and
24 basically, it meant here as building a stock or
25 a supply to meet future needs of orders that

1 were probably being forecasted.

2 Q. So maybe we're just getting a mix on
3 the jargon, the term --

4 MR. PETTICORD: Just let him finish.
5 Explain your answer.

6 THE WITNESS: This makes it sound like
7 Eaton was deliberately building a stockpile of
8 materials so that they could continue selling it
9 on beyond a normal cut-off period. And
10 basically, if they had orders in house that they
11 were under contract to supply, they wanted
12 enough to be able to meet those needs.

13 BY MR. VONA:

14 Q. Sure. And I don't want to be
15 argumentative, but those were your words. You
16 did say it.

17 A. No, no. I agree with you. It looked
18 different.

19 Q. That's what you said, correct?

20 A. Yeah.

21 Q. All right. We'll move on.

22 MR. PETTICORD: Still on the depo, or
23 are you done with the depo?

24 MR. VONA: We can put that aside for
25 now, and hopefully we won't need it.

1 BY MR. VONA:

2 Q. Okay. And I believe I may have asked
3 this, and I apologize, but the 8C5, to the best
4 of your knowledge, indicates the MM8C5?

5 A. Yes.

6 Q. And that it was asbestos-containing?

7 A. Yes.

8 Q. So is it fair to say then at least from
9 1979 to 1986, that the MM8C5 lining was
10 asbestos-containing?

11 MR. PETTICORD: Objection. Go ahead.

12 THE WITNESS: Yes.

13 BY MR. VONA:

14 Q. Okay. And also during that time
15 period, was that -- between 1979 and 1986 that
16 was the standard lining used by Ford?

17 A. Yes.

18 MR. PETTICORD: Objection.

19 (Whereupon, Hobbie Exhibit 13, a
20 document dated February 18th, 1987, was then
21 received and marked for identification.)

22 BY MR. VONA:

23 Q. Showing you Hobbie 13, and just take a
24 moment to review that. Are you familiar this
25 document?

1 A. Yes, I've seen it before.

2 Q. In fact, you're cc'd on it, correct?

3 A. Yes.

4 Q. And is this an internal correspondence
5 from Eaton?

6 A. Yes.

7 Q. And when's it dated?

8 A. February 18th, 1987.

9 Q. Okay. And what's the subject matter?

10 A. Current status brake lining recognized
11 by Eaton brake engineering.

12 Q. And the, the document states, "Attached
13 please note the current lining Eaton brake
14 engineering recognizes is serviceable. Asbestos
15 lining, although in some cases is still
16 available, will become obsolete during the third
17 quarter of 1987."

18 And the question I have is, if you flip
19 to the second page, okay, do you see the MM8C5
20 again?

21 A. Yes.

22 Q. Okay. Would you agree with me then
23 that this brake lining would have been available
24 at least until the third quarter of 1987 as
25 asbestos-containing?

1 A. I would say yes.

2 Q. Okay. And there's a, a column titled
3 replacement non-asbestos. Do you see that?

4 A. Yes.

5 Q. What do they, what do they have listed
6 under there for the MM8C5?

7 A. Testing in process for other materials.

8 Q. In progress for other materials?

9 A. Progress, yeah.

10 Q. Sir, do you know what that means?

11 A. Yes. They were probably trying to
12 qualify a higher friction level, non-asbestos
13 material to meet the customer's specifications.

14 Q. Okay. Would it be, would it be fair to
15 say then that at that time there wasn't a
16 substitute for that brake lining?

17 MR. PETTICORD: Objection.

18 THE WITNESS: In, in non-asbestos?

19 BY MR. VONA:

20 Q. Yeah. If you know.

21 A. Specifically I'm going to say no, I
22 don't know because --

23 Q. Okay. That's fair.

24 A. The customer may not have thought it
25 was a replacement.

1 Q. Okay. All right. I'm all set with
2 that one. And do you have any reason to
3 believe -- strike that.

4 All right. Sir, I ask you -- we're
5 going to look at the interrogatories once again,
6 and direct you to page 67, interrogatory number
7 thirty. You all set?

8 A. Uh-huh.

9 Q. Do you agree with that statement?

10 A. Yes.

11 Q. Okay. So between, we'll say, 1970 and
12 1990, Eaton never sold any asbestos-containing
13 brake linings to independent parts distributors?

14 A. Yes.

15 MR. VONA: Okay. Let's just do this
16 one real quick.

17 (Whereupon, Hobbie Exhibit 14, a
18 document entitled Asbestos Versus Non-Asbestos
19 Distributor Aftermarket Sales Prepared for
20 Robert VanWormer, was then received and marked
21 for identification.)

22 BY MR. VONA:

23 Q. Hobbie 14, just take a moment to look
24 at that, and let me know if you recognize this
25 document at all.

1 A. Yes.

2 Q. You do recognize it?

3 A. Uh-huh.

4 Q. Okay. You'd agree with me that this
5 was a document provided by Eaton to my office?

6 A. Yes.

7 Q. And what's -- when was it received?

8 A. Received April 17th, 1985.

9 Q. Okay. And the title of the document
10 is?

11 A. Asbestos Versus Non-Asbestos
12 Distributor Aftermarket Sales Prepared for
13 Robert VanWormer.

14 Q. Do you know Mr. VanWormer?

15 A. Yes.

16 Q. What was his position at Eaton?

17 A. He was sales manager of the brake
18 division, I believe, at that time.

19 Q. Okay. So would it be, would it be fair
20 to say that at that time it was his job to know
21 Eaton's customers?

22 A. Yes.

23 Q. All right. What does the term
24 distributor mean to you?

25 A. It means that probably in this case an

1 aftermarket -- independent aftermarket
2 distributor, and they possibly could have been a
3 channel in the distribution probably through an
4 OEM. In other words, OEMs -- if you sold
5 product to the OEM, the OEM could then --
6 certain OEMs would sell it to independent
7 distributors for distribution in areas.

8 Q. So if I'm understanding you correctly,
9 this document that Eaton provided is discussing
10 distributor sales of material that they would
11 have received from OEMs?

12 MR. PETTICORD: Objection.

13 THE WITNESS: In my knowledge, yes, it
14 probably is.

15 BY MR. VONA:

16 Q. Okay. And just for the record, there's
17 a list of distributors on the left-hand side; is
18 that right?

19 A. Yes.

20 Q. Okay. And they're from all over the
21 country, correct?

22 A. Yes.

23 Q. All right. That's all I have for that
24 one. That, that process you just described
25 where Eaton would sell asbestos-containing

1 brakes to an OEM and then the OEM would possibly
2 sell to a distributor, did the OEM have to get
3 permission from Eaton to do that?

4 A. Not necessarily. The distributor could
5 have been just their customer and they were an
6 authorized brake parts distributor for, for that
7 OEM independent channel.

8 Q. Let's say between 1980 and 1990, were
9 certain OEMs distributors for Eaton parts?

10 MR. PETTICORD: Objection.

11 BY MR. VONA:

12 Q. Do you follow my question?

13 A. Not directly, but yes, an independent
14 could buy various parts from, say, a small OEM
15 like the Crane Carrier Corporation, and then it
16 would be sold to another distributor who would,
17 in turn, have the local customers to sell to.

18 Q. Would that product have the Eaton name
19 on it?

20 A. Sure, yes.

21 Q. During the 1980, 1990 time frame, would
22 any of the larger OEM customers of Eaton do the
23 same thing?

24 A. I believe there were some.

25 Q. Did that include Ford, if you know?

1 MR. BRIDGE: Objection.

2 THE WITNESS: I'm going to say I don't
3 know.

4 BY MR. VONA:

5 Q. Fair enough. Okay. And we, we touched
6 on this a little bit earlier, and you weren't
7 able to pin it down for me as to when the last
8 time Eaton incorporated asbestos-containing
9 brake linings into an assembly; is that right?

10 A. Yes. I don't know exact date. It was
11 sometime in, in the late '80s.

12 Q. Okay. Earlier you said mid '80s. I
13 don't mean to split hairs.

14 A. Mid to late, sometime in that time
15 frame.

16 Q. All right.

17 (Whereupon, Hobbie Exhibit 15, a letter
18 dated October 20th, 1987, was then received and
19 marked for identification.)

20 (Whereupon, Hobbie Exhibit 16, an
21 internal correspondence from Eaton dated
22 December 3rd, 1987, was then received and marked
23 for identification.)

24 BY MR. VONA:

25 Q. I'm going to show you Hobbie 15. And

1 it's a one-page document. You'd agree with me
2 that was provided by Eaton to my office?

3 A. Yes.

4 Q. Okay. And where, where -- which
5 department from Eaton wrote this letter?

6 A. The axle brake division, sales
7 department.

8 Q. Okay. And when was this letter
9 written?

10 A. October 20th, 1987.

11 Q. And who's it written to?

12 A. Mr. Dan Lanzdorf, Oshkosh Truck
13 Company, Oshkosh, Wisconsin.

14 Q. And Oshkosh was a customer of Eaton's
15 during this time period?

16 A. Yes.

17 Q. Do you know the duration of Oshkosh as
18 a customer of Eaton? You can ballpark it.

19 A. I think through this period of time it
20 would have been the military Emmet truck
21 contract, so it would have been sometime in the
22 early '80s to probably 1991, '2, somewhere in
23 that range.

24 Q. That's, that's when Oshkosh was a
25 customer based on military specifications?

1 A. Yes.

2 Q. Okay. Were they a customer prior to
3 that with Eaton?

4 A. Yes, in smaller numbers.

5 Q. Non-military?

6 A. Yeah, non-military and some military,
7 too.

8 Q. Okay. And if you could, could you just
9 read to yourself the first paragraph? All set?

10 A. Yes.

11 Q. Would you agree with me that Eaton's
12 agreeing here to supply asbestos-containing
13 brakes for a particular application for Oshkosh
14 until September 1988?

15 A. Yes.

16 Q. Okay. And that's due to their
17 inventory status?

18 MR. PETTICORD: Well, objection. Go
19 ahead.

20 THE WITNESS: It's my understanding it
21 was due to the military's requirement to
22 maintain the specific lining that they were --
23 that these vehicles were originally built with
24 as a standard -- standardization.

25 BY MR. VONA:

1 Q. So for the new vehicles that were being
2 manufactured, you're saying that so they would
3 be in line with the old ones?

4 MR. PETTICORD: Objection. Go ahead.

5 THE WITNESS: I believe that was the
6 intent.

7 BY MR. VONA:

8 Q. Okay. Why don't we move on to 16.

9 MR. PETTICORD: My hand fell asleep.
10 I'm sorry.

11 MR. VONA: That's all right.

12 BY MR. VONA:

13 Q. And I'll just -- again, this is, this
14 is an internal correspondence from Eaton --

15 A. Yes.

16 Q. -- dated December 3rd, 1987?

17 A. Yes.

18 Q. And there's a particular sentence I'd
19 just like to point out to you in the middle
20 starting with "we have also committed." Do you
21 see that?

22 A. Yes.

23 Q. Could you read that sentence to
24 yourself?

25 MR. PETTICORD: Read the whole thing if

1 you need to.

2 BY MR. VONA:

3 Q. Whatever you need to do, but let me
4 know.

5 A. Okay.

6 Q. Would you agree with me it's a fair
7 statement that at least in certain applications,
8 Eaton was still using asbestos-containing brake
9 linings in 1989?

10 A. Yes.

11 Q. All right. And in all fairness, Eaton
12 phased out some of its asbestos brakes earlier
13 than that year, correct?

14 A. Correct.

15 Q. Okay. Can you, can you describe when
16 was the first time that Eaton -- strike that.

17 Can you just -- if you could, can you
18 describe for us what the process was that Eaton
19 went through where they decided to phase out
20 asbestos?

21 A. Well, I think the performance of the
22 existing linings basically were coming to the
23 point where non-asbestos linings that were being
24 developed to meet the replacement specifications
25 for the asbestos materials were being -- those

1 were being tested to meet SAE standards -- test
2 standards and all that to be able to be
3 qualified to meet the, meet the performance of
4 the lining required for those applications.

5 So I guess, really Eaton started in
6 19 -- I think the first one that was approved
7 was about 1981, as I remember, non-asbestos for
8 a specific customer.

9 Q. Do you know which customer that was?

10 A. I think it was Mack.

11 Q. Okay. I'm sorry. Go ahead.

12 A. And then it just sort of progressed
13 from there as, as different -- as the lining
14 manufacturers developed different linings to
15 meet the dynamometer testing and field testing
16 programs to be able to qualify to be approved,
17 and basically being controlled by DOT stopping
18 distances and things like that, and, and also
19 end-use customers' willingness to accept those
20 linings as a change -- another change in the
21 industry.

22 Large fleets basically like to
23 standardize on components for serviceability, so
24 it takes a while for them to change their
25 systems over and inventories of parts over.

1 Q. Okay. Do you know -- you mentioned
2 before when manufacturers -- I think you
3 stated -- and I don't mean to misstate you, but
4 when they made non-asbestos materials available.
5 Do you know with regard to Eaton's suppliers of
6 asbestos-containing linings when the first time
7 that would have been?

8 A. No, not specifically.

9 Q. Okay. Do you have a general idea? Was
10 it in the '70s, '80s, '90s?

11 A. It was probably in the '70s, and there
12 were, of course, various forms of non-asbestos
13 linings available, metallic linings and things
14 like that, that were very expensive and very
15 application sensitive.

16 In other words, you may put a high
17 friction metallic lining on the unit, and it may
18 wear the drums out, but for certain
19 applications, it also may have -- for heavy
20 loads and things like that, it may have given
21 better stopping power.

22 Q. You mentioned cost a minute ago.

23 A. Well, it was very expensive to
24 maintain, and initial cost was usually higher,
25 too.

1 Q. With regard to non-asbestos?

2 MR. PETTICORD: Objection.

3 THE WITNESS: Any other lining.

4 BY MR. VONA:

5 Q. Any other lining besides asbestos?

6 A. Right.

7 Q. It was more expensive than asbestos; is
8 that right?

9 A. No, no --

10 MR. PETTICORD: Let him finish his
11 answer.

12 MR. VONA: Go ahead. I'm
13 misunderstanding, I think.

14 MR. PETTICORD: Let him answer the
15 question. Go ahead and explain.

16 BY MR. VONA:

17 Q. Go ahead.

18 A. Metallic linings were used for specific
19 severe service applications, and they were more
20 expensive than any other linings that were
21 available at the time, and -- but they also had
22 problems or shortcomings in wear and tear on
23 brake, brake drums and things like that. So it
24 wasn't something that could be adapted to the
25 whole industry at that time.

1 Q. Okay. I think I follow you. All
2 right.

3 MR. PETTICORD: Are you okay? Do you
4 need a break?

5 MR. VONA: Are you sure you're all
6 right?

7 THE WITNESS: Uh-huh.

8 (Whereupon, Hobbie Exhibit 17, an
9 interoffice correspondence from Eaton Corp.
10 dated December 2nd, 1985, was then received and
11 marked for identification.)

12 BY MR. VONA:

13 Q. Show you what's been marked as Hobbie
14 Number 17, and ask you to take a look at that,
15 and I have some questions when you're ready.

16 A. Okay.

17 Q. All set? Okay. And once again, this
18 is an interoffice correspondence from Eaton
19 Corp., correct?

20 A. Yes.

21 Q. And dated December 2nd, 1985?

22 A. Right.

23 Q. All right. And if I could direct you
24 to the second page. First of all, what do you
25 understand this document to be?

1 A. I think it's a -- it's an interoffice
2 correspondence from Mr. Tom Bruggeman to
3 Mr. Fred Kovalik who was the -- I believe at the
4 time he was probably the material controls
5 manager, and I think he was making some
6 suggestions to Mr. Kovalik about, about some
7 obsolete material and ways of getting it out of
8 the system, I guess.

9 Q. Okay. You just said obsolete material.
10 What material was obsolete?

11 A. Looks like brake, brake shoes, brake
12 assemblies, I guess.

13 Q. Okay. Would -- well, brake assemblies,
14 did those contain linings?

15 A. Looks like some of them probably do.

16 Q. Sure. What's the subject matter of
17 this correspondence?

18 A. Proposed program to deplete excess R-31
19 brake shoe inventory resulting from non-asbestos
20 demand in the marketplace.

21 Q. Do you know if the R-31 brake shoe or
22 brake lining -- strike that.

23 MR. PETTICORD: Objection.

24 BY MR. VONA:

25 Q. Do you know what R-31 stands for?

1 A. It's not one that I'm familiar with.

2 Q. Okay. Give me a minute. Okay. I'd
3 like to redirect your attention, and I don't
4 have it marked, but was Hobbie 8 at your
5 deposition from July?

6 MR. PETTICORD: Last year?

7 MR. VONA: Yeah.

8 BY MR. VONA:

9 Q. And you have the marked copies in front
10 of you. It's May 1985 brake lining availability
11 correspondence.

12 A. Got it.

13 Q. You got it?

14 MR. PETTICORD: Read the exhibit
15 number.

16 MR. VONA: No, that's not it.

17 MR. PETTICORD: This one?

18 THE WITNESS: This one, 8.

19 MR. VONA: No, no, 8 from July.

20 THE WITNESS: Oh, 8 from July.

21 MR. PETTICORD: It looks like this.

22 MR. VONA: Unfortunately, you have all
23 the marked ones, so --

24 MR. PETTICORD: Do you want to stop for
25 a second and we'll dig it out?

1 MR. VONA: I think that's it right
2 there.

3 MR. PETTICORD: It says brake lining
4 availability at the top.

5 THE WITNESS: Yes.

6 MR. PETTICORD: Could you read for the
7 court reporter what the exhibit number is for
8 this deposition?

9 THE WITNESS: Exhibit Number 9.

10 BY MR. VONA:

11 Q. Thank you. And sir, I'm asking you to
12 take a look again at Hobbie Number 9, and if you
13 could, could you turn to the second page?

14 A. Uh-huh.

15 Q. Okay. And looking under the title or
16 the column, lining mix industry number, you come
17 about two-thirds of the way down, there's an
18 MMR-31. Do you see that?

19 MR. PETTICORD: Just getting ready.

20 MR. VONA: Let me know when you're
21 there.

22 THE WITNESS: Okay. Yeah, the MMR,
23 okay, R-31.

24 BY MR. VONA:

25 Q. Okay. Well, sir, do you have any

1 reason to believe that MMR-31 is different from
2 R-31?

3 MR. PETTICORD: Objection.

4 THE WITNESS: No. It, it --

5 BY MR. VONA:

6 Q. You can answer.

7 A. I would say it's probably the same.

8 Q. Similar to when we had the MM8C5 and
9 the 8C5?

10 A. Yes, that's correct.

11 Q. And am I correct that's a lining mix
12 industry number?

13 A. Yes.

14 Q. And they're referring to brake linings?

15 A. Yes.

16 Q. And the next column over from there, it
17 says type asbestos, non-asbestos. What does it
18 indicate?

19 A. That it's asbestos.

20 Q. Okay. So you'd agree with me then at
21 least in 1985, that the R-31 brake lining was
22 asbestos-containing?

23 MR. PETTICORD: Objection. Go ahead.

24 THE WITNESS: Yeah.

25 BY MR. VONA:

1 Q. All right. Let's, let's go back to the
2 exhibit we were just looking at a moment ago,
3 which I'm going to start writing down on mine so
4 I can keep track.

5 MR. PETTICORD: December 2, 1985.

6 BY MR. VONA:

7 Q. Thanks. And in fact, this is the same
8 year as the last exhibit we looked at, correct?

9 A. Yes.

10 Q. Okay. Does that refresh your
11 recollection as to what R-31 stands for?

12 A. Yes.

13 Q. Okay. And it stands for asbestos brake
14 linings, correct?

15 A. Yes.

16 MR. PETTICORD: Well, objection.

17 BY MR. VONA:

18 Q. Is that correct?

19 A. That's correct.

20 MR. PETTICORD: Listen to his question,
21 and then answer his question.

22 THE WITNESS: That's correct.

23 BY MR. VONA:

24 Q. Sir, would you -- would it be a fair
25 statement that in 1985 that Eaton was trying to

1 sell off this asbestos-containing brake lining
2 so they wouldn't get stuck with it?

3 MR. PETTICORD: Objection.

4 THE WITNESS: Well, it looks to me like
5 this was a proposal. I don't know if it was
6 ever adopted.

7 BY MR. VONA:

8 Q. Well, at least they were attempting to,
9 correct?

10 MR. PETTICORD: Objection.

11 THE WITNESS: Well, somebody -- Tom
12 Bruggeman was suggesting that to his boss, the
13 man who was in charge; other than the
14 suggestions made in the memo.

15 BY MR. VONA:

16 Q. How did he suggest to do that in the
17 memo? Let me, let me point you to the second
18 page which is 165 Bates number.

19 A. Sell it in the aftermarket.

20 Q. Yeah. There's a paragraph there. It
21 starts "I suggest that the following steps be
22 taken in order; that the phase in of
23 non-asbestos lining disposing of R-31 shoe
24 assemblies and the depletion of existing trailer
25 axle inventory transpire in a manner most

1 economical to the division."

2 What do you understand that to mean?

3 MR. PETTICORD: Objection.

4 THE WITNESS: If you know what
5 Bruggeman was thinking then on December 2nd,
6 1985.

7 BY MR. VONA:

8 Q. Yeah, if you know.

9 A. I don't know specifically, no.

10 Q. And one of the steps that he did
11 recommend was a service parts program for
12 marketing R-31 shoe assemblies in the
13 aftermarket, correct?

14 A. Yes.

15 Q. And then going to the final page, 166,
16 the last page. Got it?

17 A. Yeah.

18 Q. The third paragraph from the bottom
19 starts "an aggressive marketing program is
20 absolutely necessary as the demand for
21 asbestos-lined shoe assemblies is rapidly
22 diminishing."

23 MR. PETTICORD: Hey, guys. Whoever is
24 not on the mute button, can you put it on mute?
25 We're getting some cross talk into the video.

1 I'm sorry.

2 BY MR. VONA:

3 Q. That's fine. Do you see that statement
4 there?

5 A. Yes, I do.

6 Q. What is -- well, I guess my question
7 would be then -- strike that.

8 They're certainly at least attempting
9 to sell these asbestos brake linings. Would you
10 agree with that?

11 MR. PETTICORD: Objection. The
12 document is what the document is. He's answered
13 that twice now.

14 MR. VONA: It wasn't the same question,
15 but go ahead.

16 THE WITNESS: It's being proposed, yes.
17 I don't know that it's an attempt to do it.
18 It's just being proposed as a potential --

19 MR. VONA: It's a potential -- I see.
20 Okay. We're good. Let's move on to the next
21 one.

22 (Whereupon, Hobbie Exhibit 18, a
23 document entitled Internal Correspondence from
24 Eaton, February 28th, 1986, was then received
25 and marked for identification.)

1 BY MR. VONA:

2 Q. Take a look at Hobbie 18, sir. Let me
3 know when you're set, because I literally have
4 one question.

5 A. Okay.

6 Q. Good. On the cover page, Internal
7 Correspondence from Eaton, February 28th, 1986,
8 correct?

9 A. Uh-huh, yes.

10 Q. What's the subject matter here?

11 A. Update on program to deplete excess
12 R-31 brake shoe inventory and implement
13 non-asbestos in the marketplace.

14 Q. Would you agree with me that this is an
15 update on the previous memo topic?

16 A. Looks like it, yes.

17 MR. PETTICORD: Objection.

18 BY MR. VONA:

19 Q. All right. And really I just want you
20 to look at the second page, last paragraph on
21 the bottom. It says "the key in this scenario
22 is that as time progresses, the demands for
23 asbestos decreases; therefore, it is necessary
24 that we rid ourselves of asbestos inventory for
25 which Eaton is responsible."

1 What does that mean to you?

2 MR. PETTICORD: Objection. In the
3 context of the document?

4 MR. VONA: Yeah.

5 MR. PETTICORD: Or in his personal
6 opinion?

7 MR. VONA: Well, we'll do both
8 actually.

9 BY MR. VONA:

10 Q. What about in your personal opinion?
11 What does that mean to you?

12 A. Well, it says there was inventory left
13 over, and the demand for non-asbestos was
14 increasing, thereby rendering the asbestos
15 obsolete or oversupplied. So they were looking
16 at how to get rid of it.

17 Q. So you'd agree with me that they're
18 trying to get rid of this material so that they
19 don't get stuck with it as it becomes obsolete?

20 A. It looks like they were proposing to do
21 something with it.

22 Q. Okay. Would you have any -- strike
23 that.

24 In the context of the document, do you
25 think it means anything different than what you

1 just told me?

2 A. Other than, again, it's a proposal, I
3 guess. He's basically making a statement that
4 there's this situation, and we need to do
5 something about it.

6 Q. Do you know --

7 A. And they may have come back and said
8 scrap it all. I don't know.

9 Q. So you don't know one way or another if
10 they ever did?

11 A. No, I don't. I'm not aware of what
12 they did.

13 MR. VONA: Okay.

14 (Whereupon, Hobbie Exhibit 19, a
15 marketing department monthly report for
16 November 1986, axle brake division, was then
17 received and marked for identification.)

18 BY MR. VONA:

19 Q. Here's what's been marked as Hobbie
20 Number 19, also Exhibit 94 at your deposition
21 last year.

22 A. Yes.

23 Q. You recognize this document, correct?

24 A. Yes.

25 Q. You're actually listed on this document

1 as receiving it?

2 A. Yes.

3 Q. Okay. And this is December 5th, 1986?

4 A. Yup -- yes.

5 Q. And what is this document?

6 A. It's a marketing department monthly
7 report for November 1986 --

8 Q. All right.

9 A. -- axle division -- axle brake
10 division.

11 Q. If you could go to page 31 -- 721.
12 721. Sorry. And let me know when you're there.

13 A. Got it.

14 Q. Okay. You got it. I'm looking all the
15 way at the bottom under Kenworth Truck Company,
16 engineering, "it says Eaton brakes with
17 non-asbestos linings are being released in
18 December 1986. The change will be implemented
19 on a plant-by-plant basis allowing existing
20 inventories to be exhausted prior to using the
21 new non-asbestos-lined brakes. Complete
22 changeover should occur prior to February 1,
23 1987."

24 Do you see that?

25 A. Yes.

1 Q. And I just want to ask you again, what
2 does that mean to you personally?

3 A. It means that the OEM, Kenworth in this
4 particular case, probably allowed the inventory
5 to be billed out, some of which they may have
6 had in their own stock of brake assemblies at
7 their own manufacturing plants, plus whatever
8 Eaton had in the system, in the pipeline.

9 Q. Would you agree with me then at least
10 in '86 with regard to Kenworth that Eaton was --
11 what's the proper word I'm looking for? That
12 Eaton was implementing the non-asbestos brake
13 material with the exhausting of asbestos brake
14 material?

15 A. Right.

16 Q. Using it up?

17 A. Yes.

18 MR. VONA: That's it for that one.

19 That was easy. Page 20.

20 (Whereupon, Hobbie Exhibit 20, an
21 internal correspondence from Eaton dated
22 January 6th, 1987, was then received and marked
23 for identification.)

24 BY MR. VONA:

25 Q. Showing you what's been marked as

1 Hobbie 20. Take a look at that, and let me know
2 when you're comfortable.

3 A. Okay.

4 Q. All set. Okay. And once again, this
5 is an internal correspondence from Eaton dated
6 January 6th, 1987, correct?

7 A. Yes.

8 Q. What's the subject matter here?

9 A. Monthly report December 1986. It was a
10 report by Mr. Robert Ille to Mr. Fred Kovalik on
11 the status of the situation with RABA.

12 Q. First of all, who's RABA?

13 A. RABA was a company in the country of
14 Hungary that Eaton had a -- oh, it was like a
15 bartering agreement with them where they
16 manufactured trailer axles and brakes and
17 certain drive axle components in exchange for
18 other, other Eaton products that they basically
19 sold in that country.

20 Q. So this company wasn't owned by Eaton
21 or anything like that?

22 A. No. It was just an agreement that
23 Eaton had with them.

24 Q. How long -- if you know, what time
25 frame did Eaton do business with RABA?

1 A. Oh, I'd say it was in the probably mid
2 '70s to maybe late '80s. Somewhere in that time
3 frame.

4 Q. And only if you know, did RABA
5 manufacture or sell asbestos-containing brake
6 linings?

7 MR. PETTICORD: For Eaton?

8 THE WITNESS: Yes.

9 BY MR. VONA:

10 Q. At all.

11 A. Yes, yes.

12 Q. Did they do that for Eaton at all?

13 A. Yes.

14 Q. And did you have an opportunity to read
15 through that document real quick while we
16 were --

17 A. Yes.

18 Q. I'm concerned with the second
19 paragraph.

20 A. Right.

21 Q. Okay. "RABA has offered to ship all
22 41,400 shoes with asbestos brake lining
23 currently being held at RABA to Eaton for no
24 cost. Eaton will sell the shoes at \$5 a piece
25 and realize \$207,000 of the more than three and

1 a half million it claims from RABA."

2 First question, does RABA owe Eaton
3 money at this point in time?

4 MR. PETTICORD: Objection. Of the
5 letter? At the time of the letter?

6 MR. VONA: Yeah.

7 MR. PETTICORD: Okay.

8 MR. VONA: Yeah.

9 THE WITNESS: I don't really know. It
10 sort of looks like they do, but you didn't read
11 the last sentence. It says "to date, no
12 shipment notification has been received from
13 these shoes."

14 BY MR. VONA:

15 Q. Sure.

16 A. For these shoes. And as far as my
17 recollection of situations like this were
18 concerned, the US Commerce Department basically
19 looked at some of these situations as dumping
20 programs.

21 And so I don't know -- unless we have
22 something that I don't remember -- whether this
23 ever took place or not, because it mentions down
24 below here talking to the Commerce Department.

25 Q. Sure. Would you agree with me, though,

1 at least in principle, that Eaton's agreeing to
2 accept asbestos-containing shoes as part of a
3 debt?

4 MR. PETTICORD: Whoa, whoa, whoa, whoa.

5 MR. VONA: It's my question.

6 MR. PETTICORD: No, no, no. You're not
7 going to ask that question on this document.
8 The -- you can read in the document as to what
9 it says, but to -- if you want to ask him
10 whether Eaton made an agreement based on the
11 offer made by RABA in this letter, ask that
12 question.

13 MR. VONA: Well, I appreciate that, and
14 as we talked about before, you're not allowed to
15 make a speaking objection.

16 MR. PETTICORD: And I'm fine with that,
17 but you can't do what you're doing right now.

18 MR. VONA: I can ask my questions
19 however I want to ask them, and you can make
20 your objection.

21 MR. PETTICORD: That's fine.

22 MR. VONA: That's the rules.

23 MR. PETTICORD: I know. Let's go.

24 BY MR. VONA:

25 Q. Once again, it says, and I'll read it,

1 "RABA has offered to ship all 41,400 shoes with
2 asbestos brake lining currently being held at
3 RABA to Eaton for no cost."

4 Are they agreeing to ship those for
5 free? Is RABA agreeing to ship those for free?

6 MR. PETTICORD: Objection. Objection.

7 THE WITNESS: According to that
8 statement, yes.

9 BY MR. VONA:

10 Q. And then it says "Eaton will sell the
11 shoes at \$5 a piece and realize \$207,000 of the
12 money that's owed."

13 MR. PETTICORD: Objection.

14 BY MR. VONA:

15 Q. And I appreciate the last statement,
16 but at least in principle, is Eaton
17 acknowledging the fact that they would resell
18 these brake linings?

19 MR. PETTICORD: Objection.

20 THE WITNESS: According to --

21 BY MR. VONA:

22 Q. According to the letter.

23 A. According to the letter, Mr. Robert
24 Ille, he's not the sales department, but that's
25 what he was basically proposing, I guess, in

1 this letter.

2 MR. VONA: Fair enough. That's all I
3 have on that. Thank you. Are we on 21?

4 (Whereupon, Hobbie Exhibit 21, a letter
5 to Mr. Barry Sengewalt, the Eaton account
6 manager for Oshkosh Truck, from Michael Brooks,
7 chief engineer, vehicle components at Oshkosh
8 Truck, was then received and marked for
9 identification.)

10 BY MR. VONA:

11 Q. Take a look at Hobbie 21.

12 MR. PETTICORD: Bless you. My guess is
13 you're going to direct him to the second to last
14 full paragraph on the first page.

15 MR. VONA: You're catching on.

16 MR. PETTICORD: Do you want him to just
17 review that?

18 MR. VONA: I just want to give him a
19 fair opportunity to look at it.

20 MR. PETTICORD: I understand, I
21 understand.

22 MR. VONA: If you want me to direct
23 him, I can do that. It will speed things up.

24 MR. PETTICORD: For this purpose, I
25 think that's probably fair.

1 BY MR. VONA:

2 Q. Why don't we -- you all set, sir?

3 A. Yes.

4 Q. All right. I don't mean to rush you.

5 A. That's okay.

6 Q. Why don't we just take a look at --
7 first of all, do you recognize that document at
8 all?

9 A. I may have seen it.

10 Q. Sure.

11 A. When I review documents, I could have.

12 Q. Okay. And what is this document?

13 A. It's a letter to Mr. Barry Sengewalt,
14 which is the Eaton account manager for Oshkosh
15 Truck, from Michael Brooks, chief engineer,
16 vehicle components at Oshkosh Truck.

17 Q. And this is December 2nd, 1987?

18 A. Yes.

19 Q. Okay. Would you agree with me that the
20 context of this letter is discussing the phasing
21 out of asbestos-containing brake linings for
22 Oshkosh?

23 A. Yes, and also --

24 MR. PETTICORD: For this program.

25 MR. VONA: Yeah.

1 THE WITNESS: For this program, and
2 also for the implementation of the coined brake
3 shoe.

4 BY MR. VONA:

5 Q. Okay. And as Dan pointed out, we're
6 going to look at the second to last paragraph
7 that reads "the phase in of the new brakes will
8 be coordinated to use up the existing stockpile
9 of asbestos brakes."

10 Would it be a fair statement that in
11 1987, at least with regard to this specific
12 application for Oshkosh, that Eaton was trying
13 to use up its asbestos-containing brakes prior
14 to implementing non-asbestos?

15 MR. PETTICORD: Objection. This is an
16 Oshkosh document.

17 BY MR. VONA:

18 Q. If you know.

19 A. The way it's stated, yes, that's what
20 it is, but there may have been some other
21 circumstances involving why they were doing
22 that. They may have already been under
23 contract, as the contract was being fulfilled,
24 obligated to do that.

25 Q. Whose contract?

1 A. The contract with -- between Oshkosh
2 and the United States Army, the Marine Corps.

3 Q. Okay. That wouldn't be pursuant to any
4 contract between Eaton and Oshkosh?

5 A. No. Other than they were probably
6 ordered by Oshkosh for -- to build out the
7 number of vehicles that were on order at the
8 time.

9 Q. Okay.

10 MR. PETTICORD: Good.

11 MR. VONA: Yeah, good. You know, why
12 don't we, why don't we take a quick break. I'm
13 getting toward the last few things. I'm
14 switching areas. This way -- let's go off the
15 record.

16 MR. PETTICORD: Everybody, we're off,
17 okay?

18 THE VIDEOGRAPHER: We'll be going off
19 the record at 12:48 p.m. Please stand by.

20 (Whereupon, a recess was then taken at
21 12:48 p.m.)

22 (Whereupon, proceedings resumed at
23 12:59 p.m.)

24 THE VIDEOGRAPHER: Stand by. This is
25 the beginning of tape number three in the

1 deposition of Mr. Roger Hobbie. We are back on
2 the record at 12:59 p.m. Please proceed.

3 BY MR. VONA:

4 Q. Okay. All right. Sir, Keith Vona
5 still here with you, and I just need a little
6 clarification. Earlier in your testimony you
7 mentioned that non-asbestos brake linings became
8 available in the late '70s. Is that right?

9 A. I think as far as us actually shipping
10 any to a customer, it was probably 1981.

11 MR. VONA: Okay. That's fair enough.
12 That clears it up for the interrogatory answer
13 that I looked at. That being said, let me just
14 have this marked.

15 (Whereupon, Hobbie Exhibit 22, a data
16 sheet, Molded Materials Company, division of
17 Carlisle Corporation, preliminary engineering,
18 product data sheet, Carlisle K-79, asbestos-free
19 brake block, was then received and marked for
20 identification.)

21 BY MR. VONA:

22 Q. Showing you what's been marked as
23 Hobbie Number 22, and I'd like you to take a
24 look at that and ask you if you're familiar with
25 this document at all.

1 A. Probably I've seen it.

2 Q. Okay. It would be a fair statement
3 that this is a document that was provided by
4 Eaton to my office?

5 MR. PETTICORD: Objection. We'll
6 stipulate that this came from our -- the
7 document collection.

8 MR. VONA: Is the stipulation anything
9 that has that -- this caption --

10 MR. PETTICORD: I'll stipulate that
11 anything that has an EAB Bates number on it --

12 MR. VONA: EAB.

13 MR. PETTICORD: -- EAB Bates number
14 came from my office, if that will help you.

15 MR. VONA: I appreciate it. Thanks,
16 Dan.

17 BY MR. VONA:

18 Q. Can I direct your attention real quick
19 to the second page? Does that indicate when
20 this document was created?

21 A. March 1979.

22 Q. Okay. And what is this document?

23 A. It's a -- like a data sheet, Molded
24 Materials Company, division of Carlisle
25 Corporation, preliminary engineering, product

1 data sheet, Carlisle K-79, asbestos-free brake
2 block.

3 Q. Okay.

4 A. Description of the physical
5 characteristics and chemical properties and size
6 and application.

7 Q. Do you know when Eaton received this
8 document?

9 A. I don't know specifically, no.

10 Q. Okay. You have no personal knowledge
11 then as to when they would have gotten this?

12 A. No.

13 Q. Would you agree with me at least that
14 in March of 1979, Carlisle was offering
15 asbestos-free brake block?

16 A. Yes.

17 Q. Okay. And if you can look at the
18 second paragraph, it says "the Carlisle K-79
19 brake block will give equal or superior
20 performance results to that of asbestos-based
21 components of the same friction rating.
22 Carlisle K-79 material is compatible with all
23 styles of brake drums and has been designed to
24 yield longer brake drum life than original
25 equipment level blocks with the same or higher

1 friction level rating."

2 Do you know if -- based on that, do you
3 know if Eaton ever used this brake block?

4 A. No, not specifically.

5 Q. Okay. So you have no idea if they ever
6 used it at all?

7 A. No.

8 Q. Okay. Do you know why?

9 MR. PETTICORD: Why what?

10 BY MR. VONA:

11 Q. Why they didn't use it.

12 MR. PETTICORD: That's not what he
13 said.

14 MR. VONA: He said he doesn't --

15 MR. PETTICORD: You said does he know
16 if Eaton ever used the brake block.

17 BY MR. VONA:

18 Q. Do you have any personal knowledge that
19 Eaton ever used this brake block?

20 A. On this specific number, no. I do know
21 that there was testing going on early on of
22 various non-asbestos materials.

23 Q. Did, did Eaton ever use an
24 asbestos-free brake block manufactured by
25 Carlisle?

1 A. I would say yes.

2 Q. Do you have any idea when that first
3 occurred?

4 A. Well, it probably first occurred during
5 testing, fleet testing, field testing, and I
6 know that there initially were problems in the
7 field with some of the non-asbestos block that
8 was put out there on test.

9 Q. Okay. Do you have any kind of estimate
10 as a date when that would have occurred?

11 A. Probably late '70s, early '80s.

12 Q. Okay. And there was a line by itself
13 there. It says "Carlisle K-79 is registered as
14 an FF friction block with AAMVA."

15 Help me out. What does that mean, if
16 you know?

17 A. American Automobile -- no.

18 MR. PETTICORD: If you know.

19 BY MR. VONA:

20 Q. If you know.

21 A. I'm going to say no, I don't know.

22 Q. All right. What does FF friction block
23 mean? Do you know what that is?

24 A. It's a designation for the level of
25 friction that that block attains, like low,

1 medium, high.

2 Q. I'm going to take a stab at it. Would
3 the AAMVA be something like the American
4 Association of Motor Vehicles --

5 MR. PETTICORD: Objection. Motor
6 vehicles --

7 THE WITNESS: Something like that.

8 BY MR. VONA:

9 Q. Okay. And if you can look at -- on the
10 second page, 344, and under vehicle application
11 recommendations, it says "the Carlisle K-79
12 asbestos-free brake block is recommended for
13 tractor drive axles and trailer axle brakes used
14 in typical service such as interstate
15 tractor/trailer van operations."

16 What -- if you know, what does that --
17 what is meant by that? What is interstate
18 tractor/trailer van operations?

19 A. It just means for an over-the-road,
20 freight-hauling type truck that's on highway.
21 It's not a dump truck or mixer truck going off
22 highway.

23 Q. So that's something I kind of learned
24 going through this case that there's a
25 difference.

1 A. Right.

2 Q. So you mentioned you met -- read
3 Mr. Regan's testimony. What type of trucks were
4 worked on at Roadway between 1980 and 1990?

5 A. At that particular site, according to
6 his deposition, he was working on mainly
7 medium-duty pick-up and delivery trucks with the
8 occasional line-haul type truck doing
9 preventative maintenance work.

10 Q. Did he work on tractor trailers?

11 A. Yes.

12 Q. Okay.

13 MR. PETTICORD: Done?

14 MR. VONA: Yeah, I'm good with that for
15 now. I'm going to skip this one.

16 BY MR. VONA:

17 Q. Actually, would you agree with me, sir,
18 that by the late 1970s, that Eaton was aware
19 that asbestos was coming under scrutiny from the
20 government?

21 MR. PETTICORD: Objection.

22 THE WITNESS: Can you ask a more
23 specific question?

24 MR. VONA: Well, I'm trying to avoid
25 using this document.

1 MR. PETTICORD: But -- so no. Okay.

2 That's fine. I don't want you to yell at me
3 anymore.

4 MR. VONA: No, I'm not yelling at you,
5 Dan. Come on.

6 THE WITNESS: To my knowledge, I can't
7 remember the specific years, but it was when
8 OSHA started implementing regulations relating
9 to asbestos. That was my exposure to when those
10 specific changes started.

11 BY MR. VONA:

12 Q. Are you familiar with when OSHA came
13 into existence?

14 A. Off the top of my head I cannot
15 remember specifically. I would say late '70s.

16 Q. If I told you that OSHA came into
17 existence in 1971, would you have any reason to
18 disagree with me?

19 A. No, I wouldn't.

20 Q. And that they promulgated their first
21 regulations in 1972, you would have no reason to
22 disagree with me?

23 A. No, I have no reason to disagree with
24 you.

25 MR. VONA: I'm going to skip that one

1 anyway. Let's move on to 23.

2 (Whereupon, Hobbie Exhibit 23, an
3 informative request from Ford to Eaton talking
4 about willingness to work in a joint program,
5 was then received and marked for
6 identification.)

7 BY MR. VONA:

8 Q. Showing you what's been marked as
9 Hobbie Number 23, and I'd like to ask you, are
10 you familiar with this document at all?

11 MR. PETTICORD: Wait a minute. This is
12 not -- this is a four document -- although it
13 came from our document production, read it
14 first.

15 MR. VONA: Sure.

16 MR. PETTICORD: Especially since I
17 think I know where he's headed.

18 THE WITNESS: Okay.

19 BY MR. VONA:

20 Q. All set? Okay. And well, what is this
21 document, best you can tell?

22 MR. PETTICORD: If you know.

23 BY MR. VONA:

24 Q. What does it appear to be?

25 A. It appears to be an informative request

1 from Ford to Eaton talking about willingness to
2 work in a joint program, and in this particular
3 case, as far as we're talking here, about
4 developing a -- an asbestos-free brake lining
5 material having desirable characteristics of
6 present organic materials. And there's also
7 another comment about an internal parking brake
8 to replace the drive line parking brake that was
9 standard in the vehicles at that time.

10 Q. Okay. We won't talk about that.

11 A. That's a separate issue.

12 Q. When's this letter dated, sir?

13 A. May 22nd, 1979.

14 Q. And going to the third page -- well,
15 strike that.

16 Before I get there, would you agree
17 with me that at least in 1979 -- May of 1979,
18 Ford was requesting an asbestos-free brake
19 lining?

20 A. Yeah. I think they were requesting a
21 program be initiated to try to develop that,
22 yes.

23 Q. Okay. And that third-page document,
24 the third-page document, Bates 796, what is the
25 title of that document there?

1 A. Supplier Research Department Need Item.

2 Q. Do you have any idea what that means?

3 A. I think it's --

4 MR. PETTICORD: Objection.

5 THE WITNESS: It looks to me like it's
6 an initial request to a joint working program to
7 start on a program to meet the need for the
8 asbestos brake lining.

9 BY MR. VONA:

10 Q. Do you know when, if ever, Eaton was
11 able to fill this request?

12 MR. PETTICORD: Objection.

13 THE WITNESS: No. I'd have to say
14 it's, it's when Ford was able to approve a
15 non-asbestos lining for that application.

16 BY MR. VONA:

17 Q. Do you know when that was roughly?

18 A. Roughly late '80s.

19 Q. Okay. And I think we've already
20 established that, that MM8C5 lining was the
21 standard lining at least up until 1985?

22 A. Yes.

23 Q. Correct? And that was also
24 asbestos-containing. We've established that.

25 A. Yes, high-friction lining.

1 Q. So would it be fair to say that if
2 Eaton ever did fulfill this request, it would
3 have been post 1985?

4 MR. PETTICORD: Objection.

5 THE WITNESS: I'd say yes.

6 BY MR. VONA:

7 Q. Any idea why it took so long?

8 MR. PETTICORD: Objection.

9 BY MR. VONA:

10 Q. If you know.

11 MR. PETTICORD: Just go no.

12 THE WITNESS: Okay. No.

13 MR. PETTICORD: No, no, no. That's as
14 far as it's going to go.

15 MR. VONA: That's improper, but --

16 MR. PETTICORD: Yeah, it is. It's an
17 improper question. Let's move on to the next
18 document.

19 MR. VONA: You can note your objection,
20 but that is a one pager.

21 (Whereupon, Hobbie Exhibit 24, an
22 interoffice correspondence dated December 14th,
23 1982, was then received and marked for
24 identification.)

25 BY MR. VONA:

1 Q. Let me show you what's been marked as
2 Hobbie Number 24. Okay. Do you recognize this
3 document at all?

4 A. Vaguely.

5 Q. All right. And it's an interoffice
6 correspondence, correct?

7 A. Yes.

8 Q. 1982, December 14th?

9 A. Yes.

10 Q. And the subject matter is -- deals with
11 non-asbestos linings?

12 A. Yes.

13 Q. What I'd like to have you look at is
14 the second paragraph from the bottom. And
15 instead of reading, why don't you just read that
16 to yourself.

17 A. Okay.

18 Q. My question to you is with regard to at
19 least the applications that they're talking
20 about here, in 1982, the non-asbestos material
21 actually performed better than the asbestos
22 material; is that right?

23 MR. PETTICORD: Objection.

24 THE WITNESS: Yes, based on those
25 statements, yes.

1 BY MR. VONA:

2 Q. Yeah. And underneath that it says
3 negatives. "Some non-asbestos materials have
4 lower flexor strength and impact strength than
5 typical asbestos materials which results in more
6 damage during shipping, handling and assembly.
7 Although this is not a problem with vehicle
8 operation, it does contribute to cost."

9 I guess my question is at least with
10 regard to this particular application, Eaton is
11 saying that asbestos work -- or non-asbestos
12 works better than asbestos, but that it has more
13 cost to it?

14 MR. PETTICORD: No, that's not what the
15 document says.

16 MR. VONA: Why don't you explain.

17 MR. PETTICORD: You cannot -- I'll give
18 you a lot of latitude because I'm a nice guy,
19 but you cannot continue to take a sentence out
20 of a document and then change the meaning of the
21 sentence and get him to agree with it because
22 all that's going to do is take forever and a day
23 to fix later.

24 So I would appreciate it if you would
25 limit your questions about documents to asking

1 about the documents or asking him independent
2 questions, but what you're doing is wrong, and
3 it's not fair to the witness, and I will be
4 quiet now. Go ahead.

5 MR. VONA: Thank you, Dan.

6 MR. PETTICORD: You're welcome.

7 BY MR. VONA:

8 Q. Well, why don't you explain to me, if
9 you know, what does that mean?

10 A. This is not a cost issue. It's more of
11 a manufacturing handling issue, and this flexor
12 strength, impact strength had to do with some of
13 the early linings, and the typical way of
14 handling lining applications on the shoe, the
15 non-asbestos would tend to crack and break, and
16 it would have problems that way; and also in the
17 shipping and handling side of it. So those were
18 just --

19 MR. PETTICORD: Let him finish the
20 question.

21 MR. VONA: I thought he was done.

22 MR. PETTICORD: Not when he's in the
23 middle of a word.

24 MR. VONA: Go ahead.

25 THE WITNESS: Those were just things

1 that were being noted that were different than
2 past experience with the previously-used brake
3 lining.

4 In addition, even at this time, I'm
5 familiar with -- I don't have the specifics of
6 it, but I know we were field testing linings
7 with certain truck fleets, non-asbestos linings,
8 and there was a blistering problem. And as any
9 of these truck fleets were concerned, when you
10 start changing things, it causes them problems
11 in their operations because you're now
12 introducing a completely new system into what
13 they've had standardized for a long period of
14 time. So it isn't just flip a switch and make
15 it happen type thing.

16 MR. VONA: I have to move to strike the
17 portions that are non-responsive.

18 BY MR. VONA:

19 Q. So the fact of the matter here is that
20 when they talk about it does contribute to cost,
21 they're talking about shipping costs or
22 something else?

23 MR. PETTICORD: The answer stands for
24 what the answer is. Whether you --

25 MR. VONA: There's a question pending.

1 THE WITNESS: The cost is different,
2 yes, but -- because of circumstances.

3 BY MR. VONA:

4 Q. All right.

5 A. You can correct some of those
6 circumstances, which they probably did.

7 MR. VONA: Mark 25.

8 (Whereupon, Hobbie Exhibit 25, an
9 internal Eaton program to qualify non-asbestos
10 linings, was then received and marked for
11 identification.)

12 BY MR. VONA:

13 Q. I want to show you what's been marked
14 as Hobbie 25. Are you at all familiar with this
15 document?

16 A. Looks like an internal Eaton program to
17 qualify non-asbestos linings. It's just an
18 information notice to what the steps --
19 evidently the steps that were being taken to
20 qualify the various non-asbestos linings that
21 were available.

22 Q. Do you, do you, do you have any idea
23 when this document was created?

24 MR. PETTICORD: If you know.

25 THE WITNESS: The one statement in

1 January of 1979. So it was referring --
2 probably in that era, I would guess.

3 BY MR. VONA:

4 Q. So we could agree at least that it was
5 after January of 1979?

6 A. Yes.

7 Q. Okay. And the last paragraph is what
8 I'm concerned with. "The other hurdle to
9 overcome with non-asbestos linings is the cost
10 premium. Lining suppliers are quoting increases
11 in the area of 30 percent over asbestos-based
12 linings."

13 Now, would you agree with me, at least
14 at this point in time, that the actual costs of
15 the linings is a consideration?

16 A. Cost is always a consideration.

17 MR. PETTICORD: At this point in
18 time --

19 THE WITNESS: It's not the only
20 consideration.

21 MR. PETTICORD: At this point in time
22 meaning when this document was written.

23 MR. VONA: When this document was
24 written, correct.

25 BY MR. VONA:

1 Q. And you said it's always a
2 consideration.

3 A. One of many considerations.

4 Q. Why is cost a consideration?

5 A. Just the economics of it.

6 Q. Okay.

7 A. Plus, you know, there's risk costs and
8 other things, too.

9 Q. Well -- and I guess correct me if I'm
10 wrong, if, if the -- your products that you're
11 selling cost more, your customers aren't going
12 to be happy, correct?

13 A. Exactly.

14 Q. Okay. The next part of that paragraph
15 says "until legislation prohibits the use of
16 asbestos-based linings, we see this premium
17 preventing a widespread demand for non-asbestos
18 linings. Frankly, at the current stage of
19 development, it is best that there be no sudden
20 rush to non-asbestos linings."

21 Do you have any understanding as to
22 what's being said here; what is being meant?

23 A. Some of the initial testing was not
24 compatible to field applications.

25 Q. Okay.

1 A. Customer applications.

2 Q. And are they, are they also referring
3 to this premium -- the cost premium, as well?

4 A. Well, yes, in the previous part there
5 where, like you said, that you start raising the
6 price and the customers, if there's a -- you
7 know, they're going to object to increased cost.

8 Q. Okay. And we've already established
9 this document was created from some point past
10 1979 to today?

11 A. Right.

12 Q. Would you agree with me then when this
13 document was created, that Eaton was in no
14 hurry --

15 MR. PETTICORD: Objection.

16 MR. VONA: -- to introduce asbestos
17 linings?

18 MR. PETTICORD: Objection, objection,
19 objection, objection.

20 MR. VONA: That's fine.

21 MR. PETTICORD: If you can answer that
22 kind of question, answer that kind of question.

23 BY MR. VONA:

24 Q. You can answer it.

25 A. Eaton was always in a hurry to make any

1 product improvement that best suited their
2 customers' requirements. And, and I would
3 basically say from my knowledge, they were --
4 they did feel that going to non-asbestos linings
5 was a priority.

6 They knew that they weren't going to
7 shortchange the testing, and that included field
8 testing and dynamometer testing, just to get the
9 product to the market if it was not capable of
10 doing what was required of it legally.

11 Q. When did that first become a priority,
12 what you just said?

13 A. I'd have to say that probably in the
14 late '70s, early '80s.

15 Q. Okay. And with regard to -- strike
16 that.

17 I'm done with that.

18 MR. PETTICORD: Are you running out of
19 folders?

20 MR. VONA: We're getting there. I have
21 two folders left.

22 MR. PETTICORD: Hopefully they're
23 small.

24 MR. VONA: I don't know if we're that
25 lucky.

1 BY MR. VONA:

2 Q. Let's see if I can shortcut this a
3 little bit. Do you recall when you gave
4 testimony last year that it was your belief that
5 Eaton ceased the grinding of brake linings
6 sometime in the early 1970s -- or I'm sorry,
7 late 1970s, early 1980s?

8 A. Yes.

9 Q. That's what you testified to, correct?

10 A. Yes.

11 MR. VONA: Okay. And bear with me.
12 I'm trying to save us a little time. I'm not
13 going to ask about this one.

14 (Whereupon, Hobbie Exhibit 26, a
15 document concerning the lining grind elimination
16 program, was then received and marked for
17 identification.)

18 BY MR. VONA:

19 Q. I'm going to show you Hobbie 26, and
20 I'll ask you if you've ever seen this document
21 before.

22 A. Probably, yes.

23 Q. Okay. And what are we discussing here?

24 A. Lining grind elimination program.

25 Q. Okay. And Dan's correct that there is

1 no, there is no date on this. I can direct you
2 to the last sentence. It says "the target is to
3 eliminate the grinding by January 1980."

4 Would it be fair to agree that this
5 document was created before January of 1980?

6 A. Yes.

7 Q. Okay.

8 MR. PETTICORD: Look above the Bates
9 number.

10 MR. VONA: This handwritten --

11 MR. PETTICORD: If you care.

12 MR. VONA: That's fine.

13 BY MR. VONA:

14 Q. And if you could, could you just read
15 to yourself the first portion of this? And I
16 just have some questions about it. Up to the
17 sentence where it says "500 degrees Fahrenheit,
18 burnish temperature like medium-friction
19 linings." Up to that point.

20 MR. PETTICORD: Actually --

21 MR. VONA: He could read the whole
22 thing if he wants. Go for it.

23 MR. PETTICORD: There's only two other
24 sentences, and the next sentence is --

25 MR. VONA: That's fine.

1 THE WITNESS: Okay.

2 BY MR. VONA:

3 Q. Okay. I guess my question is is what
4 type of process are they discussing here?

5 A. Basically, basically going to a lining
6 block supplied by the lining manufacturers that
7 has a surface on it equivalent to what a ground
8 block would have. So the initial friction would
9 be comparable without grinding it.

10 Q. Okay. And we talked about a little bit
11 the grinding that it was something that occurred
12 at the Eaton facilities. Why was that done? I
13 just don't understand.

14 A. Well, basically, to -- basically, we're
15 saying that in order to meet the burnish
16 requirements, which they're SAE test standards
17 that basically tell you the procedures and
18 process for burnishing brake in to run an SAE
19 series qualification test to meet federal motor
20 vehicle standards, that they were basically
21 trying to develop -- get the lining
22 manufacturers to develop a block that you didn't
23 have to grind, that it would be capable of
24 meeting that specification without grinding it.

25 Q. What does that mean, burnish? That's

1 what I'm not following. I need an education
2 here unfortunately.

3 A. It's, it's when a brake is run through
4 a certain process as it's mounted in the drum,
5 and this can be done on a vehicle or on a
6 dynamometer, and you run it through application
7 cycles at certain speeds and take it up to
8 certain heat -- there are SAE specifications
9 written in SAE manuals that tell you how to do
10 that.

11 Q. Okay.

12 A. And it's basically breaking in the
13 brake.

14 Q. So when the, when the -- this, this
15 burnishing -- or strike that.

16 When this grinding would occur at
17 Eaton, are they, are they actually grinding the
18 face of the lining?

19 A. Yes.

20 Q. That's to meet certain requirements?

21 A. Right. Surface the texture of the
22 surface and the contour of the surface.

23 Q. Okay. Have, have you ever changed
24 brakes yourself?

25 A. Sure.

1 MR. PETTICORD: On a truck?

2 MR. VONA: Any brakes.

3 THE WITNESS: Yes.

4 BY MR. VONA:

5 Q. What brakes have you changed?

6 A. Lots of -- well, I started out as a
7 test technician, and one of my functions was to
8 install brakes and run tests on those driving
9 vehicles following these SAE standard practice
10 procedures. And of course, I've done brakes
11 over the years. When I was in high school, I
12 worked in a gas station. We did brake jobs.

13 Q. Okay.

14 A. And all that.

15 Q. So you've done -- is it fair to say
16 you've done brake jobs on trucks and passenger
17 cars?

18 A. Yes.

19 Q. When's the last time you did a brake
20 job on either type of vehicle?

21 A. I did it on my own personal car
22 probably six months ago.

23 Q. Okay. Where did you learn how to do
24 that?

25 A. Basically, well, somewhat in auto shop

1 class in high school and on-the-job training
2 in -- as I said, I worked part time in high
3 school in a gas station, service station.

4 Q. Okay. During your employ at Eaton,
5 have you ever observed brakes being changed on a
6 tractor trailer out in the field at any time?

7 A. Sure, yes.

8 Q. Okay. When would that have been
9 roughly, if you can give me a time frame, I
10 guess?

11 A. Well, really from the time I started in
12 1959 could be up through 1997 when I left the
13 company.

14 Q. Okay. Okay. Then, then based on your
15 personal experience, have -- strike that.

16 Based on your personal experience,
17 would you agree with me that some mechanics who
18 have been changing brakes would use compressed
19 air to clean out brake drums?

20 A. Yes.

21 Q. Okay. Making this easy on me. Good.
22 And would you agree with me from your personal
23 experience that some brake mechanics would
24 actually sand the face of the lining before
25 installing the new linings?

1 MR. PETTICORD: Can you give me a time
2 frame?

3 MR. VONA: Anytime, anytime.

4 MR. PETTICORD: Anytime.

5 THE WITNESS: I'm aware that people did
6 it, but Eaton never recommended that that be
7 done at any time.

8 BY MR. VONA:

9 Q. That's fair enough, but you've observed
10 that, haven't you?

11 A. Yes.

12 Q. Have you ever observed that with regard
13 to a tractor trailer brake job?

14 MR. PETTICORD: Observed what, though?
15 The air or the grinding or both?

16 MR. VONA: Actually, let's start with
17 the air.

18 THE WITNESS: Yes.

19 BY MR. VONA:

20 Q. Okay. How about the sanding?

21 A. I guess I'm aware of it. I know that
22 I've seen reports where somebody basically said
23 that so and so observed somebody doing that type
24 thing.

25 Q. Have you yourself ever used compressed

1 air during a brake job?

2 A. That's Fifth Amendment.

3 Q. I won't hold it against you.

4 A. Sure, I have.

5 Q. So you'd agree that it's common

6 practice amongst mechanics?

7 A. It was, it was -- yes, it probably
8 could be considered common practice, but it was
9 never a practice that was approved by any shop
10 as far as safety procedures were concerned.
11 That just wasn't something you did is blow dirt
12 all around the place.

13 It could have been dirt that was swept
14 up on the floor. You didn't take an air hose
15 and blow it all over the place. It took an
16 extra effort to use brake solvents and later
17 vacuums, shop vacs and things like that, to
18 clean it up with.

19 Generally, when people were working in
20 a shop, you just -- it wasn't necessarily
21 appreciated if somebody did that, because you
22 were blowing dirt onto somebody else's job in
23 the next bay, too.

24 Q. Nevertheless, it did occur, right?

25 A. It did occur, right.

1 Q. Okay. I think I'm good with this one,
2 whatever that was.

3 MR. PETTICORD: 29443.

4 MR. VONA: Okay. Let me see where I'm
5 at.

6 (Whereupon, Hobbie Exhibit 27, a
7 document concerning a field visit report,
8 Certified Grocers, Trailmobile grinding brake
9 linings to fit drums on the trailer axles, was
10 then received and marked for identification.)

11 BY MR. VONA:

12 Q. Let me show you Hobbie 27. And are you
13 familiar with this document at all?

14 A. I've probably seen it before, yes.

15 Q. Okay. If you take a look under copy --

16 A. Yeah, I'm copied on it.

17 Q. You were actually copied.

18 A. Yeah.

19 Q. It's a little difficult. Can you read
20 out the date there?

21 A. It looks like May 28th, 1986.

22 Q. I agree with that. Okay. And what's
23 the subject matter here?

24 A. Field report -- field visit report,
25 Certified Grocers, Trailmobile grinding brake

1 linings to fit drums on the trailer axles.

2 Q. Okay. Do you need to review this, or
3 can I ask you some questions about it?

4 A. Yeah, go ahead and ask.

5 Q. Does this document essentially discuss,
6 at least to an extent -- strike that.

7 Does this document discuss
8 representative Eaton going out to a field visit
9 to grind brake linings?

10 A. I don't think the Eaton representative
11 necessarily went out to grind brake linings, but
12 he was there observing what they were doing,
13 usually what was called Brake Doctor.

14 Q. And I wanted to ask you, do you know
15 what that is?

16 A. Yeah. Brake Doctor was a machine that
17 essentially mounted on the axle spindle, and it
18 had a device with the brake shoes mounted in
19 place without the drum on, that would basically
20 true the brake linings to the center of the
21 spindle.

22 Q. Okay.

23 A. And that, that was also -- it was
24 probably more readily used in Europe by trucking
25 fleets than it was in the United States, but for

1 some reason they were --

2 Q. Does that machine grind the brake
3 linings?

4 A. I'm not sure if it grinds it or, or
5 cuts it. There's a difference, so I'm not sure
6 about that.

7 Q. Have you ever seen one of these
8 machines?

9 A. Yeah. In fact, we used to have one in
10 our assembly plant in Cleveland. It wasn't used
11 very often, but it could be. It could have been
12 used, but that's back in the '50s.

13 Q. Okay. What kind of, what kind of --
14 whether it's grinding or cutting it, what type
15 of surface is the brake lining coming against?

16 A. Well, I think it was like a cutting
17 tool, if I remember right.

18 Q. Okay.

19 A. Basically.

20 Q. All right. This -- what's being
21 discussed here, is this a type of service that
22 Eaton normally supplied to its customers?

23 A. Not this grinding which is -- or the
24 use of the Brake Doctor. We didn't have one in
25 the field, and, and it looks to me that this

1 Hetzel Brake Service Company was demonstrating
2 this unit to Certified Grocers. Our guy was
3 there to observe what was going on.

4 Q. Well, if you have to read the document,
5 that's fair, but isn't it true that this was
6 done because there was a problem with the brake
7 linings that were sent by Eaton? Take a look if
8 you need to.

9 A. Yeah, I would say that that's probably,
10 probably the case, that they at least perceived
11 that there was some problem going on. And of
12 course, our guy -- his statement did say that --
13 about the conditions improving -- proving the
14 brake performance for conditions found but later
15 agreed to the Brake Doctoring process as an
16 acceptable remedy.

17 Q. Okay.

18 A. And he wasn't giving a blanket approval
19 to it. He just said in this particular case,
20 because we never had anything in any of our
21 service literature, service manuals or anything
22 that would recommend doing that.

23 Q. Okay. And -- okay. That's fine.

24 A. Sort of a one-of case.

25 Q. They were trying to keep the customer

1 happy?

2 A. Yeah, right.

3 Q. Okay.

4 A. Make sure that they were satisfied with
5 its overall performance.

6 Q. So at least with regard to -- well,
7 first of all -- strike that.

8 Do you know -- I apologize if I asked
9 this, but did Eaton ever stop grinding within
10 its facilities?

11 A. Yes.

12 MR. PETTICORD: Brakes?

13 THE WITNESS: Yes.

14 BY MR. VONA:

15 Q. If so, when? I'm sorry. I may have
16 asked this, and I apologize.

17 MR. PETTICORD: You didn't. You're
18 good. I think the time frame would probably be
19 good.

20 THE WITNESS: Time frame, late '70s.

21 BY MR. VONA:

22 Q. Yeah, that's fine. But at least with
23 regard to this document, it was ongoing in the
24 field in 1986, correct?

25 A. Well, no, no, this is just one case.

1 This wasn't an ongoing thing in the field. This
2 is something they were just trying here, and it
3 looks to me like it was something that this
4 brake -- Hetzel Brake Service Company was trying
5 to provide for Certified Grocers. That would be
6 my, my guess.

7 MR. VONA: Okay. That's fine.

8 (Whereupon, Hobbie Exhibit 28, a
9 document entitled Employee Training Program For
10 Asbestos, Eaton Corporation, Gallatin,
11 Tennessee, was then received and marked for
12 identification.)

13 BY MR. VONA:

14 Q. I'm going to show you what's been
15 marked as Hobbie Number 28, and I'll represent
16 to you that this is -- was also exhibit Hobbie
17 Number 5 last year. So would it be fair that
18 you're familiar with this document?

19 A. Yes.

20 Q. I'm not going to ask you to read the
21 whole thing. First of all, what's the title of
22 this document?

23 A. Employee Training Program for Asbestos,
24 Eaton Corporation, Gallatin, Tennessee, and that
25 would be the Gallatin manufacturing plant.

1 Q. Okay. When's this dated?

2 A. October 1986.

3 Q. To your knowledge, was there ever any
4 employee training program regarding asbestos
5 prior to this?

6 A. Not to my knowledge.

7 Q. Fair enough. And what does this
8 document discuss just generally?

9 A. I think it's -- basically follows the
10 OSHA guidelines and basically training the
11 employees in the plant about what those
12 guidelines were relating to asbestos.

13 Q. Okay. And if you could, I direct your
14 attention to Bates 702. That will be, that will
15 be the best way to find it, I think.

16 A. Okay.

17 Q. Let me know when you're there.

18 A. Got it.

19 Q. And just to -- and the last paragraph,
20 just to give you some context with this,
21 "certain job classifications have been
22 identified as having potential employee
23 exposures to asbestos above the action level."

24 And if you could flip to the next page,
25 and at the top, it says "the following is a list

1 of these job classifications including a
2 description of the facility location and manner
3 of use release and storage of
4 asbestos-containing materials."

5 And I direct you to number three, and
6 just take a look at that. The section titled
7 grinding.

8 A. Uh-huh.

9 Q. Okay. And would it be fair to say that
10 at least in 1986, that the grinding of brake
11 linings was still occurring at an Eaton
12 facility?

13 MR. PETTICORD: Objection. Read
14 subpart three and then answer the question.

15 THE WITNESS: I think I know what this
16 is talking about.

17 BY MR. VONA:

18 Q. Well, my question is to you, though, at
19 least -- if I may, my question is even if it's
20 with regard to specific handling of shoes, would
21 you agree with me that there's still grinding of
22 linings going on at an Eaton facility in 1986?

23 MR. PETTICORD: Objection. Give him
24 the answer that you want to give him.

25 THE WITNESS: Basically, this is

1 referring to heavy-duty, off-road cast brake
2 shoes for heavy-duty, probably 18-inch brakes
3 which were very limited production. And they
4 probably -- and to the best of my recollection,
5 they were not able to come up with the lining or
6 they -- the lining manufacturers were not able
7 to come up with a lining for that heavy-duty
8 brake that met the, you know, the burnishing
9 requirements that we talked about earlier for
10 the high-production, sixteen-and-a-half by
11 seven-inch brake.

12 And in fact, those brakes I think
13 were -- about this time, those -- a lot of those
14 brakes would have been non-asbestos, and they
15 may have been grinding non-asbestos linings.

16 BY MR. VONA:

17 Q. Okay. And I'll -- looking at number
18 three, it says "grinding: Located in the brake
19 shoe riveting and grinding area, the linings on
20 certain brake shoes require surface grinding.
21 Asbestos fibers may be released during handling
22 of shoes and grinding of linings."

23 A. It does say that.

24 Q. So would you agree with me that at
25 least some of the linings that were being ground

1 contained asbestos?

2 A. Or that they just wanted to cover all
3 bases and make sure that if there were some
4 asbestos in there, yeah, it was --

5 Q. You can't state with any certainty that
6 they weren't grinding asbestos linings?

7 A. Exactly, yeah.

8 Q. If you could go to page 706, Bates 706.
9 Sorry. Let me know when you're there.

10 A. Got it.

11 Q. All right. And I'm looking at the
12 third paragraph from the bottom. Okay. And
13 again, this is in 1986. About halfway through
14 that paragraph, starting with however, do you
15 see where I'm at?

16 A. Yes.

17 Q. "However, it is recognized that fibers
18 may be released during various phases of the
19 manufacturing process such as unpacking,
20 handling, insulation, riveting, grinding and
21 re-packaging."

22 Would you agree with that statement?

23 MR. PETTICORD: Hold on. I may be on
24 the wrong page.

25 MR. VONA: On 706.

1 MR. PETTICORD: And you're saying in
2 the third paragraph --

3 MR. VONA: Third paragraph.

4 THE WITNESS: From the bottom.

5 MR. VONA: From the bottom. I'm sorry.

6 MR. PETTICORD: Oh, okay.

7 MR. VONA: He's with me.

8 MR. PETTICORD: I'm the lost one here.
9 Let me catch up.

10 MR. VONA: Starting with "however."

11 MR. PETTICORD: I got you. I'm just
12 slow. Go ahead. I'm sorry. Go ahead.

13 BY MR. VONA:

14 Q. Sir, would you agree with that
15 statement?

16 A. Sure, yes.

17 Q. That those type of procedures could
18 potentially release asbestos fibers in an
19 asbestos-containing brake lining?

20 A. Yes.

21 Q. Okay. And would it be fair to say that
22 Eaton recognized this in 1986 based on this
23 document?

24 A. Yes. And they said "therefore, various
25 precautionary measures have been implemented in

1 our manufacturing process to reduce the
2 potential for exposure to airborne asbestos."

3 Q. Okay. What type of precautionary
4 measures did Eaton take?

5 MR. PETTICORD: Read the next
6 paragraph.

7 BY MR. VONA:

8 Q. I have a question. If you can answer
9 it --

10 MR. PETTICORD: You have to be fair
11 within the context of the document.

12 MR. VONA: Well, I mean, he can answer
13 the question.

14 MR. PETTICORD: He sure can, but you
15 have to be fair with the document.

16 MR. VONA: I can't read the whole thing
17 either. I mean, if you want -- I mean, Dan, you
18 know, you can redirect on it if you want. I
19 mean, I think he can answer it.

20 MR. PETTICORD: He can.

21 THE WITNESS: Yeah. They put in
22 respiratory protection masks for the operators,
23 plus high-flow ventilation systems, ventilation
24 of the area around the machines to filter out
25 the dust and things like that.

1 BY MR. VONA:

2 Q. Okay. Do you know if -- do you know
3 approximately when they started doing that; when
4 Eaton started doing that?

5 A. No, I don't.

6 Q. Okay.

7 MR. PETTICORD: By "that," just for
8 clarification, you mean the precautions listed
9 in the letter on page --

10 MR. VONA: Yeah.

11 MR. PETTICORD: -- 1876.

12 MR. VONA: What he just testified to.

13 MR. PETTICORD: Okay. I got you. Fair
14 enough.

15 BY MR. VONA:

16 Q. You can put that one to the side for
17 now. Don't lose it, though. We're going to
18 need that one again.

19 Mr. Hobbie, am I correct that before
20 selling its brakes containing asbestos, to your
21 knowledge, that Eaton did not conduct any
22 pre-market tests of its brakes concerning its
23 potential to cause injury from exposure to
24 asbestos?

25 A. I'm not aware of any.

1 Q. Okay. And during the time frame since
2 Eaton started selling asbestos-containing brake
3 linings, and we'll say up to 1990, isn't it true
4 that Eaton never conducted any tests on its
5 brakes that contained asbestos to determine
6 whether they posed a health risk?

7 MR. PETTICORD: Objection. Go ahead
8 and answer it, if you can.

9 THE WITNESS: I'm not aware of any.

10 BY MR. VONA:

11 Q. All right. Do you know, has Eaton ever
12 done any research to determine when it was known
13 by the company that asbestos could be a
14 potential health hazard?

15 MR. PETTICORD: Objection.

16 THE WITNESS: I'm not aware of any.

17 BY MR. VONA:

18 Q. Okay. And do you know -- I think we
19 mentioned earlier that Eaton was a member of the
20 trade association, the American -- was it
21 trucking association?

22 A. American Trucking Association.

23 MR. PETTICORD: No. He was a member of
24 the American Trucking Association on Eaton's
25 behalf. That's fine.

1 BY MR. VONA:

2 Q. But you were there on behalf of Eaton,
3 correct?

4 MR. PETTICORD: Yes.

5 THE WITNESS: Yes.

6 BY MR. VONA:

7 Q. That's all I'm getting at. And also
8 the --

9 A. SAE, Society of Automotive Engineers.

10 Q. Okay. Were any other employees of
11 Eaton -- well, strike that.

12 Before I get there, were you members of
13 any other associations for Eaton?

14 A. Yes.

15 Q. Okay. Which ones?

16 A. American Truck Dealers Association, the
17 Truck Renting and Leasing Association, the
18 American Trucking Association Maintenance
19 Council, which I'm still a member of.

20 Q. Okay.

21 A. There was another one that was the
22 Society for Service Management Standards or
23 Perfection.

24 Q. Okay. With regard to the ATA, do you
25 know if any other employees of Eaton were also

1 members?

2 A. Yes.

3 Q. Well, with that respect, do you know
4 when an employee of Eaton first became a member
5 of the ATA?

6 A. I don't know specifically, but I would
7 guess it was probably back in the 1950s.

8 Q. Okay. Do you know -- did Eaton
9 continue -- well, at least while you were
10 employed there, were they continuously a member
11 of that organization?

12 MR. PETTICORD: Were Eaton employees
13 members of these organizations?

14 THE WITNESS: Yes.

15 BY MR. VONA:

16 Q. What was your, what was your purpose
17 for, for being a member of that association?

18 A. You were representing your company to
19 the trucking industry. The full members of the
20 association are truck operators, truck fleet
21 operators. And it's to basically get feedback
22 from them -- well, the American Trucking
23 Association is a lobbying organization is what
24 it is.

25 Q. Okay.

1 A. And basically, you're there
2 representing your company to ensure that you
3 know what is going on in the industry, what the
4 industry needs and wants, and basically, trying
5 to present to them what you have to fill those
6 needs and whatever. You're not there selling,
7 but you're representing your company.

8 Q. Okay. To stay informed?

9 A. Stay informed and inform them, too.

10 Q. Okay. Did it cost anything to belong
11 to it?

12 A. Oh, yes.

13 Q. Who paid for that?

14 A. Eaton.

15 Q. Fair enough. Last folder. It has some
16 documents in it, though.

17 MR. PETTICORD: The question is not
18 whether you have documents. It's whether you
19 want to use them.

20 MR. VONA: Hey.

21 (Whereupon, Hobbie Exhibit 29, a
22 document concerning going to the Department of
23 Labor, dealing with the Occupational Safety and
24 Health Administration, Docket Number H033,
25 Occupational Exposure to Asbestos, Comments of

1 the American Trucking Association, Incorporated,
2 was then received and marked for
3 identification.)

4 BY MR. VONA:

5 Q. I'm going to show you Hobbie 29 and ask
6 if you're familiar at all with this document.

7 A. I've probably seen it before.

8 Q. Okay. What's this document titled?

9 A. This is a document of -- going before
10 the Department of Labor, dealing with the
11 Occupational Safety and Health Administration,
12 Docket Number H033, occupational exposure to
13 asbestos, comments of the American Trucking
14 Association, Incorporated.

15 Q. Okay. And when is this dated at the
16 bottom?

17 A. Dated April 9th, 1976.

18 Q. Okay. And there's a list of names
19 there. It says attorneys. You don't know any
20 of those gentlemen, do you?

21 A. No.

22 Q. And would it be a fair statement
23 that -- well, strike that.

24 Would it be a fair statement that, that
25 Eaton --

1 MR. PETTICORD: This isn't an Eaton
2 document.

3 BY MR. VONA:

4 Q. -- would have been a member of the ATA
5 in 1976?

6 A. Yes.

7 MR. PETTICORD: Objection.

8 BY MR. VONA:

9 Q. Or -- strike that.

10 MR. PETTICORD: Objection. Go ahead.

11 BY MR. VONA:

12 Q. Would it be fair that an employee of
13 Eaton would have a member of --

14 A. Yes.

15 Q. In 1976?

16 A. Yes.

17 Q. Okay. And this is before OSHA,
18 correct?

19 A. No. It would have been right about the
20 middle of its implementation.

21 Q. I guess that's my -- that's a bad
22 question. These are, as you said before,
23 comments of --

24 A. Oh, I see.

25 Q. -- comments of the ATA before OSHA?

1 A. Before. Yeah, it was probably the
2 testimony --

3 MR. PETTICORD: Given to the
4 Occupational Health --

5 THE WITNESS: It's probably testimony
6 by the ATA attorneys.

7 BY MR. VONA:

8 Q. That would have been my guess, too.
9 Okay. If you could go to the last page. 755 is
10 the Bates number. Okay. And why don't you --
11 I'll have you read from the first full paragraph
12 in sum, and have you read the whole thing. I
13 won't read that into the record.

14 MR. PETTICORD: Read that to himself?

15 MR. VONA: Yeah, that's fine.

16 BY MR. VONA:

17 Q. Let me know when you're done.

18 A. Okay. I've read that paragraph.

19 MR. PETTICORD: He means one, two,
20 three.

21 MR. VONA: All the way down.

22 MR. PETTICORD: Particularly number
23 two.

24 THE WITNESS: Yes.

25 BY MR. VONA:

1 Q. Okay. Would you agree with me that by
2 1976, that Eaton was aware or should have been
3 aware that some brake mechanics would use
4 compressed air to clean out brake drums?

5 A. Yes.

6 Q. All right. And would you also agree
7 with me that by 1976, that Eaton was aware or
8 should have been aware that some brake mechanics
9 would sand brake linings?

10 A. Yes.

11 Q. Okay. And also, would you agree by
12 1976, that Eaton was aware or should have been
13 aware that some brake mechanics would grind
14 brake linings?

15 A. Yes.

16 Q. Okay. And in particular, statement
17 number -- or number number three, number number
18 three.

19 MR. PETTICORD: Long day.

20 BY MR. VONA:

21 Q. It says that "the disassembly and
22 assembly of brake and clutch components be
23 conducted in a manner which will minimize the
24 dispersion of airborne asbestos through damp
25 wiping, vacuuming or other appropriate

1 techniques."

2 A. Uh-huh, yes.

3 Q. And I guess my question is do you know
4 why they were recommending that?

5 MR. PETTICORD: Objection. Go ahead,
6 if you know.

7 BY MR. VONA:

8 Q. If you know.

9 A. Yeah, to minimize the dispersion of any
10 of the dust --

11 Q. Okay.

12 A. -- in the area.

13 Q. Okay. And would that be limited to the
14 person working on the vehicle?

15 MR. PETTICORD: What would?

16 MR. VONA: The exposure.

17 MR. PETTICORD: Yeah. Okay.

18 BY MR. VONA:

19 Q. Let me strike that. That was a poor
20 question. You read Mr. Regan's testimony,
21 correct?

22 A. Uh-huh.

23 Q. And you're aware that Mr. Kolasinski
24 alleges some asbestos exposure, for lack of a
25 better word, as bystander exposure?

1 A. Uh-huh.

2 Q. Would you agree with me that that
3 precaution in number three was would have been
4 recommended, in part, as to avoid bystander
5 exposure?

6 A. Yes, sure.

7 Q. Thank you.

8 MR. PETTICORD: Are you done with that
9 one?

10 MR. VONA: Yeah.

11 BY MR. VONA:

12 Q. Mr. Hobbie, did, did Eaton ever supply
13 any masks or respirators with its
14 asbestos-containing brakes?

15 A. No, not that I'm aware of.

16 Q. Sorry. Some of these questions I just
17 have to ask. And to your knowledge, am I
18 correct that Eaton never stated that brake
19 mechanics, brake mechanics should not grind
20 brakes?

21 MR. PETTICORD: Objection.

22 MR. VONA: Do you understand the
23 question?

24 MR. PETTICORD: If you understand the
25 question.

1 THE WITNESS: I understand the
2 question, and I'd say no, we never did. It was
3 basically understood as a given shop practice
4 that you didn't do things like that. Number
5 one, it could have destroyed the contour of the
6 brake.

7 BY MR. VONA:

8 Q. Okay.

9 A. And that's what we didn't want to have
10 happen, but it was just understood as a common
11 shop practice you would not do something like
12 that.

13 Q. Well, looking back at Hobbie 29, they
14 do discuss the grinding of asbestos brakes, do
15 they not?

16 MR. PETTICORD: Which one is Hobbie 29?

17 MR. VONA: The one we just looked at.

18 MR. PETTICORD: The OSHA stuff?

19 MR. VONA: Yeah, the last page.

20 MR. PETTICORD: You're talking about
21 subpart one? Is that where you're at?

22 THE WITNESS: Basically, I read that it
23 says do not do any grinding, cutting, drilling,
24 sanding or --

25 BY MR. VONA:

1 Q. Right. But would you agree with me
2 that this -- in 1976, this was a common practice
3 that they're trying to eliminate?

4 THE WITNESS: No.

5 MR. PETTICORD: No. Objection. If you
6 can assume -- somehow divine what four lawyers
7 working for the American Trucking Association
8 thought was a common shop practice in replacing
9 brake shoes, God bless you. If not, tell him
10 that.

11 THE WITNESS: I'd say no.

12 BY MR. VONA:

13 Q. Well, did you not testify earlier that
14 you yourself have personal knowledge that the
15 sanding of asbestos-containing brake linings did
16 occur?

17 A. On limited occasions, yes, it was
18 reported.

19 Q. Okay. And am I correct that Eaton
20 never stated to anyone that brake mechanics
21 should not sand brakes?

22 MR. PETTICORD: Objection.

23 THE WITNESS: Should not sand?

24 BY MR. VONA:

25 Q. Yeah. Did they ever tell anybody don't

1 sand brakes?

2 A. I'd say our field people probably told
3 customers not to sand them.

4 Q. Do you have any personal knowledge of
5 that?

6 A. Not personal specifically, but just as
7 a general observation. As I mentioned, I've
8 seen reports where some of our field people
9 reported that somebody were sanding brakes, you
10 know, and they --

11 Q. Did Eaton ever produce any written
12 literature to that effect?

13 A. No.

14 Q. Okay. How about with regard to
15 compressed air? Did Eaton ever produce any
16 literature stating that mechanics should not use
17 compressed air to blow out brake drums?

18 MR. PETTICORD: If you recall.

19 THE WITNESS: I vaguely remember that
20 there was something added to one of the pieces
21 of service literature for the brakes, but I
22 can't give you specific date when it was.

23 BY MR. VONA:

24 Q. Okay. Do you recall what that said?

25 A. I think it was basically outlining what

1 OSHA said about not dispersing dust and things
2 like that.

3 Q. But you have no idea when this
4 occurred?

5 A. No. I don't remember specifically, but
6 it was probably in the mid '80s. Something like
7 that.

8 Q. Okay. That's fine. Let me move on
9 to --

10 A. I think -- if I could add to that.

11 Q. Go ahead.

12 A. I think OSHA put out a set of rules or
13 recommendations or whatever they were about
14 doing this specific job, and I think we sort of
15 followed those recommendations at the time that
16 you contain the dust around the brake or clutch
17 and those types of things to ensure it from
18 blowing around. That's the best of my
19 knowledge.

20 Q. Is it your recollection that this was
21 put into some sort of written form?

22 A. I believe it was.

23 Q. Would that have been dispersed with the
24 asbestos containing friction materials that
25 Eaton was selling?

1 A. I don't remember that it ever was
2 dispersed with the brakes, per se, but it was
3 probably included in training programs, and
4 there was a government -- US federal government
5 brake mechanic certification program. I don't
6 know if you've ever looked at that or not.

7 Q. I'm not sure.

8 A. That was implemented probably in the
9 early '80s, I think.

10 Q. Okay. But those training programs were
11 for Eaton employees, correct?

12 A. No, no, for mechanics that worked in
13 the field; fleet mechanics and things like that.
14 So they -- a dealer or a fleet could certify by
15 having the technician take a test as far as
16 working on brakes. That's -- to my recollection
17 there was a program like that.

18 MR. VONA: Okay.

19 (Whereupon, Hobbie Exhibit 30, a
20 document concerning part of the American
21 Trucking Association tag group, was then
22 received and marked for identification.)

23 BY MR. VONA:

24 Q. Let me show you Hobbie Number 30. Take
25 a look at it. Let me know if you're familiar

1 with this document at all.

2 A. I've seen it before.

3 Q. Okay. In what context? Do you know?

4 A. Just when I was reviewing documents. I
5 know I saw it then. Whether I ever saw it
6 before that, although I'm familiar it's part of
7 the American Trucking Association tag group,
8 which was a committee made up of fleet operators
9 and engineers that participated together to
10 review different standards and develop new
11 standards.

12 Q. Would any manufacturers be present at
13 this --

14 A. Yes.

15 Q. -- type of meeting?

16 A. Yes.

17 Q. Do you know if --

18 MR. PETTICORD: Let him finish the
19 question before you jump him.

20 THE WITNESS: Sorry.

21 BY MR. VONA:

22 Q. Do you know if, do you know if an Eaton
23 representative would have been present at this
24 meeting?

25 A. Possibly.

1 Q. Okay.

2 MR. PETTICORD: By meeting, you're
3 talking about the July 19th --

4 BY MR. VONA:

5 Q. Yeah, this particular, this particular
6 meeting.

7 A. I'd say possibly. I don't know that
8 for sure, no.

9 Q. But again, we've confirmed that at
10 least by 1977, Eaton had employees who were
11 members of the ATA, correct?

12 A. Yes.

13 Q. Okay. And there's -- what's the title
14 of this document?

15 A. ATA Technical Advisory Group Asbestos
16 in the Workplace.

17 Q. Okay. Do you know who wrote this?

18 MR. PETTICORD: Individually or --

19 MR. VONA: Yeah, yeah.

20 THE WITNESS: Other than it's signed by
21 RE Nelson, manager of technical services, Abex
22 Corporation. He may have been the secretary of
23 the group. Something like that, for all I know.
24 I would say that --

25 MR. PETTICORD: If you know. If you

1 don't know --

2 THE WITNESS: I don't know, but you
3 know --

4 MR. PETTICORD: If you don't know, you
5 don't know.

6 BY MR. VONA:

7 Q. So at least it's signed by somebody
8 from Abex, correct?

9 A. Right.

10 Q. Okay. And I'm just going to go to
11 specific portions and try to speed this up a
12 little bit. On the first page, second
13 paragraph, okay, it reads "the first fact is
14 that asbestos has been identified and is -- is a
15 known carcinogenic substance. By definition, a
16 carcinogen is a substance or agent producing or
17 inciting cancer."

18 Okay. Would you agree with me by 1977,
19 that Eaton was aware or should have been aware
20 that asbestos was a carcinogen that caused
21 cancer?

22 MR. PETTICORD: Objection. I think we
23 will agree that Eaton had this document within
24 its document collection when these documents
25 were selected and when they were reviewed by

1 your colleagues, but I don't think you have laid
2 a foundation for him to answer that question.

3 MR. VONA: Well, he can answer it if he
4 can.

5 MR. PETTICORD: He sure can, he sure
6 can.

7 THE WITNESS: I don't know, I don't
8 know that Eaton had necessarily accepted that
9 fact at that particular time.

10 BY MR. VONA:

11 Q. Well, okay. Whether or not they had
12 accepted that as truth, they should have been
13 aware that the statements were being made,
14 right?

15 A. Probably, yes.

16 Q. That's fine. Let's take a look at the
17 next page, and about halfway down, where it says
18 "let's get down to some more facts. One of the
19 more common diseases is asbestosis which is
20 caused from inhaling asbestos fibers." Okay?

21 Again, with regard to whether or not
22 Eaton accepted it or not, I want to ask you
23 should -- by 1977, should Eaton -- or was Eaton
24 aware or should they have been aware that
25 breathing asbestos fibers could potentially

1 cause asbestosis?

2 MR. PETTICORD: Objection. Go ahead
3 and answer, if you can.

4 THE WITNESS: Eaton probably was aware
5 of it, yeah.

6 BY MR. VONA:

7 Q. And in the next sentence, it says
8 "inhaled asbestos is also associated with the
9 development of malignant tumors in the bronchial
10 system of the lungs, and there is some
11 indications of a form of cancer of the
12 intestinal tract to be related to asbestos."

13 MR. PETTICORD: You actually skipped a
14 sentence, but that's accurate.

15 MR. VONA: Did I? I'm sorry.

16 MR. PETTICORD: That's okay. I don't
17 need it. I'm just letting you know.

18 BY MR. VONA:

19 Q. You're right. But anyway, with regard
20 to that statement, as well, would it be fair to
21 say that by 1977, that Eaton should have been
22 aware or was aware that the breathing of
23 asbestos fibers was associated with the --

24 MR. PETTICORD: Objection.

25 MR. VONA: You've got to let me finish

1 the question, both you guys.

2 MR. PETTICORD: But you're sneaky, and
3 you skipped a word there and I want to make
4 sure --

5 MR. VONA: Let me, let me try it over.

6 MR. PETTICORD: There you go.

7 BY MR. VONA:

8 Q. I'm just trying to speed it up a
9 little. Would you agree by 1977, that Eaton was
10 aware or should have been aware that breathing
11 asbestos was associated with the development of
12 malignant tumors in the lungs, among other
13 areas?

14 MR. PETTICORD: Objection. Go ahead.

15 THE WITNESS: Yeah. Generally, I'd say
16 they were aware of it.

17 BY MR. VONA:

18 Q. Okay. And then flip to the next page.
19 And are you on 758?

20 A. Uh-huh, yes.

21 Q. The first full paragraph, you know,
22 let's just skip it. I can cover that later.
23 All right. On 761, okay?

24 A. Got it.

25 Q. All right. The last full paragraph,

1 what does all this mean?

2 MR. PETTICORD: The beginning of the
3 last paragraph. It's not a full paragraph.

4 BY MR. VONA:

5 Q. Yeah. It goes to the next page. "The
6 industry, in general -- I can speak more
7 specifically from my own company, the Abex
8 Corporation, is working on non-asbestos friction
9 materials. Some of these are already available.
10 Sintered metallic linings have been available
11 and in use by a number of industries for quite a
12 few years. These generally are expensive. They
13 have proven to be less cost effective in
14 automotive applications than asbestos."

15 Based on that statement, would you
16 agree with me that at least for certain
17 applications, non-asbestos linings were
18 available prior to 1977?

19 A. Yes.

20 Q. Okay. And would you also agree with me
21 that they were generally more expensive?

22 MR. PETTICORD: Objection. I think he
23 already testified to this --

24 THE WITNESS: Yeah.

25 MR. PETTICORD: -- in some detail.

1 THE WITNESS: I can answer if you want.

2 BY MR. VONA:

3 Q. Sure, go ahead.

4 A. They were more expensive initial cost
5 and also operating cost.

6 Q. Okay. And --

7 A. And basically did not perform to what
8 would be necessarily acceptable practices for
9 over-the-road trucks.

10 Q. Okay.

11 A. And I can give you the reason for it.

12 Q. That's not necessary. How about -- and
13 I apologize for jumping around on you a little
14 bit. If you can go back to 758, and let me know
15 when you're there.

16 A. Got it.

17 Q. All right. And where -- the first full
18 paragraph, the last sentence, it starts "there
19 is no reason to believe." Let me know when
20 you're there. First full paragraph, last
21 sentence.

22 A. On 58?

23 Q. Yes, sir, 758.

24 MR. PETTICORD: And I will instruct you
25 to read at least the sentence before that. It's

1 the last sentence to reference --

2 BY MR. VONA:

3 Q. Yeah, go ahead and -- if you want to
4 read it. Would you agree with me by 1977, that
5 Eaton or was aware or should have been aware
6 that there was no safe level of asbestos to
7 prevent cancer?

8 MR. PETTICORD: Objection, objection,
9 objection. That's not what it says, and you
10 can't lead him to a sentence in a document and
11 then ask a different question. We've been
12 through this.

13 MR. VONA: I most certainly can ask
14 whatever questions I want. I'm just asking him
15 a general statement after reading that.

16 MR. PETTICORD: You are setting it up
17 by implying to people who do not have this
18 document --

19 BY MR. VONA:

20 Q. Let's put the document aside. Okay.
21 I'm done with that document. I just want to ask
22 you, would you agree with me by 1977, that Eaton
23 was aware or should have been aware that there's
24 no safe level for asbestos for the prevention of
25 cancer?

1 MR. PETTICORD: Objection. Answer if
2 you can.

3 THE WITNESS: I can't answer that. I
4 don't know.

5 BY MR. VONA:

6 Q. You don't know? You have no knowledge?

7 A. No.

8 Q. Fair enough. Did that -- at any point
9 in time did Eaton ever become aware that there
10 was no safe level for the exposure to asbestos
11 for the prevention of cancer?

12 A. Not that I'm aware of.

13 Q. Okay.

14 (Whereupon, Hobbie Exhibit 31, a
15 document received July 20th, 1979, brake
16 division, product engineering, Friction
17 Materials Work Practices Guide, was then
18 received and marked for identification.)

19 BY MR. VONA:

20 Q. Handing you what's been marked as
21 Hobbie Number 31, and are you familiar at all
22 with this document?

23 A. I think I've seen it before, yes.

24 Q. Okay. And there's a stamp on there.
25 It says received July 20th, 1979, brake

1 division, product engineering?

2 A. Right.

3 Q. Do you see that?

4 A. Yes.

5 Q. Would you agree with me that this
6 document was received by Eaton in 1979?

7 A. Yes. They state it there, yes.

8 Q. Actually, this document was created in
9 October of 1978, correct?

10 A. Yes.

11 Q. What's the title of that?

12 A. Friction Materials Work Practices
13 Guide.

14 Q. Okay. And underneath that picture,
15 there's a -- does that indicate who created
16 this?

17 A. I'm assuming. It says Friction
18 Materials Standards Institute, Incorporated.

19 Q. Okay. Also known as the FMSI. Are you
20 familiar with that organization?

21 A. Not, not directly, no. I've heard of
22 them, but I don't know.

23 Q. Do you know if Eaton was ever a member
24 of the FMSI?

25 A. No, I do not.

1 Q. You don't know?

2 A. I don't know.

3 Q. Okay. You can flip to the second page
4 Bates 430. And what's, what's the title of
5 that?

6 A. Use dust collection equipment when
7 machining.

8 Q. Do you know if Eaton ever passed on
9 this information regarding dust collection
10 equipment to any of its customers?

11 A. I think, as I mentioned earlier, there
12 were OSHA standards that basically were put out
13 to the end users in the field that recommended
14 how the dust collection should be handled.

15 Q. Okay. So that would have been done by
16 OSHA, though?

17 A. Yeah. And basically, Eaton could not
18 really dictate what practices a specific shop
19 used, and it was better done by a standards
20 organization like OSHA.

21 Q. Fair, but -- and I won't even ask you
22 would you agree with me. Do you have any
23 personal knowledge whether or not Eaton actually
24 itself promulgated any of this information to
25 any of its customers?

1 A. I don't have any knowledge of that.

2 Q. Okay.

3 MR. PETTICORD: By that, you mean the
4 machine information?

5 MR. VONA: Yeah, yeah.

6 BY MR. VONA:

7 Q. I mean, did they ever pass that on?

8 A. I didn't have any knowledge that they
9 did pass that on to any, any of their customers.

10 Q. Okay. Next page, under asbestos and
11 friction materials, I had asked you before if
12 you knew how much asbestos was in the brake
13 linings that were sold by Eaton. This statement
14 says "most molded friction materials contain
15 about 50 percent asbestos."

16 Would you agree with that statement?

17 MR. PETTICORD: Objection. Would he
18 agree what? That the statement is made?

19 MR. VONA: No, that most friction
20 materials contain about 50 percent asbestos.

21 MR. PETTICORD: Objection. Foundation.

22 THE WITNESS: Best of my knowledge,
23 that varied over a range depending on the
24 friction materials. So yes, 50 percent could be
25 an average, but yes, it could be less than that

1 and maybe more.

2 BY MR. VONA:

3 Q. Do you know the range?

4 A. No, I don't. It could vary all over
5 the place depending on specific friction
6 material -- friction -- coefficient of friction.

7 MR. PETTICORD: You have to keep your
8 voice up so she can hear you, Roger.

9 MR. VONA: Okay. And then down to the
10 third paragraph.

11 MR. PETTICORD: Same page?

12 MR. VONA: Yeah, same page, Dan.

13 BY MR. VONA:

14 Q. It says "breathing excessive quantities
15 of asbestos fiber can cause respiratory disease
16 and cancer."

17 A. Uh-huh.

18 Q. Now, would you agree with me by
19 July 20th, 1979, when this document was received
20 by Eaton, that they should have been aware or
21 were aware that the breathing of asbestos fiber
22 could cause respiratory and cancer?

23 MR. PETTICORD: Objection. Go ahead.

24 THE WITNESS: I'd say that they were
25 aware that there were documents like this

1 stating that, yes.

2 BY MR. VONA:

3 Q. But is it Eaton's position to the
4 contrary?

5 MR. PETTICORD: What to the contrary?

6 MR. VONA: That breathing asbestos
7 fiber does not cause cancer.

8 THE WITNESS: No, not to my knowledge.

9 BY MR. VONA:

10 Q. Do you know what Eaton's position is
11 with regard to that?

12 MR. PETTICORD: As of today or as of
13 the date that it was --

14 MR. VONA: Yeah, as of today, let's
15 say.

16 MR. PETTICORD: Don't answer that.

17 THE WITNESS: No.

18 MR. VONA: Why not?

19 MR. PETTICORD: Because it's not
20 relevant.

21 BY MR. VONA:

22 Q. What about in 19 --

23 MR. PETTICORD: You can ask him, you
24 can ask him in 1979.

25 BY MR. VONA:

1 Q. 1979 what did they believe, if you
2 know?

3 A. I guess I -- my exposure as a
4 supervisor and a manager at that point in time,
5 I guess it was common sense that you didn't go
6 around breathing asbestos because there were a
7 lot of the alarms going on that -- including the
8 OSHA regulations that basically said you
9 shouldn't do that.

10 Q. Okay. Did Eaton ever pass that
11 information on to any of its customers?

12 MR. PETTICORD: Not to breathe
13 asbestos? Is that what you're asking?

14 BY MR. VONA:

15 Q. What he just said.

16 A. Specifically, I don't remember whether
17 they did or not.

18 Q. Next page. Try to speed this up.
19 We're running out of tape. "Do not use an air
20 hose for cleaning."

21 A. Right.

22 Q. And they've got a little picture there.
23 Did Eaton ever pass this information on to any
24 of its customers at any time?

25 A. In picture form, not that I'm aware of.

1 Q. All right. And 434 titled "use vacuum
2 or wet methods for cleaning." How about that?
3 Did Eaton ever pass that information on to any
4 of its customers at any time?

5 A. I think probably as a general practice
6 that those things were talked about in brake
7 training.

8 Q. Okay. We're going to go off the record
9 for a minute and let him change the tape. I'm
10 almost done.

11 MR. PETTICORD: You're not going to
12 make it through, are you?

13 MR. VONA: No. And I have like two
14 more documents to finish after this.

15 THE VIDEOGRAPHER: Counsel agree?

16 MR. PETTICORD: Yeah.

17 THE VIDEOGRAPHER: We are going off the
18 record at 2:19 p.m. Please stand by.

19 (Whereupon, a recess was then taken at
20 2:19 p.m.)

21 (Whereupon, Hobbie Exhibit 32, a letter
22 from Bruce L. Webb, was then received and marked
23 for identification.)

24 (Whereupon, Hobbie Exhibit 33, an
25 interoffice correspondence, July 1980, subject

1 matter, asbestos brake lining, was then received
2 and marked for identification.)

3 (Whereupon, the proceedings resumed at
4 2:25 p.m.)

5 THE VIDEOGRAPHER: Please stand by.
6 This is beginning of tape number four. This is
7 the beginning of tape number four in the
8 deposition of Mr. Roger Hobbie. We are back on
9 the record at 2:25 p.m. Please proceed.

10 BY MR. VONA:

11 Q. Good afternoon, Mr. Hobbie. We're
12 getting there. I promise you. If we -- we were
13 just discussing this FMSI document received by
14 Eaton in July of 1979. If you could turn to 435
15 Bates number, and under handling new friction
16 materials, that first paragraph, the second full
17 sentence there where it says "if the parts."

18 MR. PETTICORD: Let -- go ahead and
19 read it.

20 MR. VONA: I was going to let him read
21 it.

22 MR. PETTICORD: He was reading it while
23 you were asking.

24 THE WITNESS: Okay.

25 BY MR. VONA:

1 Q. Okay. And this statement, "if the
2 parts are purchased in bulk quantities, abrasion
3 during shipment may result in the accumulation
4 of dust in shipping containers."

5 First of all, do you agree with that
6 statement?

7 A. Sure. That could be rubbing --

8 Q. So would that be the release of
9 asbestos-containing dust?

10 A. Yes.

11 Q. All right.

12 MR. PETTICORD: Keep your voice up.

13 THE WITNESS: Yes.

14 MR. PETTICORD: Thank you.

15 BY MR. VONA:

16 Q. Next page, sir. Okay. And that says
17 "do not sweep in work area, use vacuum method."

18 Okay. I forgot to ask you this before,
19 but in your own personal experience, have you
20 ever observed a brake mechanic sweep up a shop?

21 A. Sure.

22 Q. Okay. And would this go back to the
23 time you were a young man?

24 A. Sure.

25 Q. Okay. So way prior to 1980, right?

1 A. Uh-huh.

2 Q. Would it be fair to say, though, by
3 1979, that Eaton should have been aware or was
4 aware that some mechanics would sweep up their
5 work areas?

6 A. Yes, I'd say so, sure.

7 Q. All right. If not earlier?

8 A. Right.

9 Q. The next page "other methods of
10 minimizing dust exposure."

11 Do you see that?

12 A. Yes.

13 MR. PETTICORD: We're on 437.

14 MR. VONA: Yes.

15 BY MR. VONA:

16 Q. Then it states under there "whenever
17 possible, machining and repair operations should
18 be isolated from other work areas in a
19 restricted area to prevent unnecessary exposure
20 of other workers."

21 Now, would you agree with that
22 statement?

23 A. Yeah, it would be general good practice
24 to do that.

25 Q. To avoid exposing other workers to

1 asbestos?

2 A. To any dust.

3 Q. Okay. In -- well -- and would it be
4 fair -- strike that.

5 Would you agree with me that by 1979,
6 that Eaton was aware or should have been aware
7 that brake repair could cause exposure to other
8 workers working in the area? And I mean by
9 exposure, exposure to asbestos.

10 A. If practices were being used that
11 dispersed this dust over, over a wide area, work
12 area, then sure, you know, I guess -- if we
13 were, if we were putting on a training class in
14 a shop and saw them doing that, we would
15 recommend them not doing that obviously, but
16 again, we weren't there to implement work rules
17 in somebody else's shop either.

18 Q. So this is something they were trying
19 to prevent?

20 MR. PETTICORD: Who was trying to
21 prevent?

22 THE WITNESS: Sure.

23 BY MR. VONA:

24 Q. FMSI.

25 A. Right. Yeah. This was a document that

1 tried to convey that over a wider area.

2 Q. Do you know if Eaton ever passed this
3 type of information on to any of its end
4 customers?

5 A. I don't -- I'm not aware of this
6 specifically, no.

7 Q. Okay. I'm done with this document. I
8 want to show you what's been marked as Hobbie
9 32.

10 MR. PETTICORD: I'll object to this
11 document.

12 MR. VONA: On what basis?

13 MR. PETTICORD: Because it's not
14 relevant to the case. It has to do with
15 manufacturing facilities.

16 MR. VONA: But it discusses asbestos.

17 MR. PETTICORD: That's my objection.

18 MR. VONA: That's fine.

19 BY MR. VONA:

20 Q. Let me know when you're all set there.
21 Just so you know, I'm only concerned with the
22 first page.

23 A. Okay.

24 MR. PETTICORD: He's probably only
25 concerned with eighth sentence starting on the

1 eighth line of the second full paragraph.

2 MR. VONA: Do you want me to ask my
3 questions?

4 MR. PETTICORD: Sure.

5 BY MR. VONA:

6 Q. First of all, and I know Dan
7 stipulated, but it's fair to state that this is
8 a document that was provided by you, correct?

9 THE WITNESS: Yes.

10 MR. PETTICORD: It was -- this was a
11 document from our document collection.

12 BY MR. VONA:

13 Q. And who's this, who's this letter from?

14 A. Bruce L. Webb, manager of employees --

15 MR. PETTICORD: Listen to his question.

16 THE WITNESS: It's from the United
17 Steel Workers of America.

18 BY MR. VONA:

19 Q. Did that organization have any
20 relationship with Eaton?

21 A. Yeah, they were a -- one of the plants
22 had them as their union representation, I
23 believe.

24 Q. So they were union for some of the
25 Eaton employees?

1 A. Yes.

2 Q. And this is dated July 25th, 1979,
3 correct?

4 A. Yes.

5 Q. And you started to allude to it that
6 it's addressed to --

7 A. Bruce Webb, manager of employee
8 relations at the brake division plant in
9 Gallatin, Tennessee.

10 Q. Do you, do you have any personal
11 knowledge regarding this document?

12 A. No, I don't. I may have seen it
13 before, but I basically may have read it or
14 reviewed it, but at the time I didn't have any.

15 Q. All right. That's fair. The sentence
16 I'm concerned with obviously, as Dan was
17 pointing out, starts with "as you know."

18 "As you know, there is no safe level
19 for a carcinogen, although the lower the level,
20 the lower the risk."

21 Okay. And with that statement, I'd
22 like to ask you, would it be fair to state by
23 July 25th, 1979, that Eaton was aware or should
24 have been aware that there's no safe level for
25 exposure to asbestos as a carcinogen?

1 MR. PETTICORD: Objection. You can
2 give him the same answer again if you choose.

3 MR. VONA: Or a different one if you
4 choose.

5 MR. PETTICORD: Or a different one if
6 you choose. That's a fair qualification. I
7 won't take that --

8 THE WITNESS: I have to say I don't
9 really know.

10 BY MR. VONA:

11 Q. Okay. Well, the document speaks for
12 itself, does it not?

13 A. Yes. It's a statement. It's just like
14 talking about global warming.

15 Q. Fair enough. Number 33 -- Hobbie 33.

16 MR. PETTICORD: July 28th, this one.

17 MR. VONA: You got it.

18 BY MR. VONA:

19 Q. Okay. Now, we are getting there. I
20 keep saying that. I know. The first page of
21 this document, interoffice correspondence,
22 July 1980, correct?

23 A. Correct.

24 Q. Subject matter, asbestos brake lining?

25 A. Right.

1 Q. And in -- it starts off, it says
2 "attached is a bulletin from OSHA and NIOSH
3 which spells out the problems that stem from
4 asbestos fibers in a working environment."

5 Correct?

6 A. Correct.

7 Q. Now, the attached bulletin -- strike
8 that.

9 Turn to the next page. And actually, I
10 want to go to 568. All right. Do you recognize
11 this document at all?

12 A. I've probably seen it, yes. I've seen
13 it before.

14 MR. PETTICORD: By this document, at
15 this point we're talking about only 8568, right?

16 MR. VONA: Well, and the accompanying
17 pages that go with it.

18 MR. PETTICORD: The whole package.

19 MR. VONA: Yes.

20 MR. PETTICORD: I got it, I got it.
21 I'm sorry.

22 MR. VONA: That's all right.

23 BY MR. VONA:

24 Q. Do you know what this document
25 discusses, sir?

1 A. I think it was basically announcing
2 OSHA's bulletin on dealing with asbestos in the
3 workplace --

4 Q. Okay.

5 A. -- and their recommendations.

6 Q. All right. And this is dated when?

7 A. April 17th, 1980.

8 Q. Okay. And this probably will help out.
9 It says "remarks by NIOSH director, Anthony
10 Robbins on the need for a new asbestos
11 standard."

12 So they're discussing a new --
13 potentially a new asbestos standard in 1980,
14 correct?

15 A. Yes.

16 Q. And would you agree with me this is a
17 document that Eaton had in its possession?

18 A. Yes.

19 Q. Do you know when Eaton would have
20 obtained -- do you know when Eaton would have
21 obtained this?

22 A. The document?

23 MR. PETTICORD: By that, by that, we're
24 talking about the NIOSH press release, correct?

25 MR. VONA: Yup.

1 THE WITNESS: Well, the only thing I
2 know is the cover letter that was received by
3 Jim Pruneski on July 25th, it looks like 1958.

4 MR. PETTICORD: What?

5 THE WITNESS: No. Excuse me.

6 MR. PETTICORD: 1958?

7 THE WITNESS: That's not correct.

8 Strike that.

9 BY MR. VONA:

10 Q. Are you talking about the first page of
11 the exhibit?

12 A. Yeah, the --

13 Q. July 28th, 1980.

14 A. Is it '80?

15 MR. PETTICORD: Are you having trouble
16 seeing?

17 THE WITNESS: Yeah, my copy is --

18 MR. PETTICORD: No, no. Stop for a
19 second.

20 THE WITNESS: No, no. It's all
21 blurred. It's just a bad copy.

22 MR. PETTICORD: I apologize. He's
23 talking about this cover page, not -- he's
24 talking about 8565. That's July 28th, 1980.
25 You're looking at --

1 BY MR. VONA:

2 Q. We'll get to the other in a minute.

3 A. Okay. That's fine.

4 Q. Would you agree with me then that Eaton
5 had this document in its possession July 28th,
6 1980?

7 A. Yes.

8 Q. All right. Do you know who Richard
9 Lemen is?

10 A. No, I don't.

11 Q. Okay. And on the first page -- let me
12 know --

13 MR. PETTICORD: Back to 8568?

14 MR. VONA: Yup, 8568, back on there.

15 BY MR. VONA:

16 Q. If we could go down to the second full
17 paragraph where it says "we are here to announce
18 the findings of a joint NIOSH/OSHA work group
19 that has reviewed recent scientific information
20 about the health effects of asbestos. The group
21 reconfirmed that there's no safe exposure limit
22 for asbestos, and all commercial and several
23 non-commercial forms of asbestos cause disease."

24 Would you agree with those statements,
25 sir, as of 1980?

1 MR. PETTICORD: That they are true as
2 of 1980?

3 MR. VONA: Yeah.

4 MR. PETTICORD: Objection. Go ahead.

5 THE WITNESS: I'd agree if that's what
6 OSHA said. I have no -- other than what they
7 said, I don't know any of the data that used to
8 come to that conclusion.

9 BY MR. VONA:

10 Q. Sure. Well, would it be fair to say
11 that when Eaton received this document in July
12 of 1980, at least that they should have been
13 aware that OSHA and NIOSH were discussing the
14 fact that, in their opinion, there was no safe
15 exposure level -- or exposure limit for
16 asbestos?

17 A. Yes.

18 Q. And also, that all forms of asbestos
19 could cause disease?

20 A. Yes.

21 Q. Okay. And next page, we're looking
22 at -- this should be 569, and second paragraph
23 from the bottom. Let me know when you're there,
24 and I'm going to read it.

25 A. I'm there.

1 MR. PETTICORD: The last full
2 paragraph?

3 BY MR. VONA:

4 Q. Yes. And I'll probably screw this up a
5 little. This is a bad word for me. "Asbestos
6 is ubiquitous, and its effects measured in
7 disease and death are staggering. Asbestos
8 causes a very serious form of lung fibrosis
9 known as asbestos."

10 MR. PETTICORD: Asbestosis.

11 MR. VONA: Asbestosis. Thank you, Dan.
12 I told you I'd screw it up.

13 BY MR. VONA:

14 Q. Would you agree with me then by July of
15 1980, that Eaton should have been aware or was
16 aware that OSHA and NIOSH were discussing the
17 relationship between asbestos exposure and
18 asbestosis?

19 A. Yes.

20 Q. All right. And then the next sentence,
21 "it also causes lung cancer and mesothelioma, a
22 cancer of the membrane that lines the chest and
23 abdominal cavities."

24 And the same question, and I have to
25 get it out, so bear with me. Would you agree

1 with me by 1980, that Eaton was aware or should
2 have been aware that OSHA and NIOSH were
3 discussing the potential link between asbestos
4 exposure and lung cancer and mesothelioma?

5 A. Yes.

6 Q. Okay. And in fact, would you agree
7 with me that they actually describe what
8 mesothelioma is?

9 A. Yes.

10 Q. And then on the next page -- actually,
11 you can skip that. All right. Flip it all the
12 way back to the front, and we'll try and stay
13 organized. If you could, turn to the second
14 page. Okay. And I'll ask you if you're
15 familiar with this document at all.

16 A. Yes, I've seen it before.

17 Q. Okay. Good. And who's this document
18 from?

19 A. It's from John J. Brown, account
20 manager, original equipment sales, I assume, for
21 Abex.

22 Q. Why do you assume that?

23 A. Well, it's on Abex letterhead.

24 Q. Okay. Fair enough. And who's it to?

25 A. Jim Pruneski, Eaton Corporation, brake

1 division.

2 Q. When's it dated?

3 A. May 16th, 1980.

4 Q. All right. So -- and it says "dear
5 Jim" -- it's very short -- "attached is an
6 article from the Friction Material Institute,
7 FMSI, regarding asbestos fiber in the working
8 place. Thought this might be of interest to
9 you."

10 And if you could turn to the next page,
11 would you, would you agree with me that this is
12 the document that that letter refers to?

13 A. Yes.

14 MR. PETTICORD: 8567?

15 MR. VONA: Yes, sir.

16 MR. PETTICORD: Objection. Go ahead.

17 MR. VONA: All right.

18 THE WITNESS: It appears to be, yes.

19 BY MR. VONA:

20 Q. Okay. And this is -- at the top it
21 says, Friction Material Standard Institute,
22 correct?

23 A. Yes.

24 Q. And it's dated April 23, 1980?

25 A. Yes.

1 Q. And the title is NIOSH/OSHA
2 Recommendations Concerning Workplace Exposure to
3 Asbestos.

4 A. Yes.

5 Q. And the first paragraph, it says "in a
6 press conference held April 17th, 1980, some
7 expected recommendations were announced to the
8 media by a joint working group on individuals
9 from NIOSH and OSHA."

10 They're referring to the document we
11 just looked at, correct?

12 A. Yes.

13 Q. Okay. And scan down to the fourth
14 paragraph where it says "among the items
15 stated."

16 A. Okay.

17 Q. "Among the items stated in this press
18 release of importance are there's no safe
19 exposure level limit for asbestos. All
20 commercial and several non-commercial forms of
21 asbestos cause disease."

22 So would it be fair to state that in
23 1980, Eaton received -- strike that.

24 Would it be fair to say that in April
25 of 1980, Eaton received a second time

1 information discussing the fact that there's no
2 safe exposure level for asbestos?

3 MR. PETTICORD: No. Objection. I
4 think we can -- we'll stipulate to the April of
5 1980 Eaton received -- these two documents,
6 whether they came at the same time or at
7 different times, given the way this is all put
8 together, I don't know.

9 BY MR. VONA:

10 Q. Well, the first cover letter attaching
11 the form we discussed, the actual report, is
12 from July of 1980, is it not?

13 MR. PETTICORD: There's a letter --

14 MR. VONA: Just let me ask him that,
15 Dan. I mean, it's two different occasions.

16 MR. PETTICORD: No, it's not. One is
17 an -- and that's -- one is the interoffice
18 correspondence, July 28th, 1980, and one is a
19 document from someone at Abex to Pruneski.

20 BY MR. VONA:

21 Q. Would it be fair to say that, that
22 Eaton received information in 1980 regarding no
23 safe level of exposures to asbestos and that all
24 forms of asbestos caused disease in two
25 different documents?

1 A. Yes.

2 MR. PETTICORD: That's fair.

3 MR. VONA: That's fair. I'm all set
4 with that one.

5 (Whereupon, Hobbie Exhibit 34, a
6 document concerning a training program regarding
7 asbestos, was then received and marked for
8 identification.)

9 MR. PETTICORD: I'm very hopeful that
10 your questions are going to be very small about
11 this because --

12 BY MR. VONA:

13 Q. Let me show you what's been marked as
14 34 -- Hobbie 34. And actually, I'd asked you
15 earlier, and you said to the best of your
16 knowledge, there was no program prior to '86.
17 Does this help you out with that?

18 MR. PETTICORD: Whoa, whoa, whoa.

19 MR. VONA: Well, let me --

20 MR. PETTICORD: What program? That's
21 all I'm asking.

22 BY MR. VONA:

23 Q. Okay. Training program regarding
24 asbestos.

25 A. Yeah. This is, this is a plant program

1 which I wouldn't have been directly related to
2 in my, in my job.

3 Q. And that's perfectly acceptable, but
4 in -- and I'm not accusing you of lying in any
5 way.

6 A. No, no.

7 Q. If you don't know, you don't know, but
8 I'm just trying to -- would it be fair to say
9 that Eaton had a training program concerning
10 asbestos in 1983?

11 A. Looks like it, yes.

12 Q. Okay. And under -- on the cover page
13 there on 644, as part of the outline under Roman
14 numeral four, health effects, it says "potential
15 health consequences from asbestosis, lung cancer
16 and mesothelioma."

17 Would it be fair to say that on
18 December 10th, 1983, that Eaton is making a
19 recognition that there's potential health
20 consequences regarding those diseases?

21 A. I would say yes, and it looks like they
22 were regurgitating the information that was
23 presented to them from the authorities.

24 Q. But you'd agree with me that it's
25 actually different in that it's not something

1 that Eaton received, it's something that Eaton
2 is saying, correct?

3 A. Yes. Well --

4 Q. It's on their program.

5 MR. PETTICORD: No, it's not.

6 MR. VONA: Well --

7 MR. PETTICORD: This is not an Eaton
8 document.

9 MR. VONA: It's not?

10 MR. PETTICORD: No. Look at the
11 bottom. Look in the corner. See the little,
12 the little beaker?

13 BY MR. VONA:

14 Q. Okay. Do you know who Resource
15 Consultants are?

16 A. No.

17 Q. Okay. You have no idea who they'd be?

18 A. No.

19 Q. Okay. But again, at the top of the
20 document, what's the title of it?

21 A. It's for Training Program Outline,
22 Eaton Corporation, Gallatin, Tennessee.

23 Q. Did Eaton regularly conduct training
24 programs for their employees?

25 A. Yes, I'd say so.

1 Q. As such, would this type of document be
2 something that would be passed out to employees?

3 A. Probably.

4 Q. Okay. Would Eaton pass out anything
5 that they didn't approve to their employees?

6 A. I'd say no.

7 Q. Okay.

8 A. Not deliberately.

9 MR. PETTICORD: That would be the Fifth
10 Amendment question right there.

11 BY MR. VONA:

12 Q. If you could, let's go through this on
13 650, it's the second to last page.

14 MR. VONA: Is that what you're
15 referring to, Dan?

16 MR. PETTICORD: I just -- I'm not
17 trying to be funny, but we're not going to go
18 through the CFR in any great detail.

19 MR. VONA: I don't know what that is.

20 MR. PETTICORD: This attachment.

21 MR. VONA: No, no, no.

22 MR. PETTICORD: That's what I was
23 talking about.

24 MR. VONA: The OSHA stuff. No, I'm not
25 going to go through that.

1 BY MR. VONA:

2 Q. Are you there on 650?

3 A. Yes.

4 Q. And what is -- it says "item three,
5 table ten." What's the title of that table?

6 A. Estimated Asbestos-Related Cancer
7 Mortality from a One-Year Exposure to Various
8 Fiber Concentrations.

9 Q. Okay. And right below that, it says
10 "Cancer Mortality Slash One Hundred Thousand
11 Exposed." And it lists some types of cancer.
12 Do you see that?

13 A. Yes.

14 Q. Okay. And with regard to -- I want to
15 ask you about mesothelioma. Under the chart age
16 at first exposure, twenty, can you tell me the
17 estimated number of mesotheliomas that it
18 states --

19 MR. PETTICORD: Objection.

20 MR. VONA: -- from .1 fiber cc.

21 MR. PETTICORD: Objection. You're
22 asking him to regurgitate what's reported on
23 this table? Is that your question?

24 MR. VONA: Yes.

25 MR. PETTICORD: He can read what's on

1 the table.

2 THE WITNESS: 9.5.

3 BY MR. VONA:

4 Q. Okay. And same question for 2.0 fibers
5 per cc.

6 A. 188.7.

7 Q. Okay. 188.7 mesotheliomas per one
8 hundred thousand?

9 A. Yes.

10 Q. Okay. And do you have any reason to
11 believe that this document was not passed out to
12 Eaton employees?

13 MR. PETTICORD: Objection. Go ahead.

14 THE WITNESS: Do you know what -- I
15 don't know.

16 BY MR. VONA:

17 Q. All right. Would you agree with me
18 that in 1983, that Eaton had in its possession
19 this document outlining these numbers?

20 MR. PETTICORD: Which document are you
21 referring to?

22 MR. VONA: The same chart.

23 MR. PETTICORD: Table ten?

24 MR. VONA: Yeah.

25 MR. PETTICORD: Okay.

1 THE WITNESS: It appears that they did.

2 BY MR. VONA:

3 Q. And same questions -- and I won't get
4 into details on it -- but for table eleven, the
5 next page.

6 MR. PETTICORD: EAB 018651?

7 MR. VONA: 651, yes, sir.

8 BY MR. VONA:

9 Q. Would you agree with me that Eaton had
10 these numbers in its possession; correct, this
11 table?

12 A. It appears they did.

13 Q. Good.

14 MR. VONA: All right.

15 MR. PETTICORD: I think we're done with
16 that.

17 MR. VONA: Yeah, I think we're all set
18 with that. Let me just check my outline. Okay.

19 BY MR. VONA:

20 Q. Sir, would you agree with me based on
21 your prior testimony, that Eaton never provided
22 any warnings with its brakes concerning the
23 potential health hazards of asbestos?

24 MR. PETTICORD: Objection. Go ahead
25 and answer that.

1 THE WITNESS: I'd say yes, I don't
2 believe they ever did specifically.

3 BY MR. VONA:

4 Q. Okay. Thank you. Did there come a
5 time when Eaton became aware of the hazards of
6 asbestos to your knowledge?

7 A. Yes. I'd say over this period of time
8 when different research was presented to them
9 and, and as the whole industry was --

10 Q. Okay.

11 A. -- became aware about it.

12 Q. You say the whole industry. Are you
13 referring to the friction industry?

14 A. I'd say the friction industry, the
15 trucking industry, the truck components
16 manufacturing industry.

17 Q. Can you put any kind of time frame on
18 that for me? I mean, I know you probably
19 couldn't give me a specific year, but --

20 A. I'd say mid '70s to mid '80s. It was
21 probably a growing issue through that point in
22 time.

23 Q. Okay. So as early as the mid '70s
24 potential health hazards of asbestos would have
25 been aware?

1 A. Sure, an awareness --

2 Q. That was a bad question.

3 A. A low level of awareness probably.

4 Q. Let me, let me try to fix that. Would
5 you, would you agree with me then that, that
6 Eaton, as a member of the industry, would have
7 been aware of the potential health hazards of
8 asbestos sometime in the mid '70s?

9 MR. BURCH: Objection.

10 THE WITNESS: I'd say at a low level,
11 yes, as a developing issue.

12 BY MR. VONA:

13 Q. Do you know what it actually, what it
14 actually learned?

15 MR. PETTICORD: In the '70s?

16 MR. VONA: Yeah.

17 BY MR. VONA:

18 Q. Other than what you told me about OSHA.

19 A. I don't know. I do not know that they
20 learned anything specifically other than what
21 printed material of these research programs were
22 presented at that -- starting at that time.

23 Q. Okay. Do you have any personal
24 knowledge why Eaton never included warnings with
25 its asbestos-containing brake materials?

1 MR. PETTICORD: Objection. That's not
2 what he testified to. Go ahead and answer.

3 THE WITNESS: As to why?

4 BY MR. VONA:

5 Q. Yeah.

6 A. I guess -- I don't know. It probably
7 wasn't something that really was relevant at the
8 time.

9 Q. What's --

10 A. It wasn't considered relevant
11 necessarily.

12 Q. To who?

13 A. To, to anyone. As far as putting --
14 there weren't any, any systems in place to put,
15 oh, material warnings and what have you on
16 different things like that.

17 Q. You mean actually put a warning on the
18 brake itself? Is that what you're talking
19 about?

20 A. Yeah, or warnings on anything relating
21 to that, because it wasn't -- necessarily wasn't
22 proven to the industry, I guess.

23 Q. Okay. But would you agree with me you
24 just stated that in the mid '70s at least the
25 industry was somewhat aware of that?

1 A. Starting to become aware of, yes.

2 Q. Well, would it have been possible for
3 Eaton to put that into a printed format and
4 distribute it to their customers in the mid
5 1970s?

6 A. It would have been possible, but I
7 guess there may have been objection at the truck
8 manufacturers if something arrived with a label
9 on that -- on to the assembly floor as to now
10 okay, now what do we do with it.

11 Q. Sir, do you know if any of the brake
12 linings that Eaton purchased ever came with
13 warnings?

14 A. Not that I'm aware of.

15 Q. Okay. Let me go back to the 1986
16 training program document.

17 MR. PETTICORD: The research
18 consultant?

19 MR. VONA: I don't have my -- yeah, the
20 '86 one, not the one that we just went through.

21 MR. LEONHARDT: That's 28.

22 MR. PETTICORD: It's right in front of
23 me. This one.

24 BY MR. VONA:

25 Q. It's pretty --

1 A. I set it aside because you were coming
2 back to it.

3 Q. We set it too far aside. All right.
4 Just going back to -- I'm sorry, what number is
5 that?

6 A. 28.

7 Q. Hobbie 28. If you could go to 702
8 Bates number. It's towards the end.

9 A. Got it.

10 Q. Okay. And under the heading
11 asbestos-containing materials used in
12 manufacture -- do you see that?

13 A. Yes.

14 Q. It says "certain types of brake linings
15 used in this facility to manufacture brake shoes
16 contained asbestos. The containers in which
17 these brake linings are received from suppliers
18 have asbestos warning labels affixed."

19 Does that help you out at all with
20 regard to whether or not any of these --

21 A. They must have, yes.

22 Q. Okay. So you have no reason to
23 disagree with that statement?

24 A. No, I wouldn't disagree with it.

25 Q. So at least you'd agree with me by 1986

1 suppliers were sending brake linings that had
2 asbestos warnings on it?

3 A. It looks like it, yes.

4 Q. Do you have any reason -- strike that.

5 Do you know if they were on any earlier
6 than that?

7 A. I don't know.

8 MR. VONA: Okay. Of course I do.

9 (Whereupon, Hobbie Exhibit 35, a
10 portion of the answers to interrogatories
11 propounded by defendant Abex in this case for
12 Eighth Judicial District Asbestos Litigation,
13 was then received and marked for
14 identification.)

15 BY MR. VONA:

16 Q. Let me show you -- what was it? 35?

17 A. 35.

18 Q. Hobbie 35. And I'm going to go ahead
19 and say that you probably aren't familiar with
20 this document, but I'll ask you. Are you?

21 MR. PETTICORD: Okay. I'll object to
22 that insofar as it's a piece of a larger
23 document filed in this case, but with that
24 understanding, go ahead and -- go ahead.

25 THE WITNESS: Yeah, I don't think I've

1 seen it before.

2 BY MR. VONA:

3 Q. Okay. And I'll represent to you that
4 this is a portion of the answers to
5 interrogatories propounded by defendant Abex in
6 this case for Eighth Judicial District Asbestos
7 Litigation, okay, where this case is filed. All
8 right.

9 And if you could just turn -- and these
10 were received in the county clerk's office
11 May 15th, 2007. If you could just turn to the
12 next page and the first full paragraph, "subject
13 to." It says "and subject to and without
14 waiving these objections and insofar as Abex
15 understands this interrogatory, in the mid 1970s
16 and perhaps earlier, Abex commenced the
17 placement of warning labels on its
18 asbestos-containing automotive friction
19 products. This label reads as follows: And
20 then you have caution, contains asbestos fibers,
21 avoid creating dust, creating asbestos dust may
22 cause serious bodily harm. Abex does not
23 believe the wording of this warning was ever
24 changed, and to the best of current and
25 reasonably available information and belief, the

1 warning labels were affixed to automotive
2 friction packages.

3 MR. PETTICORD: Product packages. And
4 I will object again because we don't have the
5 interrogatory and based on it's a partial
6 answer. Go ahead.

7 BY MR. VONA:

8 Q. I know. Well, with that being said,
9 first of all, Abex was a major supplier of
10 asbestos-containing linings to Eaton between
11 1980 and 1990, correct?

12 MR. BURCH: Objection.

13 THE WITNESS: Yes.

14 BY MR. VONA:

15 Q. And do you have any reason to dispute
16 what Abex is claiming here in their answers to
17 interrogatories?

18 A. No.

19 Q. Looking at this, does this refresh your
20 recollection at all -- did you ever see any
21 warnings like this from Abex while you were at
22 Eaton?

23 A. No, I can't say that I have. And what
24 I'm assuming here is that this warning was
25 probably on the package as the linings were

1 shipped in the factory, into the plant for
2 assembly. That's what I'm assuming.

3 So I wouldn't have necessarily had the
4 opportunity to see that as such because my
5 exposure to the linings would be after they were
6 put on the shoes --

7 Q. And they're --

8 A. -- and assembly.

9 Q. Sort of in a finished state?

10 A. Yeah, right.

11 Q. How did the linings come to the Eaton
12 facilities from their -- from the distributors?

13 MR. PETTICORD: At what time?

14 MR. VONA: Between 1980 and 1990.

15 THE WITNESS: You know, I guess I can
16 just answer that from the recollection I have,
17 that they probably were in boxes on pallets.

18 MR. VONA: Okay. Let me --

19 (Whereupon, Hobbie Exhibit 36, a
20 portion of a deposition of Ronald Creamer, was
21 then received and marked for identification.)

22 BY MR. VONA:

23 Q. Showing you what's been marked as
24 Hobbie Number 36, and I'll represent to you that
25 this is a portion of a deposition that was taken

1 in the same case that you testified in by a
2 different corporate representative. Okay. And
3 his name is Ronald Creamer. Do you know
4 Mr. Creamer at all?

5 A. No.

6 Q. All right. Fair enough. And --

7 MR. PETTICORD: I -- we have the same
8 foundational objections to this document as we
9 did before.

10 MR. VONA: That's fine.

11 BY MR. VONA:

12 Q. I just want to read a portion of his
13 testimony, if I may. And it would start on this
14 page forty-three, line twenty-two. Let me know
15 when you're there.

16 A. Got it.

17 Q. "Research has indicated that since
18 1977, answering defendant has included in its
19 containers of asbestos-containing brake lining a
20 statement which has the same or substantially
21 the same form and wording as that attached as
22 Exhibit 5 entitled recommended procedures for
23 reducing asbestos dust during brake servicing."

24 Okay. Did I read that correctly?

25 MR. PETTICORD: Objection. Go ahead.

1 BY MR. VONA:

2 Q. That's correct. Okay. "My question is
3 what research are you referring to to come to
4 the conclusion that it was used in 1977 in every
5 container, because I was there at that point in
6 time, and I recall us putting them in the
7 boxes."

8 Now, before I go any further, I'll
9 represent to you that Mr. Creamer is a corporate
10 representative for Carlisle. Give you some
11 context.

12 MR. PETTICORD: If you want to ask him
13 if he ever saw Exhibit 5 or if he recalls
14 Exhibit 5, then go ahead and ask him that, and
15 I'm not sure reading Creamer's depo does much
16 for this witness's knowledge.

17 BY MR. VONA:

18 Q. No, but I wanted to establish
19 Exhibit 5, and this was Exhibit 5 to the
20 deposition, and I'll let you take a look at it.
21 It was the last page. Why don't you take a look
22 at yours. Sorry.

23 A. It's the last page on this.

24 MR. PETTICORD: It is.

25 BY MR. VONA:

1 Q. There you go.

2 A. This was in the boxes of brake linings.

3 MR. PETTICORD: Well, objection.

4 That's my point is you can't -- and I will
5 instruct you that you should not take knowledge
6 counsel just read into the record from a
7 deposition taken in a different case -- let me
8 finish my point -- as, as a replacement for your
9 personal knowledge.

10 THE WITNESS: I have no personal
11 knowledge of this ever being in boxes of brake
12 lining when they arrived at the plant.

13 BY MR. VONA:

14 Q. Okay. I didn't ask that question, but
15 I'll get there, I suppose. You've never seen
16 this document before?

17 A. No.

18 Q. Okay. And you just told me that you've
19 never -- well, you've never seen this document
20 provided by Carlisle in brake linings that they
21 supplied to Eaton?

22 A. That's correct.

23 Q. Okay. And I won't read the testimony,
24 but the gist of it is they say that this was
25 supplied in 1977. Do you have any reason to

1 dispute the testimony in this case; that this,
2 this warning was supplied with Carlisle
3 asbestos-containing brakes?

4 A. No, I don't because I don't have any
5 direct personal knowledge of what they're
6 saying. It could have been there, and I just
7 was never exposed to it, so --

8 Q. So you're saying it could have been
9 there?

10 A. It could have been.

11 Q. Okay. And I'll pose a hypothetical to
12 you. Supposing it was there. Do you know if
13 Eaton ever passed it on?

14 A. I never saw it passed on.

15 Q. Okay. And was Carlisle also a major
16 supplier of brake linings -- asbestos brake
17 linings to Eaton?

18 A. Yes, yes, they were.

19 Q. And Mr. Hobbie, would you, would you
20 agree with me that if warnings on the dangers of
21 asbestos were placed on brake linings that were
22 purchased by Eaton for use in their products, it
23 would be reasonable to expect Eaton to pass
24 those warnings on to its customers?

25 MR. PETTICORD: Objection. Go ahead.

1 THE WITNESS: I guess it would be a
2 reasonable idea.

3 MR. VONA: Okay. All right. And I
4 think I'm done. I'm not going into the last
5 one. I thank you for your time today. I don't
6 know if Dan has got anything.

7 MR. PETTICORD: You guys need anything
8 or want anything?

9 MR. BURCH: No, I have no questions.

10 MR. PETTICORD: Anybody on the phone?

11 MR. VONA: Anybody on the phone have
12 questions?

13 TELEPHONIC COUNSEL: I have no
14 questions.

15 MR. VONA: Going once, going twice --

16 MR. PETTICORD: Three times a lady.
17 All right, guys. I think we're done.

18 MR. BRIDGE: Chris Bridge. No
19 questions, but I would like to just note, and I
20 know it may have been noted before, but I would
21 ask that we make arrangements to have copies of
22 all the exhibits that were marked today provided
23 as well as the discovery responses that Eaton
24 provided.

25 MR. PETTICORD: Sure. You should have

1 the discovery responses, I thought, but if you
2 don't, Chris, we can certainly get them to you.
3 I thought those were sent out, but they could
4 be -- I'll talk to you.

5 MR. VONA: With regard to the exhibits,
6 once I get them back from the court reporter,
7 I'll scan them all to a disc and have them sent
8 to all counsel.

9 MR. BRIDGE: Fair enough. Thank you.

10 MR. VONA: Mr. Hobbie, thank you for
11 your patience with me.

12 MR. PETTICORD: We'll read, and we're
13 waiving time limits for reading, correct?

14 MR. VONA: That's fine. If there's any
15 problems with it, point it out to me.

16 THE VIDEOGRAPHER: All counsel through?

17 MR. PETTICORD: We're done.

18 THE VIDEOGRAPHER: This concludes the
19 deposition --

20 MR. PETTICORD: We are getting off the
21 phone, guys.

22 THE VIDEOGRAPHER: This concludes the
23 deposition of Mr. Roger Hobbie. We are off the
24 record at 3:04 p.m. Please stand by.

25 (Whereupon, the deposition concluded at

1 3:04 p.m.)

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1 I hereby CERTIFY that I have read
2 the foregoing pages, and with the exception of
3 the changes on the errata sheet, that they are a
4 true and accurate transcript of the testimony
5 given by me in the above-entitled action on
6 September 8, 2008.

7
8
9 ROGER HOBBIE

10
11 Sworn to before me this
12 day of , 2008.

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16 Notary Public
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1 STATE OF NEW YORK)

2 SS:

3 COUNTY OF ERIE)

4
5 I, VICTORIA ROHL, a Notary Public
6 in and for the State of New York, County of
7 Erie, DO HEREBY CERTIFY, that the Examination
8 Before Trial of ROGER HOBBIE, was taken down by
9 me in a verbatim manner by means of Machine
10 Shorthand on September 8, 2008, that the
11 proceedings were taken to be used in the
12 above-entitled action.

13 I further CERTIFY that the
14 above-described transcript constitutes a true,
15 accurate and complete transcript of the
16 testimony.

17
18
19
20 VICTORIA ROHL

21 Notary Public
22
23
24
25