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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPT.
OF THE TRIAL COURT
NO. 08-0489

MAUREEN TAVAGLIONE, Individually *
and as Executrix of the Estate of *
ROBERT TAVAGLIONE, *
Plaintiff, *

vs. *

3M COMPANY, et al, *
Defendants. *

AUDIOVISUAL DEPOSITION OF PNEUMO ABEX
CORPORATION By Its Designee ALBERT INDELICATO
Monday, September 26, 2011
Wentworth By The Sea
588 Wentworth Road
New Castle, New Hampshire

----- Darlene Caiazzo Sousa, CSR, RPR -----
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(Original exhibits returned to Attorney George;
with copies distributed to counsel)

1 -----

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

3 11:15 a.m.

4 -----

5 THE VIDEOGRAPHER: We are now
6 recording and on the record. My name is Kevin
7 J. Harrington. I'm a certified legal video
8 specialist for National Video Reporters, Inc.
9 Our business address is a 7 Cedar Drive, Woburn
10 Massachusetts, 01801.

11 Today is September 26, 2011, and the
12 time is 11:15 a.m. This is the deposition of
13 Albert D. Indelicato in the matter of Maureen
14 Tavaglione, individually and as executrix of
15 the estate of Robert Tavaglione, plaintiff,
16 versus 3M Company, et al, defendants in the
17 Commonwealth of Massachusetts, Middlesex
18 Superior Court, Department of the Trial Court,
19 Civil Action No. 08- 0489. This deposition is
20 being taken at 588 Wentworth Road, New Castle,
21 New Hampshire 03854 on behalf of the plaintiff.

22 The court reporter is Darlene Caiazzo
23 Sousa of Eppley Court Reporting, LLC. Counsel,
24 please state your appearances, and the court

1 reporter will administer the oath.

2 MR. GEORGE: My name is Jonathan
3 George. I'm an attorney at Waters & Kraus, and
4 I represent the plaintiff.

5 MR. RADCLIFFE: Tom Radcliffe, Pneumo
6 Abex, LLC.

7 MR. CARON: Jason Caron, Genuine Parts
8 Company.

9 MR. GEORGE: You guys want to do your
10 appearances.

11 MR. BJORNLUND: Kyle Bjornlund for
12 Honeywell International as successor in
13 interest to Bendix Corporation and Pneumo Abex,
14 LLC.

15 MR. ZAYOTTI: This is Matt Zayotti.
16 I'm representing Kaiser-Gypsum, Parker Hannifin
17 and Cleaver-Brooks.

18 MR. FLORES: This is Javier Flores
19 representing Georgia-Pacific, LLC.

20 MR. WOLBERT: This is Clint Wolbert
21 for Warren Pumps, LLC, Weil-McLain and
22 Borg-Warner.

23 MR. GEORGE: Anybody else?

24 ALBERT INDELICATO,

1 having first been duly sworn by the Notary
2 Public, was examined and testified as follows:

3 EXAMINATION CONDUCTED

4 BY MR. GEORGE:

5 Q. Can you please introduce yourself for
6 the ladies and gentlemen of the jury?

7 A. Sure. I'm Albert D. Indelicato.

8 Q. And you are currently the president of
9 Pneumo Abex, LLC, correct?

10 A. That's correct.

11 Q. And your current stint as president of
12 Pneumo Abex, LLC began in May of 2011?

13 A. That's correct.

14 Q. You understand that you've been
15 designated to testify today as a representative
16 for Pneumo Abex?

17 A. That's right.

18 Q. And you understand that your testimony
19 here today can and will bind that company?

20 A. I do.

21 Q. And you've been deposed previously,
22 correct?

23 A. I have.

24 Q. You understand the process?

1 A. I do.

2 Q. Now, I want to talk very briefly about
3 your work background. As I understand your
4 background, you began working for Abex
5 Corporation in 1970?

6 A. That's correct.

7 Q. You joined them at their corporate
8 research center in Mahwah, New Jersey, as a lab
9 technician and ultimately progressed at the
10 research center to the position of development
11 engineer, correct?

12 A. That's right.

13 Q. And around 1972 you were assigned as a
14 liaison engineer responsible for the Friction
15 Products Group wherein you would travel to the
16 friction division headquarters in Winchester,
17 Virginia?

18 A. That's correct.

19 Q. In 1974 you worked at the new
20 manufacturing facility in Salisbury, North
21 Carolina?

22 A. That's right.

23 Q. '75 to '76 you worked quality
24 assurance programs for both the Winchester and

1 Salisbury plants, correct?

2 A. That's right.

3 Q. And Winchester manufactured asbestos
4 brakes for passenger cars, light trucks and
5 heavy trucks, and Salisbury was exclusively
6 heavy trucks?

7 MR. RADCLIFFE: Object to form.

8 A. That's correct.

9 Q. In 1976 to 1984 you were the director
10 of product engineering and development?

11 A. That's right.

12 Q. Eventually you were given a vice
13 president's title?

14 A. That's right.

15 Q. And from 1987 to 1993 you were the
16 president of Abex Friction Products?

17 A. That's right.

18 Q. From 1993 to 1995, you were the
19 president and CEO, chief executive officer, of
20 Abex, Inc.?

21 A. That's right.

22 Q. And you've been designated as the
23 person most knowledgeable based on your 25
24 years of working in the friction business?

1 A. That's right.

2 MR. RADCLIFFE: Object to form.

3 Q. Your job duties as current president
4 is to assist in litigation, testifying and
5 helping with documents, correct?

6 A. That's right.

7 Q. And for this you are paid \$10,000 per
8 month?

9 A. That's right.

10 Q. Now, in order to offer testimony as
11 the person most knowledgeable, you've had the
12 opportunity, have you not, to review the
13 historical documents of Abex?

14 A. Yes.

15 Q. And you're familiar with the corporate
16 history of Abex?

17 A. Generally, yes.

18 Q. Now, the documents are contained in a
19 repository in New York?

20 A. Brooklyn, New York.

21 Q. And as president you are also
22 responsible for signing sworn Answers to
23 Interrogatories?

24 A. Yes, verifications, certifications,

1 that sort of thing.

2 Q. And by verifying a set of
3 interrogatories, what interrogatories are, are
4 a set of questions that Abex is asked by
5 various plaintiff's attorneys, correct?

6 A. That's right.

7 Q. And Abex responds to them based on
8 their historical knowledge, and you verify
9 those answers by reviewing them and making sure
10 the information contained therein is --

11 A. As correct --

12 Q. -- accurate?

13 A. -- as possible, yes.

14 Q. In fact, you've verified a set of
15 interrogatories in this case, correct?

16 A. I have.

17 Q. And do you have that with you?

18 A. I do.

19 MR. GEORGE: We're going to make that
20 Exhibit 1 to this deposition. And these are
21 responses of defendant Pneumo Abex, LLC,
22 successor in interest to Abex Corporation to
23 plaintiff's first set of interrogatories.

24 (Exhibit No. 1, Response of Defendant

1 Pneumo Abex, LLC to Plaintiff's First Set of
2 Interrogatories so marked)

3 Q. I notice that these aren't signed, but
4 you have provided a signed copy?

5 A. That's right.

6 Q. And those are questions you've read,
7 answers that you've read and verified?

8 A. That's right.

9 Q. Okay. Now, let's talk briefly about
10 the corporate history of Abex. You agree that
11 the business started in the early 1900s
12 principally as a railroad brake and component
13 manufacturer?

14 A. That's right.

15 Q. And at some point in the early 1900s
16 it was known as the American Brake Shoe and
17 Foundry Company?

18 A. Yes.

19 Q. And in 1926 the company incorporated
20 in New York and became American Brake Materials
21 Corporation?

22 A. I believe that to be true.

23 Q. And that's when Abex first began
24 producing asbestos linings that were used to

1 line brake shoes?

2 A. About that time.

3 Q. And in 1933 the company changed its
4 name to American Brakeblok Corporation?

5 A. I believe that to be true.

6 Q. In 1937 American Brakeblok Corporation
7 merged with American Brake Shoe and Foundry
8 Company and thereafter operated as American
9 Brakeblok Division?

10 A. I'm not sure I understand that. If
11 you could read that again or --

12 Q. Sure. Let me just see what I have
13 here. In 1937, as I understand the corporate
14 history, American Brakeblok Corporation merged
15 with American Brake Shoe Foundry Company and
16 thereafter operated as American Brakeblok
17 Division?

18 A. I think that's right.

19 Q. Okay. And in 1943 the company again
20 changed its name this time to American Brake
21 Shoe Corporation?

22 A. Correct.

23 Q. In 1966 they changed its name to Abex
24 Corporation?

1 A. That's right.

2 Q. And in 1978 Abex became a wholly-owned
3 subsidiary of Illinois Central Industries?

4 A. Yes, sir.

5 Q. And in 1970 when you joined Abex,
6 there were four business units, a railroad
7 products group, a friction products group, a
8 castings business, and a hydraulics division?

9 A. That's right.

10 Q. And the one that we're going to be
11 talking about mostly today is the Friction
12 Products Group?

13 A. Okay.

14 Q. And you understand when we talk about
15 friction products, we're talking about material
16 that was put on metal foundations to be either
17 drum brake linings or disc brake linings?

18 A. I mean, I'll accept that as our
19 definition for today, except that Abex
20 generally didn't put brake linings onto those
21 metal carriers. That was either a brake
22 manufacturer's responsibility or rebuilder's
23 responsibility.

24 Q. What Abex did is they manufactured the

1 actual asbestos material that was then sent to
2 others, and they incorporated it into either
3 the drum brake or the disc brake as a complete
4 unit?

5 A. Others did --

6 MR. RADCLIFFE: Objection.

7 A. -- the incorporation, and Abex also
8 sold nonasbestos brake lining. It wasn't only
9 asbestos.

10 Q. You would agree with me that as of the
11 19 -- well, prior to 1980 the vast majority of
12 the brake linings that Abex manufactured
13 contained asbestos for passenger cars and
14 light- and heavy-duty trucks?

15 MR. CARON: Objection.

16 A. Yes.

17 Q. In fact, Abex has a very limited
18 amount of nonasbestos brakes for passenger cars
19 and trucks in 1965?

20 MR. RADCLIFFE: Object to form.

21 A. I don't know what your definition of
22 limited is, but I would agree the majority of
23 production was asbestos containing.

24 Q. Would you agree with me that the only

1 nonasbestos-containing brake linings that Abex
2 manufactured for passenger cars and light
3 trucks and heavy-duty trucks was the Velvet
4 Touch line of product?

5 MR. RADCLIFFE: Objection to form.

6 A. Yes.

7 Q. And that was a product that was first
8 introduced in the marketplace in 1965?

9 A. I don't know when the actual
10 introduction was. I thought it was earlier
11 than that but....

12 Q. And how successful was that line of
13 nonasbestos brake products?

14 A. It was pretty well accepted for severe
15 duty applications, police, ambulance, taxis,
16 that sort of thing.

17 Q. And how applicable was that product to
18 ordinary uses, passenger cars, heavy-duty
19 trucks, that kind of thing?

20 A. I think the general driving public
21 found them to be noisy and aggressive and wore
22 out prematurely.

23 Q. If you had to put a percentage of how
24 much asbestos-containing product versus

1 nonasbestos-containing product that Abex
2 manufactured during the 1960s, what would that
3 percentage be?

4 A. Ninety plus percent
5 asbestos-containing.

6 Q. Would that be true of the 1970s as
7 well?

8 A. No.

9 Q. How much would the percentage be in
10 the 1970s?

11 A. It varied a lot because as we got
12 closer to being totally out of asbestos there
13 was an, you know, ever increasing percent of
14 asbestos free, so I couldn't answer your
15 question with a definitive amount.

16 Q. You sold your last asbestos brake
17 linings in 1987?

18 A. That's right.

19 Q. And when did you begin phasing out
20 asbestos as a corporate policy?

21 A. It really wasn't a corporate policy
22 until, you know, 1986 or 1987. It was -- you
23 know, we had gotten to about, I would say,
24 nominally 85 percentile of nonasbestos. There

1 was still some asbestos-containing product, and
2 senior management made the decision that it
3 just didn't make sense to continue.

4 Q. Now, you agree with me that prior to
5 the 1980s the vast majority of the brake
6 linings Abex manufactured for passenger cars
7 and light- and heavy-duty trucks contained
8 asbestos, correct?

9 A. Yes.

10 Q. What would that percentage be?

11 A. Again, I don't know the exact
12 percentage. Vast majority I would agree with.

13 Q. Eighty-five?

14 A. If that's your definition of vast
15 majority, I'll accept that.

16 Q. I'm really looking for your definition
17 of vast majority?

18 A. Eighty-five.

19 Q. Okay. Would you agree that when Abex
20 sold friction material that contained asbestos,
21 typically the percentage of asbestos ranged
22 from approximately 25 to 70 percent?

23 A. I would say that out of all the
24 formulations to encompass every formulation

1 that Abex manufactured that would be an
2 accurate range. I would tell you that the
3 majority of product was probably in the 30 to
4 35 percent asbestos range.

5 Q. Is that true for both disc brakes and
6 drum brakes?

7 A. Yes.

8 Q. Did one type of product have more
9 asbestos than the other?

10 A. When you say "type of product," disc
11 versus drum?

12 Q. Correct.

13 A. No. They were essentially the same.

14 Q. Would you agree with me that there
15 were about three pounds of asbestos per set of
16 brake linings?

17 MR. RADCLIFFE: Object to form.

18 A. No, that seems awfully high, and I
19 think a lot depends on the type of product. I
20 mean, there were drum brake products that would
21 go on, let's say, a small Chevrolet car that
22 the entire -- all of the brake lining
23 themselves probably didn't weigh more than two
24 pounds. And yet, on a heavy-duty truck, you

1 might have, you know, a three-pound asbestos
2 load that's reasonable. But it's certainly not
3 a reasonable number for all asbestos brake
4 lining products.

5 Q. Do you agree that that's a number that
6 has been used in the past to estimate the
7 amount of asbestos that is emitted from the use
8 of brakes in the environment?

9 MR. RADCLIFFE: Object to form.

10 A. I've never used that as an estimate.

11 Q. Are you familiar with a document that
12 is entitled Memorandum: Subject: Asbestos
13 Fiber Emissions Friction Materials from June
14 19, 1972, that's on American Brakeblok Division
15 Winchester office letterhead signed by E.H.
16 Feierabend, F-E-I-E-R-A-B-E-N-D? Is that a
17 document you've seen before?

18 MR. RADCLIFFE: I'm going to object to
19 that characterization. That's a multiple page
20 document. Only the first page is an Abex
21 document. The rest of it is not an Abex
22 document. It's incomplete.

23 MR. GEORGE: We'll be talking about
24 it, don't you worry.

1 A. Mr. Feierabend's letter is simply a
2 transmittal cover letter that says, "Referring
3 to an enclosed mailing from FMSI."

4 Q. Is the enclosed mailing attached?

5 MR. RADCLIFFE: Object to form.

6 A. I don't know. I mean, there's two
7 members of -- yeah, it certainly comes from the
8 friction or from -- yeah, from the Friction
9 Material Standard Institute. Whether or not
10 this is the memorandum that Mr. Feierabend is
11 referring, I really couldn't say.

12 Q. Well, he says, "The enclosed mailing
13 from the FMSI" -- now, that's the Friction
14 Material Standard Institute, correct?

15 A. That's right.

16 Q. That's an organization that Abex had
17 been a member of for many years at this point
18 in time?

19 A. Yes.

20 Q. And then they say that "The enclosed
21 mailing from the FMSI Asbestos Study Committee
22 has great interest now that the EPA emission
23 study report is about to be released. Note
24 that the item on brakes page 28. The

1 assumption appears to be disc brakes will be
2 cure-all. We will attend the next meeting of
3 the committee and report further findings."

4 Now, what is attached is a June --
5 this letter is dated June 19, 1972, correct?

6 MR. RADCLIFFE: Object to form.

7 A. I'm sorry?

8 Q. This is dated June 19, 1972?

9 A. Mr. Feierabend's letter is.

10 Q. And what is attached is a June 6,
11 1972, memorandum from E.W. Drislane, the
12 executive secretary of the FMSI, to members of
13 the Asbestos Study Committee, correct?

14 MR. RADCLIFFE: Object to form.

15 A. That's right.

16 Q. And Abex was one of the founding
17 members of the Asbestos Study Committee,
18 correct?

19 MR. RADCLIFFE: Object to form.

20 A. I know we were a member. I don't know
21 if we were a founding member.

22 Q. What this memorandum sent to the
23 members of Asbestos Study Committee were
24 various pages from an IRTRI paper, correct?

1 MR. RADCLIFFE: Object to form.

2 A. I don't know. I mean, there's several
3 pages here.

4 Q. If you look at the second paragraph of
5 the June 6, 1972, letter from E.W. Drislane, it
6 says, "The pages from the IRI paper are" -- and
7 they list the pages enclosed, 2225, 2627?

8 A. I see that. I do see that.

9 Q. And if you look at page 25 of the
10 enclosure, they're talking about sources of
11 emissions from friction materials from the
12 results of normal day-to-day usage, correct?

13 A. What page are you on, 25?

14 Q. Twenty-five of the enclosure?

15 A. Yes.

16 Q. And it says that "Data concerning
17 motor vehicle brake linings for the whole of
18 the United States are given in the following,"
19 and it has some data with regard to the number
20 of vehicles and brake linings and the pounds of
21 asbestos per set of brake linings, correct?

22 A. Yes.

23 Q. And it says, "for pounds of asbestos
24 per set of brake linings," it indicates three,

1 correct?

2 A. It does say that.

3 Q. Okay. You'd agree with me that
4 there's more asbestos in a drum brake than in a
5 disc break?

6 MR. RADCLIFFE: Object to form.

7 A. I don't agree with you. It depends on
8 the size of the brake, the size of the vehicle.

9 Q. Would you agree with me that prior to
10 the mid 1970s most brakes -- most cars
11 contained four-wheel drum brakes?

12 MR. RADCLIFFE: Object to form.

13 MR. CARON: Object to form.

14 A. Yes, most cars did.

15 Q. Starting in the early/mid '70s onward,
16 technology was developed for disc brakes?

17 MR. RADCLIFFE: Object to form.

18 A. Technology was adapted. The Europeans
19 had been using disc brake for many years before
20 they were used in the United States, but
21 technology was adopted to North American
22 vehicles.

23 Q. And when disc brakes were introduced,
24 they were typically disc brakes in the front of

1 the car but drum brakes still on the back of
2 the car?

3 A. That's right.

4 Q. The first all-wheel disc brake car
5 first came on the market when?

6 A. I wouldn't know that offhand.

7 Q. Sometime in the late '70s, early '80s?

8 A. Probably mid '70s for sports cars.
9 Again, it depends if you're limiting our
10 discussion to cars manufactured in North
11 America. I mean, I think cars like Porsche,
12 Ferrari, high-performance cars had four-wheel
13 disc brakes earlier than that.

14 Q. Would you agree with me that European
15 cars had nonasbestos brakes earlier than
16 American cars?

17 A. No, I do not agree with that.

18 Q. Are you familiar with Scan-Pac?

19 A. Yes, I've heard of the company.

20 Q. A company out of Scandinavia?

21 A. No. Actually, I thought the company
22 was out of the midwest.

23 Q. Do you know when Scan-Pac first went
24 all asbestos-free?

1 A. No, I don't.

2 Q. May I ask you this: Would you agree
3 that in 1971 after you had joined Abex, it was
4 one of the major suppliers of friction material
5 for brake and clutch use in the United States?

6 A. That Abex was?

7 Q. Yes.

8 A. No.

9 Q. Would you agree that in 1971 Abex
10 sales of asbestos-containing friction material
11 for use in vehicles operating in the United
12 States was projected to be in excess of \$20
13 million?

14 A. That seems like a reasonable estimate.

15 MR. GEORGE: Let me show you what I'll
16 mark as Exhibit 2.

17 (Exhibit No. 2, Letter to Samuel
18 Lawton, 10.8.71 so marked)

19 Q. This is a letter from G.R. Graham,
20 director of friction materials research, to
21 Samuel T. Lawton, State of Illinois Pollution
22 Control, dated November 8, 1971, and ask you if
23 that's a document you've seen before?

24 A. Do you want this document back, try to

1 keep them straight? Yeah, I've seen this
2 document before.

3 Q. And in that document can you read for
4 me the first sentence of the second paragraph?

5 A. The one that you've highlighted.

6 Q. Correct?

7 A. "The Abex Corporation, through its
8 American Brakeblok Division, is one of the
9 major suppliers of friction material for brake
10 and clutch use in the United States. During
11 1971, our sales of asbestos-containing friction
12 material for use in vehicles operating in the
13 United States will be in excess of \$20
14 million."

15 Q. Can you tell me when Abex first had a
16 relationship with the National Auto Parts
17 Association?

18 MR. CARON: Object to form.

19 A. To my knowledge I can't give you an
20 exact date, but it was my understanding that
21 Abex and NAPA, if you will, went back to the
22 origins of NAPA. I don't know exactly what
23 year that was, but it goes back a long time.

24 Q. Can you tell us a decade?

1 A. '40s.

2 Q. And is it correct that NAPA was a
3 trade organization that was composed of
4 companies that manufactured and sold various
5 automotive parts?

6 MR. CARON: Object to form.

7 A. It's my understanding NAPA was a trade
8 organization.

9 Q. One of the members of that trade
10 organization was a company called Genuine
11 Parts?

12 A. That's correct.

13 Q. Genuine Parts manufactured a product
14 called Rayloc brakes?

15 MR. CARON: Object to form.

16 Q. Right?

17 A. A product? I mean, I knew Rayloc as
18 an operating entity of Genuine Parts.

19 Q. And as an operating entity, what did
20 that entity do?

21 A. They rebuilt a variety of products,
22 brakes being one of them.

23 Q. And Abex would sell to Genuine Parts
24 the asbestos linings that would go into the

1 rebuilt brakes?

2 MR. RADCLIFFE: Object to form.

3 MR. CARON: Object to form.

4 A. Abex would sell asbestos or
5 asbestos-free linings to Rayloc.

6 Q. But if we're talking about any time
7 prior to the mid 1980s, you would agree that a
8 majority of what Abex was selling to Genuine
9 Parts was asbestos-containing material?

10 MR. CARON: Object to form.

11 A. No. If you say mid 1980s, no, I
12 wouldn't agree with that. Again, there's a
13 point in time where asbestos-free is introduced
14 and continues to grow and grow and grow until
15 1986 or so where it's probably 90 percent of
16 Abex's business, approximately.

17 Q. You would agree with me that prior to
18 1970s almost all of the material that Abex sold
19 to Genuine Parts would be asbestos-containing
20 linings?

21 MR. CARON: Object to form.

22 A. Yes, I would.

23 Q. Let me ask you: Would you agree that
24 the safety of the consumer should be the

1 primary concern of Abex when selling its
2 products?

3 A. Yes.

4 Q. Would you agree that any risk of
5 serious injury or death is always unreasonable
6 if there are reasonable means to reduce or
7 eliminate that risk?

8 MR. RADCLIFFE: Object to form.

9 A. Yes.

10 Q. Would you agree that Abex should
11 become aware of any potential hazards
12 associated with the contents of the products
13 that they sell?

14 MR. RADCLIFFE: Object to form.

15 A. I'm not sure I understand in the
16 context of should. I mean, Abex always tried
17 to understand the limitations of its product
18 and appropriately deal with it.

19 Q. Before a company puts a product in the
20 stream of commerce, would you agree that they
21 have an obligation to investigate the
22 components of that product to make sure that
23 there aren't any potential hazards associated
24 with the normal use of that product?

1 MR. RADCLIFFE: Object to form.

2 A. Yes.

3 Q. And you would agree that Abex should
4 share knowledge of any potential hazards
5 associated with the contents of their products
6 with the public who is buying their product?

7 MR. RADCLIFFE: Object to form.

8 A. Yes.

9 Q. You would agree that Abex should never
10 keep potential hazards of their products
11 secret?

12 A. Yes.

13 Q. You would agree that Abex should test
14 its products to determine if they are
15 potentially dangerous before selling them?

16 MR. RADCLIFFE: Object to form.

17 A. Yes.

18 Q. You'd agree that as soon as Abex
19 learns its product is dangerous, the company
20 should inform consumers of the potential
21 danger?

22 MR. RADCLIFFE: Object to form.

23 A. Yes.

24 Q. You agree that Abex should inform

1 consumers if it learns a component of a product
2 is potentially dangerous even after placing it
3 on the market?

4 MR. RADCLIFFE: Object to form.

5 A. Yes.

6 Q. Now you agree that Abex never went out
7 and did any kind of air sampling in garages
8 where servicemen were working with Abex
9 products?

10 A. That's right.

11 Q. You agree you've seen documents at
12 least that in 1936 Abex, along with several
13 other manufacturers of asbestos products,
14 agreed to underwrite certain experiments with
15 asbestos dust to be conducted Dr. Leroy U.
16 Gardner at Saranac Laboratory at Saranac Lake
17 in New York?

18 A. Yes.

19 Q. And you agree that at that time
20 Saranac Laboratories was one of the most
21 prestigious laboratories investigating lung
22 disease?

23 A. As I read documents, that's my
24 understanding.

1 Q. And one of the lung diseases that
2 Saranac Laboratory investigated was diseases
3 caused by exposure to asbestos?

4 A. That was the intent of the study, yes.

5 Q. Now, one of the -- Abex had a medical
6 department, correct?

7 A. It did.

8 Q. And the first medical director of that
9 medical department was Lloyd Hamlin, correct?

10 A. I don't believe that to be the case.
11 I think there was someone who predated Dr.
12 Hamlin.

13 Q. Let me just make sure I have my
14 information. According to your answers to
15 interrogatories, you were asked to describe
16 your corporate structure concerning medical
17 directors, industrial hygienists, physicians,
18 biological scientists, and consultants in these
19 fields from 1930 to 1980. In your response the
20 first name listed as the medical director is
21 Lloyd Hamlin?

22 A. That's right.

23 Q. So if there was anybody prior to him,
24 you --

1 A. It would have been prior to 1930.

2 Q. When was your medical department
3 established?

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

8 Q. The information that you recorded in
9 these interrogatories begins with Dr. Hamlin in
10 1941, correct?

11 A. Okay. Yes.

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

14 A. That's about right.

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

18 MR. RADCLIFFE: Object to form.

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

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

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

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

21 MR. RADCLIFFE: Object to form.

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

1 that with the majority of the time.

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

7 A. From --

8 MR. RADCLIFFE: Object to form.

9 A. -- time to time.

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

14 A. Your question is?

15 Q. You're aware of that document?

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

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

23 MR. RADCLIFFE: Object to form.

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

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

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

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

12 A. I don't remember seeing it before.

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

17 A. Yes.

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

1 A. I don't. This is, you know, kind of
2 an eye test. If you'd like to take a break and
3 give me a chance to read this, I'll be happy to
4 do that and try to intelligently answer your
5 questions.

6 Q. How about I just give you my
7 highlighted copy, and you'll be able to see?

8 A. Okay. Is this from what page in that
9 document?

10 Q. Second page. It is the --

11 A. It says it covers a variety of
12 conditions. It's defined as chronically -- as
13 a chronic pulmonary fibrosis due to the
14 inhalation of irritating dust.

15 Q. Among the pneumoconiosis is
16 asbestosis, correct?

17 A. Yes.

18 Q. Asbestosis is a disease of the lungs
19 caused by exposure to asbestos?

20 MR. RADCLIFFE: Object to form.

21 MR. CARON: Object to form.

22 A. Yes.

23 Q. Now, it indicates, does it not, that
24 asbestos and silica are the only two dusts that

1 had the capacity to produce fibrosis?

2 A. I don't see where it says that. I see
3 it referring to pneumoconiosis includes
4 specifics diseases, and it goes on to say
5 asbestosis, siderosis, silicosis, etcetera.

6 Q. The first sentence on the second
7 column --

8 A. Uh-huh.

9 Q. -- what does that say?

10 A. "Of the dust studied up to the present
11 time, only silica and asbestos contain" or, I'm
12 sorry -- "produce definitive pulmonary
13 fibrosis."

14 Q. I'm going to show you the second page
15 of Dr. Hamlin's article. Would you agree with
16 me that Dr. Hamlin was aware when he wrote this
17 article in 1944 that there were 41 deaths from
18 asbestosis that had been reported in England up
19 to 1934?

20 A. Forty-one deaths were reported from
21 the cause -- from this cause in England up to
22 1934.

23 Q. And let me show you the next page, the
24 document which is page three. He indicates,

1 does it not, that "The greatest occupational
2 hazard exists in mining, handling and crushing
3 crude asbestos, making insulation and the
4 cardigan weaving of asbestos. In other
5 industries, such as the compounding of
6 materials for brake linings, the hazard is
7 recognized but the disease is uncommon."

8 Is that what he says?

9 A. I'm not seeing what you read.

10 Q. Starting right here.

11 A. You know, really, I really want to try
12 to be helpful and answer your questions to the
13 best of my ability, but having pages out of
14 context I'm really uncomfortable. I mean, I
15 don't even know that is part of Hamlin's
16 article at this point so.....

17 Q. Nevertheless, this document right
18 there says exactly what I said it said,
19 correct?

20 MR. RADCLIFFE: Object to form.

21 A. I'm reading from a document that says
22 SPNY 000230. What the context of that page is,
23 it's out the context, but what is highlighted
24 is "In other industries such as the compounding

1 of materials for automative brake lining, the
2 hazard is recognized but the disease is
3 uncommon."

4 Q. In fact, in this article Dr. Hamlin
5 actually talked about experiences that were had
6 at the Abex plant, correct?

7 MR. RADCLIFFE: Object to form.

8 A. In one of our plants where
9 considerable asbestos is used in the
10 manufacture of automative brake lining, a
11 recent survey of 189 employees exposed to
12 various amounts of dust revealed that no actual
13 cases of fibrosis." Would you like me to go
14 on?

15 Q. Sure.

16 A. "A few men's films" -- presumably
17 referring to the x-rays -- "showed haziness
18 which suggested evidence of the disease, but
19 they were not significantly typical to warrant
20 diagnosis of asbestosis. However, it should be
21 noted that the hazard in this particular plant
22 was well controlled by adequate exhaust
23 ventilation."

24 Q. One of the things that Abex knew as

1 far as back as 1940s was that one way that you
2 can prevent disease is to lessen exposure by
3 using adequate exhaust ventilation?

4 A. Yes. As well as other means, but that
5 was certainly a principal one used in a
6 manufacturing environment where raw asbestos
7 fiber was used.

8 Q. And one of the sources for Dr.
9 Hamlin's knowledge as contained in the
10 bibliography is a paper by Merewether and Price
11 that was published in 1930, correct?

12 A. That's what's referenced here, yes.

13 Q. Now, in 1947 Dr. Hamlin wrote another
14 paper entitled Industrial Diseases of the
15 Chest. Let me just show you that document. Is
16 that a document you've seen before?

17 A. Just before the deposition today, you
18 showed it to me, but I hadn't had a chance to
19 read it.

20 MR. GEORGE: I'm going to make as
21 Exhibit 3 the prior paper by Dr. Hamlin.

22 (Exhibit No. 3, Industrial Dust - The
23 Pneumoconiosis, L.E. Hamlin so marked)

24 MR. RADCLIFFE: Can you tell me what

1 Exhibit 2 was?

2 MR. GEORGE: Exhibit 2 was the Abex
3 letter of November 8, 1971. And Exhibit 1 is
4 the Answers to Interrogatories.

5 MR. RADCLIFFE: Okay. Thank you.

6 Q. I just want to ask you one question
7 about this document. If you look at the
8 highlighted portion of that -- I'll give it to
9 you to make it easier for you -- which is on
10 page six, Dr. Hamlin talks about the fact that
11 occupational fibrosis can result from the
12 inhalation of asbestos fibers and that he
13 references a 1940 paper from Dr. Gardner that
14 stated that 27 percent of exposed workers were
15 involved, and those with more than 15 years
16 experience the percentage rose to 60. That's
17 what he wrote, correct?

18 A. Yeah, but, again, I believe that this
19 was in reference to workers of raw asbestos
20 fiber, not automobile guys or even people
21 within the Abex factories.

22 Q. Well, in your Abex factory you had
23 individuals, did you not, that were using raw
24 asbestos fibers?

1 A. Some.

2 Q. Now, would you agree with me that
3 during this period of time, the 1940s, Abex was
4 a member of a group called the Industrial
5 Hygiene Foundation?

6 A. I believe that to be the case, yeah.

7 MR. GEORGE: I'm going to mark the
8 second Hamlin article as Exhibit 4.

9 (Exhibit No. 4, Industrial Diseases of
10 The Chest, L.E. Hamlin so marked)

11 Q. I think in your responses to
12 interrogatories in this case --

13 A. This case being?

14 Q. Being the Tavaglione case?

15 A. Okay.

16 Q. -- you indicated that Abex was a
17 member of the Air Hygiene Foundation of America
18 which later became the Industrial Hygiene
19 Foundation from 1937 to 1961?

20 A. That's right.

21 Q. Now, would you agree with me that the
22 Industrial Hygiene Foundation is an
23 organization that was touted as the only
24 national association of private industries for

1 the advancement of employee health?

2 MR. RADCLIFFE: Object to form.

3 A. I had no personal knowledge of that.
4 I don't know what their charter was or how they
5 were recognized.

6 MR. GEORGE: I'm going to show you a
7 document that we'll mark as Exhibit 5.

8 (Exhibit No. 5, Letter to S. Simpson,
9 12.2.46 so marked)

10 Q. I'm just going to provide you with my
11 highlighted copy because it's easier for
12 reference for you?

13 A. Okay.

14 Q. And ask you if this is a document that
15 you have seen before. The heading is
16 Industrial Hygiene Foundation of America, Inc.
17 It's dated December 2, 1946, and it's from John
18 F. McMahon, managing director.

19 A. I have not seen this document before.
20 And yes, it is a letter from John F. McMahon.
21 It's dated December 2, 1946, and it's on
22 letterhead from the Industrial Hygiene
23 Foundation of America to one Mr. S. Simpson,
24 president of Raybestos-Manhattan, Incorporated.

1 Q. Now in this letter they indicate that
2 W.B. Given, Jr., the president of the American
3 Brake Shoe Company was being elected as a new
4 trustee of the organization. Is that
5 information that you had gleaned from your
6 experience with Abex?

7 A. I know Mr. Given was president about
8 that time. I had no knowledge that he was a
9 trustee of the Industrial Hygiene Foundation.

10 Q. From your review of documents for
11 Abex, were you aware that the Industrial
12 Hygiene Foundation was an association of
13 industries for the advancement of healthful
14 working conditions?

15 A. That was my nominal understanding of
16 their purpose, yes.

17 Q. Did you agree with me that as part of
18 the -- part of your membership to the
19 Industrial Hygiene Foundation, members were
20 allowed or permitted to subscribe to the
21 Industrial Hygiene Digest?

22 A. I wouldn't know. I mean, again, all
23 of these things predate my birth by a good
24 number of years.

1 Q. Well, but as the person who is being
2 offered as the one most knowledgeable of the
3 corporation, have you done any investigation to
4 see what the historical knowledge was of Abex
5 with regard to asbestos?

6 A. Well, I have no way to find out
7 whether or not we were entitled to a
8 subscription to a particular periodical. I
9 mean, there's nobody that's alive that could
10 answer that question for me, and I haven't seen
11 any documents that say one of your benefits for
12 being a member is that you get this document.

13 MR. GEORGE: I'm going to show you
14 what I'll mark as Exhibit 6.

15 (Exhibit No. 6, Industrial Hygiene
16 Digest, March, 1947 so marked)

17 Q. And just ask you: In your review of
18 the documents that were kept by Abex whether
19 you've seen any documents similar to that which
20 is -- this is an excerpt from an Industrial
21 Hygiene Digest?

22 A. I have not seen anything that looks
23 like this before.

24 Q. How did you get your information that

1 of the years of membership of Abex and the
2 Industrial Hygiene Foundation?

3 A. Through documents review and with the
4 help of counsel.

5 Q. And through that document review and
6 the help of counsel, you've never been shown
7 any of the Industrial Hygiene Digests that were
8 published by the Industrial Hygiene Foundation?

9 MR. RADCLIFFE: Object to form.

10 A. I don't recall ever seeing anything
11 that looks like that.

12 Q. I understand from your responses to
13 interrogatories in this case that Abex never
14 maintained a library of periodicals or books on
15 any subject related to their manufacture of
16 asbestos products?

17 MR. RADCLIFFE: Object to form.

18 Q. Is that accurate?

19 MR. RADCLIFFE: Object to form.

20 A. Well, we didn't maintain any kind of
21 central library. I mean, I know as an
22 executive and an engineer at Abex, I had my own
23 little personal library of books that I would
24 refer to, but there wasn't any librarian.

1 There wasn't a central place where these kinds
2 of periodicals were kept.

3 MR. GEORGE: Let me show you what I'll
4 mark as Exhibit 7.

5 (Exhibit No. 7, Industrial Wastes,
6 14th Annual Meeting so marked)

7 Q. This is an excerpt from Industrial
8 Wastes, 14th annual meeting from the Industrial
9 Hygiene Foundation. It's a transactions
10 bulletin No. 13 dated 1949. And listed as an
11 officer of the Industrial Hygiene Foundation is
12 William B. Given, Jr., president American Brake
13 Shoe Company, New York, New York.

14 And the reason why I'm offering that
15 to you, I just want to see if that's a document
16 that you've seen before in your quest to
17 determine Abex's membership to this
18 organization?

19 A. No, I've never seen this document
20 before.

21 Q. In the 1940s and forward, would you
22 agree that one of the jobs of the medical
23 department at Abex was to conduct annual
24 examinations of its employees?

1 A. One of its tasks was to do that, yes.

2 Q. And this would include taking chest
3 x-rays, doing pulmonary function studies and
4 physical examinations, correct?

5 A. Yeah, as well as other testing, yes.

6 Q. And, in fact, at some point in the
7 1950s or earlier, Abex had a van that was
8 equipped with chest x-ray machinery so that it
9 can bring it to the gates of the facility and
10 run its employees through it to take
11 appropriate x-rays?

12 A. Yes, as well as vans for hearing
13 tests, pulmonary function and so on, yes.

14 Q. One of the purposes for chest x-rays
15 and breathing tests was the fact that Abex was
16 aware that exposure to asbestos and other dust
17 can cause lung diseases?

18 A. Well, it was broader than that because
19 Abex -- again, you started out the deposition
20 talking about other divisions of Abex. We had
21 castings and -- so there was concern about dust
22 in general, silicosis, lead at the bronze
23 foundries.

24 So chest x-rays were typically used at

1 all of the different businesses of Abex in a
2 quest to try to safeguard our employees' health
3 and to give heads-up if there were any kinds of
4 issues that rose.

5 Q. At least as it applies to the friction
6 materials division, one of the occupational
7 hazards that Abex was aware of and was
8 screening its employees for was diseases caused
9 by exposure to asbestos, correct?

10 A. One of, yes.

11 Q. And, in fact, Abex first started doing
12 air sampling for asbestos dust in its plants in
13 the 1940s at the Detroit plant, correct?

14 A. That's right.

15 Q. And the Detroit plant is where they
16 made passenger car, light truck and heavy truck
17 friction material?

18 A. That's right.

19 Q. We talked earlier about the fact that
20 in 1936 Abex participated in asbestos dust
21 studies at Saranac Lake, correct?

22 A. We didn't participate. We were a
23 funder. I think we funded \$200 to help Dr.
24 Gardner progress his research on that topic.

1 Q. You were aware that Abex was one of
2 the companies that sponsored the study?

3 A. Yes.

4 Q. And you were aware also from your
5 review of historic documents that the sponsors
6 of the study had an opportunity to comment on
7 the study prior to its publication?

8 A. Yes.

9 Q. And, in fact, Dr. Hamlin offered
10 specific comments about that study in writing
11 prior to the meeting because he couldn't be
12 present at the meeting, correct?

13 A. That's not quite the way I remember
14 it. I think Dr. Hamlin had some observations,
15 but I think I recall seeing a document that
16 said, yeah, I can't attend and another document
17 that said, fine, publish it the way you see
18 fit. So I don't think any of Dr. Hamlin -- I
19 don't think Dr. Hamlin ever really changed the
20 wording of the report.

21 Q. But he did offer comments with regard
22 to his perceptions of the report, the proposed
23 report?

24 A. I'll accept that he offered comments,

1 yes.

2 Q. And there's a letter that's dated
3 November 3, 1948, that's on American Brake Shoe
4 Company letterhead medical department that's
5 computer -- not -- didn't have computers back
6 then, but it's a typewritten signed by L.E.
7 Hamlin. I'm just asking you if that's a letter
8 you've seen before in this litigation with
9 regard to the Saranac studies?

10 A. I believe I have, but this copy is so
11 poor that I can't really read it at all. If
12 you have a better copy or --

13 Q. I just want to make sure that that's
14 what we're talking about.

15 A. I think there were a series of letters
16 that went back and forth between a Vandiver
17 Brown at Johns Manville and, quote, Abex that
18 dealt with that topic, but, ultimately, it was
19 like, you know, fine, publish it.

20 MR. GEORGE: We'll mark this as
21 Exhibit 8.

22 Q. I'm just going to turn your attention
23 to the first sentence that says, "I have read
24 carefully the report you've forwarded and am

1 returning it with my comments." And then he
2 goes on to give his comments.

3 (Exhibit No. 8, Letter, November 3,
4 1948, American Brake Shoe Company, Medical
5 Department so marked)

6 A. I agree that that's what the first
7 sentence says, and, honestly, I can't make out
8 the rest of the document at all. I don't even
9 know what the next line says.

10 Q. Now that was November 3, 1948. On
11 November 8, 1948, in a document that we'll mark
12 as Exhibit 9, there's a letter from the
13 executive vice president of the American
14 Brakeblok Division to Vandiver Brown that's
15 dated, like I said, November 8, 1948. This is
16 a letter that you've seen correspondence with
17 regard to Abex's sponsorship of Saranac Lake
18 studies, correct?

19 A. Yes.

20 (Exhibit No. 9, Letter to Vandiver
21 Brown, 10.6.48 so marked)

22 A. Again, that's hardly legible, but I do
23 recognize the letter.

24 Q. It says, "Thank you for your letter of

1 October 27, which has been reviewed by our
2 medical department, and while Dr. Hamlin would
3 like very much to be in attendance at the
4 meeting that you've scheduled for November 11,
5 it is impossible for him to do so. We would,
6 therefore, like to ask that you" something "for
7 us." You have a better copy of that right
8 there. "That you act for us in connection with
9 any decisions that have to be made." I'm just
10 going to --

11 MR. GEORGE: Is it all right if I mark
12 this?

13 MR. RADCLIFFE: Yes.

14 MR. GEORGE: It's a much cleaner copy.

15 MR. RADCLIFFE: I gave it to him so he
16 could read along, and you took it from him.

17 MR. GEORGE: I'll just read it, and
18 when I'm done, give it right back to him.

19 A. I'm not sure of the protocol.

20 MR. RADCLIFFE: I gave him another
21 copy.

22 (Exhibit No. 10, Letter to W.T. Kelly,
23 Jr., 11.12.48 so marked)

24 Q. And then he says at the end of it, "I

1 thought you'd be interested in the remarks of
2 our medical director Dr. L.E. Hamlin in
3 connection with this report, and I am,
4 therefore, attaching a copy."

5 MR. RADCLIFFE: Object to form.

6 A. Yes, that's what it says.

7 Q. Now, there's a Bates stamping on the
8 bottom of this one that says CRMC 002653. Do
9 you have any idea what that Bates stamp is?

10 A. I do not.

11 Q. Now the meeting with regard to this
12 publication was held on November 11 in New York
13 City, correct?

14 A. November 11 when?

15 Q. 1948?

16 A. Okay.

17 Q. You've seen --

18 MR. GEORGE: Do you have a better copy
19 of the November 12 letter?

20 MR. RADCLIFFE: Yeah, but it's got
21 highlighting on it.

22 MR. GEORGE: That's okay.

23 Q. What you have in your hand is a letter
24 dated November 12, 1948, from Vandiver Brown to

1 Mr. Kelly, the executive vice president of
2 American Brakeblok, correct?

3 A. That's right.

4 Q. And what he's doing is reporting to
5 Mr. Kelly about the meeting since Abex was
6 unable to attend, correct?

7 A. That's right.

8 Q. And what he says is they've looked at
9 -- "We've read Dr. Hamlin's memorandum of
10 November 3, and it was the consensus that his
11 judgment was correct concerning the references
12 to pneumonia among the experimental animals."
13 Correct?

14 A. Yes.

15 Q. It goes on to to say that, "It was the
16 unanimous opinion, however, that the reference
17 to cancer and tumors should be deleted, and
18 this is a point we would insist upon for the
19 following reasons." Correct?

20 A. Yes.

21 Q. And what that means is when Dr.
22 Gardner had done his preliminary draft of the
23 Saranac experiments, he found that a number of
24 the mice had lung cancer or lung tumors that

1 were cancerous?

2 A. That's not my understanding.

3 Q. Well, he goes on to say, does he not,
4 that the reason why they wanted to delete
5 references to cancer and tumors were that the
6 experiments were not directed toward
7 determining the incidence, if any, of cancer as
8 a result of asbestos exposure, correct?

9 MR. RADCLIFFE: Object to form.

10 A. It says, "And that the strain of the
11 mice" -- "white mice."

12 Q. We'll go through each one of them.
13 That's the first one, correct?

14 A. Yes.

15 Q. The second one was "Dr. Gardner
16 indicated prior to his death that he believed
17 this aspect should be made the subject of a
18 separate study which would take from to two
19 three years." Correct?

20 A. That's my understanding, and, in fact,
21 Dr. Gardner went for funding from the
22 government to study that and was rejected.

23 Q. Dr. Gardner was the one that was
24 originally contracted to do these experiments,

1 correct?

2 A. Well, again, you know, from a legal
3 point of view, I don't know if the contract was
4 with the Saranac Laboratories or Dr. Gardner,
5 so I don't know. It was Gardner who worked at
6 Saranac labs. Upon his death one of his
7 colleagues finished up his work. I presume the
8 contract, quote, was with Saranac Laboratories.

9 Q. Dr. Gardner died in 1946, correct?

10 A. I think that's correct.

11 Q. Just to clarify that earlier point
12 that you made -- and we'll mark this as Exhibit
13 No. 11 -- this is the memorandum of agreement
14 dated November 20, 1936. And it is signed --
15 one of the signatories is the vice president of
16 American Brakeblok Corporation. Let me just
17 show you that memoranda and agreement and ask
18 if you've seen that before.

19 (Exhibit No. 11, Memorandum of
20 Agreement, 11.20.36 so marked)

21 A. Yes.

22 Q. And that memorandum agreement
23 indicates, does it not, that these entities
24 were contracting with Dr. Gardner to conduct

1 these studies?

2 A. It says "to be conducted by Leroy
3 Gardner at the Saranac Laboratories." We got
4 enough lawyers in the room. You guys can tell
5 me the contract law. Whether it was Saranac
6 Labs or Dr. Gardner, I can't tell you.

7 Q. Now, I just want to finish with regard
8 to the cancer references. The third reason why
9 they made a unanimous opinion to delete
10 references to cancer and tumors was that Dr.
11 Gardner also indicated that he believed the
12 question of cancer susceptibility would be
13 omitted from the report. "This statement is
14 contained in his letter to me of February 24,
15 1943, with which he enclosed his outline of a
16 proposed monograph on asbestosis." That's what
17 it says, correct?

18 A. It does say that.

19 Q. It also appears from Dr. Gardner's
20 outline that certain strains of white mice
21 developed tumors without apparent cause and
22 that such a strain of white mice was
23 unintentionally used in three inhalation
24 experiments with asbestos. Correct?

1 A. Yes.

2 Q. Would you agree with me that the tenor
3 of this letter suggests that during his
4 experimentation Dr. Gardner determined that
5 some of the mice in the experiment developed
6 lung cancers or tumors of the lung?

7 A. Well, I don't agree with you. I think
8 it's absolutely out of context. From other
9 documents that I've read I've gleaned and have
10 the position that there was no controlled
11 animals. The whole study was flawed, and I
12 think there's a lot of speculation that that
13 was probably why Dr. Gardner was turned down
14 for additional funding when he went to, I
15 believe it was, the National Cancer Society, or
16 some entity like that, for additional funding.

17 Q. Have you seen the proposed monograph
18 from Dr. Gardner and the revised monograph?

19 A. I don't believe I have, no.

20 Q. Okay. Now, you would agree with me --
21 and I'm going to show you a letter from October
22 27, 1948, that occurred prior to this meeting.

23 MR. GEORGE: And we'll mark this as
24 Exhibit 12.

1 (Exhibit No. 12, Saranac Laboratory
2 Asbestos Dust Experiments so marked)

3 Q. That the companies that sponsored this
4 research were given copies of the draft of what
5 purported to be part one of a report from
6 Saranac Laboratories entitled Pneumoconiosis.

7 Let me just first show you this
8 correspondence which I'll mark as Exhibit 12.
9 This is from Vandiver Brown, secretary and
10 general attorney to American Brakeblok Division
11 of A.B.S.A.P and others, October 27, 1948?

12 A. Let's clarify, Vandiver Brown was not
13 with Abex. He was --

14 Q. Understood.

15 A. Okay. Well, the way you said it, it
16 sounded like you were saying he was from Abex.

17 Q. He was general counsel from
18 Raybestos-Manhattan?

19 A. I believe that's correct, yes.

20 Q. Raybestos-Manhattan was --

21 MR. RADCLIFFE: He was general counsel
22 to Johns Manville.

23 THE WITNESS: You're right. I'm
24 sorry.

1 Q. Johns Manville at the time was of one
2 the leading manufacturers of asbestos products
3 in the United States, correct?

4 MR. RADCLIFFE: Object to form.

5 A. They were a principal miner of
6 asbestos.

7 Q. What Vandiver Brown did is he sent
8 copies -- well, first of all, have you seen
9 that correspondence before?

10 A. I don't believe I have.

11 Q. According to that letter, he sent
12 copies of the proposed publication for review
13 by the committee members, correct?

14 A. Yes.

15 Q. And he wanted them to keep it
16 confidential, correct?

17 A. Yes.

18 Q. Let me see that for just a second.

19 A. (Witness complies)

20 Q. In fact, he said, "With the request
21 that you treat with it with the utmost
22 confidence and make it available to no one
23 outside your organization, I'm enclosing what
24 purports to be part one of a report by the

1 Saranac Laboratory entitled, 'Asbestos
2 Pneumoconiosis.'" That's what the opening
3 paragraph says, correct?

4 A. Yes.

5 Q. In his correspondence that we've
6 looked at previously from November 12, 1948, he
7 states that after talking about the unanimous
8 opinion to omit references to cancer and
9 tumors --

10 A. What document are you looking at?

11 Q. The November 12, 1948, the one we
12 marked previously, on the back side he says
13 that "We have retrieved all the copies of this
14 tentative and confidential report except the
15 one we sent you." And he's writing to Mr.
16 Kelly who is the executive vice president of
17 Abex, correct?

18 A. That's right, yes.

19 Q. "Which I note Dr. Hamlin would like to
20 keep. I wish, however, you would prevail upon
21 him to return it to us. Everyone felt that it
22 would be most unwise to have any copies of the
23 draft report outstanding if the final report is
24 to be different in any substantial respect.

1 The feeling of the representatives of the
2 various companies was very emphatic on this
3 point." Correct?

4 MR. RADCLIFFE: Object to form.

5 A. That's what Vandiver Brown wrote to
6 Mr. Kelly at Abex, yes.

7 Q. He also sent a copy of the letter to
8 Dr. Hamlin, correct?

9 A. I don't see that.

10 Q. "I'm enclosing an extra copy of this
11 letter in case you wish to send it to Dr.
12 Hamlin"?

13 A. Okay, yeah, last sentence. I'm sorry.

14 Q. And then on November 16, 1948, a
15 document we'll mark as Exhibit 13, then Mr.
16 Kelly acknowledges receiving that letter and
17 says, "Since we have the only stray copy of the
18 tentative report, I am asking Dr. Hamlin to
19 return it directly to you."

20 A. Yes, I'm familiar with that document.

21 (Exhibit No. 13, Letter to Vandiver
22 Brown, 11.16.48 so marked)

23 Q. Okay. This report was ultimately
24 published in 1951, correct?

1 A. Yes.

2 Q. And at the time it was published,
3 there was no reference to cancer in the report,
4 correct?

5 MR. RADCLIFFE: Objection to form.

6 A. That's right.

7 Q. Let me ask you: Have you ever seen --
8 this is a document, it says copy. It's
9 confidential. It's dated March 19, 1949. It
10 says Saranac report. It's from Kenneth W.
11 Smith, M.D., and the only recipient that's not
12 Xed out, if there was any others, George K.
13 Foster. And it's a report on experimental
14 asbestosis has been reviewed, and attached are
15 some summary of findings. I'm just curious as
16 to whether you have seen that document in the
17 files of Abex?

18 A. I don't recall seeing this document.
19 I have no knowledge as to who Foster or Smith
20 are either.

21 Q. After Mr. Hamlin the next medical
22 director of Abex was Dr. Blackwell, correct?

23 A. Yes.

24 Q. And Dr. Blackwell started in 1961.

1 His name was Charles C. Blackwell, correct?

2 A. That's right.

3 Q. Now, the office of the medical
4 director was in Chicago, correct?

5 A. Yes, in the greater Chicago area.

6 Q. Dr. Blackwell was the medical director
7 of Abex from 1961 until 1976, correct?

8 A. Yes.

9 Q. Is Dr. Blackwell still alive?

10 A. Not to my knowledge. I mean, I don't
11 know. I really just don't know. Although, I
12 think -- can I see our interrogatories
13 because --

14 Q. It doesn't say anything. It just says
15 deceased for the other two, but it doesn't have
16 anything.

17 A. I knew one of them was showing
18 deceased. I thought it might have been
19 Blackwell. If it doesn't say in there, then my
20 answer stands. I'm not sure if he's alive or
21 not.

22 Q. Would you agree that Abex purchased
23 asbestos fiber from Johns Manville since 1950?

24 A. One of our suppliers was Johns

1 Manville, yes.

2 Q. You also were supplied from Lake
3 Asbestos in Quebec, Canada, correct?

4 A. Yes.

5 Q. Bell Asbestos Mines in Quebec?

6 A. Yes, sir.

7 Q. Asbestos Corporation in Quebec?

8 A. Yes, sir.

9 Q. The GAF Corporation in Vermont?

10 A. Yes.

11 Q. And the Vermont Asbestos Group?

12 A. Yes.

13 Q. I'm going to show you a letter -- it's
14 actually two letters. The first one is from
15 Anthony Lanza to Mr. Arthur Fiske of the legal
16 department of Johns Manville. It's dated March
17 5, 1952. The second is his response dated
18 February 20, 1952.

19 Actually, the first one was February
20 20, 1952, and the response is March 5, 1952,
21 both deal with the labelling of asbestos fiber.

22 MR. RADCLIFFE: Object to form.

23 Q. My first question is whether you've
24 seen either one of those letters prior to

1 today?

2 MR. RADCLIFFE: Object to form.

3 A. No. You showed them to me just before
4 the deposition started, but I hadn't seen them
5 prior to that.

6 Q. What those letters indicate is that
7 Johns Manville was consulting with Dr. Lanza
8 with regard to cautionary language to put on
9 its bags of asbestos, correct?

10 MR. RADCLIFFE: Object to form.

11 A. I don't know. I mean, these weren't
12 Abex documents. I've not seen them before.
13 You're asking me for an interpretation of a
14 letter from a physician to a corporate guy. I
15 don't know.

16 Q. I want you to assume that this letter
17 from Arthur Fiske, who is with the legal
18 department of Johns Manville, asks -- tells Dr.
19 Lanza that "It is our intention to label our
20 bags containing asbestos fiber using the
21 following: Caution, asbestos fiber.
22 Inhalation of asbestos fiber over long periods
23 may be harmful. The materials should be used
24 as not to create dust or if this is not

1 possible, employees should be equipped with
2 adequate protective devices."

3 With that assumption, can you tell me
4 when Abex first realized that there were
5 cautionary labels on the bags of asbestos that
6 it was being provided from those companies that
7 we discussed earlier?

8 MR. RADCLIFFE: Object to form.

9 A. Well, irrespective of those letters,
10 based on my personal knowledge, I believe that
11 we started to see some bags of asbestos appear
12 at the Winchester plant in the very early 1970s
13 with some labels on them like that similar to
14 that. Whether they were exactly the same as
15 that, I couldn't say for sure.

16 Q. Have you done any investigation to
17 determine when Johns Manville, GAF or these
18 other companies first put warnings on their
19 bags -- not warnings, cautionary language on
20 their bags of asbestos?

21 A. I haven't found any documents that
22 would support a firm position. I can tell you
23 from my personal knowledge having been at the
24 Winchester plant, I started to see them on some

1 bags in the early 1970s.

2 Q. And by that statement you're saying
3 some bags had cautionary language and other
4 bags didn't?

5 A. Well, from some suppliers because we
6 would have comingling of some fiber that was
7 procured from Johns Manville, other from Bell,
8 other from Lake, other from GAF, and I don't
9 remember if the warnings were on one brand of
10 asbestos, if you will, or another.

11 Q. And the reason why I call them
12 cautionary language is because the word
13 "warning" wasn't used on those labels, correct?

14 A. Okay. Again, I don't recall the exact
15 wording, but materially that was the warning
16 that I recall. Whether it was called a warning
17 or cautionary label, I can't tell you.

18 Q. Would you agree with me that
19 cautionary labels were on the bags of asbestos
20 fibers received from Abex before Abex ever put
21 any cautionary labels on asbestos products that
22 it manufactured?

23 A. I see the time very close and somewhat
24 overlapping. My first visits to Winchester

1 were in the 19 -- very early 1970s, and I
2 remember seeing a hand rubber stamp going on
3 boxes of Abex product that had a warning or
4 cautionary statement and that was about the
5 same time as I recall seeing some bags of
6 asbestos containing that warning or similar
7 warning.

8 Q. You just said that you saw them in the
9 early '70s. I'm looking at your sworn Answers
10 to Interrogatories in this case, and you stated
11 that "Due to concerns of the use of asbestos
12 and regulatory action for some products that
13 contained asbestos, starting in the early to
14 mid 1970s Abex commenced the placement of
15 warning labels on those friction materials that
16 contained asbestos." That's what you wrote,
17 correct?

18 A. Yeah. And I guess the only difference
19 from what I'm saying today is today I'm saying
20 early 1970s, and there I'm saying early to mid.

21 Q. You would agree with me that you have
22 no documentation that pinpoints the exact point
23 in time when Abex first placed any cautionary
24 language on any product that it sold that

1 contained asbestos?

2 A. I have not come across a document that
3 pinpoints the specific date that it started,
4 but I can tell you from my own personal
5 knowledge and being in that factory and when I
6 was certainly in the quality assurance area,
7 part of our responsibility was to put warnings
8 on the boxes so....

9 Q. You continue to use the terminology
10 "warnings." You would agree with me that the
11 language that was put on the packages of
12 materials that were manufactured by Abex simply
13 stated "caution, contains asbestos fiber,"
14 correct?

15 A. Yes. In my definition of that is a
16 warning.

17 Q. Okay. It doesn't contain the word
18 "warning"?

19 A. The word "warning," no, it does not.

20 Q. Is also doesn't contain any
21 information with regard to cancer, correct?

22 A. That's right.

23 MR. RADCLIFFE: Object to form.

24 Q. And, in fact, while it states that the

1 product contains asbestos fibers, it tells the
2 user to avoid creating dust, correct?

3 A. Yes.

4 Q. But it doesn't tell the user how to
5 avoid creating dust, correct?

6 A. That's correct.

7 Q. It doesn't tell the user what to do if
8 dust is created?

9 A. No, it doesn't.

10 Q. It says "breathing asbestos dust may
11 cause serious bodily harm." Correct?

12 A. Yes.

13 Q. But it does not define what that
14 bodily harm is, correct?

15 A. That's right.

16 Q. To the best of your knowledge, this
17 cautionary language which was put on your
18 product sometime starting in early to mid
19 1970s, that warning -- that language was never
20 changed throughout the time up until 1987 when
21 Abex stopped selling asbestos-containing brake
22 linings, correct?

23 A. To my knowledge we never changed that
24 warning statement.

1 MR. GEORGE: Do you want to take a
2 break?

3 THE WITNESS: Yeah, I think that would
4 be great, sure.

5 MR. GEORGE: Why don't we take a
6 break.

7 THE VIDEOGRAPHER: The time is now
8 12:31 p.m. We're going off the record.

9 (Recess 12:31 p.m. to 12:40 p.m.)

10 THE VIDEOGRAPHER: The time is now
11 12:41 p.m. We are back on the record.

12 BY MR. GEORGE:

13 Q. We were talking about cautionary
14 labels that were placed on Abex products in the
15 early to mid '70s. I want to go back in time a
16 lit bit. I want to show you what we'll mark as
17 Exhibit 14, which is a letter from D.K. Rennie,
18 R-E-N-N-I-E, to Dr. C. C. Blackwell, medical
19 director, American Brake Shoe Company, dated
20 October 8, 1964.

21 (Exhibit No. 14, Letter to C.C.
22 Blackwell, 10.8.64 so marked)

23 Q. First of all, can you tell me who D.K.
24 Rennie is?

1 A. I knew Don Rennie in a couple of
2 capacities. For a while he was the corporate
3 VP for human resources, and for a while he was
4 I believe the VP of operations for the friction
5 division of Abex.

6 Q. And you've seen this letter before,
7 correct?

8 A. I believe I have.

9 Q. This is another document that has that
10 SPNY Bates numbering on the bottom, correct?

11 A. Yes.

12 Q. Now, this is a letter of October 8,
13 1964, wherein Mr. Rennie is sending to Dr.
14 Blackwell an article from The Pontiac Press
15 that was brought to his attention, correct?

16 A. Yes.

17 Q. And the attached article is entitled
18 Medical Specialists Suspect Asbestos As a Cause
19 of Cancer. Correct?

20 A. Yes.

21 Q. It says that "Medical specialists
22 pointed a strong finger of suspicion today at
23 asbestos as not as a cause not only of lung
24 cancer but also of another extremely rare form

1 of fatal human cancer. This cancer known as
2 mesothelioma involves the lining of the
3 abdominal and chest cavities," is what the
4 article says, correct?

5 A. Yes.

6 Q. It says after -- the second paragraph
7 after "marked increase" says, "Now they also
8 find a markedly high incidence among such
9 workers of mesothelioma, a cancer so rare it is
10 not classed separately as a cause of death in
11 international classification of diseases."
12 Correct?

13 A. Yes.

14 Q. At the end of the column entitled High
15 Incidence it says, "The cancers may not appear
16 until 20 to 30 years after asbestos dust is
17 inhaled or swallowed they said," correct?

18 A. Yes.

19 Q. The "they" that they're referring to
20 is Dr. Selikoff and Dr. Churg at the Mount
21 Sinai Hospital?

22 A. I haven't read this article, so I
23 can't say -- okay, I do see Selikoff's name
24 referenced here, yes.

1 Q. The last column says, "Dr. Hammond
2 said one worry is whether a few or even a
3 single past exposure might set the stage for
4 cancer. He said this is a matter calling for
5 more research. Taking precautions to avoid
6 breathing in asbestos dust is a main protection
7 for industrial workers, he and Dr. Selikoff
8 said." That's what that Pontiac Press article
9 that Mr. Rennie was sending to Dr. Blackwell,
10 correct?

11 A. That's right. And he was sending it
12 with regard to licensees and presumably having
13 to give him an alert that maybe we should be
14 doing more outside the United States. That's
15 my take on that letter.

16 MR. GEORGE: Movie to strike as
17 nonresponsive everything after yes.

18 Q. There was a response to that letter by
19 Dr. Blackwell, correct, dated October 13, 1964?

20 MR. GEORGE: And we'll mark it as
21 Exhibit 15.

22 (Exhibit No. 15, Letter to William
23 Veenstre, 10.13.64 so marked)

24 Q. That's a letter you've seen before,

1 correct?

2 A. No, I don't recall seeing this one.
3 Wait, let me read it first. This letter, I
4 have seen this before, and I don't understand
5 this to have any relation to the previous
6 letters that you've shown me or articles.

7 Q. The article that Mr. Rennie said -- he
8 sent it to him October 8, correct, and talked
9 about mesothelioma. And this is a letter that
10 Dr. Blackwell is sending to --

11 A. Purchasing department.

12 Q. About five days later in 1964,
13 correct?

14 A. Right.

15 Q. And one of the people that's listed on
16 top is D.K. Rennie -- actually D.R. Rennie?

17 A. Somebody wrote that in, but it's not
18 part of the letter. And nor do I see that Dr.
19 Blackwell has officially carbon copied Mr.
20 Rennie. So I have no way to assure that this
21 has anything to do with the Pontiac Press
22 article.

23 Q. Other than it says in the third full
24 sentence, "It is interesting that Don Rennie

1 also wrote to me at about the same time you did
2 concerning this particular item," which was a
3 clipping concerning asbestosis and
4 mesothelioma, correct?

5 A. It doesn't say that.

6 Q. Let's just read. For the record, it
7 says, "Dear Bill, thank you for your note of
8 October 7, 1964," which predated Mr. Rennie's
9 by a day, correct?

10 A. Yes.

11 Q. "And for the clipping concerning
12 asbestosis. The problem of mesotheliomas in
13 individuals exposed to asbestos is pretty well
14 known in industry. It is interesting that Don
15 Rennie also wrote to me at about the same time
16 you did concerning this particular item."
17 That's what it's written, correct?

18 A. Yes.

19 Q. It says, "Up until the present time,
20 based on our industrial hygiene surveys, we
21 have not had any great concern about asbestos
22 exposure among our employees, but there is
23 certainly the need for continued vigilance."
24 That's what he wrote, correct?

1 A. Yes.

2 Q. One of the reasons why the plant
3 personnel, they didn't have any great concern
4 was because there were industrial hygiene
5 measures that were employed in the plant
6 including exhaust ventilation, correct?

7 A. What's your question?

8 Q. My question is: One of the reasons
9 why Dr. Blackwell said they didn't have any
10 great concern about asbestos exposure among
11 their employees was the fact that there were
12 industrial hygiene measures that were in place
13 at the plant for people using asbestos?

14 A. Yes, that was one.

15 MR. RADCLIFFE: Object to form.

16 A. One factor.

17 Q. So they had exhaust ventilation that
18 reduced the amount of dust that these people
19 were exposed to, correct?

20 A. Yes. It was encapsulated in a resin.
21 I mean, there were numerous factors, but that
22 was one factor. If that was your question,
23 yes, that was one factor.

24 Q. Now seven days later on October 20,

1 1964, there was another letter from Dr.
2 Blackwell to Mr. R.B. Parker management
3 personnel, New York office.

4 MR. GEORGE: We'll mark this as
5 Exhibit 16.

6 (Exhibit No. 16, Letter to R.B.
7 Parker, 10.20.64 so marked)

8 Q. Is that a document that you've seen
9 before?

10 A. If you let me see it, I'll tell you.
11 Yes, I believe I have seen this before.

12 Q. Who is Mr. Parker?

13 A. I never knew a Mr. Parker.

14 Q. Okay. But you did have a New York
15 office --

16 A. We did.

17 Q. -- at Abex? It says in the last
18 sentence of the first paragraph, "Management
19 has been aware of the occupational hazards
20 associated with this material." And they're
21 talking about asbestos, correct?

22 A. Yes.

23 Q. "In the April 6, 1964 issue of the
24 Journal of American Medical Association,

1 there's an article by I.J. Selikoff, M.D., J.
2 Churg, M.D., E.C. Hammond, D.Sc. on 'asbestos
3 exposure and neoplasia.' It is this same group
4 and the findings described in this article
5 which have prompted numerous newspaper articles
6 which so many of us are reading." That's what
7 Dr. Blackwell wrote, correct?

8 A. Yes.

9 Q. Basically what he's saying is these
10 news articles are all based on the fact that
11 scientists at Mount Sinai have found an
12 increased risk of mesothelioma among workers
13 who worked with asbestos?

14 A. It doesn't say that in this letter
15 but....

16 Q. Well, it says, "in the select group of
17 workers," the first sentence of the third
18 paragraph?

19 A. I don't know what select group of
20 workers -- I mean, I'm just -- I'm really
21 uncomfortable. I really feel like you're
22 taking things, a sentence here and a sentence
23 there and trying to paint a picture that suits
24 you, and you're not giving me a chance to read

1 the document or comment on it.

2 Q. Take your time to read it.

3 A. How about I just read it aloud.

4 Q. Take your time and read it to
5 yourself, and I'll ask you questions about it.

6 MR. GEORGE: We can go off the record
7 for a second.

8 THE VIDEOGRAPHER: The time is 10:50
9 a.m. Going off record.

10 (Recess 12:50 p.m. to 12:52 p.m.)

11 THE VIDEOGRAPHER: The time 12:52 p.m.
12 Back on the record.

13 BY MR. GEORGE:

14 Q. You would agree with me that what this
15 letter is addressing is the fact that these
16 researchers from Mount Sinai, including Dr.
17 Selikoff and others, had determined that there
18 was an increased risk of cancer of the lung and
19 the pleura in workers exposed to asbestos?

20 A. I would agree that Dr. Selikoff's
21 group said essentially what you're saying for
22 people that were exposed for long periods of
23 time. Frequent and prolonged exposures is the
24 terminology that's used in this letter.

1 Q. Okay. And Dr. Blackwell's comment on
2 that was, "Despite the fact of this publicity,
3 I do not feel that there will be further and/or
4 sufficient publicity on the basis of present
5 studies on asbestos as it relates to human
6 health to the point where it would affect the
7 asbestos brake lining exposure of the general
8 populous." That's what he wrote, correct?

9 A. That's right.

10 Q. Now, as of this time, October 1964,
11 Abex hasn't put any cautionary language on any
12 product that it's selling that contained
13 asbestos, correct?

14 A. I believe that to be correct, yes.

15 Q. In fact, at this point in time, the
16 mid 1960s, at least as of 1964, Abex was only
17 selling asbestos brake linings and asbestos
18 clutch face linings because they hadn't yet
19 developed any nonasbestos product?

20 A. That's right.

21 Q. I want to show you what I'll mark as
22 Exhibit 17.

23 (Exhibit No. 17, Memo to J.D.
24 Henderson, 3.25.68 so marked)

1 Q. Which is a letter dated March 25,
2 1968, and it's from G.M. Theodore to J.D.
3 Henderson, and the subject is Liberty Mutual
4 Safety Management Institute. It's an
5 interoffice correspondence of the Abex
6 Corporation.

7 A. Specifically, it's the Denison
8 Hydraulics Division of Abex. It has nothing to
9 do with the brake business of Abex.

10 Q. Well, you would agree this is a
11 business record of the Abex Corporation?

12 A. Yes, but not the friction business.

13 Q. And Mr. Theodore, do you know who he
14 was?

15 A. Never heard of him.

16 Q. Mr. Theodore, according to this
17 document, apparently attended a session that
18 was put on by the Liberty Mutual Safety
19 Management Institute, correct?

20 A. That's what it says.

21 Q. And one of the things he learned, one
22 of the things that was discussed was product
23 liability in relation to large lawsuits for
24 improper warnings against hazards on products

1 produced?

2 MR. RADCLIFFE: Object to form.

3 Q. That's what he wrote, correct?

4 MR. RADCLIFFE: Object to form.

5 A. "Product liability was also discussed
6 in relation to improper warnings."

7 Q. And as of March 1968, at least some
8 members of the Abex Corporation understood that
9 there was the possibility of product liability
10 if there were improper warnings against hazards
11 that were put on product produced?

12 MR. RADCLIFFE: Object to form.

13 A. Your question, please?

14 Q. My question is: You would agree with
15 me that as of March 25, 1968, there were
16 members of the Abex Corporation that were aware
17 that there was probably product liability for
18 improper warnings against hazards on products
19 produced?

20 MR. RADCLIFFE: Object to form.

21 A. I would agree in the context of the
22 Denison Division of Abex. I mean, Abex was a
23 big corporation, and it had 50 or 60 factories,
24 had four divisions scattered all over the

1 world. And because one guy at one division
2 totally unrelated to what we've been talking
3 about today went to a conference and wrote a
4 memo I think is totally out of context.

5 Q. Is it your testimony as the corporate
6 representative for Abex that the only
7 individual in the Abex Corporation that knew
8 that there was potential product liability when
9 improper warnings were placed on products was
10 Mr. Theodore?

11 MR. RADCLIFFE: Object to form.

12 A. No.

13 Q. I want to show you what we'll mark as
14 Exhibit 18.

15 (Exhibit No. 18, Report On FMSI
16 Asbestos Study Committee Activities so marked)

17 Q. This is a report on the FMSI Asbestos
18 Study Committee activities that's signed by
19 I.H. Weaver, chairman.

20 A. Mr. Weaver wasn't an Abex person.

21 Q. Understood. Mr. Weaver was the
22 president of Raybestos-Manhattan, correct?

23 A. I don't know --

24 MR. RADCLIFFE: Object to form.

1 A. -- what his job was. I knew he was on
2 the Asbestos Study Committee.

3 Q. First of all, we talked about it
4 earlier that Abex was a member of an
5 organization called the Friction Materials
6 Standard Institute, correct?

7 A. That's right.

8 Q. Now, the predecessor to that
9 organization was the -- well, strike that.

10 According to your interrogatories,
11 Abex was a member of the Friction Materials
12 Standard Institute from 1949 to 1994, correct?

13 A. Yes.

14 Q. And the Friction Materials Standard
15 Institute was composed of entities that made
16 asbestos friction materials?

17 A. They were composed of entities that
18 made brake lining.

19 Q. And for those entities prior to 1970,
20 the majority of the brake linings they were
21 manufacturing contained asbestos, correct?

22 A. Yes.

23 MR. RADCLIFFE: Object to form.

24 Q. In fact, as of the date of this

1 meeting, September 15, 1971, the overwhelming
2 majority of friction materials sold by these
3 organizations contained asbestos, correct?

4 A. Yes.

5 Q. Okay. And, in fact, the reason why
6 they formed an Asbestos Study Committee was
7 because the State of Illinois had indicated
8 that it was going to ban asbestos from brake
9 linings, correct?

10 A. That's true until they realized they
11 still had to stop cars, and there was no way to
12 do that.

13 Q. In July of 1971, with the assigned
14 purpose to review and comment on rules and
15 regulations promulgated by state and federal
16 governments concerning asbestos and its
17 applications, the FMSI formed the Asbestos
18 Study Committee, correct?

19 A. Yes, that's right.

20 Q. One of the avowed purposes of the
21 committee was the distribution and circulation
22 of literature on asbestos and health subjects,
23 correct?

24 A. That was one of them, yes.

1 Q. One of the founding members of the
2 Asbestos Study Committee was Abex?

3 MR. RADCLIFFE: Object to form.

4 A. We were a member. Whether founding
5 member, I can't say.

6 Q. The first committee meeting was held
7 on September 15, 1971, correct?

8 A. Yes.

9 Q. And Abex was at that first meeting?

10 A. Yes.

11 Q. Okay. If you turn to the third
12 page --

13 A. (Witness complies)

14 Q. -- it states at the very bottom that
15 one --

16 A. No. 8 is that?

17 Q. Yes. "One of the activities of this
18 committee was to follow as closely as possible
19 medical and occupational health research
20 concerning asbestos and asbestos-related
21 diseases and determine whether FMSI or its
22 member companies should help sponsor or
23 otherwise support work of the nature."
24 Correct?

1 A. Yes, there's a listing here, and that
2 was No. 8 of that list.

3 Q. I'll take that. I want to show you
4 what we'll mark as Exhibit 20, which is a
5 letter from Charles Blackwell to Milton Pogsin
6 dated August 13, 1971.

7 (Exhibit No. 19, Exhibit Number
8 Skipped - No Exhibit Marked)

9 (Exhibit No. 20, Letter to Milton
10 Pogsin, 8.13.71 so marked)

11 Q. That's a letter that you've been shown
12 before, correct?

13 A. Yes, I believe I have seen this
14 before.

15 Q. And this is some seven years after the
16 correspondence in October -- well, almost seven
17 years since the correspondence in October 1964
18 where Dr. Blackwell had addressed the initial
19 research of Dr. Selikoff and the scientists at
20 Mount Sinai, correct?

21 A. Yes.

22 Q. Seven years later he says that "Dr.
23 Irving Selikoff is well-intentioned, but I
24 personally fear that he is a panic or fear

1 peddler so to speak." That's what he wrote,
2 correct?

3 A. Yes.

4 Q. And he said, "There is most certainly
5 some or a lot of merit to some of that which he
6 promotes, but a lot of physicians object to the
7 manner in which he does it, by means of fear
8 and a very aggressive policy and especially
9 when he admits that neither he nor the
10 engineers have the solution to the problems
11 attended to or with such utilization of
12 asbestos."

13 That's what he wrote, correct?

14 A. Yes.

15 Q. He talked about meeting with some
16 union officials. He showed them movies. He
17 reportedly left a 45-minute technical medical
18 tape on asbestos with the union officials that
19 they could study, and Dr. Blackwell's comment
20 was, "Can you imagine his misdirected efforts,
21 such nerve."

22 That's what he wrote, correct?

23 A. Yes.

24 Q. As of the date, August 13, 1971, Abex

1 still had not placed any cautionary language on
2 any of its products of asbestos-containing
3 material, correct?

4 MR. RADCLIFFE: Object to form.

5 A. I don't know if in August 13 of 1971
6 there was a warning label on or not. It was
7 about that time. I said to you earlier it was
8 the early 1970s, '71, '72. This is the third
9 quarter of '71. Possibly there were warnings
10 on it. Also, I'd like to point out that Dr.
11 Blackwell hadn't signed this letter, and that
12 it's simply a response to Milton who sent him
13 an article which Dr. Selikoff is expounding
14 upon.

15 Q. We've looked at other correspondence
16 that was not signed by Dr. Blackwell?

17 A. Yeah, I should have pointed those out
18 because many of them are not signed.

19 Q. You're not maintaining, are you, that
20 this correspondence is not a business record of
21 Abex, are you?

22 A. I'm not saying -- I'm saying I'm not
23 sure it was ever sent.

24 Q. But it contains the SPNY Bates stamp

1 numbering on the bottom, correct?

2 A. Well, that's you're telling me that
3 means, and I'll accept that. But all I'm
4 saying is I get really uncomfortable with
5 unsigned memos because I think oftentimes
6 letters are written and not sent, and they may
7 still be in the file somewhere.

8 Q. Is it your position that the previous
9 letter of October 8, 1964, which also has the
10 Bates stamp numbering and indicates --

11 A. Can I see it again?

12 Q. -- from Mr. Rennie to Mr. Blackwell,
13 but is not signed was not a business record of
14 Abex?

15 A. I'm saying it's an unsigned copy of a
16 letter.

17 Q. As the corporate representative for
18 Abex, it's not your testimony, is it, that this
19 letter is not a business record of Abex
20 Corporation that's been kept in their
21 repository?

22 A. I don't know.

23 Q. Similarly, the other letter that we
24 looked at from October 20, 1964, again, not

1 signed, but it contains the Bates stamp
2 numbering on the bottom, is it your position
3 that this document was not found within the
4 business records of Abex?

5 A. I'm not saying it wasn't found in the
6 business records. I'm not saying -- I'm saying
7 I don't know for sure that it was ever sent to
8 anyone; that it could have been a draft. It
9 could have wound up in a file. It could have
10 never been communicated to anybody.

11 Q. Would you agree with me that the
12 documents that are contained within the
13 document repository at Abex were documents that
14 were kept by Abex because they were part of
15 their business records?

16 MR. RADCLIFFE: Object to form.

17 A. I can't answer that. I don't know.

18 Q. As the corporate representative, do
19 you have any knowledge of the origin of the
20 document depository?

21 A. The origin of it?

22 Q. Sure. How did those documents get
23 collected?

24 A. A bunch of lawyers came in and

1 gathered them up, and that was, you know, the
2 business was sold. Many of the records stayed
3 with the business purchaser, you know, and
4 records were at some point gathered in one
5 place and put in Brooklyn.

6 Q. Have you ever gone to Brooklyn to look
7 at them?

8 A. No, I haven't.

9 Q. You can't tell whether those documents
10 have been indicated in some manner so that in
11 subsequent proceedings we can be assured that
12 they're documents that came from the
13 repository?

14 MR. RADCLIFFE: Object to form.

15 A. I'm sorry, what's your question?

16 Q. Since you've never been to the
17 depository --

18 A. Right.

19 Q. -- repository, you've never seen
20 documents as they were taken out of the
21 repository?

22 A. That's right.

23 Q. You don't know if they're marked in
24 any manner so that in substance --

1 A. I don't know the protocol in terms of
2 the markings. You're telling me that's the
3 Bates number. I'll willing to accept that,
4 but, I mean, I don't know that. I didn't put
5 the marking on it.

6 Q. Have you read the deposition testimony
7 of any of the other designated corporate
8 representatives of Abex?

9 A. No.

10 Q. And you know there have been other
11 designated corporate representatives prior to
12 you?

13 A. Sure. There were people that, you
14 know, I worked for that, unfortunately, passed
15 on, and you're just asking me to make a lot of
16 assumptions, and my knowledge of being a good
17 witness is not to assume so....

18 Q. Well, is it your position as the
19 corporate representative of Abex that Abex was
20 unaware of Dr. Selikoff's research in 1964?

21 A. No. We knew what Dr. Selikoff was
22 publishing. We were aware of it. We certainly
23 were concerned about what he was saying and how
24 oftentimes it was misquoted because it was my

1 understanding back then, and it still is today,
2 that a lot of Selikoff's work had to do with
3 people in the asbestos fiber business and not
4 necessarily brake mechanics.

5 Yet all of his findings seem to get
6 spun in a way that made it sound like it all
7 related to automotive brakes. And that wasn't
8 at all the case from my knowledge.

9 Q. Do you agree with the correspondence
10 from Dr. Blackwell in 1964 that mesothelioma as
11 a disease was -- the problem mesothelioma in
12 individuals exposed to asbestos was pretty well
13 known in the industry in 1964?

14 MR. RADCLIFFE: Object to form.

15 A. You're asking for my medical opinion?

16 Q. No. I'm asking as a corporate
17 representative of Abex, do you agree that Abex
18 had knowledge of mesothelioma in 1964?

19 MR. RADCLIFFE: Object to form.

20 A. I don't know if we had knowledge in
21 1964.

22 Q. Yet, you do concede that you are --
23 you were aware of Dr. Selikoff's publications?

24 MR. RADCLIFFE: Object to form.

1 A. Yes.

2 Q. I'm going to show you what we'll mark
3 as Exhibit 21.

4 (Exhibit No. 21, Letter to D.K.
5 Rennie, 5.10.72 so marked)

6 Q. This is a letter from Dr. Blackwell
7 copying E.R. Feierabend to Mr. D.K. Rennie
8 dated May 10, 1972. Was this a document that
9 you've seen before?

10 A. I'm not sure. Can I take a minute and
11 read it?

12 Q. Sure.

13 THE WITNESS: Would you like to go off
14 the record?

15 THE VIDEOGRAPHER: The time is 1:09
16 p.m. Going off record.

17 (Recess 1:09 p.m. to 1:10 p.m.)

18 THE VIDEOGRAPHER: The time is now
19 1:10 p.m. We are now back on the record.

20 BY MR. GEORGE:

21 Q. Having reviewed the document, is it a
22 document that you've seen before?

23 A. Yes, I believe I have seen this
24 before.

1 Q. Do you agree that this is a document
2 of Abex Corporation?

3 A. Yes.

4 Q. This is dated May 10, 1972, correct?

5 A. Yes, it is.

6 Q. And again Dr. Blackwell is talking
7 about Dr. Selikoff, correct?

8 A. That's one of the topics, yeah.

9 Q. And this is some almost eight years
10 after Dr. Selikoff first published on his
11 studies in 1964, correct?

12 A. That's right.

13 Q. And he says that, "Dr. Selikoff,
14 unfortunately, I feel has somewhat of a flare
15 for creating the sensational type of reporting
16 with the news media. Nevertheless, one cannot
17 ignore the statistics which he and his
18 associates have compiled dealing with
19 asbestos."

20 That's what he wrote, correct?

21 A. Yes.

22 Q. And specifically in the last paragraph
23 he talks about, "The mesothelioma, a particular
24 type of lung cancer, is generally speaking a

1 rarity except among those exposed to asbestos
2 where it is much more prevalent." Correct?

3 A. The last paragraph talks about the
4 smoking in the incidence of.

5 Q. Last paragraph on the first page?

6 A. Okay. I'm sorry.

7 Q. He says, does he not, "Mesothelioma, a
8 particular type of lung cancer, is, generally
9 speaking, a rarity except among those exposed
10 to asbestos where it is much more prevalent"?

11 A. Yes.

12 MR. RADCLIFFE: Object to form.

13 Q. Now this is in May of 1972. I want to
14 show you what I'll mark as Exhibit 22, minutes
15 of the Friction Material Standard Institute
16 Asbestos Study Committee dated June 20, 1972.

17 (Exhibit No. 22, Friction Material
18 Standard Institute Asbestos Study Committee
19 Minutes, 6.20.72 so marked)

20 Q. This is a document you've seen before,
21 correct?

22 A. Only at the beginning of today. I
23 haven't had a chance to study it.

24 Q. You agree that during this period of

1 time, June 20, 1972, that Abex was a member of
2 the Asbestos Study Committee?

3 A. Yes.

4 Q. And this is a letter from Mr. Drislane
5 who is the executive secretary of the FMSI to
6 members of the Asbestos Study Committee,
7 correct?

8 A. Yes. It's a transmittal letter that
9 says basically here's this Ike Weaver document,
10 and he thought it should be given out to the
11 members so here it is.

12 Q. What it is is comparing the industry
13 position, the NIOSH advisory committee
14 recommendation and the final OSHA standard as
15 it applies to the regulations on asbestos,
16 correct?

17 A. That appears to be what it is, yes.

18 Q. And you agree that in June 1972 is
19 around the time that OSHA was formulating its
20 asbestos standards?

21 MR. RADCLIFFE: Object to form.

22 A. I don't know when they were
23 formulating them. I don't know how far back
24 that goes. I don't know when it says "final

1 OSHA standard," if that's what they're saying
2 is in place as of the writing date. So, I
3 mean, it's interesting, but I'm not sure what
4 it really tells me.

5 Q. Were you aware that prior to the
6 implementation of the OSHA standards that the
7 NIOSH advisory committee was recommending that
8 all asbestos-containing products should be
9 labeled and carry the words "cancer" and
10 "danger"?

11 MR. RADCLIFFE: Object to form.

12 A. I wasn't aware of that.

13 Q. Were you aware that the industry
14 position was that the words "cancer" and
15 "danger" should not be used on labels?

16 MR. RADCLIFFE: Object to form.

17 A. No, I didn't know, and I don't know
18 when you say -- when this says industry
19 position if it's talking about the asbestos
20 mining industry, the brake lining industry. I
21 just don't know what industry means in this
22 context.

23 Q. You would agree with me that Abex
24 never put the words "cancer" or "danger" on any

1 of its labels of asbestos friction materials?

2 MR. RADCLIFFE: Object to form.

3 A. All I can tell you is that the
4 document you showed me earlier that had the
5 warning label that I described is the one I
6 believe to be true and correct and carried on
7 through that period of time and was in effect
8 totally in agreement with what was published by
9 OSHA in the Federal Register in 1972 I believe.

10 Q. You would agree the cautionary
11 language that Abex put on its product did not
12 contain the words "cancer" or "danger"?

13 MR. RADCLIFFE: Object to form.

14 Q. Correct?

15 A. It had whatever the Federal Register
16 had, and it did not contain those words.

17 Q. I want to show you what we'll mark as
18 Exhibit 23.

19 (Exhibit No. 23, Minutes of the
20 Meeting of the Asbestos Study Committee,
21 8.17.72 so marked)

22 Q. Minutes of the Asbestos Study
23 Committee from Thursday, August 17, 1972. On
24 the face of that document it indicates, does it

1 not, that Abex was a member present during
2 these minutes?

3 A. Yes.

4 Q. I want you to turn to page three --

5 A. (Witness complies)

6 Q. -- which deals with labeling
7 practices?

8 A. Okay.

9 Q. It says that "It was reported during
10 this topic that there was a higher
11 concentration of asbestos in the air in the
12 inspection department than most members had
13 realized. One member indicated that when
14 pallets of brake linings were shipped, there
15 apparently is additional dust created during
16 transportation."

17 That's what they wrote, correct?

18 MR. RADCLIFFE: Object to form.

19 MR. CARON: Object to form.

20 A. That's what it says.

21 Q. And, in fact, there have been
22 industrial hygiene surveys at Abex, correct?

23 A. Yes.

24 Q. And in the 1971 survey --

1 A. Are we done with this document?

2 Q. Hold on to it for a minute -- they did
3 studies, air sampling of various workers at the
4 plant, correct?

5 A. That was common practice was to
6 inspect the entire factory, yes.

7 Q. And for those individuals that were
8 inspectors at the plant, they found measurable
9 amounts of asbestos dust, correct?

10 MR. RADCLIFFE: Object to form.

11 Q. I'm going to -- this is entitled --
12 I'll withdraw that and lay the foundation
13 first.

14 This is a document entitled Results of
15 U.S.P.H.S. Survey of American Brake Shoe,
16 Winchester, Virginia.

17 MR. GEORGE: We'll mark that Exhibit
18 24.

19 (Exhibit No. 24, Results of U.S.P.H.S.
20 Survey at American Brake Shoe, Winchester,
21 Virginia so marked)

22 Q. I ask you if you're familiar with that
23 document?

24 A. I haven't seen it before today.

1 Q. I noticed in your responses to
2 interrogatories --

3 A. I don't dispute the study was done.

4 Q. Okay. Because in your responses to
5 interrogatories, when asked if there were any
6 studies or research concerning the health
7 consequences of inhaling asbestos, you state
8 that at least one area sampling analysis to
9 collect wear product particle during brake
10 operations prior to November '71.

11 Abex also cooperated with the United
12 States Public Health Survey in a study of wear
13 debris, and the results are now published by
14 the United States Public Health Service?

15 A. That has nothing to do with this.
16 That was wear debris which was the result of
17 dynamometer testing done at the Mahwah research
18 center.

19 Q. This survey was done by the United
20 States Public Health Service, correct?

21 A. Yes.

22 Q. And you're aware that the United
23 States Public Health Service did air sampling
24 at your plant in Winchester, Virginia?

1 A. Yes. Abex, and specifically the
2 Winchester plant, cooperated with them so that
3 they could get their arms around what
4 industrial exposure was like. And, in fact, I
5 think there was a commendation or some such
6 commendation to Abex for their corporation.

7 And I believe that further that a lot
8 of this data was used to actually establish
9 standard deviation or error of the counters of
10 these asbestos fiber tests.

11 Q. When they found -- when they took air
12 sampling of workers whose sole job was to
13 inspect the final product, they found
14 measurable amounts of asbestos dust, correct?

15 MR. RADCLIFFE: Object to form.

16 A. Again, I know this study was done. I
17 haven't had a chance to see the results. And
18 I'll be happy to just scan this quickly. I see
19 a lot of different operations in the factory,
20 but so far -- there we go, inspectors. Yes,
21 there was some measurable fiber counts in the
22 inspection department.

23 Q. Those are not the individuals that
24 participated in any sort of drilling or cutting

1 of the asbestos material, correct?

2 MR. RADCLIFFE: Object to form.

3 A. That's right. And I see numbers like
4 ranging from .1 to 1.9 fibers per cubic
5 centimeter.

6 Q. You're aware that there was some
7 concern at a point in time in the Winchester
8 plant that some of their shipments were going
9 out with excess dust on them?

10 A. Yes.

11 MR. RADCLIFFE: Object to form.

12 A. I'm aware of that.

13 Q. Now going back to Exhibit 22, it
14 states that it was suggested that a
15 notification be put into --

16 A. I'm sorry, Exhibit 22? Did I just
17 hand that back to you?

18 Q. The August --

19 A. I may have. That was the FMSI?

20 Q. Yes.

21 A. Yeah, I handed that back to you.
22 Sorry.

23 Q. This is still on page three. Going
24 down to the middle of the third paragraph --

1 A. Okay.

2 Q. -- it says, "It was suggested that a
3 notification be put in boxes of brake linings
4 or clutch facings being shipped to customers.
5 A sample of the caution label suggested is
6 attached to these minutes. Mr. Feierabend" --
7 now, Mr. Feierabend was an employee of Abex?

8 A. He was.

9 Q. It says, "Mr. Feierabend indicated
10 that this recommendation would not be accepted
11 warmly by many manufacturers." That's what
12 they report, correct?

13 A. That's right.

14 Q. And, in fact, Abex never put any type
15 of cautionary language in a sheet that was
16 placed in the boxes of brake linings or clutch
17 facings?

18 A. No, we didn't. And Mr. Feierabend's
19 comment is based on the fact that we had some
20 customers who complained to us when we started
21 putting the warning labels on the outside of
22 the box. So he was taking it to the next step
23 of saying, If they complained about that, it's
24 highly likely they wouldn't be very happy about

1 a warning label in the box.

2 Q. One of the concerns of the FMSI is
3 that there are customers that are going to do
4 additional grinding and drilling of the brake
5 linings or clutch facings that create work
6 conditions where the concentration of asbestos
7 would be a hazard?

8 MR. RADCLIFFE: Object to form.

9 Q. That's what they wrote, correct?

10 MR. RADCLIFFE: Same objection.

11 A. I'm sorry, I don't see where -- is
12 that where Mr. Wagner objected to this
13 recommendation? It indicated -- it says, "It
14 is not indicated that this was specifically
15 required by the OSHA regulation. The concern
16 is due to the customers doing additional
17 grinding and drilling of the brake linings or
18 clutch facings create working conditions where
19 the concentration of asbestos would be a
20 hazard." Yes, that's what it says.

21 Q. What they were concerned about is that
22 the OSHA regulations exempted products that
23 were locked in, but these manufacturers knew
24 that there might be subsequent manipulation of

1 the products after it left their control?

2 MR. RADCLIFFE: Object to form.

3 A. Some of these manufacturers may have
4 believed that. Our position was, continues to
5 be, that we made every effort to try to deliver
6 our product to customers in a form that was
7 ready to install without any further machining.

8 Q. But you did know that there were
9 certain customers that were going to do
10 additional grinding or drilling of your brake
11 linings?

12 A. No, I didn't know that. I mean, we
13 talked earlier that some time years ago,
14 perhaps in the '60s, '50s, '40s some of that
15 went on. When I was at that company, that was
16 -- I wouldn't say never, but that certainly was
17 much more the exception than the rule. We
18 supplied to rebuilders and other sophisticated
19 users product that was ready to install.

20 Q. I'm going to show you what we'll mark
21 as Exhibit 25, and this is August 30, 1972, a
22 letter from Mr. Drislane to the Asbestos Study
23 Committee which contained an article entitled
24 Health Hazards of Asbestos. Is that a document

1 you've seen before?

2 (Exhibit No. 25, Letter to Asbestos
3 Study Committee, 8.30.72 so marked)

4 A. I don't believe I have.

5 Q. At the time that that document was
6 created in August 30, 1972, Abex was a member
7 of the Asbestos Study Committee, correct?

8 A. Yes.

9 Q. And what this attached article
10 indicates is that "By the late 1920s it was
11 clear from surveys made in this country and in
12 the United States that a high proportion of
13 older workers in the asbestos textile
14 industries were becoming severely disabled by a
15 specific type of chest disease due to the dust.
16 This was named asbestosis."

17 That's what was written in the
18 article, correct?

19 A. Right.

20 MR. RADCLIFFE: Object to form.

21 A. And it's based on reports from France
22 and England, and it's specific to the textile
23 industry.

24 Q. There's also two references to studies

1 in the United States, correct?

2 A. I don't see that. Again, you just
3 handed me this three-page document with
4 micro --

5 Q. If you look at the last sentence of
6 the second paragraph where it says, "By the
7 late 1920s," after it says USA, there are two
8 numbers, correct?

9 A. I don't see it. If you can point it
10 out to me. "From surveys made in this country
11 and USA," yes.

12 Q. Okay.

13 A. But it says textile industries which
14 is a different kind of fiber. It's longer in
15 length, it's different chemistry. You know,
16 that's my comment.

17 Q. Well, you knew that -- I'm not done
18 with this.

19 You knew that in the 1940s that there
20 were incidence of asbestosis being reported in
21 factories that were making asbestos friction
22 products?

23 MR. RADCLIFFE: Object to form.

24 A. But in the 1940s a lot of asbestos

1 friction products, particularly in Europe, were
2 of a woven variety in which used a different
3 type of asbestos, both in physical nature and
4 chemical composition.

5 Q. In this article they indicate that --
6 under asbestos cancers?

7 A. Where are we? Okay.

8 Q. It says, "Some years after the
9 recognition of asbestosis as an important
10 problem in the asbestos textile industry,
11 articles began to appear in medical journals
12 suggesting an association between asbestosis
13 and lung cancer." Correct?

14 A. Yes.

15 Q. And then the last sentence of that
16 page says, "In the last 15 years there has been
17 much new information about the link between
18 exposure to asbestos and" --

19 A. I can't read it.

20 Q. -- "previously very rare type of
21 cancer affecting the surface of the lung and
22 gut. Reports of these mesotheliomas, as they
23 are called, has increased steeply over the last
24 ten years."

1 That's what they wrote, correct?

2 MR. RADCLIFFE: Object to form.

3 A. That's part of what they wrote, yes.

4 Q. "A feature of those tumors is the long
5 interval between first exposures to asbestos
6 dust and the detection of cancer. It is rarely
7 less than 20 years and maybe up to 50 or more
8 years." Correct?

9 A. Yes.

10 MR. RADCLIFFE: Object to form.

11 Q. Then under the Practical Implications
12 of the Biological Affect of Asbestos it says,
13 under Inhalation of Fiber, "For all practical
14 purposes, the risk from asbestos is limited to
15 inhalation of the fibers. Thus, control of the
16 airborne dust levels and their monitoring by
17 instruments which would measure the part of the
18 dust which can gain access to the deeper parts
19 of the lung is an essential step in the safe
20 use of all types of asbestos."

21 That's what they wrote, correct?

22 A. Yes, it says safe use is possible.

23 Q. That's something that Abex knew since
24 the 1940s, correct?

1 A. I believe that to be the case, yes,
2 sir.

3 Q. If you go to the last page, the first
4 full paragraph, the first sentence says, "The
5 risk of developing mesotheliomas has a
6 different relation to fiber type, is probably
7 highest with crocidolite and lowest with
8 chrysotile."

9 A. Correct.

10 Q. As they wrote, right?

11 A. That's consistent with what I said
12 earlier.

13 Q. Let me show you what we'll mark as
14 Exhibit 26.

15 (Exhibit No. 26, Minutes of the
16 Meeting, Asbestos Study Committee, 2.16.73 so
17 marked)

18 Q. These are, again, minutes of the
19 Asbestos Study Committee, Friday, February 16,
20 1973. Those are minutes that indicate that
21 Abex was present, correct?

22 A. Yes.

23 Q. And that's Mr. Feierabend?

24 A. Feierabend, yes.

1 Q. And in talking about labeling
2 practices in the last sentence, it says, "In
3 many" --

4 A. What page are you on?

5 Q. I'm on the first page.

6 A. Okay.

7 Q. It says, "In many drilling and
8 grinding operations without dust collectors,
9 committee members indicated that the 10 fiber
10 per CC ceiling concentration has been
11 exceeded." That's what they reported, correct?

12 A. Yes.

13 Q. You've also seen the speech that Mr.
14 Weaver gave to the Friction Materials Standard
15 Institute members on June 27, 1973?

16 A. Yes, I've seen this before.

17 MR. GEORGE: We'll mark that as
18 Exhibit 27.

19 (Exhibit No. 27, Asbestos and the
20 Friction Material Industry so marked)

21 Q. He said that that speech, did he not
22 -- looking at the last paragraph?

23 A. On the first page?

24 Q. On the first page, "Probably the

1 single most significant event that occurred
2 during the past year" -- and this is in 1973
3 -- "on the subject of asbestos hazards was
4 the meeting of the International Agency For
5 Research on Cancer that was held at Lyon,
6 France last October. This meeting was attended
7 by more than 130 medical researchers and
8 representatives of government, industry and
9 labor from virtually every major
10 asbestos-consuming or producing country in the
11 world." That's what he wrote, correct?

12 A. Yes.

13 MR. RADCLIFFE: Object to form.

14 Q. One of the first things that he
15 reported from this significant event was that
16 all major commercial types of asbestos can
17 cause cancer, correct?

18 MR. RADCLIFFE: Object to form.

19 A. I don't see that, I'm sorry.

20 Q. Number one?

21 A. Okay. Got you.

22 Q. He also says in number three on the
23 next page that "Evidence has been greatly
24 strengthened that all commercial types of

1 asbestos except anthophyllite may be
2 responsible for mesothelioma (risk is greatest
3 with crocidolite, less with amosite and
4 apparently still less with chrysotile.)"
5 Correct?

6 MR. RADCLIFFE: Object to form.

7 A. Yes.

8 Q. In then in the next paragraph it says,
9 "The most important item here is the
10 incrimination of all major types of asbestos as
11 causal agents for carcinoma, particularly
12 mesothelioma."

13 That's what he wrote, correct?

14 MR. RADCLIFFE: Object to form.

15 A. Yes.

16 Q. He said, "Most of other items only
17 confirm or substantiate previous conclusions.
18 Since most of us use substantial amounts of
19 chrysotile asbestos in our formulations,
20 association of this material with mesothelioma
21 and other types of cancer is of serious
22 concern."

23 That's what he wrote, correct?

24 MR. RADCLIFFE: Object to form.

1 A. Yes.

2 Q. And then if we go to page three, in
3 the last paragraph he says, "I know of no way
4 any of us can be absolutely sure that his
5 friction products, regardless of whether they
6 are sold as original equipment or on the
7 replacement market, will not be subjected to
8 additional operations or alterations in the
9 field that could result in excessive exposure
10 of workers or bystanders to airborne asbestos
11 fibers."

12 That's what he wrote, correct?

13 MR. RADCLIFFE: Object to form.

14 A. I believe that's his opinion, yes.

15 Q. In fact, on the next page, page four,
16 in the middle of the first paragraph he says
17 that, "Large volume replacement users present
18 major potential hazards, and even small job
19 shops can needlessly expose people to high
20 fiber concentrations if operations are
21 performed without controls."

22 That was his opinion, correct?

23 MR. RADCLIFFE: Object to form.

24 A. Yes, uh-huh.

1 Q. What he was talking about is that
2 there are instances where these industries,
3 these large volume replacement users or even
4 small job shops, in working with the asbestos
5 friction materials without proper controls can
6 expose their workers to various amounts of
7 asbestos?

8 A. Based on his experience and the
9 experience of Johns Manville, not Abex.

10 MR. RADCLIFFE: Object to form.

11 Q. Then he says in the final part of page
12 four, last paragraph, "Keep in mind that NIOSH
13 and the OSHA Advisory Committee recommended a
14 much more severe label than the one we are
15 talking about. This subject was heatedly
16 debated during the OSHA Advisory Committee
17 deliberation, and their final recommendation
18 called for the use of the word 'danger' instead
19 of 'caution' and specifically mentioned that
20 breathing asbestos caused cancer. Very
21 frankly, I was exceedingly surprised when the
22 final OSHA standard came out in favor of
23 considerably milder working. Now I am
24 perplexed that industry resists the OSHA label

1 requirement as vigorously as it does."

2 That's what he told the members of
3 FMSI in 1973, correct?

4 MR. RADCLIFFE: Object to form.

5 A. Yeah, but, I mean, he says "the
6 industry," and I'm not sure what he's talking
7 about because the time of this writing Abex was
8 already putting warnings on. So, you know,
9 it's -- again, it's his opinion. I'm sure that
10 it probably reflected the beliefs of his
11 company Johns Manville, but not Abex.

12 Q. Abex was putting cautionary language
13 on their products, correct?

14 A. We can get into a definitional
15 argument all day. I call it a warning. You
16 call it a cautionary label. And I'll just
17 remind you that it was, in fact, in concert
18 with what OSHA required in the Federal Register
19 in 1927.

20 Q. I understand that. But when we're
21 talking about a warning there, you can put the
22 actual word "warning" to make it a warning or
23 you can use cautionary language by using the
24 word "caution," correct?

1 A. Correct. You can do either.

2 Q. What Abex chose to do was to use the
3 term "caution," correct?

4 A. What Abex chose to do was what the
5 federal government had required us to do.

6 Q. There was nothing in any of the
7 federal regulations that prevented Abex from
8 using more restrictive or more descriptive
9 language than what OSHA required, correct?

10 MR. RADCLIFFE: Object to form.

11 A. And your question is?

12 Q. There's nothing in any of the federal
13 regulation that said, Abex, hey, you can't --

14 A. That you can't, of course not.

15 Q. -- use the word "danger"?

16 MR. RADCLIFFE: Same objection.

17 A. Of course not.

18 Q. There was no federal regulation that
19 said, Abex, you can't use the word "cancer" in
20 your label?

21 A. Of course not.

22 MR. RADCLIFFE: Same objection.

23 MR. GEORGE: The next document I'll
24 mark as Exhibit 28 --

1 (Exhibit No. 28, Letter to Asbestos
2 Study Committee, 12.26.73 so marked)

3 Q. -- is minutes of the Asbestos Study
4 Committee dated December 26, 1973. You would
5 agree with me that during this time period,
6 December of 1973, that Abex was a member of the
7 Asbestos Study Committee?

8 A. Yes.

9 Q. And if Abex received this document,
10 they would have received articles that talk
11 about asbestos, cancer and mesothelioma,
12 correct?

13 MR. RADCLIFFE: Object to form.

14 A. I don't know how to answer your
15 question.

16 Q. Well, it says here that, "Mr. Weaver,
17 the chairman of the committee has kept me
18 abreast on various activities in government,
19 industry and in the press concerning asbestos.
20 Because of the considerable amount of
21 literature, I am forwarding articles that your
22 chairman specifically suggested I send to
23 committee members."

24 A. Okay.

1 Q. "These articles are the type of
2 asbestos and respiratory cancer in the asbestos
3 industry (types of asbestos and their
4 carcinogenic potential)." And, two, "Asbestos
5 Health Question Perplexes Experts." He then
6 attaches, does he not --

7 A. An index.

8 Q. -- a synopsis of articles with regard
9 to asbestos?

10 A. Yes.

11 Q. And if we look at the second to last
12 page of that document, the first article listed
13 there is, "Asbestos Dust is Linked to Disease
14 (Asbestosis Lung Cancer Mesothelioma and
15 Gastrointestinal - brief summaries of Dr.
16 Selikoff reports")?

17 A. Yes.

18 MR. RADCLIFFE: Object to form.

19 Q. Then the second to last one says,
20 "Type of Asbestos and Respiratory Cancer in the
21 Asbestos Industry (Types of Asbestos and Their
22 Carcinogenic Potentials)." Correct?

23 A. Yes.

24 Q. Basically, this is an indication that

1 the FMSI was fulfilling its avowed purpose
2 which was to keep abreast of --

3 A. To disseminate information, yes.

4 Q. And this is information about
5 mesothelioma and lung cancer that was
6 disseminated to its membership, one of which
7 was Abex?

8 MR. RADCLIFFE: Object to form.

9 A. Yes.

10 Q. Okay.

11 MR. GEORGE: I'm going to mark the
12 next exhibit as Exhibit 29.

13 (Exhibit No. 29, Letter to Asbestos
14 Study Committee, 3.10.75 so marked)

15 Q. This is a letter from Drislane to
16 members of the Asbestos Study Committee of
17 which Abex was a member, correct?

18 A. Yes.

19 Q. And it indicates that in talking about
20 mesotheliomata in rats that Mr. Weaver -- "This
21 is a British paper that indicated that
22 mesotheliomata was observed in a considerable
23 proportion of animals with all samples of
24 asbestos. Mr. Weaver indicated this was bad

1 news for those hoping that chrysotile would be
2 proven not to be associated with mesothelioma."

3 MR. RADCLIFFE: Object to form.

4 Q. That's what they wrote in March 1975,
5 correct?

6 A. Yes.

7 MR. RADCLIFFE: Object to form.

8 Q. Now in August of 1975 -- I'm sorry, in
9 June of 1975 --an exhibit that I'll mark as
10 31?

11 (Exhibit No. 30, Exhibit Number
12 Skipped - No Exhibit Marked)

13 (Exhibit No. 31, Friction Material
14 Board of Directions Meeting Minutes, 6.75 so
15 marked)

16 Q. Again, these are minutes of the
17 meeting of the board of directors of Friction
18 Materials Standard Institute and it indicates
19 that an S.S. Conway was present for Abex
20 Corporation?

21 A. Yes.

22 Q. Do you know who Mr. Conway was?

23 A. Yes.

24 Q. Who was that?

1 A. Depends on the time frame. I'm not
2 sure. As of 1975 he probably was either vice
3 president of sales or perhaps president of Abex
4 friction.

5 Q. And also present was Mr. Nelson?

6 A. Right.

7 Q. And he was the committee chairman?

8 A. Right.

9 Q. And one of the things that they
10 discussed if you --

11 A. It doesn't say what committee he's
12 chairing.

13 Q. It says (brake performance)?

14 A. Brake performance, okay.

15 Q. Anyway, if you turn to page three of
16 the document?

17 A. (Witness complies)

18 Q. The three on the top.

19 A. It's the last page; is that correct?

20 Q. Yes.

21 A. Okay.

22 Q. Under Medical it says, "Selikoff
23 continues predictions of epidemic of
24 asbestos-related death and disease in years to

1 come. He emphasizes that mesothelioma hazard
2 and the fact no known dose level is safe and is
3 pointing to the possible health significance of
4 shorter, smaller fibers or particles not now
5 covered by standards.

6 Selikoff people have been actively
7 promoting hazards associated with asbestos
8 emissions from brake lining wear and from brake
9 service operations. Acknowledgement of
10 association between asbestos exposure and
11 increased GI cancer has become accepted
12 practice during the past year."

13 That's what was reported to the
14 members of the FMSI, correct?

15 MR. RADCLIFFE: Object to form.

16 MR. CARON: Object to form.

17 A. Honestly, I'm not sure. I mean, I'm
18 reading this cover letter, and then it goes to
19 page 10 and then it goes to an Asbestos Study
20 Committee report.

21 Q. Well, if it's --

22 A. And I don't know that -- I mean, the
23 cover letter doesn't say anything about the
24 Asbestos Study Committee. It talks about the

1 brake performance committee.

2 Q. If you turn to page -- the second to
3 last page of the document -- well, third to
4 last page.

5 A. (Witness complies) Yeah, that has
6 number 59 in the lower right-hand corner?

7 Q. I think it's 54.

8 A. Okay.

9 Q. But it says this is an Asbestos Study
10 Committee report, correct?

11 A. It does, but the cover sheet doesn't
12 say anything about an asbestos cover. It says
13 committee chairman present, R.E. Nelson, brake
14 performance.

15 Q. Let me ask you this --

16 A. Guests present, and it has all of
17 these names, except it doesn't say anything
18 about an Asbestos Study Committee nor does it
19 say anything about Ike Weaver.

20 Q. To the extent that these are documents
21 from June 1975 that are part of the Asbestos
22 Study Committee report, Abex was a member of
23 that committee in June 1975, correct?

24 MR. RADCLIFFE: Object to form.

1 A. Yes, we were.

2 Q. And those final three pages appear to
3 be contiguous, correct?

4 MR. RADCLIFFE: Object to form.

5 A. I believe they appear to be
6 contiguous, yes, but who -- I mean, I don't
7 know who it was reported to.

8 Q. This is the same Dr. Selikoff that
9 first came to the attention of Dr. Blackwell in
10 1964, correct?

11 A. Yes.

12 Q. And so it's now nine years after he
13 first heard about Dr. Selikoff's research,
14 correct? No, it's actually 11 years?

15 A. Who is "he"?

16 Q. Dr. Blackwell?

17 A. Dr. Blackwell doesn't have anything to
18 do with that.

19 Q. I understand that, but Dr. Blackwell
20 first heard of Dr. Selikoff's studies in 1964
21 and it's now 1975?

22 A. That's right.

23 Q. So that's 11 years after that
24 research, correct?

1 A. Yes.

2 MR. RADCLIFFE: Object to form.

3 Q. I want to show you what we'll mark as
4 Exhibit 32.

5 (Exhibit No. 32, Letter to D.K.
6 Rennie, 8.22.75 so marked)

7 Q. It's dated August 22, 1975, that's a
8 letter from Dr. Blackwell to Mr. Rennie,
9 correct?

10 A. Yes.

11 Q. Is this a letter you've seen before?

12 A. I'm not sure.

13 Q. Okay.

14 A. Yes, I have seen this before.

15 Q. This has various Bates numbers at the
16 bottom of it, correct?

17 A. It has more numbers than I can
18 decipher. SPNY numbers, KWHLL number, KAZ
19 numbers, exhibit numbers.

20 Q. This has as an exhibit number for one
21 of your prior depositions?

22 A. Okay.

23 Q. And in this letter Mr. Blackwell says,
24 "In the most recent Occupational Safety &

1 Health Reporter, there's a brief comment
2 quoting Dr. Selikoff regarding mesotheliomas.
3 Apparently, several cases have been noted in
4 automobile repair workers."

5 That's what he wrote, correct?

6 A. Yes.

7 MR. RADCLIFFE: Object to form.

8 Q. "Additionally, in thinking of product
9 liability, do we need to look upon the friction
10 product brakes as requiring any label regarding
11 potential hazard?"

12 That's the question that he asks,
13 correct?

14 A. Correct.

15 Q. And to the extent that he was asking
16 whether we should put on our label
17 mesothelioma, that never occurred, right?

18 A. That's not what he was asking. He was
19 unaware that we had labels on our products.

20 Q. To the extent that you had cautionary
21 labels on your product, they didn't mention
22 anything about mesothelioma, correct?

23 MR. RADCLIFFE: Object to form.

24 A. No, they didn't.

1 Q. I want to show you what we'll mark as
2 Exhibit 33.

3 (Exhibit No. 33, Memo to C.C.
4 Blackwell and E.H. Feierabend so marked)

5 Q. This is a memo from Don Rennie to Mr.
6 Blackwell and Mr. Feierabend. Have you seen
7 that before?

8 A. I don't believe I have.

9 Q. It has the SPNY Bates numbering at the
10 bottom, correct?

11 A. It has an SPNY number, yes.

12 Q. Are you familiar with Mr. Rennie's
13 handwriting?

14 A. No, I'm not. I mean, I've seen his
15 handwriting. I can't say that is or isn't. I
16 just don't know.

17 Q. What this memo purports to do is to
18 send to Dr. Blackwell and Mr. Feierabend an
19 article from the New York Daily News, correct?

20 A. Somebody wrote that in. I don't know
21 that it's from the New York Daily News.

22 Q. The article is entitled, Cancer Kills
23 1 in 5 asbestos workers, says Doc. Correct?

24 A. That's what the headline says.

1 Q. Under it, "It's Simply a Disaster.
2 Selikoff considered to be one of the world's
3 leading experts on cancer-causing chemicals
4 said, 'It now seems clear that one out of every
5 five workers exposed to asbestos will die of
6 cancer and probably cancer of the lung. It's
7 simply a disaster."

8 That's what's recorded, correct?

9 A. Yes.

10 MR. RADCLIFFE: Object to form.

11 Q. He says on the next column that first
12 paragraph, "However, he said an additional 35
13 of the cancer deaths were from mesothelioma, a
14 type of tumor that is almost unheard of in the
15 absence of exposure to asbestos."

16 That's what he wrote -- what was
17 written about him, correct?

18 MR. RADCLIFFE: Object to form.

19 A. Written about asbestos workers, yes.

20 Q. And then under "Risk Cited For Others,
21 Selikoff told the meeting that insulation
22 workers are not the only people at risk. It is
23 apparent, he said, that people living near an
24 asbestos plant or with an asbestos worker in

1 the household has greater chances of getting
2 cancer.

3 Selikoff also expressed concern for
4 the hundred thousand men in this country who
5 work in garages repairing or lining brakes.
6 While it was once thought that the heat used in
7 the process eliminated the risk from asbestos
8 dust, it is now clear that this is untrue, he
9 said."

10 That's what they reported, correct?

11 MR. RADCLIFFE: Object to form.

12 A. Who are "they"?

13 Q. The New York Daily News?

14 A. You know, again, I can't substantiate
15 it says New York Daily News other than somebody
16 handwrote it on the top, but the article says
17 Washington, February 25, and the news bureau.
18 And it talks about New York and New Jersey
19 insulation workers so....

20 Q. That article quotes Dr. Selikoff --

21 A. It does, but --

22 Q. -- as expressing concern for the
23 hundred thousand men in the country working in
24 garages repairing or lining brakes?

1 MR. RADCLIFFE: Object to form.

2 A. It doesn't express his opinion, yes.

3 Q. That certainly would be an opinion
4 that Dr. Blackwell and Mr. Feierabend would be
5 interested in since Abex was manufacturing
6 asbestos brake products in 1976?

7 MR. RADCLIFFE: Object to form.

8 A. Since Abex was trying to garner as
9 much information about the topic as it possibly
10 could, yes.

11 MR. GEORGE: Do you want to keep
12 going?

13 THE WITNESS: I'd like to take a lunch
14 break, frankly.

15 MR. RADCLIFFE: How much longer do you
16 think you'll be?

17 MR. GEORGE: Probably half hour, 45
18 minutes.

19 THE VIDEOGRAPHER: The time is now
20 1:51. We're going off the record.

21 (Recess 1:51 p.m. to 2:48 p.m.)

22 THE VIDEOGRAPHER: The time is 2:48
23 p.m. We're back on the record.

24 BY MR. GEORGE:

1 Q. When we left, we were talking about an
2 article that was sent to Dr. Blackwell and Mr.
3 Feierabend in the late '70s. The next exhibit
4 I'd like to show you is a document that we'll
5 mark as 34.

6 (Exhibit No. 34, Memo to John Marsh,
7 7.22.76 so marked)

8 Q. This is a letter from R.H. Mereness,
9 M-E-R-E-N-E-S-S, executive director. It's on
10 Asbestos Information Association letterhead.
11 It's dated July 22, 1976. First of all, I want
12 to ask you if you've seen that document before?

13 A. I don't recall it.

14 Q. First of all, you would agree with me
15 that Abex was a member of the Asbestos
16 Information Association, correct?

17 A. It was.

18 Q. And, in fact, I think in your
19 interrogatory responses you told us that it was
20 a member from, let's see, 1975 to 1980?

21 A. That's correct.

22 Q. Okay. Now, one of the memorandum four
23 is to Eric Feierabend, correct?

24 A. Yes.

1 Q. And that would be an employee of Abex?

2 A. Yes.

3 Q. What this memo does is to send to Mr.
4 Feierabend and others a galley proof of an
5 article prepared by Mount Sinai School of
6 Medicine on asbestos dust during the servicing
7 of brake and clutch assemblies. Do you agree
8 that's what the memo indicates?

9 A. Yes.

10 MR. RADCLIFFE: Object to form.

11 Q. It says that "This study was cited as
12 the primary reference for the NIOSH alert
13 issued August 1975 (distributed to members)
14 calling attention to potential health hazards
15 to workers exposed to asbestos dust during the
16 servicing of brake and clutch assemblies."

17 Are you familiar with the NIOSH alert
18 from August 1975?

19 A. Not offhand, I don't recall it.

20 Q. Let me show you what we'll mark as
21 Exhibit 35.

22 (Exhibit No. 35, Current Intelligence
23 Bulletin 5, 8.8.75 so marked)

24 Q. This is the Current Intelligence

1 Bulletin No. 5 dated August 8, 1975, entitled
2 Asbestos Exposure During the Servicing of Motor
3 Vehicle Brake and Clutch Assemblies.

4 Is that document that you've seen
5 before?

6 A. I don't recall seeing this before
7 today.

8 Q. Do you know whether that's a document
9 that was received by Abex through its
10 association with the Asbestos Information
11 Association?

12 A. I don't know. We were members. It's
13 probable that we did get a copy, but I can't
14 say that I know for sure we did.

15 Q. What that says -- what this is is from
16 the Department of Health Education and Welfare,
17 and it says, "This communication is intended to
18 alert you to recently gathered information
19 indicating a potential health hazard for
20 persons exposed to asbestos during the
21 servicing of motor vehicle brake and clutch
22 assemblies" is what the alert says, correct?

23 A. Yes.

24 MR. RADCLIFFE: Object to form.

1 Q. Is it says, "The data was presented by
2 investigators from the Mount Sinai School of
3 Medicine in New York City indicating that
4 workers engaged in the maintenance and repair
5 of automobile and truck brake linings are
6 exposed to potentially hazardous levels of
7 airborne asbestos dust."

8 MR. RADCLIFFE: Object to form.

9 Q. That's what's written in the second
10 sentence of the second paragraph there?

11 A. Yes.

12 Q. And that's certainly consistent with
13 the cover letter from the Asbestos Information
14 Association saying that Mount Sinai was the
15 basis for the data that was contained within
16 the alert?

17 MR. RADCLIFFE: Object to form.

18 A. I don't understand your question.

19 Q. All I'm saying is that the fact that
20 the alert is referencing Mount Sinai is
21 consistent with the cover letter from the
22 Asbestos Information Association which says
23 that the alert issued in August 1975 was based
24 on information from Dr. Selikoff and Mount

1 Sinai?

2 A. Yes.

3 MR. RADCLIFFE: Object to form.

4 Q. One of the other things that this
5 alert told people that received it is that --
6 in the third paragraph, last sentence, "The
7 present findings indicate that enough asbestos
8 is preserved to produce significant exposures
9 during certain brake servicing procedures,"
10 correct?

11 MR. RADCLIFFE: Object to form.

12 A. I'm sorry -- oh, I do see it. Third
13 paragraph?

14 Q. Correct.

15 A. Yes.

16 Q. And what they're saying is that
17 although there is a chemical transformation of
18 the majority of the asbestos, once the brakes
19 are put in use that there still is some amount
20 of asbestos that survives the brake operation?

21 MR. RADCLIFFE: Object to form.

22 MR. CARON: Object to form.

23 Q. Do you agree with that?

24 A. No, I don't really see that. I

1 mean --

2 Q. It says, "Previous studies of the
3 extent of asbestos emissions from automobile
4 brake lining wear showed that only a very small
5 fraction of the original asbestos content of
6 the brake lining is found in brake drum dust.
7 It was presumed this is due to the thermal
8 degradation of the fibers during braking. The
9 present findings indicate that enough asbestos
10 is preserved to produce significant exposures
11 during certain brake servicing procedures."

12 A. That's what it says.

13 MR. RADCLIFFE: Object to form.

14 Q. Have you seen the paper that
15 the Asbestos Information Association is sending
16 to its members as a galley proof from the
17 researchers at Mount Sinai entitled Asbestos
18 Exposure During Brake Lining Maintenance and
19 Repair?

20 A. No, I have not seen that.

21 Q. Do you know if this article is within
22 the business records of Abex in the document
23 depository?

24 A. I haven't seen it, so at this point

1 I'd have to say no.

2 Q. I noticed in one of your depositions
3 that you disagreed with the concept that some
4 of the brake wear debris dust contains
5 unaltered chrysotile fibers?

6 MR. RADCLIFFE: Object to form.

7 Q. Is that your opinion?

8 A. Could you say that again?

9 Q. Sure. Let me just ask you: Do you
10 agree that even though a significant portion of
11 the chrysotile that starts in the brake lining
12 converts to a substance known as Fosterite --

13 A. Fosterite.

14 Q. -- during the braking process?

15 A. Right.

16 Q. That there are free floating
17 chrysotile asbestos fibers that survive that
18 process intact?

19 MR. RADCLIFFE: Object to form.

20 A. It's kind of a compound point that
21 you're trying to make. I don't dispute that
22 there might be some very short fiber
23 chrysotile, your term "free floating" makes it
24 difficult for me to answer your question

1 directly.

2 Q. Let me remove that term and address it
3 this way. You're aware that as part of --
4 well, are you aware that as part of the paper
5 that Dr. Selikoff and others at Mount Sinai did
6 is they examined what we call brake wear debris
7 under a microscope?

8 A. I understand that Dr. Selikoff and
9 many other have studied wear debris over the
10 years.

11 Q. And what wear debris is is that
12 material that remains in the drum brake housing
13 after the brakes have been applied?

14 A. I didn't know it was limited to drum
15 brakes, but are we limiting it to drum brakes?

16 Q. No. Also it can be around where the
17 disc brakes are?

18 A. Okay.

19 Q. You agree with that?

20 A. Yeah, I agree that wear debris is wear
21 debris.

22 Q. You also agree that when we talked
23 earlier about manipulation of brakes prior to
24 installation, that doesn't involve this

1 Fosterization process?

2 MR. RADCLIFFE: Object to form.

3 A. When you say "manipulation," what are
4 you talking about?

5 Q. If you have to grind, drill or sand --

6 A. No.

7 Q. -- a new brake lining?

8 A. No. We're talking about wear debris
9 which is totally different than that.

10 Q. Now, have you seen photomicrographs of
11 brake wear debris where they have demonstrated
12 the existence of Chrysotile fibers that are
13 uncoated and unconverted into --

14 A. No.

15 Q. -- the Fosterite process?

16 MR. RADCLIFFE: Object to form.

17 A. I've never seen any such photographs.

18 Q. Am I correct that, for example, on
19 page 124 of the Rohl article -- which we'll
20 make as the next exhibit, which will be 36 --
21 you haven't seen a photograph like that that
22 indicates that there are in effect chrysotile
23 fibers still present in the wear debris?

24 A. No, I have not.

1 (Exhibit No. 36, Asbestos Exposure
2 During Brake Lining Maintenance and Repair so
3 marked)

4 Q. And there are -- I'm going to show you
5 page 116 of the same document and ask you
6 whether those photomicrographs indicate that
7 there are chrysotile fibers that survived
8 intact the braking process?

9 MR. RADCLIFFE: Object to form.

10 A. I couldn't say from these photographs.

11 Q. What does the caption say on the
12 bottom of those?

13 A. If you want me to read the caption,
14 that's one thing. If you want my
15 interpretation of a photomicrograph, that's
16 entirely something else. There are four
17 figures on this page. Figure 3 says, "Electron
18 microphotographs of brake drum dust.
19 Chrysotile is present in both free fiber and
20 fibril form. Opaque granular material is road
21 dust or phenolic binder. A x 10,800; B x 9300;
22 C x 30,000; D x 30,000."

23 Q. Okay. Now, you indicated in a prior
24 deposition that you had at least on one

1 occasion had the opportunity to look at brake
2 wear debris under a microscope?

3 A. I believe I saw brake wear debris and
4 brake lining under an electron microscope, yes.

5 Q. And that was only one occasion,
6 correct?

7 A. No, I think it was more than one
8 occasion.

9 Q. How many occasions was it?

10 A. I don't remember. I mean, I've been
11 in that business for most of my life. And
12 using microscopes, both optical and electron
13 microscopes were I wouldn't say routine, but it
14 was certainly something I'd done numerous
15 times.

16 Q. And why would you be looking at brake
17 wear debris?

18 A. Well, in one case to find out why the
19 opposing surface, the brake drum, was being
20 worn prematurely. In other cases to understand
21 structural failures of brake lining. Many
22 reasons why we would have done that.

23 Q. The significance of anything you saw
24 under the electron microscope would have been

1 pointed out to you by the operator of the
2 electron microscope, correct?

3 A. Well, it's kind of -- you know, I
4 wasn't a qualified electron microscope
5 operator, so it was not uncommon that the
6 operator and the scientist or engineer would
7 sit with the operator, and they would kind of
8 collaborate on what they were seeing and trying
9 to deduce and garner information from the
10 image.

11 Q. When NIOSH or the director of the
12 Occupational Health and Surveillance in
13 Biometrics of the Department of Health and
14 Human Services wrote to individuals in this
15 August 1975 letter and indicated that the
16 present findings indicate that enough asbestos
17 is preserved to produce significant exposures
18 during certain brake surfacing procedures, do
19 you believe that that information is incorrect?

20 MR. RADCLIFFE: Object to form.

21 A. I'm not saying it's incorrect. It's
22 inconsistent with my understanding.

23 Q. One of the other things that was
24 communicated in this alert was the fact that "A

1 review of the scientific literature on the
2 association between asbestos exposure and
3 mesothelial tumors of the pleura and peritoneum
4 has revealed at least four cases of these rare
5 tumors in person who were employed in jobs
6 involving automobile brick service."

7 That's what was reported, correct?

8 A. I don't see that on this page. Can
9 you help me?

10 Q. Last sentence of the first -- of the
11 last paragraph?

12 A. The first paragraph?

13 Q. Of the last paragraph?

14 A. Okay. I see it, yes.

15 Q. And to the extent that Abex received
16 this alert, they were on at least notice that
17 there were some -- there was some scientific
18 literature that showed the association between
19 asbestos exposure and mesothelial tumors in
20 automobile brake servicing personnel?

21 MR. RADCLIFFE: Object to form.

22 Q. Would you agree with that?

23 A. I don't know what your question is,
24 I'm sorry.

1 Q. My question is: If Abex as a member
2 the Asbestos Information Association received
3 this alert in 1975 --

4 A. Okay.

5 Q. -- then they would be on notice
6 that --

7 A. What do you mean by "on notice"? Can
8 you define "on notice" for me? I guess that's
9 the problem.

10 Q. Well, they certainly were --

11 A. Did they have knowledge?

12 Q. They were aware of the existence of
13 scientific literature that showed an
14 association of mesothelial tumors and brake
15 service personnel?

16 A. I would have --

17 MR. RADCLIFFE: Object to form.

18 A. -- to say as members they would have
19 garnered that information in the normal course
20 of their business.

21 Q. There was also certain recommended
22 practices that were part of the alert. I'm
23 going to show them to you. One of the
24 recommended practices says that -- and this is

1 the first one. "If possible, an area shall be
2 designated for all brake and clutch repairs.
3 Entrances into this area shall be posted with
4 an asbestos exposure warning sign as follows."
5 And the last part of that warning sign was
6 "Breathing asbestos dust may cause asbestosis
7 and cancer."

8 That's what was recommended by NIOSH
9 in 1975, correct?

10 A. Yes.

11 Q. And that's not a statement that ever
12 appeared on any cautionary language that Abex
13 put on any of its products?

14 MR. RADCLIFFE: Object to form.

15 A. That's not what this says. This says
16 that the area shall be designated and labeled
17 this way. It doesn't say anything about using
18 this on the product.

19 Q. But the fact that breathing asbestos
20 dust can cause asbestosis or cancer was not
21 information that Abex provided to the consumers
22 of its products either through an insert in the
23 product itself or by labeling on the packaging
24 of its product?

1 MR. RADCLIFFE: Object to form.

2 A. No, we did not.

3 Q. It also indicates that "During brake
4 services air purifying respirators, either
5 single use or with replacement of particular
6 dust filters, shall be worn during all
7 procedures following removal of the wheels,
8 including reassembly." Again, that's not a
9 procedure that Abex communicated to any
10 consumers of its products either through an
11 insert or through cautionary language on its
12 packaging, correct?

13 MR. RADCLIFFE: Object to form.

14 A. Our customers were not the installers
15 of brakes. I mean, our product has to be
16 handled and assembled to something else before
17 it can be put in the hands of someone who
18 assembles brakes so....

19 Q. For that person that eventually gets
20 your product and has to install or handle it,
21 Abex did not communicate the fact that
22 respirators should be worn during that process?

23 MR. RADCLIFFE: Object to form.

24 A. There's no way for Abex to communicate

1 it to the persons that would be doing the
2 installation. I contend that that -- that we
3 would rely on the brake manufacturers, the
4 vehicle manufacturers, the rebuilders. We had
5 no way to do that.

6 Q. You certainly didn't pass any of the
7 information that you had gleaned to your
8 customers?

9 MR. RADCLIFFE: Objection.

10 Q. Other than what was in your
11 cautionary --

12 A. I disagree --

13 MR. RADCLIFFE: Objection.

14 A. -- because a lot of these warnings and
15 recommendations and so on were, in fact,
16 incorporated into FMSI catalog which ultimately
17 got to the end users.

18 Q. And that was not until the late '70s
19 and early '80s, correct?

20 A. That's the time period we're talking
21 about here.

22 Q. This is 1975, and the FMSI catalog was
23 not available until 1978, correct?

24 MR. RADCLIFFE: Object to form.

1 A. I don't recall it being that late. I
2 thought it was like about 1976, but I don't
3 happen to have a ready reference for that date.

4 Q. According to your answers to
5 interrogatory responses, you indicate that "In
6 1979 and 1982 Abex participated in the
7 preparation and distribution of a pamphlet
8 published by the Friction Materials Standard
9 Institute entitled Recommended Procedures For
10 Reducing Asbestos Dust During Brake Service."

11 A. I stand corrected. Those are the
12 dates.

13 Q. 1979 was the first time that type of
14 information was communicated by Abex, correct?

15 A. Yes.

16 MR. RADCLIFFE: Object to form.

17 Q. You would agree with me that by that
18 period of time, 1979, Abex had been subject to
19 -- had already been sued in at least four
20 occasions in different states with regard to
21 allegations that individuals had developed an
22 asbestos disease from the use of Abex's
23 products?

24 A. Can I refer to --

1 MR. RADCLIFFE: Object to form.

2 Q. Sure.

3 A. The first one was 1977.

4 Q. Then there was one in 1978 and two in
5 1979?

6 MR. RADCLIFFE: Object to form.

7 A. Correct.

8 Q. Also in 1979 Abex received an
9 allegation that one of its workers was
10 diagnosed with asbestosis, correct?

11 A. Yeah. I'm very familiar with that
12 case. It was an employee in our Salisbury
13 plant, and it turned out that he had been
14 exposed to asbestos in the shipbuilding
15 industry. And under North Carolina workers'
16 comp law, last injurious exposure date was what
17 mattered, and that was why Abex was named in
18 that suit.

19 MR. RADCLIFFE: Object to form.

20 Q. You've also indicated that a review of
21 Abex's records demonstrated that there were a
22 few claimed cases of asbestosis among its
23 employees, correct?

24 A. Yes. Claimed being the operative

1 word.

2 Q. I want to show you a document dated
3 September 5, 1978.

4 MR. GEORGE: We'll mark this as
5 Exhibit 37.

6 (Exhibit No. 37, Letter to E.P. Hoff,
7 9.5.78 so marked)

8 Q. This is a letter from a B. Iwarsson,
9 I-W-A-R-S-S-O-N?

10 A. Yes.

11 Q. Who is Mr. Iwarsson?

12 A. He was an executive at Friction
13 Products Group of Abex.

14 Q. And he's writing to a Mr. E.P. Hoff?

15 A. Right, who is sales manager.

16 Q. And this is under the Friction
17 Products Group Winchester letterhead, correct?

18 A. That's right.

19 Q. Is this -- first of all, is this an
20 authentic record of Abex?

21 A. I believe it be to, yes.

22 Q. In this letter it says talking about
23 asbestos booklets --

24 A. Yes.

1 Q. -- "Please do not, under any
2 circumstances, distribute our blue booklets to
3 our customers." What were the blue booklets?

4 MR. RADCLIFFE: Object to form.

5 A. The blue booklets were informational
6 booklets that were distributed to our workers
7 in our factory as part of their asbestos
8 education and had a little tear-off thing where
9 they signed and acknowledged receipt of the
10 training booklet.

11 Q. The blue information booklets were
12 internal documents that --

13 A. Dealt with.

14 Q. -- educated your workers to the
15 hazards associated with working with asbestos?

16 A. With raw asbestos fiber in their
17 environment.

18 Q. Do you have any exemplars of that blue
19 booklet?

20 A. No. I'm sorry to say we have not been
21 able to produce such a copy.

22 Q. What this letter says is that, "The
23 blue information booklets are strictly for
24 internal use and should not be considered to

1 inform our customers of the potential hazards
2 of asbestos. The FMSI booklet would be quite
3 sufficient."

4 That's what he wrote, correct?

5 A. Yes.

6 Q. Did Abex itself ever publish any kind
7 of safe handling bulletin or brochures to its
8 customers?

9 A. No.

10 Q. Abex did, however, provide MSDS
11 sheets, correct?

12 A. Yes.

13 Q. An MSDS sheet is a material safety
14 data sheet?

15 A. That's right.

16 Q. It was required by OSHA?

17 A. That's right.

18 Q. That a manufacturer of a product
19 needed to alert the consumers of that product
20 or the people who purchased that product of the
21 contents of that product and any potential
22 hazards that may be associated with the use of
23 that product, correct?

24 MR. RADCLIFFE: Object to form.

1 A. Yes.

2 Q. I want to show you a document that is
3 from a document that's entitled Asbestos
4 Corporate Friction Product Group Brake Lining,
5 and it is an August 1, 1986, MSDS date, and ask
6 you if you're familiar with this document?

7 A. I'm not familiar with this document.

8 Q. Let me ask you about the document
9 itself. Would you agree with me that the Abex
10 company name in 1986 was Abex Corp. Friction
11 Products Group?

12 MR. RADCLIFFE: Object to form. Let
13 me just object also this is not an Abex
14 document.

15 MR. GEORGE: I'm going ask some
16 questions about it.

17 MR. RADCLIFFE: Well, you can ask
18 questions about it. I don't know where you got
19 it. I don't know who prepared it.

20 MR. GEORGE: That's why I'm going ask
21 questions about it.

22 MR. RADCLIFFE: Can I have an
23 continuing objection to all your questions?

24 MR. GEORGE: You may.

1 A. The name of the company was not Abex
2 Corp. Friction Products Group.

3 Q. Was it located at 2610 Paper Mill
4 Road, Winchester, Virginia?

5 A. Was the company?

6 Q. Correct?

7 A. Or was there a factory at that
8 location?

9 Q. Did Abex have a facility that address?

10 A. Yes.

11 Q. Was Eaton Corporation in Kalamazoo,
12 Michigan, one of Abex's customers?

13 A. Well, Eaton Corp. in Kalamazoo, no.
14 Eaton was a customer, but I don't recognize
15 Kalamazoo, Michigan, as a location for Eaton
16 Corp.

17 Q. Are you familiar with the Hazardous
18 Material Information System of the federal
19 government?

20 A. The MSDS system?

21 Q. No, the HMIS system of the federal
22 government?

23 A. No, I'm not.

24 Q. Are you aware of whether Abex ever

1 sold any of its asbestos material to the
2 government?

3 A. I'm not sure. I don't think so.

4 Q. Did Abex sell any of its material to
5 someone who incorporated that asbestos material
6 into a product that was sold to the government?

7 A. Entirely possible.

8 Q. Do you have any exemplars of MSDS
9 sheets that Abex gave to its customers?

10 A. I believe that I've seen one as an
11 exhibit in some other litigation, but to my
12 knowledge we haven't been able to find any
13 MSDSes in our repository.

14 Q. Do you know what date the MSDS that
15 you saw was from --

16 A. No, I don't.

17 Q. -- what year? I want to show you a
18 series of advertisements we'll mark as Exhibit
19 39.

20 (Exhibit No. 39, Advertisements so
21 marked)

22 Q. I think you've seen these
23 advertisements before?

24 A. I'll tell you when you show them to

1 me.

2 Q. These are advertisements from the
3 various issues of The Saturday Evening Post?

4 A. Yeah, I've seen some of these, not
5 necessarily all of them but....okay.

6 Q. These are -- take the first one from
7 April 30, 1955?

8 A. I can't even read the dates on these.

9 Q. The first page.

10 A. Okay.

11 Q. In that one there's a picture of a
12 revolver, correct?

13 A. Uh-huh.

14 Q. It says, "Brakes can become just as
15 deadly," correct?

16 A. Yes.

17 Q. It says, "When you handle a loaded
18 revolver, you treat it with care and respect.
19 It's a deadly weapon and you know it. Brakes
20 can be just as lethal, but, unfortunately, you
21 may not know they have become potential
22 killers," correct?

23 A. Yes.

24 Q. It says --

1 MR. RADCLIFFE: Object to form.

2 Q. It says, "American Brakeblok, American
3 Safety brake lining." Is the way that American
4 Brakeblok is scripted there something that is a
5 historical trademark of American Brakeblok?

6 A. Yes.

7 Q. It says, "A Product of Brake Shoe
8 distributed nationally by" and then it has a
9 symbol for NAPA, correct?

10 A. I can't read that.

11 MR. CARON: Object to form.

12 A. I see a product of brake shoe
13 distributed something nationally.

14 Q. Okay. Let's look at the second one.
15 This is from August 27, 1955.

16 A. Uh-huh.

17 Q. This is a picture of two sticks of
18 dynamite, correct?

19 A. That appears to be. I'm not sure.
20 It's really a bad image.

21 Q. It says, "Brakes can be become just as
22 deadly. Handling dynamite can be a risky
23 operation. It's a deadly explosive and
24 everyone knows it. Brakes can be just as

1 deadly, but, unfortunately, you may not know
2 that they've become potential killers"?

3 A. "That's why regular periodic brake
4 inspection is so important."

5 Q. The next -- it's from July 1955, and
6 it has a photograph of a dagger, correct?

7 A. Yes.

8 Q. It says, "Brakes can become just as
9 deadly. An ancient dagger can be an
10 interesting relic or a deadly weapon.
11 Fortunately, you know it. Brakes can be
12 equally deadly," is what they write, correct?

13 MR. CARON: Object to form.

14 A. Yes.

15 Q. Then the last one is a photograph of a
16 few bullets, correct?

17 A. Yes.

18 Q. And it says, "Loaded cartridges can be
19 a means of protection or deadly killers, and
20 you know it. Brakes can also protect you or be
21 just as fatal as a bullet, but, unfortunately,
22 you may not know they have become potential
23 killers," correct?

24 MR. CARON: Object to form.

1 A. Yes.

2 Q. We talked earlier about the
3 relationship between NAPA and Abex, and you
4 said you believe that that relationship went
5 back sometime into the '40s?

6 A. I think even before that as I thought
7 about it.

8 Q. Now, do you know whether Genuine Parts
9 had any other supplier of asbestos linings for
10 its brakes other than Abex?

11 A. Yes, I know they did.

12 Q. Okay. And how much of Genuine Parts'
13 business did Abex have?

14 MR. RADCLIFFE: Object to form.

15 MR. CARON: Object to form.

16 A. I don't know at what point in time
17 we're talking, but while I was active in the
18 business, I would say I'd estimate our market
19 share at NAPA to be about 30, 35 percent.

20 Q. Who else would supply linings for
21 Genuine Parts to put on its product?

22 MR. CARON: Object to form.

23 A. I don't know all the potential
24 suppliers over the years, but certainly

1 Raybestos, Eckland at the time, Bendix, now
2 Honeywell, Virginia Friction. I mean, there
3 was a couple of Canadian companies I know they
4 sourced product from.

5 Q. You've seen, have you not, various
6 advertisements from NAPA?

7 A. I mean --

8 MR. CARON: Object to form.

9 A. -- I saw one yesterday for wiper
10 blades.

11 Q. Let me show you these. This one is
12 from Commercial Car Journal July 1966?

13 MR. GEORGE: And we'll mark that as
14 Exhibit 40.

15 (Exhibit No. 40, Photocopy of
16 Commercial Car Journal Page 182-183, July 1966
17 so marked)

18 Q. In that advertisement they associate
19 products with specific manufacturers, correct?

20 MR. CARON: Object to form.

21 A. Well, there's images of various
22 products and various product types, and, I
23 mean, there's a line here for it looks like
24 suspension parts, that's NAPA Allied. There's

1 one for lamps and tubes, but it doesn't -- I
2 guess it's Balkamp. There's one for bearings,
3 one for emission parts, one for brakes.

4 Q. What does it have for brakes?

5 A. American Brakeblok, but it's limited
6 to in this case thick blocks and heavy-duty
7 linings, and the image is for a commercial
8 vehicle type of brake lining.

9 Q. Now, you are familiar, are you not,
10 that there were Rayloc relined brake shoe
11 catalogs that contained American Brakeblok
12 products?

13 MR. CARON: Object to form.

14 MR. RADCLIFFE: Object to form.

15 A. Catalogs contained products? I'm not
16 sure I understand what you're saying.

17 Q. I'm going to show you -- and I don't
18 have the whole catalog, but I'm going to show
19 you an excerpt from one. This is a BSE-72R
20 catalog, and it has that SPNY number at the
21 bottom, and it talks about Rayloc relined brake
22 shoes. It has the NAPA logo, and then it says
23 American Brakeblok?

24 A. Okay.

1 Q. And if we go into the next page, it
2 talks about NAPA American Brakeblok relined
3 brake shoes, and in the table of contents -- I
4 didn't bring all the associated lists -- but
5 they talk about domestic cars, foreign cars,
6 relined brake shoe sets, and this is a catalog
7 that NAPA put out. I'm just asking --

8 MR. GEORGE: We'll mark this as 41.

9 (Exhibit No. 41, Rayloc Relined Brake
10 Shoes, BSE-72R Catalog so marked)

11 Q. Is this something that you're familiar
12 with?

13 A. Not offhand. I've seen similar kind
14 of catalog covers.

15 MR. CARON: I'm just going to object
16 to the form of the last question. I'm also
17 just going to make an objection to the use of
18 these documents. They're unauthenticated. I
19 don't think the foundation has been laid for
20 use of any of them.

21 Q. Let me ask you this: As the corporate
22 spokesman for Abex, are you aware of any
23 relined brake catalogs from Rayloc that
24 indicate that the linings were provided by

1 Abex?

2 A. Not necessarily.

3 MR. CARON: Object to form.

4 MR. RADCLIFFE: Object to form.

5 A. The trade name American Brakeblok at
6 some point in the corporate history was the
7 company name, but in this time frame American
8 Brakeblok was just a product trademark that we
9 let NAPA use. And we had a verbal agreement
10 with them that we wouldn't use it on anything
11 else. That's not to the say that every piece
12 of brake lining they bought from us or that was
13 implied in their catalog came from us.

14 Q. So when -- what you're saying is that
15 American Brakeblok, even though it's a
16 registered trademark, that was a registered
17 trademark of your company, correct?

18 A. Yes, it was.

19 Q. Okay. So you lent your registered
20 trademark to NAPA to put on any brake material
21 that they sold?

22 A. No, it was --

23 MR. CARON: Object to form.

24 Q. I'm just trying to understand what

1 your testimony is.

2 A. We gave them the use of that market,
3 all right. Our intent was to try to get as
4 much business from Rayloc, NAPA, Genuine Parts
5 as we possibly could. Not always did they buy
6 their brake lining from us, and it was a source
7 of many discussions of, Hey, guys, we're
8 letting you use the mark. You really shouldn't
9 be using somebody else's brake lining but, in
10 fact, they did. And they were an important and
11 big and a good customer, and we just kind of
12 let it go on.

13 Q. Do you have any documentation from
14 that depository that would substantiate that
15 testimony?

16 A. I believe we do.

17 Q. Okay. Have you produced any of that
18 material?

19 A. Did you ask for it?

20 Q. I'm sure we asked for it. Let me ask
21 this way: When did you first assign your
22 registered trademark to NAPA?

23 A. I have no idea when it first started.

24 Q. When did NAPA first sell a brake

1 product as an American Brakeblok material that
2 did not contain an asbestos lining from an Abex
3 entity? And by that I mean any of the
4 formulations of American Brakeblok?

5 A. I don't know when it started.

6 MR. CARON: Object to form.

7 A. It was certainly when I joined the
8 company in 1970 and got involved with the
9 friction business directly in '71 or '72 there
10 was brake linings that was not Abex's that was
11 being used in the NAPA Genuine Parts
12 distribution.

13 Q. How would anybody who was purchasing
14 that product know that it was not, in fact, an
15 American Brakeblok Corporation lining on that
16 product?

17 A. I don't know.

18 MR. CARON: Object to form.

19 A. Perhaps by the edge coding that was on
20 the brake lining.

21 Q. Your edge coding -- you mentioned
22 them. Let me just show you what we'll mark as
23 Exhibit 42.

24 (Exhibit No. 42, Abex 614EF so marked)

1 Q. And this is an advertisement from Abex
2 an IC Industries Company Friction Products
3 Group and from Commercial Car Journal, October
4 1976. Have you seen that before?

5 A. I mean, it's familiar to me. I
6 probably remember seeing it back when it ran in
7 the ad.

8 Q. And that is a picture of some truck
9 brake segments, correct?

10 A. Yes. That has nothing to do with NAPA
11 or Genuine Parts.

12 Q. Correct. I'm just asking you -- you
13 talked about an edge code?

14 A. Right. That's typical of an edge code
15 on a truck block.

16 Q. No. 41 is an example of what --

17 A. 42.

18 Q. 42 is an example of what an edge code
19 is which is on the edge of the brakes. You
20 would put your company's name, right?

21 MR. RADCLIFFE: Object to form.

22 A. Well, you came up with a series of
23 letters or numbers that were registered with
24 AAMVA, which was an Association of Motor

1 Vehicle Administrators nationally, and they
2 would assign or you would request an edge code
3 nomenclature.

4 And they would grant it, and then you
5 put that on brake lining along with a
6 two-letter designation at the end here. It's
7 like EF which was a describer of the friction
8 performance in the brake.

9 Q. Now, were there instances where Abex
10 and its various prior entities, actually put
11 its name on the edge code like is depicted in
12 Exhibit 42?

13 MR. RADCLIFFE: Object to form.

14 MR. CARON: Object to form.

15 A. Every manufacturer had a different
16 methodology. Abex only used the term "Abex" on
17 its heavy-duty products.

18 Q. From your review of the corporate
19 records of Abex, did it ever put American
20 Brakeblok or any other identifying company name
21 on any of the edge codes of its passenger
22 brakes?

23 MR. RADCLIFFE: Object to form.

24 MR. CARON: Object to form.

1 Q. The linings that went on passenger
2 brakes?

3 A. When you say "name," no. A name like
4 American Brakeblok or -- no.

5 Q. It always just had numbers?

6 A. Or letters. It might have had ABB or
7 ABX or COM.

8 Q. I want to show you what we'll mark as
9 43. This is what appears to be an
10 advertisement from Motor Age, April 1950. It
11 says, "Costs Up Profits Down. American
12 Brakeblok registered US patent office." And
13 then it says "NAPA jobbers everywhere and 39
14 warehouses have all the details. See your NAPA
15 jobber salesmen, Brake Shoe, American Brakeblok
16 Division."

17 (Exhibit No. 43, American Brakeblok
18 Advertisement, Motor Age, April 1950 so marked)

19 MR. CARON: Object to form.

20 Q. Is that an advertisement that's
21 consistent with the type of advertising that
22 Abex did in the 1950s?

23 MR. CARON: Object to form.

24 A. I really couldn't say. I have never

1 seen this before. I mean, I'm -- you know,
2 certainly it looks like it says American
3 Brakeblok. It says Detroit. It says Brake
4 Shoe. It says NAPA, American Brakeblok Brake
5 Lining. I mean, I don't know what you want me
6 to say about it.

7 Q. Would you agree with me, number one,
8 that the depictions of the name are consistent
9 with the trademarks and other licenses?

10 A. At the time, yeah, those are pretty
11 consistent with 1950s vintage signage, if you
12 will.

13 Q. I wanted to ask you -- I'm going to
14 show you a letter that we'll mark as Exhibit
15 44.

16 (Exhibit No. 44, Letter to Messrs.
17 Challinor, Hubbard, etc., 4.14.77 so marked)

18 Q. This is dated April 14, 1977, and it's
19 a letter from A.P. Schmaltz, S-C-H-M-A-L-T-Z,
20 of the Friction Products Group to a number of
21 different individuals and ask if you've seen
22 that before?

23 A. I have.

24 Q. Now, in that letter there's an

1 indication that certain customers of Abex did
2 not want to be provided with cautionary
3 information of product hazards, correct?

4 A. Why don't I just read the letter.

5 Q. Okay.

6 A. It says, "We recently decided that the
7 caution information required by OSHA should be
8 imprinted on all of our boxes and carton. Our
9 carton and box vendors have been so notified"
10 -- or "so advised, and this will become a
11 running change.

12 The only remaining boxes and cartons
13 not so imprinted are those made and printed by
14 customer specifications. Attached is a list"
15 -- which is not attached by the way -- "of
16 those involved. We would appreciate your
17 approaching these customers with the fact that
18 caution information is required by law and
19 whether or not they elect to abide by it is
20 their decision.

21 If they do not want this data on their
22 boxes, we would request that they send us a
23 written statement to that effect." The
24 following -- I'm sorry. "The wording which we

1 propose appear on the box and cartons is as
2 follows: Caution, contains asbestos fibers.
3 Avoid creating dust. Breathing asbestos dust
4 may cause serious bodily harm. Please review
5 this with each of your customers and give us a
6 report advising what we should do."

7 Q. The one customer that you have
8 personal experience with who did not want to
9 have cautionary language placed on your product
10 was Ford, correct?

11 A. That's right.

12 MR. RADCLIFFE: Object to form.

13 Q. So for those shipments that went to
14 Ford, Abex, up until the time frame mentioned
15 in this letter, did not put the cautionary
16 language on there at their request?

17 A. At whose request?

18 Q. At Ford's request?

19 A. No. We managed -- by the time this
20 letter was written the Ford issue was resolved.

21 Q. When was that issue resolved?

22 A. I don't remember exactly, but it was,
23 I think in like '76 or something.

24 Q. What other companies are you aware of

1 that did not want to be advised of the
2 potential hazards associated with the use of
3 your asbestos linings?

4 MR. CARON: Object to form.

5 A. I don't know of anyone else who
6 objected to us doing it. There were companies
7 -- and I think in the case of Schmaltz,
8 Schmaltz's letter, there were companies that
9 supplied us boxes. So this is simply a letter
10 to them to say, hey, we're requiring that that
11 warning goes on. You need to have it added to
12 your boxes or contact us and we'll work
13 something out, like we'll put the stickers on
14 for you.

15 Q. Do you know when Ford first put
16 warnings or cautionary language on the cartons
17 of brakes that it distributed in the stream of
18 commerce?

19 A. I do not know.

20 Q. Do you have any documents that Abex
21 may use to dispute that the plaintiff decedent,
22 Robert Tavaglione, worked with or was exposed
23 to asbestos using products manufactured,
24 marketed, sold or distributed by Abex?

1 A. No, I do not.

2 Q. Would you agree that during the period
3 of 1950 through the 1980s that Abex sold
4 asbestos-containing brake linings that were
5 distributed throughout Massachusetts and
6 Connecticut?

7 MR. RADCLIFFE: Object to form.

8 A. It's possible that they were.

9 Q. There wasn't any geographic limitation
10 of where Abex's products ended up, was there?
11 You were a nationwide company?

12 A. Right.

13 MR. GEORGE: Give me just one second.

14 Q. In your interrogatory responses, you
15 indicate that Abex has been advised through
16 historical documents from other parties that
17 certain individuals at American Brake Shoe and
18 Foundry Company or its employees were members
19 of the National Safety Council, correct?

20 A. That's right.

21 Q. Do you know the dates that those
22 employees were members of that organization?

23 A. No, I don't. I do not.

24 Q. They also -- you indicate that

1 historical documents indicate that some
2 employees of American Brake Shoe and Foundry
3 might have been trustees of the National Safety
4 Council. Do you know when?

5 A. In fact, I think one of the documents
6 you produced today talked about one of our
7 executives being a trustee. I think it was
8 Given, that's the first I'd seen that.

9 Q. The Industrial Hygiene Foundation?

10 A. I think so.

11 Q. What I'm asking about is the National
12 Safety Council?

13 A. Don't know.

14 Q. Do you know what type of organization
15 the National Safety Council is?

16 A. It is or was or -- well, I'm really
17 not sure. I'm really not sure what their
18 charge or charter was.

19 MR. GEORGE: Why don't we go off for
20 just two minutes.

21 THE VIDEOGRAPHER: The time is now
22 3:39 p.m. Going off the record.

23 (Recess 3:38 p.m. to 3:44 p.m.)

24 (Exhibit No. 45, Advertisement,

1 Commercial Car Journal, February 1968 so
2 marked)

3 THE VIDEOGRAPHER: The time is 3:44
4 p.m. We're back on the record.

5 BY MR. GEORGE:

6 Q. I put before you -- I'm going to
7 switch -- an advertisement I've marked as
8 Exhibit 45. This is from Commercial Car
9 Journal February 1968. And it says, "Why we're
10 No. 1 in safety"?

11 A. And it talks about how American
12 Brakeblok has more heavy-duty original
13 equipment applications, heavy-duty meaning
14 commercial vehicles. And Abex engineers who
15 also make brake materials for jet planes work
16 on their brake linings for their trucks and
17 buses and earth moving equipment. It's just a
18 broad here's all the things we can do.

19 Q. As of 1968 at least in this
20 advertisement when it has the NAPA and American
21 Brakeblok what it's referring to is Abex,
22 correct?

23 MR. CARON: Object to form.

24 MR. RADCLIFFE: Object to form.

1 A. I'm not sure I understand your
2 question.

3 Q. It's certainly not referring to
4 American Brakeblok as a service mark for
5 another corporation?

6 MR. RADCLIFFE: Object to form.

7 A. It's referring to American Brakeblok,
8 the mark that we let NAPA use.

9 Q. Okay. But it was referring to the
10 company itself?

11 A. No, I don't believe it is.

12 Q. When it says, "American Brakeblok has
13 been America's heavy-duty safety brake lining
14 for over 40 years," it's referring to?

15 A. Yeah, in that case in the context of
16 the text, it's referring to American Brakeblok
17 the corporation. But the ad is a NAPA American
18 Brakeblok ad. And in 1968 the company's name
19 was Abex, not American Brakeblok.

20 Q. But you used the American Brakeblok
21 trade name in certain applications throughout
22 the 1960s, correct?

23 A. There was a point in time when it was
24 analogous to the company name. After that

1 point then the trademark American Brakeblok was
2 essentially loosely assigned to NAPA.

3 Q. In 1968 in this advertisement there is
4 underneath the American Brakeblok NAPA symbols
5 in parenthesis American Safety Brake Lining for
6 over 40 years. That is a phrase that's
7 associated with American Brakeblok Abex
8 products, correct?

9 A. Yes.

10 Q. Okay. That's your service mark,
11 correct? "Yours" being Abex?

12 A. I can't say that. I'm not sure if
13 that was assigned to NAPA as well, but it
14 certainly implies the use of Abex brake lining.

15 Q. In your interrogatories you were asked
16 about the trade names of the various products
17 that were used by Abex and its various
18 predecessor corporations, correct?

19 A. Yes.

20 Q. This is an interrogatory that you've
21 been asked in prior cases, correct?

22 A. Yes.

23 Q. Now you indicate that the American
24 Brakeblok as -- the first year registration of

1 use was 1938, correct?

2 A. I believe that to be the case, yes,
3 sir.

4 Q. And Abex, the first year of registered
5 use was 1941?

6 A. Can I see that, please?

7 Q. Sure.

8 A. It seems a little early to me but
9 okay.

10 Q. Now, both those trade names were used
11 simultaneously throughout the '40s, '50s and
12 '60s, correct?

13 A. Yes.

14 Q. Do you know the last date that the
15 trade name American Brakeblok was last used to
16 indicate a product that was manufactured by
17 Abex or one of its predecessor corporations?

18 A. I do not know.

19 MR. RADCLIFFE: Object to form.

20 Q. I want to show you one last
21 advertisement from what we'll mark as 46. This
22 is from Commercial Car Journal July of 1966.

23 (Exhibit No. 46, Advertisement,
24 Commercial Car Journal, July 1966 so marked)

1 Q. And among the products listed for NAPA
2 is thick blocks and heavy-duty linings. Do you
3 see that up in the --

4 A. Yes.

5 MR. CARON: Object to form.

6 Q. First of all, was this the type of
7 advertisement that would have appeared in the
8 1960s?

9 A. I've never seen an advertisement like
10 this before.

11 Q. The way that American Brakeblok is
12 depicted in that advertisement, does that lead
13 you to believe that they were referring to an
14 Abex lining as opposed to some generic service
15 mark lining?

16 MR. CARON: Object to form.

17 A. No, I believe it's for an Abex
18 produced heavy truck commercial brake lining
19 product.

20 Q. It even indicates where that lining is
21 going to come from, correct?

22 A. No, it doesn't.

23 Q. Well, it indicates where it's
24 produced, underneath?

1 A. No, it doesn't.

2 Q. Doesn't give an address?

3 A. It says, "American Brakeblok Division,
4 Birmingham, Michigan." We had no manufacturing
5 facility or warehouse in Birmingham, Michigan.

6 Q. Did you have any sort of distributor
7 or other entity in Birmingham, Michigan?

8 A. Not that I know of.

9 Q. Okay.

10 MR. GEORGE: I have nothing further.
11 Thank you. I appreciate your time.

12 THE WITNESS: Sure, you bet.

13 MR. RADCLIFFE: Do you have any
14 questions?

15 MR. CARON: I'm going to look at my
16 notes for a minute. I don't think I'm going to
17 have much, if anything.

18 MR. RADCLIFFE: Anybody have any
19 questions on the phone? You don't have to say
20 no questions. If you have them, speak up.

21 Let's go off the record.

22 THE VIDEOGRAPHER: The time is now
23 3:50 p.m. Let's go off the record.

24 (Recess 3:50 p.m. to 4:00 p.m.)

1 THE VIDEOGRAPHER: The time is now
2 4:01 p.m. We're back on the record.

3 EXAMINATION CONDUCTED
4 BY MR. CARON:

5 Q. Good afternoon, sir. My name is Jason
6 Caron. I represent Genuine Parts Company. I
7 just have a few short questions to try to
8 clarify some of your testimony. The first, as
9 I understand it, and I think you testified that
10 some brakes were sold through NAPA using the
11 American Brakeblok name that didn't contain
12 linings that were supplied by Abex. Is that --

13 A. Well, yeah.

14 Q. -- accurate?

15 A. Just to kind of get the terminology
16 straight, we never sold brakes. We sold brake
17 lining.

18 Q. Agreed. Thank you for correcting me.

19 A. Sure. And it is my contention that
20 while Abex had a significant amount of NAPA,
21 Genuine Parts, Rayloc, whatever entity you want
22 to call it, business, there were purchases of
23 brake lining from other brake lining companies
24 other than Abex.

1 Q. Okay. And understanding there were
2 purchases from other companies, purchases of
3 brake linings from other companies, is it your
4 contention that those brake linings purchased
5 from other companies were incorporated into
6 brakes that were sold using the American
7 Brakeblok name as opposed to some other brand
8 name or trade name?

9 A. It's a fine point. We never contended
10 or alleged that NAPA's organization would have
11 put American Brakeblok on the actual friction
12 product, but it might have been included in a
13 product offering that was in a brochure, let's
14 say, that was entitled American Brakeblok.

15 Q. I guess what I'm getting at is this:
16 Do you have any evidence that a brake that came
17 in a package that had the American Brakeblok
18 name somewhere on it contained linings other
19 than those supplied by Abex?

20 A. No, I don't.

21 Q. You talked about the American
22 Brakeblok name being assigned to NAPA?

23 A. I said loosely assigned. I don't
24 think there was a legal assignment of the mark.

1 Q. Okay. Was there any sort of written
2 agreement reflecting that assignment?

3 A. I don't believe so.

4 Q. Okay. Was this just a verbal
5 agreement?

6 A. Yeah. There were a lot of -- I mean,
7 NAPA, Genuine Parts and Abex were, quote, old
8 corporate friends going back to the beginning
9 of time. And there were a lot of handshake
10 kind of deals, and I think that was the way
11 that GPC and Abex did business for many, many
12 years.

13 Q. Okay. When -- if you answered this, I
14 apologize. When did NAPA's use of the American
15 Brakeblok name begin?

16 A. I don't know.

17 Q. Do you know -- to the extent this was
18 a verbal agreement, do you know any of the
19 people that had the conversations?

20 A. Steve Conway would have been the one
21 that I would have relied on.

22 Q. Can you tell me who Steve Conway is?

23 A. He was the president of Abex
24 ultimately. He was the VP of sales for Abex

1 Friction. He was on the railroad side of the
2 business for a number of years. He became
3 ultimately president of Abex Friction Products
4 and then president of Abex Corp.

5 Q. Okay. I think you said that there was
6 a verbal agreement not to use the American
7 Brakeblok name elsewhere, and by that I took to
8 mean that Abex wasn't going to use the American
9 Brakeblok name elsewhere?

10 A. Right.

11 Q. Is that true?

12 A. Yes.

13 Q. Who was that verbal agreement between?

14 A. I think it was Conway and I'm not
15 positive, but I think it would have been with
16 Wilton Looney, is I believe his name or I
17 believe he's deceased now. But I think at the
18 time Mr. Looney was either the chairman or
19 president of Genuine Parts.

20 Q. Okay. Do you know when this verbal
21 agreement took place?

22 A. No. I think it you, know predated, me
23 being involved in management, early '70s, late
24 '60s perhaps.

1 Q. Will you agree with me that you don't
2 have any personal knowledge of this verbal
3 agreement, right? You weren't there?

4 A. Well, only that Conway, you know, when
5 I got into more of a management role and less
6 of an engineering role, you know, Mr. Conway
7 sat me down a number of times explaining kind
8 of the relationship, the long-lasting
9 relationship between NAPA and Abex. And, you
10 know, things that, you know, we just didn't do.
11 These were our friends, and we weren't going
12 to, you know, sell product that we sell to NAPA
13 to somebody else and, you know, that sort of
14 thing.

15 Q. Will you agree with me that to the
16 extent there was a verbal agreement, your
17 knowledge of it comes from your discussions
18 with Mr. Conway?

19 A. Yes.

20 Q. You don't have some independent basis?

21 A. No.

22 Q. Now I understand there may have been a
23 verbal agreement for Abex not to use the
24 American Brakeblok name independently of its

1 relationship with NAPA, but do you know one way
2 or the other whether Abex actually did use the
3 American Brakeblok name on products that it
4 sold through channels other than Genuine Parts
5 Company or NAPA?

6 A. I think many years ago certainly
7 because American Brakeblok was the name of the
8 company, so it would only stand to reason that
9 we would have sold product branded American
10 Brakeblok to people other than NAPA. But there
11 was some point in time during my tenure that we
12 didn't use the American Brakeblok mark on
13 anything other than products that we sold
14 through NAPA.

15 Q. Okay. And did that change? You said
16 it just happened during your tenure so after --

17 A. During my tenure. It happened
18 sometime before that; I just can't tell you
19 when.

20 Q. As of -- I think you said you started
21 in 1971, correct?

22 A. 1970, right.

23 Q. As of 1970 and going forward, you
24 don't know of an instance in which Abex used

1 the American Brakeblok name other than through
2 the Genuine Parts Company or NAPA distribution?

3 A. No. And I would qualify that to say
4 for passenger cars or light trucks. We may
5 have used the American Brakeblok name on some
6 select heavy-duty products.

7 Q. Okay. Do you believe you did?

8 A. I'm not positive.

9 Q. And I know you don't have personal
10 knowledge of this, but prior to 1970, do you
11 have any knowledge from any source of how long
12 Abex was continuing to use the American
13 Brakeblok name on products it sold other than
14 through a Genuine Parts Company or NAPA
15 network?

16 A. I don't know for sure. I know that I
17 can frame out some things. There were some
18 really heavy expensive advertising programs
19 done to build the alliance between NAPA and
20 Abex that go into the early '60s.

21 And it was -- in fact, I remember
22 specifically it used Ronald Regan as a
23 spokesperson, and that was the first -- the
24 oldest thing that I saw that really linked the

1 American Brakeblok brand to NAPA.

2 Q. Okay. I think you said at some point
3 that Abex had a 35 to 40 percent share of
4 Genuine Parts Company brake lining business?

5 A. It could have been higher at some
6 points in time. Market shares that I remember
7 typically were around, you know, mid 30s.

8 Q. Okay.

9 A. We always strived to get more but for
10 whatever reason we couldn't.

11 Q. Let me ask first: When we're talking
12 -- when you said 35 to 40, was that during your
13 tenure? Was there a particular decade you
14 associate that with?

15 A. I'd say during my tenure, from, you
16 know, the mid '70s until I sold the company in
17 1994.

18 Q. Okay. How would you determine that
19 number? How did you know how much --

20 A. Well, market shares were always, you
21 know, kind of reasonable estimates using some
22 form of analytics, but at best they were
23 educated estimates.

24 Q. All right. You mentioned that Genuine

1 Parts Company had other suppliers of brake
2 linings. You gave us a list of a few that you
3 knew?

4 A. Right.

5 Q. Generally speaking, what's the basis
6 of your knowledge of those other suppliers?

7 A. Again, NAPA was one of our largest
8 customers. They were one of our most important
9 customers. They were, you know, talked about
10 big time by our senior management staff. They
11 got the white-glove treatment by us in terms of
12 sales coverage.

13 Any issue that came up an appropriate
14 representative from our company would go in.
15 Oftentimes it was me, being in the quality
16 assurance department, whether it was a brake
17 noise issue or gee, we found some dust in the
18 box or whatever.

19 So, I mean, I used to go to Rayloc
20 Atlanta, you know, very, very often. I've
21 probably been to, you know, Payson, Utah,
22 Morganfield, Kentucky, and Hancock, Maryland,
23 more times than I can remember.

24 Q. Then based on that would it be fair to

1 say that your knowledge of the identity of
2 Genuine Parts Company's other suppliers comes
3 from discussions with people at Genuine Parts
4 Company or NAPA?

5 A. Yeah. And also some Abex people. I
6 mean, there were times when we'd get a call
7 from, you know, one of our sales guys that
8 said, hey, you know, I was in a NAPA jobber,
9 and he had a bunch of Raybestos stuff in there.
10 What's going on?

11 Q. I just want to refer you to Exhibit 39
12 really quickly, and I won't go through every
13 single document, but you were shown several
14 documents of some -- what looked like some
15 advertisement materials, one with the picture
16 of a gun on it and another with dynamite?

17 A. Right.

18 Q. Will you agree with me that the
19 dangers that these advertising materials are
20 addressing are dangers of brake failure from
21 not having the brakes maintained properly?

22 A. Absolutely.

23 Q. This has nothing to do with asbestos?

24 A. Absolutely not.

1 Q. I'd like to refer you to Exhibit 44
2 which was -- I may have lost it. I apologize.

3 MR. CARON: Exhibit 45 is a letter or
4 memo. Is it over there?

5 Q. You were shown -- I don't know how far
6 I can walk with this microphone. You were
7 shown that memo earlier, and I think it
8 references in the first paragraph that
9 customers and vendors were made aware of -- I'm
10 sorry --

11 A. Parts and carton vendors had also been
12 advised what it was referring to.

13 Q. Do you have any -- other than that
14 statement, do you have any knowledge that
15 Genuine Parts Company or NAPA was actually
16 advised as that first paragraph references?

17 A. Well, it really wouldn't have applied
18 to NAPA because we shipped to NAPA in bigger
19 boxes that would have hundreds or 50 pieces of
20 brake lining, and then NAPA would -- or Rayloc
21 would put them on their production line, take
22 them out of the boxes, rivet them through a
23 brake shoe and send them on.

24 Q. So --

1 A. We're talking about, in this case, set
2 boxes which would have been labeled with the
3 warning.

4 Q. So that --

5 A. This letter has absolutely nothing to
6 do with NAPA, nothing whatsoever. In fact,
7 there's some handwritten annotations on here,
8 Volkswagen, Alfa, which means mean Alfa Romeo,
9 and Renault, those were some of the customers
10 that were supplying boxes to us for packaging.

11 Q. You talked before about edge codes.
12 And without going into that in too much detail,
13 was that something that was applied to a brake
14 lining prior to it being shipped by Abex?

15 A. Yeah. The brake lining manufacturer
16 was the person responsible to put edge codes on
17 them.

18 Q. And was the edge code on every brake
19 lining that went out?

20 A. Well, it should be. You know, we did
21 see, from time to time, product in the
22 aftermarket from, let's call it, lesser quality
23 suppliers that didn't have any coding on it.

24 MR. CARON: Sir, I think's all I have.

1 Thanks for your time.

2 THE WITNESS: You bet.

3 EXAMINATION CONDUCTED

4 BY MR. RADCLIFFE:

5 Q. Mr. Indelicato, I've got a couple of
6 questions for you. As you know my name is Tom
7 Radcliffe. I'm going to try to cover a number
8 of the issues that Mr. Smith covered with you
9 earlier so --

10 MR. GEORGE: Mr. George.

11 MR. RADCLIFFE: Excuse me, Mr. George.
12 I apologize.

13 MR. GEORGE: No problem.

14 Q. I may bounce around a little bit.

15 A. Okay.

16 Q. First of all, you're the president for
17 Abex right now?

18 A. I am.

19 Q. Does Abex have any operating
20 facilities?

21 A. No, it doesn't.

22 Q. Are there any employees of Abex?

23 A. No.

24 Q. Are there any other officers of Abex?

1 A. I'm the only one.

2 Q. Okay. And when is the last time that
3 Abex was involved with the manufacture of a
4 friction material?

5 A. It would have been sometime in 1994.

6 Q. And when was the last time that Abex
7 was involved with the manufacture of friction
8 materials that contained asbestos?

9 A. 1987.

10 Q. You were asked questions from Mr. --
11 by Mr. George about safety being an important
12 concept, primary concern. Do you remember
13 those types of questions?

14 A. Absolutely.

15 Q. And when Abex was concerned with the
16 safety of its friction materials, tell me some
17 of the concerns that Abex had?

18 A. First and foremost, was would it
19 safely stop a car. And not only in terms of
20 stopping distance, but would repeated brakings
21 cause the brakes to fail? Would it cause the
22 car to pull in one direction or another? Would
23 the longevity of the brake lining be
24 satisfactory? Would customers complain about

1 the noise coming from brakes? But first and
2 foremost was safely stopping the vehicle;
3 that's what the business was all about.

4 Q. Did Abex make a friction material that
5 could safely stop vehicles?

6 A. Absolutely. That was the nature of a
7 lot of those ads where there were bullets and
8 things. It was really trying to, you know, get
9 your attention and say, look, you know, safe
10 braking system is very important.

11 Q. I'm going to come back to those ads.
12 Did Abex use quality material in the
13 manufacture of a friction term?

14 A. The best we could procure.

15 Q. You've already testify that asbestos
16 was used in some friction materials. Why was
17 asbestos used in some friction materials in the
18 past?

19 A. Because we couldn't come up with a
20 satisfactorily safe product that met customers'
21 requirements without using asbestos.

22 Q. Let's take 1975, was there an ability
23 to produce a friction material to stop an -- I
24 don't think we had minivans in 1975, did we?

1 A. If we did we probably could have come
2 up with something. No. In the '70s we made
3 some semi-metallic brake lining that worked
4 really well for severe-duty applications, but
5 mom driving to the grocery store wouldn't have
6 been a happy camper.

7 Q. So could you have done something
8 without asbestos --

9 A. No.

10 Q. -- at that time?

11 A. (Witness nods)

12 Q. Who are Abex's customers?

13 A. They were primarily brake
14 manufacturers, what we term in the business as
15 foundation brake manufacturers that would make
16 the physical mechanical brake, its actuation
17 system, the rotor, the drum, the caliper, wheel
18 cylinder and kind of all the mechanical
19 components that the brake lining would go into
20 to fit into an axle and ultimately onto a
21 vehicle.

22 Q. Did these customers know about brakes?
23 Were they sophisticated companies when it came
24 to understanding how brakes worked?

1 MR. CARON: Object to form.

2 A. Very much so. I mean, there were
3 varying degrees. I think, you know, when you
4 looked at companies like Rockwell and Eaton on
5 the heavy-duty side or Ford on the passenger
6 car side, GM had their own brake lining
7 business, so they were pretty knowledgeable
8 folks.

9 There was a very high level of
10 expertise. In fact, we used to rely a lot on
11 people at Ford that had probably the best brake
12 engineering laboratory on the planet. You
13 know, rebuilders, a little less sophisticated
14 but nonetheless knew a lot about brake systems
15 because they supplied all the componentry that
16 was required to safely stop a vehicle.

17 Q. When Abex was making a friction
18 material, were there specifications for the
19 material?

20 A. It varied. The original equipment
21 manufacturers would be very, very specific in
22 their specifications. The aftermarket guys a
23 little less so, but they would, nonetheless,
24 specify a particular formula. And oftentimes

1 they would rely on engineering data or test
2 data that we supplied them, and then they would
3 augment it with their own testing.

4 Q. Did Abex perform tests and analysis on
5 its friction material?

6 A. Yes. We had an engineering test
7 center which was the size of a few football
8 fields filled with machines call dynamometers
9 that simulate braking in a laboratory
10 environment. And we also ran a fleet of test
11 vehicles around the entire country and for
12 different things, mountain testing, traffic
13 testing, that sort of thing.

14 Q. You were asked a lot of questions that
15 dealt with asbestos and not necessarily
16 asbestos in friction materials. Do you recall
17 some of those questions?

18 A. Yes.

19 Q. The fact that asbestos could be
20 hazardous to people like an insulator or a
21 shipyard worker or textile worker, does that
22 mean that asbestos is hazardous once it's put
23 into a friction material?

24 MR. GEORGE: Object to form both to

1 leading and to lack of foundation.

2 A. It's my strong opinion that it's an
3 entirely different animal. The people that
4 worked at the mines up in Quebec versus the
5 people that processed the asbestos rock into
6 fibers and then in varying degrees through our
7 manufacturing environment, the guys that opened
8 the bales of asbestos were probably at a higher
9 level of concern to us.

10 And, consequently, we had more dust
11 collection in that area of our plant than the
12 folks further downstream once the asbestos
13 fiber got mixed with other ingredients, so its
14 concentration was down. It was coated with
15 polymers, and it was held together with other
16 things. It was finally compression molded or
17 extruded to make essentially a nonfriable
18 article where the fibers themselves were pretty
19 well tied up.

20 MR. GEORGE: Move to strike as
21 nonresponsive.

22 Q. Do you believe that the friction
23 materials that Abex manufactured up until 1987
24 were hazardous to end users?

1 MR. GEORGE: Object to form. Leading.

2 A. No.

3 Q. Why not?

4 A. I think there were a lot of basis for
5 my opinion, and it's not just my opinion. I
6 think there's a lot of evidence even, you know,
7 going into the 2000 time frame, 2004, 2006
8 perhaps, that suggests that the amount of
9 asbestos fiber or the asbestos wear debris, in
10 fact, gets transformed to Fosterite for the
11 vast majority of it.

12 That fiber length has a lot to do with
13 it. The concentration has a lot to do with it,
14 the time-weighted average. I mean, people in
15 our plants were dealing with this stuff eight
16 hours a day, 240 days a year compared to, you
17 know, someone who occasionally does a brake
18 job.

19 So, you know, it's dosage, it's
20 latency, it's quantity. It's -- there's just
21 so many factors that enter into the equation
22 that -- and, you know, I think that from our
23 perspective all along was that while we had a
24 couple of workers' comp cases, you know, the

1 business, Abex had been in that business since
2 the mid 1920s and never had any appreciable
3 amount of issues. So if people that are
4 dealing with raw fiber and so on aren't having
5 those kinds of problems, why would it be
6 reasonable to assume that people further
7 downstream would. That was kind of my view and
8 I think was substantiated by fact.

9 Q. Let's talk about the Abex
10 manufacturing facilities for a moment.

11 A. Okay.

12 Q. Winchester in 1965 -- well, Winchester
13 in 1970, approximately how many friction pieces
14 a day was Winchester manufacturing?

15 A. 30,000 or more per day.

16 Q. And there was grinding there?

17 A. There was grinding. There was
18 drilling. There was edging. There was
19 printing. There was packaging, I mean, mixing
20 of raw materials. It was a pretty
21 comprehensive process and had probably at that
22 time around just short of a thousand employees.

23 Q. And we heard a little bit about
24 environmental controls, dust collection and

1 things of that nature. Did those controls
2 remove every single asbestos fiber from the
3 environment?

4 A. No. And that's why when you see some
5 dust sample studies that were done over the
6 years, one was done pretty much every year,
7 give or take. You know, there would be
8 instances where we were in excess of the TLV,
9 and we, you know, go to work diligently to
10 improve the engineering controls. But it
11 wasn't a perfect environment. We did the very
12 best we could, and I think did a pretty good
13 job.

14 Q. In addition to dust collection, what
15 else -- was there any other part of the program
16 for employee health for looking after the
17 employees?

18 A. Well, if we had an area of the plant
19 that had any concern, we would fit employees
20 with appropriate respirators and dust masks and
21 that sort of thing. We abandoned sweeping with
22 a broom and went with vacuum systems. We
23 actually had -- we bought a couple of giant
24 almost like small city street cleaning machines

1 that literally drove around the aisles of the
2 factory all day to keep the environment in good
3 shape.

4 Q. All right. Now, again, pardon me for
5 bouncing around. You were asked some questions
6 about Dr. Gardner's work at Saranac. Do you
7 remember that?

8 A. Yes.

9 Q. And Exhibit 9 was a memo from Dr.
10 Hamlin. I'm going to hand you a slightly
11 better copy. Mr. George asked you some
12 questions. I want to point out some other
13 things. This is dated November 3, 1948, right?

14 A. Yes.

15 Q. The third paragraph, can you read
16 starting with the first sentence?

17 A. "I gain"?

18 Q. No. "While admitting"?

19 A. I'm sorry, third paragraph.

20 Q. Can you --

21 A. "While admitting the advisability of
22 reconciling the two, it must be remembered that
23 any animal experimentation cannot be absolutely
24 conclusive. Observations on the tissue

1 reactions to various substances can mean
2 nothing more than reasonably accurate
3 supportive evidence that the effect noted is
4 what is likely to occur in man after similar
5 exposure.

6 The report notes that the same result
7 is not always obtained in each species of
8 experimental animals used. It is, therefore,
9 only possible to employ such phraseology as
10 the dust apparently does not alter
11 significantly the course of experimental
12 Tuberculosis in guinea pigs, etcetera.

13 Possibly similar experiment carried
14 out over a longer period of time could produce
15 an entirely different result. There are two
16 many intangibles to allow dogmatic or other
17 definitive statements. This is true of any
18 experimental work in animals or humans.

19 The value of the experimental work
20 lies in the fact that it forms a reasonable
21 basis for study of characteristic tissue
22 changes which were similar to those seen in
23 units."

24 Q. Thank you. You've seen this letter

1 before, right?

2 A. Yes, I have.

3 Q. And your understanding is that this is
4 Dr. Hamlin writing about Dr. Gardner's report?

5 A. Yes.

6 Q. In essence, to your understanding,
7 what did Dr. Hamlin say in terms of the report?

8 A. You can't draw a conclusion from your
9 observations without further study.

10 Q. Did Dr. Hamlin, nevertheless, say
11 publish it, don't publish it?

12 A. He said publish it.

13 Q. There was evidently a meeting, and I
14 think you were shown a different exhibit,
15 Exhibit No. 9, that Dr. Hamlin was unable to
16 attend the meeting?

17 A. Yes.

18 Q. All right. And although Dr. Hamlin
19 was unable to attend -- strike that.

20 Dr. Hamlin was unable to attend.
21 There was a letter from Mr. Brown to Abex to
22 give him the results of the meeting, right?

23 A. Yes.

24 Q. That's Exhibit 10. And so --

1 A. I'm sorry, is this Exhibit 10?

2 Q. No, the -- yes, the results?

3 A. This is 9.

4 Q. Yes, the results. And so we went into
5 this a little bit. Mr. George went into it a
6 little bit. There was an agreement of the
7 folks at the meeting that the cancer references
8 would be deleted, right?

9 A. Yes.

10 Q. The reasons are given here one, two,
11 three, four, correct?

12 A. Correct.

13 Q. Reason No. 2, "Dr. Gardner indicated
14 prior to his death that he believed this aspect
15 should be made the subject of a separate study
16 which would take from two or three years."

17 Have you seen documents about that?

18 A. Yes.

19 Q. And were you aware that Dr. Gardner
20 applied for funding?

21 A. I was, and I understand he was denied.

22 MR. RADCLIFFE: Do we have the exhibit
23 labels, Mr. George?

24 MR. GEORGE: I don't have any left.

1 MR. RADCLIFFE: This should be 47.

2 (Exhibit No. 47, National Cancer
3 Council, 1.8.44 so marked)

4 Q. I'm going to hand you Exhibit 47.
5 Have you seen this document before?

6 A. I believe I have.

7 Q. This is the proceedings from the
8 Advisory Cancer Council at the National Cancer
9 Institute; is that right?

10 A. Yes.

11 Q. And it's dated 1944?

12 A. Yes, January 8, 1944.

13 Q. If you turn to the page that's
14 numbered 21 at the bottom?

15 A. Yes.

16 Q. Does it start to talk about an
17 application from the Saranac Laboratory?

18 A. Yeah. It says, "You find under 213 an
19 application from the Saranac Laboratory of
20 Trudeau Foundation in New York."

21 Q. And read the next two sentences.

22 A. "The project is the relationship of
23 asbestos to pulmonary carcinoma. The director
24 of the project is Leroy U. Gardner. The amount

1 requested is \$10,000 for a period of two
2 years."

3 Q. That's the same Dr. Gardner that was
4 doing the test that was discussed yearly,
5 right?

6 A. Yes, sir.

7 Q. And these folks then go on to talk
8 about the test, right?

9 A. Yes.

10 Q. Page 23?

11 THE WITNESS: I'm sorry, can you just
12 excuse me for a second?

13 MR. RADCLIFFE: Sure.

14 THE WITNESS: I always wanted to have
15 that videotaped.

16 MR. RADCLIFFE: We'll see if we can
17 get it taken out.

18 THE WITNESS: Excuse me. I'm sorry.

19 Q. Let's go to page 24?

20 A. Okay.

21 Q. Dr. Murphy, what does he say?

22 A. "You notice he calls it an
23 uncontrolled experiment, so I doubt if he knows
24 the normal lung tumor rate for his animals. He

1 gives 18 percent in 143 animals. It is very
2 hard to get a strain of mice that gives much
3 lower than 3 or 4 percent, and we have some
4 strains that give as high as 50 to 80 percent
5 normality.

6 I wouldn't consider that figure
7 uncontrolled as of any other significance,
8 however, unless I knew the strain of the
9 animals. When it was a low strain, and, of
10 course, that is the whole danger in having a
11 project of this kind carried on in an
12 institution where they have absolutely no
13 experience with animals in planning cancer
14 experiments."

15 Shall I go on or is that fine?

16 Q. No, that's good. All right. Then
17 page 25 if you can find that?

18 A. (Witness complies) Got it.

19 Q. Again, this is Dr. Murphy. He speaks
20 of an -- do you see that he speaks of an
21 uncontrolled experiment right there in the
22 middle?

23 A. "It doesn't mean anything"?

24 Q. Then "Dr. Dyer: An incidence of 81.8

1 percent in 11 white mice is not very
2 impressive"?

3 A. Right.

4 Q. "Dr. Murphy: "It doesn't mean
5 anything"?

6 A. Mean anything.

7 Q. That's what these folks were saying,
8 right?

9 A. That's right.

10 Q. And do you understand that they
11 refused to fund Dr. Gardner for these reasons?

12 A. Yes, that was my understanding.

13 Q. Okay.

14 MR. RADCLIFFE: Let me have that back
15 so we don't lose it since it's marked.

16 A. (Witness complies)

17 Q. Thank you.

18 A. Sure.

19 Q. So going back to -- did you give me
20 back both?

21 A. Here's 9, and this is the one you said
22 was 10.

23 Q. Hold on to that one. Let me have 9
24 for just a moment.

1 A. Okay. Does this need a label?

2 Q. No, it doesn't. There's another one
3 that's labeled.

4 A. Okay.

5 Q. Grab that one. That's still No. 10.
6 So that was just point No. 2, and point No. 3,
7 "Dr. Gardner also indicated that he believed
8 the question of cancer susceptibility should be
9 omitted from the report." Do you see that?

10 A. Yes, I do.

11 Q. And have you seen other correspondence
12 where Dr. Gardner, the author of this report,
13 actually said, I think it should be omitted.

14 A. I thought I saw some of Gardner's
15 colleagues say that it should be omitted.

16 Q. Okay. Well, I was --

17 A. I might be mistaken, but there were
18 folks at Saranac that I remember seeing some
19 documents that suggest that it should be
20 omitted.

21 Q. That's fine. I was unable to print
22 the document, so we'll just have to deal with
23 that later. So to sum up Saranac, what was
24 Abex's position on publication of the document

1 with cancer?

2 A. We made some comments, but we said,
3 hey, you know, if you want to publish it the
4 way it is, that's fine with us.

5 Q. What was the position of the other
6 folks who sponsored the study?

7 A. They wanted it out. They wanted more
8 significant change to the document.

9 Q. And did they give reasons for that?

10 A. I believe they did.

11 Q. Have you seen documentation to support
12 the reasons they gave?

13 A. Yes.

14 Q. Okay. You were asked questions about
15 whether Abex should warn of all potential
16 hazards of brakes. Can you give me an idea of
17 what you considered to be a potential hazard of
18 brakes or friction materials?

19 A. I mean, perhaps a logical place to
20 start is potentially if the brakes don't work,
21 you're going to crash into the car in front of
22 you. Perhaps if you go down a hill too fast
23 and repeatedly stand on your brakes without
24 allowing them to cool, the brakes will fade and

1 fail. Perhaps you should inspect your brakes
2 at some regular interval to be sure that
3 they're adequate. I mean, there's so many
4 potentials; I don't know where to start or
5 stop, frankly.

6 Q. So is it -- which is more accurate to
7 say; that Abex should warn of all potential
8 hazards or Abex should warn of hazards that are
9 foreseeable and likely under the circumstances?

10 MR. GEORGE: Objection to form.
11 Leading.

12 A. Foreseeable and likely would be
13 infinitely more logical than any potential.

14 Q. You were asked some questions about
15 warnings before. I'll give you Exhibit 48.

16 (Exhibit No. 48, Letter to L.W. Moore
17 5.20.75 so marked)

18 Q. Have you seen this document before?

19 A. I have.

20 Q. What's the date?

21 A. May 20, 1975.

22 Q. And who is the author of the letter?

23 A. Harry Jones, sales manager for Abex.

24 Q. Did you know Mr. Jones?

1 A. I did.

2 Q. And who is the recipient?

3 A. Mr. Moore of Rayloc who at the time
4 was either sales manager or sales VP for Rayloc
5 NAPA.

6 Q. Did you know Mr. Moore?

7 A. I did.

8 Q. The letter reads, "The other day" --
9 this is Abex writing to Rayloc.

10 A. Right.

11 Q. Is Rayloc part of Genuine Parts?

12 A. Yes.

13 Q. The letter reads, "The other day I
14 read in the Wall Street Journal where Raybestos
15 was being sued by 168 employees due to the fact
16 that they were not properly notified of the
17 hazards of working around asbestos. As you
18 know, we stencil our segment boxes as a warning
19 of the hazards as follows: Caution, contains
20 asbestos fibers, avoid creating dust.
21 Breathing asbestos dust may cause serious
22 bodily harm." With me so far?

23 A. Absolutely.

24 Q. What does that mean that you were

1 stenciling the segment boxes?

2 A. When Abex first started putting
3 warnings on boxes, it started out in a very
4 simplistic way. They had big rubber stamps
5 made, and the boxes were stamped. And then on
6 larger boxes they actually used a stencil.

7 We had a machine that would make up a
8 stencil. We may have used them as kids, and
9 then you take kind of a brushy article and
10 stencil on the box. So that evolved ultimately
11 to the boxes being preprinted with this warning
12 as was referenced in Mr. Schmaltz's memo that
13 we talked about a few moments ago.

14 Q. The letter goes on to state, "I know
15 you have taken steps to protect your people.
16 However, it comes to mind that you may have
17 some responsibility to your customers and might
18 consider including the same caution on your
19 boxes or labels. This could also be used as
20 another strong reason for discouraging field
21 grinding of brake shoes by the jobbers and/or
22 brake shops?"

23 Is that consistent with what you
24 understand Abex was saying to its customers in

1 this time frame, 1975?

2 A. Yes.

3 Q. There's a -- further down there's a
4 BCC. Do you see that?

5 A. I do.

6 Q. It says R.G.?

7 A. Lindley.

8 Q. Lindley?

9 A. Yeah.

10 Q. Who is that?

11 A. Bob Lindley was a sales manager
12 responsible for rebuilders other than NAPA and
13 GPC.

14 Q. Okay. Let me take that from you so I
15 can put it in the pile of all these other
16 exhibits?

17 A. Sure.

18 Q. If someone working at a gas station
19 called Abex and said, I need a set of brakes,
20 not friction material, but a set of brakes for
21 a car, what would Abex have said?

22 A. You've got the wrong number. I mean,
23 chances are the receptionist would have handled
24 it and just explained to them that we didn't

1 sell retail. We didn't sell brakes. We sold
2 just brake lining, and we didn't sell to
3 consumers.

4 Q. Would that have been true in the '60s
5 and '50s?

6 A. Yeah. As far as I know, we never,
7 ever made brakes for passenger cars or light
8 trucks or heavy trucks.

9 Q. The advertisements that you were
10 shown, there was a gun, a revolver, I think.
11 There might have been some dynamite. Do you
12 remember those?

13 A. I do.

14 Q. If it's argued that Abex could have
15 used that same sort of advertising to warn
16 folks about the hazards of asbestos, not the
17 hazards of asbestos generally, but the hazards
18 of asbestos specifically with regard to brakes,
19 do you think that would have been an
20 appropriate way for Abex to communicate the
21 warning to its customers?

22 MR. GEORGE: Objection to form.
23 Leading. Calls for speculation. Lack of
24 foundation. Argumentative.

1 MR. CARON: I'm going to join all of
2 those.

3 A. No, I don't think that would be an
4 appropriate forum to educate people about
5 anything.

6 Q. And, again, were Abex's customers
7 skilled and knowledgeable in brakes and how
8 they were remanufactured or manufactured and
9 what functions the various parts of the brake
10 system performed?

11 A. Yeah.

12 MR. GEORGE: Objection. Leading.
13 Asked and answered.

14 MR. CARON: Form.

15 MR. RADCLIFFE: I think those are all
16 the questions I have for you. Thank you.

17 THE WITNESS: Okay.

18 EXAMINATION CONDUCTED

19 BY MR. GEORGE:

20 Q. I just wanted to ask you a couple of
21 questions about some of the documents that Mr.
22 Radcliffe showed you. Let's go back to the
23 proceedings which I believe is Exhibit 47.

24 First of all, this is not the complete

1 proceedings, correct?

2 A. No, it's not.

3 Q. When is the first time you saw this
4 document?

5 A. Probably a month or so ago.

6 Q. This isn't a document that came out of
7 Abex's files, is it?

8 A. No. I believe it kind of came about
9 as a result of some other litigation we were
10 involved with.

11 Q. You got this from your attorneys?

12 A. I did.

13 Q. Okay. Because on page one where they
14 have the people that were present during this
15 meeting, none of those are Abex employees, are
16 they?

17 A. I don't believe so.

18 Q. Okay. I just wanted to ask you, you
19 read some portions of the document. I want to
20 turn your attention to page 23 wherein Dr.
21 Murphy said -- and just tell me if I read that
22 correctly -- "This is the first time I have
23 seen this application. I think it is bringing
24 a very big gun to bear on a subject that will

1 probably be settled in a very short time with a
2 very slight expenditure of money."

3 Isn't that what he said according to
4 this transcript?

5 A. More or less, yeah.

6 Q. He said, "I believe the question can
7 be settled in one comprehensive experiment with
8 a modest outlay of cost. It is a problem that
9 you could do here, for instance, at a cost of
10 perhaps \$20 or \$30. I think we are hardly
11 justified in appropriating \$10,000 for it in a
12 laboratory that isn't experienced in cancer
13 research or in handling this particular type of
14 material."

15 That's what he says, right?

16 A. Yeah.

17 Q. So, in fact, the reason why -- one of
18 the reasons why they declined this application
19 is not because they didn't think it was
20 worthwhile to investigate whether cancer is a
21 consequence of exposure to asbestos, but rather
22 because Dr. Gardner was simply asking for too
23 much money to perform the experiment?

24 A. Well, I think it further --

1 MR. RADCLIFFE: Object to form.

2 A. -- it implies to me that they also had
3 question about his expertise in methodology.

4 Q. Well, isn't there also --

5 A. It says, "Isn't experienced in cancer
6 research." So you can, you know, you can say
7 it's too expensive. I say equally as important
8 they didn't have confidence in the guy that was
9 making the pitch.

10 Q. Dr. Hektoen was talking on page 21,
11 correct?

12 A. I don't know. Hang on a second.

13 Q. And that's H-E-K-T-O-E-N?

14 A. Yes.

15 Q. He says on page 22 that he reviewed a
16 letter from Dr. Gardner, correct?

17 A. I'm sorry, where are you?

18 Q. Page 22?

19 A. Second paragraph, "In a letter from
20 Dr. Gardner."?

21 Q. Correct.

22 A. Okay.

23 Q. And that apparently is something that
24 went along with the application, correct?

1 A. I presume.

2 Q. And he said that "Dr. Gardner wrote
3 that I've always felt that asbestosis probably
4 created" -- and then somebody hand wrote in
5 there "no specific predisposition to pulmonary
6 cancer. However, evidence to the contrary
7 continues to accumulate. In the last number of
8 the American Journal of Pathology, Homberger
9 reports 19 new cases making a total of 19 in
10 which the conditions were associated."

11 When he's talking about conditions
12 associated, he's talking about asbestosis and
13 lung cancer, correct?

14 MR. RADCLIFFE: Object to form.

15 A. I don't know. You know, again, when
16 somebody stroked this, wrote the word "no" in
17 there. I don't know what it means, I really
18 don't.

19 Q. He's talking about the asbestosis
20 probably created no specific predisposition to
21 pulmonary cancer. This whole paragraph deals
22 with and, in fact, Dr. Gardner's application
23 deals with whether asbestosis predisposed one
24 to cancer, correct?

1 A. Right.

2 Q. Okay. And Dr. Gardner in proposing
3 this experiment concludes in his letter, "For
4 this reason I do not believe we can afford to
5 neglect the matter much longer."

6 That's what his letter was purporting
7 to say, correct?

8 A. Yes.

9 Q. I did want to ask you one clarifying
10 question about -- well, let me just turn to
11 page 24 of the same transcript. You referenced
12 Dr. Murphy's comments, and isn't it true that
13 on page 24 Dr. Murphy says, his concluding
14 sentence is, "It may be well worth doing, but I
15 doubt if this is quite the way to do it."

16 A. It does say that.

17 Q. Okay. Now, I want a clarification on
18 this issue of the American Brakeblok trademark
19 and whatever assignment was made to NAPA.

20 If in 1960 an individual went to a
21 NAPA store and purchased a set of brakes that
22 came in a carton that had American BrakeBlok's
23 name on it, would that set of brakes more
24 likely than not be composed of linings that

1 were manufactured by Abex or one of its
2 predecessor entities?

3 MR. RADCLIFFE: Object to form. Also
4 it's beyond the scope of cross.

5 MR. CARON: Objection.

6 A. First of all, there's two parts to
7 your question. I don't know that they would
8 have come in a box back in 1960, and, number
9 two, if they did come in a box that said
10 American Brakeblok, it's most plausible that
11 the brake lining was made by Abex.

12 Q. Okay. Same thing, 1970s, assume
13 somebody went into a NAPA store in the 1970s.
14 They purchased a set of brake shoes that were
15 in a box, and on the that box was written
16 American Brakeblok. More likely than not would
17 you agree that the linings of those shoes were
18 probably manufactured by Abex or one of its
19 predecessor entities?

20 MR. RADCLIFFE: Same objection.

21 MR. CARON: Object to form.

22 A. Probably.

23 Q. Are you saying more likely than not
24 that it was --

1 A. I'd say more.

2 MR. RADCLIFFE: Same objections.

3 A. I would say more likely that it was
4 not.

5 Q. So you're saying that in the 1970s
6 Abex allowed NAPA to put into commerce brake
7 shoes that had the American Brakeblok
8 trademark, but they would have contained more
9 likely than not linings from some other
10 entities?

11 A. Yes.

12 MR. RADCLIFFE: Object to form.

13 MR. CARON: Object to form.

14 Q. What's your basis for that?

15 A. Observing it firsthand and having
16 various arguments and discussions with the
17 people at NAPA GPC about the fact that, hey,
18 guys, you can't continue to do this.

19 Q. Now, when you say observing it
20 firsthand, are you telling me that you'd gone
21 into NAPA's stores and in the 1970s; that you
22 picked up a carton that had American Brakeblok
23 on it, and you determined independently that
24 the linings on those brake shoes were not

1 manufactured by Abex or any one of its entity?

2 MR. RADCLIFFE: Same objections.

3 A. I've answered this question before.
4 I'm telling you that I know for a fact that our
5 salespeople in the field reported back to me
6 and other executives that this was going on.

7 Q. And this is something that was totally
8 verbal communications to you, correct?

9 A. There may be some documents. I'm sure
10 I've seen at least one that talks about issues
11 where people were using or NAPA was using other
12 than Abex brake lining.

13 Q. I want to be specific in my
14 questioning. I'm not really asking you whether
15 NAPA used American Brakeblok trademark material
16 in advertising. I'm talking about cartons of
17 brakes that contained the American Brakeblok
18 trademark, whether those brakes --

19 A. For what time period are you talking?

20 Q. Let's talk about 1970s?

21 A. Okay. 1970s American Brakeblok,
22 chances are you wouldn't have seen much for
23 passenger cars or light trucks that had an
24 American Brakeblok brand because at that point

1 many of the boxes said NAPA -- sorry -- NAPA
2 Rayloc or they would have said NAPA Genaut.

3 Q. If it said --

4 A. If it said American Brakeblok, it
5 probably was for a class seven or eight truck
6 and not for a passenger car or a light truck.

7 Q. So you're saying that there were no
8 boxes of brakes in the 1970s that contained the
9 name American Brakeblok on them?

10 A. I'm not saying --

11 MR. RADCLIFFE: Object to form.

12 Q. I'm just trying to find out what the
13 scope --

14 A. I just gave you the answer.

15 Q. Are you saying that there were no
16 boxes in NAPA's stores of passenger brake shoes
17 that had the name American Brakeblok on them?

18 MR. RADCLIFFE: Object to form.

19 MR. CARON: Same objection to form.

20 A. It's possible there would have been
21 some that had it. I don't know how quickly
22 they turned their inventory. There may have
23 been stuff there that still had NAPA -- I'm
24 sorry, American Brakeblok branding on the box,

1 I can't tell you. But to say never, I never
2 say never.

3 Q. When did Abex stop using the trademark
4 name of American Brakeblok to describe linings
5 that it manufactured that contained asbestos?

6 MR. RADCLIFFE: Object to form.

7 MR. CARON: Object to form.

8 A. For passenger cars and light trucks?

9 Q. Yes.

10 A. I don't know the exact date, but it
11 was before 1970.

12 Q. Before 1970?

13 A. Yes.

14 Q. Do you have any documentation that
15 supports that?

16 A. No.

17 MR. GEORGE: I don't think I have any
18 further questions.

19 EXAMINATION CONDUCTED

20 BY MR. CARON:

21 Q. Sir, Jason Caron again. Earlier today
22 plaintiff's attorney showed you a number of
23 different pieces of correspondence that were
24 unsigned. One of the things you said was that

1 you were uncomfortable answering questions
2 about them because you didn't know whether they
3 were sent. Do you remember that?

4 A. Yes.

5 Q. Okay. Would you take a look at the?

6 MR. RADCLIFFE: 48.

7 Q. Exhibit 48 this letter is unsigned,
8 right?

9 A. Yeah.

10 Q. So we don't know whether this letter
11 was ever sent?

12 A. I know it was.

13 Q. And how do you know it was?

14 A. Because I was actively involved in the
15 business at that time, and I know that there
16 were discussions surrounding Mr. Jones' letter
17 to Toby Moore based on conversations I had with
18 Toby. And I believe it might have even been at
19 a NASCAR race in Charlotte.

20 Q. So Toby told you this letter was sent?

21 A. No, there was discussion about it.
22 There were a group of us that went down to
23 NAPA. We talked about it. It was conversation
24 that went on more than once. There was

1 conversation within Rayloc with John Aderhold
2 and Toby Moore about what they were going to
3 do. And it was clearly it was their decision
4 to make. All we could do is give them our
5 guidance and advice and thoughts.

6 Q. Okay. Now, I see there are six
7 different people copied on this letter?

8 A. Can I have it back?

9 Q. Right.

10 A. Let me see. Yeah.

11 Q. Do you have a signed version of the
12 letter?

13 A. Do I?

14 Q. Yes.

15 A. Not with me. I don't know if one
16 exists, frankly.

17 Q. Would it be fair so assume with six
18 people copied, there would have been at least
19 six or seven signed versions of this letter if,
20 indeed, it was signed and sent?

21 MR. RADCLIFFE: Object to form.

22 A. Probably not in 1975. Chances are
23 there would have been one original signed and
24 copies made. So maybe it just went out and it

1 was unsigned. I mean, this copy is underlined.

2 Q. In 1975 the practice was not to keep
3 copies of signed letters? Is that what you're
4 saying?

5 A. I can tell you that I signed all of my
6 letters, and it's unusual that letters weren't
7 signed. But I can also tell you by the fact
8 that this was discussed in my presence the fact
9 that Phil Grim's name is underlined suggests
10 that this was probably Phil Grim's copy, and
11 that, in fact, it was sent.

12 Q. Did you see the letter signed and
13 sent? Do you have personal knowledge it was
14 sent? I understand there were people
15 discussing the letter.

16 A. I don't know. No, I haven't seen a
17 signed version of this.

18 Q. Who is Harry Jones?

19 A. Harry Jones was the sales guy that was
20 responsible for the NAPA Rayloc account.

21 Q. Did he draft this letter or is that
22 just his name on it? Did somebody else draft
23 it?

24 A. I don't know if he would have drafted

1 it himself.

2 Q. Did you draft any portion of the
3 letter?

4 A. No, I did not.

5 Q. What was your relationship to Harry
6 Jones? Did you have regular --

7 A. In 1975 we would have been somewhat
8 contemporaries I think. '75 I was in quality
9 assurance.

10 Q. What's your understanding of who L.W.
11 Moore?

12 A. Ron Moore. Well, I'm sorry, Toby
13 Moore. I don't know what L.W. stood for. It
14 was Toby Moore was the individual this letter
15 went to.

16 Q. Okay. What was his position?

17 A. He was either general sales manager or
18 I believe maybe vice president for NAPA Rayloc.

19 Q. Okay. I noticed the letter doesn't
20 have any letterhead. Do you know why that is?

21 A. I don't.

22 Q. All right. Do you remember ever
23 seeing a copy that did have letterhead?

24 A. No.

1 Q. Do you know specifically when this
2 letter was created?

3 A. May 20, 1975.

4 Q. I understand it says that, but that --
5 will you agree with me that date could have
6 been put there at any time?

7 A. I guess we can conclude that for any
8 of these documents, but, you know, I think
9 that's about the right time frame for what I
10 recall. Whether it was May 19 or 20 or I don't
11 know if that's a 20 or 28, but, I mean, May
12 1975 I think is reasonable.

13 Q. You mentioned having personal
14 discussions with folks at Rayloc about the
15 subject of this letter?

16 A. Yeah.

17 Q. Okay. Who did you talk to at Rayloc?

18 A. I know it was Toby. There's another
19 guy that I just -- I can't think of his name
20 offhand. His name surfaced in another document
21 today, but I can't recall his name right now.
22 But Toby and he went to the NASCAR race with
23 me, and that's this conversation came up there.
24 And I also had that conversation with John

1 Aderhold and Toby Moore at Rayloc's
2 headquarters in Atlanta.

3 Q. And you actually discussed this
4 letter?

5 A. No. We discussed specifically the
6 idea that NAPA needs to decide whether or not
7 it was going to put warnings on its finished
8 brake lining sets.

9 Q. Okay. And can you tell me what you
10 said during those discussions and what the
11 individuals from Rayloc said?

12 A. You know, I just was part of the
13 conversation telling him what we were doing,
14 what our plans were. And that all the boxes
15 that they were receiving and would continue to
16 receive would have it. That if, in fact, they
17 asked us to package anything in set boxes or it
18 was our position that we would use the same
19 warning. And you guys need to decide what
20 you're going to do.

21 Q. What was the response to that?

22 A. We'll consider it.

23 Q. When did those discussion take place?
24 Was it sometime in 1975?

1 A. I think it happened in '75 and again
2 in '76 and then probably on and off, but '77 it
3 happened again. I know there was another
4 flurry of what are we going to do? And, can
5 you help us out? Can you print labels for us?
6 Which we did. Apparently, they decided to put
7 the same warning on their product, and as I
8 recall, our print shop actually printed labels
9 for them.

10 Q. Okay.

11 MR. GEORGE: I don't have anything
12 further. Thank you.

13 MR. RADCLIFFE: It looks like we're
14 all done.

15 THE VIDEOGRAPHER: The time is 4:56
16 p.m. The deposition is concluded. We are now
17 going off the record.

18 (Discussion off the record)

19 MR. GEORGE: In reviewing the exhibit
20 numbers for the exhibits that were attached to
21 the deposition, there is no exhibit that
22 corresponds with Exhibit 19 and Exhibit No. 30,
23 just in case.

24 (Whereupon, the deposition was

1 concluded at 4:56 p.m.)
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C E R T I F I C A T E

STATE OF NEW HAMPSHIRE

I, Darlene Caiazzo Sousa, a Certified Shorthand Reporter, Registered Professional Reporter and Commissioner of Deeds in and for the State of New Hampshire, do hereby certify that the foregoing transcript of the deposition of ALBERT INDELICATO, having been duly sworn, on Monday, September 26, 2011, is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this day of
 , 2011.

Darlene Caiazzo Sousa, CSR, RPR
Commissioner of Deeds

My commission expires: November 15, 2014

DEPONENT'S ERRATA SHEET
AND SIGNATURE INSTRUCTIONS

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

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

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After reading this volume of your deposition, indicate any corrections or changes to your testimony and the reasons therefor on the Errata Sheet supplied to you and sign it. DO NOT make marks or notations on the transcript volume itself.

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ATTACH TO THE DEPOSITION OF ALBERT INDELICATO
CASE:

ERRATA SHEET

INSTRUCTIONS: After reading the transcript of your deposition, note any change or correction to your testimony and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Sign and date this errata sheet (before a Notary Public, if required). Refer to Page 250 of the transcript for errata sheet distribution instructions.

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I have read the foregoing transcript of my deposition and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

ALBERT INDELICATO

DATE