

Multi-Page™

CIRCUIT COURT THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOISIn Re: ALL SIMMONS FIRM CASES)
ON THE MAY 3, 2004, TRIAL DOCKET,)

Plaintiffs,)

-vs-)

A.W. CHESTERTON, et al.,)

Defendants.)

THE DEPOSITION OF CHARLES WILLIAM ALLEN,
produced, sworn and examined on the part of the
Plaintiffs, pursuant to Notice to Take Deposition, on
Tuesday, the 13th day of April, 2004, at the Law
Offices of RASMUSSEN, WILLIS, DICKY & MOORE, L.L.C.,
9200 Ward Parkway, Suite 310, in the City of Kansas
City, County of Jackson, and State of Missouri, before
me:

KAREN J. MAY, RMR. CRR
ofJOHN M. BOWEN & ASSOCIATES
Court Reporters

a Certified Shorthand Reporter, in a certain cause now
pending in the Circuit Court Third Judicial Circuit,
Madison County, Illinois.

A p p e a r a n c e s:

For the Plaintiffs:

THE SIMMONS FIRM, L.L.C.
707 Berkshire Boulevard
East Alton, Illinois 62024
BY: MR. TED N. GIANARIS
MR. MARCUS E. RAICHLE, JR.

For the Defendant Pneumo-Abex:

SWAIN, HARTSHORN & SCOTT
411 Hamilton Boulevard
Suite 1806
Peoria, Illinois 61602
BY: MR. ROBERT W. SCOTT

Page 6

Q. Okay. Who is the other one?

A. Standard Units would be one.

Q. Any others?

A. I would say Oklahoma City would be one, that's Britain Brothers.

MR. ABBOT: Britain?

THE WITNESS: Britain Brothers.

MR. RILEY: B-R-I-T-T-A-I-N.

A. Britain Brothers.

MR. RILEY: And he's talking historical, not current.

MR. GIANARIS: Okay, right.

Q. (BY MR. GIANARIS) Okay, well, let's talk about that. How far back -- how far back does your historical knowledge of Genaut's relationship to NAPA go?

A. Well, Genaut was part of -- they were a wholly-owned subsidiary of Genuine Automotive Parts, but there was also another company BHT Products in Indianapolis that was also a wholly-owned subsidiary, and we were just like a sister. In fact, our plant manager the reason I became plant manager was because he was promoted to general manager of the two plants, and we both supplied GAP and all the NAPA stores that were

Page 7

supplied by GAP of remanufactured product, and the BHT plant went all the way back into the '30's.

Q. Okay. Do you know how far back the other I'll call them competitors, because that's how we termed it earlier, competitors supplied NAPA?

A. To my knowledge, and this is just talking to Walter Devoe, who is the plant manager there at Stephenville, and all the old -- when we was starting the new plant, we had a lot of old-timers come in, see the new facility, and they was always trying to teach me about NAPA because I really knew nothing about NAPA at the time, and this goes -- they go all the way back into I'm sure Genuine Parts and all of them all the way back in the '30's, also. Everything was Abex at that time.

Q. Let me ask you about that. You say everything was Abex?

A. Yes.

Q. Explain that to me.

A. Well, in all of our meetings, in fact, the day I went to work at Stephenville, the American Brakebloc representative was there, they were back there him and Walter trying to set up a production grinder to grind brake shoes, and this was a gentleman named Dale Schoonover, and they were

Page 8

asking me did I know anything about it, and I really didn't, I had never messed with one of those before, it was an arcing grinder, high speed grinder, and I'd say just in talking with people, as far as I remember, a guy by the name of John Franks who was in Indianapolis -- I'm sorry, Evansville, Indiana, at the time, he came down and they always introducing me to all these folks, old-timers, and they were always telling me about our relationship with the NAPA jobbers and American Brakebloc, who I call Abex, and just the way of conversation, I guess my teaching and training.

Q. So your teaching, training, and conversations with people employed or affiliated with NAPA is what you're basing your historical knowledge on?

A. When I was talking about the '30's, because my knowledge with NAPA started in 1966.

Q. Right. So, prior to -- what you know about it prior to 1966 comes from those --

A. That's correct.

Q. -- those sources I just mentioned?

A. Yes, that's right.

Q. Okay. So, going back historically before you started in 1966 all the way let's say through the 1970's to the end of the 1970's, was Abex or

Page 9

American Brakebloc a supplier of friction materials, brake friction materials, to NAPA?

A. Yes.

Q. Okay. Now, if a person went in a NAPA store to buy brakes and they bought brakes, they came in a NAPA box with a NAPA label on them, would those brakes during that period of time have been supplied or those friction parts in that box have been supplied by Abex or American Brakebloc?

A. This is from '60 through the '70's or further back?

Q. Let's go back to your historical knowledge, what you know, as far back as you know.

A. I'd say it goes all the way back somewhere in the '30's.

Q. Okay. And that would be the situation throughout the country including the parts your company supplied and your competitors supplied to NAPA?

A. Yes.

Q. Okay.

MR. GIANARIS: I think that's all I have for now.

MR. ABBOT: Let's take just a break for a second.

(BRIEF RECESS TAKEN.)

Q. (BY MR. GIANARIS) Sir, American Brakebloc and

Multi-Page™

Page 10	Page
1 Abex, in your mind, are the same company? 2 A. Yes. 3 Q. You use them interchangeably? 4 A. Yes. 5 Q. Okay. And you -- let me read something to you 6 here. When I asked to take this deposition, I 7 asked for the person most knowledgeable regarding 8 the sale or supply of products manufactured by 9 American Brakeblocc, also known as Abex, and/or its 10 successor to or through the NAPA distribution 11 centers generally on the national level. Do you 12 feel like, in your business organization, you would 13 be the person who fits that bill? 14 A. I wouldn't say national because I'm not familiar 15 with the west coast at all. 16 Q. Okay. But, other than the west coast, you feel 17 comfortable with that description? 18 A. Yes. 19 Q. Okay. 20 MR. GIANARIS: That's all I have. Thanks. 21 EXAMINATION 22 BY MR. ABBOT: 23 Q. Hello, Mr. Allen. My name is Ed Abbot. I 24 represent Pucumo-Abex Corporation. I have just a 25 couple questions.	1 over the BHT plant, and I became plant manager, and 2 he was flying back and forth running both plants. 3 We had people like John Hoving, for example, who 4 was a Houston distribution center manager. We were 5 talking to these people on a regular basis bringing 6 in customers trying to get the business, and this 7 would be all the people in Dallas, and I'm talking 8 about in jobbing stores, NAPA parts stores, 9 Houston, San Antonio. 10 Q. Okay. Let me just go back to the knowledge you 11 have prior to 1966 that's not based on your 12 personal knowledge? 13 A. Absolutely not. 14 Q. Could you do me -- you had mentioned NAPA jobber 15 the past and distribution centers. 16 A. Right. 17 Q. Could you provide me with kind of your 18 understanding of what a NAPA distribution center 19 is, what a NAPA jobber is, and what the retail 20 store is, how that works, how that all works 21 together? 22 A. Let's start with the distribution center. Of 23 course, we used to call them warehouses back before 24 we went to distribution centers. These are people 25 that supply the NAPA parts stores for their
Page 11	Page
1 A. Okay. 2 Q. Initially you just mentioned something about 3 representing Rayloc. You're an employee of Rayloc, 4 is that correct? 5 A. Yes. 6 Q. Are you employed by NAPA? 7 A. I'm employed by Genuine Parts Company. 8 Q. Are you employed by NAPA? 9 A. No, NAPA is a trade selling name. Genuine Parts 10 Company is who I work for. 11 Q. You had mentioned before, prior to 1966, the 12 information you have prior to 1966, that was 13 obtained through conversations you had with some 14 individuals? 15 A. Walter Devoe, who was the plant manager there. 16 Q. Do you recall roughly when you had that 17 conversation? 18 A. Well, it's from '66 through '70. 19 Q. Okay, the last time you talked to Mr. Devoe was 20 1970 then? 21 A. No. Are you talking about, when we're talking 22 about the information, we're talking about NAPA, 23 American Brakeblocc, the relationships to NAPA? 24 Q. Uh-huh. 25 A. He became general manager approximately that time	1 particular locations, whether it be Kansas City, 2 whether it be Dallas, Houston, San Antonio, all the 3 parts stores that are NAPA parts stores in those 4 areas. The distribution brings in product from a 5 lot of suppliers. They have -- they have engines, 6 belts, hoses, remanufactured parts, numerous 7 things, and they supply those exclusively to the 8 NAPA stores at that time. 9 The NAPA stores, which could be a company 10 owned or it could be an independent owned, they 11 stocked all of what they considered to be a stock 12 that they needed to supply their particular given 13 area and this went out to dealers, it could be 14 individual walk-in trade, companies, anyone that 15 they were going to be doing business with. 16 As far as the retail store, I don't think 17 I'm knowledgeable enough about the retail store to 18 talk about it. This is something that's fairly new 19 as far as the super stores. 20 Q. Okay. You've made a reference to NAPA stores. 21 that also the same as the terminology NAPA jobber 22 A. Yes. 23 Q. Okay. Now, the NAPA jobbers they were not required 24 to purchase all of their materials from a NAPA 25 distribution center, is that correct?

Multi-Page™

Page 14

1 A. No, there was no contract that I know of.
 2 Q. They were free to purchase brake linings from other
 3 manufacturers other than Abex?
 4 A. They could, but most of them didn't or any of the
 5 remanufactured parts.
 6 Q. Okay.
 7 (OFF-THE-RECORD DISCUSSION.)
 8 Q. Just a couple more questions. When an individual
 9 walked into a retail store and purchased brakes,
 10 they would not necessarily be purchasing Abex brake
 11 lining, is that correct?
 12 A. During what time frame?
 13 Q. Let's take your historical understanding prior to
 14 1966.
 15 A. They would be purchasing Abex material.
 16 Q. In any retail store?
 17 A. Yes, my understanding, yes.
 18 Q. And what about the NAPA jobbers?
 19 A. That's who we're talking about, the NAPA jobbers.
 20 Q. Okay, but they were free not to -- but the NAPA
 21 jobbers you just said --
 22 A. They were free to purchase water pumps or anything
 23 else from somebody else if they so choose, but most
 24 of them are all loyal. Abex was a long time
 supplier, and they were a good supplier. We still

Page 15

1 use them today as our supplier at Morganfield.
 2 Q. Okay, so then, after 1966 if someone walked into a
 3 NAPA store and purchased brake linings, would they
 4 necessarily be purchasing Abex brakes?
 5 A. In my opinion, it would be Abex in the NAPA boxes,
 6 yes.
 7 Q. And the basis of that opinion is what?
 8 A. What I've been told by Walter Devoo and all the
 9 people that I've associated with when I went to the
 10 Stephenville plant.
 11 Q. Again, you have no independent knowledge of that?
 12 A. No, sir, I do not other than doing changeovers and
 13 stuff on other product lines.
 14 Q. And stores that carried NAPA products, again, could
 15 sell other products as well, not just -- I'm not
 16 talking just brake linings --
 17 A. Yes.
 18 Q. -- they could sell a variety of products?
 19 A. Yes.
 20 Q. Some of those products could come from a NAPA
 21 distribution center?
 22 A. It's possible.
 23 Q. And some of them did not?
 24 A. Yes, it's possible.
 25 Q. Were you aware that NAPA stores, jobbers and the

Page 16

1 like, were selling products that did come from
 2 areas outside of distribution centers?
 3 A. Well, that was part of our business to go in and --
 4 if someone was buying water pumps, for example,
 5 we'd try to get their business and bring them into
 6 our plants and show them how we produced the units
 7 and, if they were not buying our water pumps,
 8 hopefully we could get their business. This was an
 9 ongoing deal. There was stores that would be not a
 10 NAPA -- not a NAPA store that would be selling any
 11 kind of product that we were trying to get their
 12 business; but the NAPA stores that I was in and any
 13 of these changes like water pump changes is always
 14 American Brakebloc.
 15 Q. Was there a time, in your opinion, that it was not
 16 American Brakebloc, American Brakebloc was not the
 17 only supplier of brake linings?
 18 A. I would say late -- late '80's, maybe early '90's.
 19 Q. And the basis of that knowledge is what?
 20 A. Well, BPI became the primary supplier I believe the
 21 year was 1989.
 22 Q. Did Genuine Parts manufacture its own line of brake
 23 linings?
 24 A. They don't manufacture brake linings.
 25 Q. Okay. Tell me about Rayloc brakes, did they

Page 17

1 manufacture their own brake linings?
 2 MR. RELEY: You said brake linings.
 3 MR. ARBON: I said, I'm sorry?
 4 MR. RELEY: You said they manufactured
 5 brake linings. He said they don't manufacture
 6 brake linings.
 7 Q. (BY MR. ARBON) Brakes?
 8 A. Back up to your original question.
 9 Q. Strike that. Give me one second, I'm sorry.
 10 Are you familiar with a gentleman named
 11 Paul Lacour?
 12 A. Yes.
 13 Q. What was his job title, as you understood it, the
 14 last time you saw him or what was his job title?
 15 A. You mean the last time I saw him?
 16 Q. Yes.
 17 MR. DICKEY: Do you know his title?
 18 A. I don't really know. I'm going to say customer
 19 service, but I'm not sure. It's changed over the
 20 last few years.
 21 Q. (BY MR. ARBON) How long have you known Mr. Lacour?
 22 A. Since probably since '84. I may have talked with
 23 him prior to. Let's make that like 1980.
 24 Q. Okay.
 25 A. Because I had some conversations I think with Paul

Multi-Page™

Page 18	Page
1 on some water pumps. 2 Q. You mentioned distribution centers. What 3 distribution -- what locations do you remember 4 these distribution centers; do you remember where 5 they were located throughout the country? 6 A. For GAP? 7 Q. Well, the NAPA, you mentioned NAPA distribution 8 centers or the distribution centers that had the 9 products. 10 MR. RILEY: Over what time frame? 11 Q. (BY MR. ABBOT) Let's go from 1966 when you started 12 to 1980. 13 A. All right, GAP supplied approximately 14 to 17. 14 Q. 14 to 17 distribution centers? 15 A. Yes. 16 Q. Who owned those distribution centers? 17 A. Part of them were owned by Genuine Automotive Parts 18 and some of were owned by I think the Boltons owned 19 Des Moines and Dewitt. I guess the rest of them 20 were GAP. Only those two were probably Bolton. 21 Q. Could you, just based on your recollection, today 22 let me know, identify for me, where those 23 distribution centers were located? 24 A. Dallas, Houston, San Antonio, Kansas City, St. 25 Louis, Mount Vernon, Milwaukee, Stevens Point,	1 Industries, were you involved in the purchasing at 2 all? 3 A. Purchasing? 4 Q. Yes. 5 A. No, not at that time. 6 Q. And what year did you get involved with the 7 purchasing of product? 8 A. Somewhere around '69, maybe '68, '69, some 9 purchasing. 10 Q. Okay. What sort of purchasing were you involved 11 then? 12 A. Once the plant manager took over as general manager 13 of the two plants, I would help out sometime if we 14 were -- say someone was off on vacation or out sick 15 or something, I would help out on purchasing. I 16 talked with some of the people, I ordered some 17 brake lining. 18 Q. You ordered all different type of products, isn't 19 that correct? 20 A. Ordered American Brakebloc. 21 Q. No, I'm just talking, beyond that, all sorts of 22 products from American Brakebloc? 23 A. Sure. I was not a purchasing person. I just 24 filled in. 25 MR. ABBOT: That's all the questions I
Page 19	Page
1 Indianapolis, Grand Rapids, Detroit, Fort Wayne, 2 Louisville, Knoxville, and Nashville. I left out 3 two, Des Moines and Dewitt. 4 MR. DICKEY: You didn't mean Mount Vernon, 5 Virginia, did you? 6 THE WITNESS: No. 7 Q. (BY MR. ABBOT) Of the distribution centers you 8 mentioned, were there any distribution centers 9 you're aware of that are on the east coast? These 10 all seem to be in the middle of the United States. 11 A. Central United States. None on the east coast. 12 Q. None on the east coast? 13 A. No. 14 Q. What about the west coast? 15 A. No, sir. 16 Q. And, the follow-up on that, you would have no 17 knowledge of the distribution centers in the east 18 coast or who they were buying products from, what 19 they were supplying NAPA stores with on the east or 20 west coast? 21 A. It was always my knowledge what I was told, if they 22 were NAPA, they were buying American Brakebloc. 23 Q. Give me one second. Let me check my notes for a 24 second. 25 In 1966 when you started with Genaut	1 have, thank you. 2 MR. DICKEY: I don't have any questions. 3 Do you have anything, Pat? 4 EXAMINATION 5 BY MR. RILEY: 6 Q. I just want to clarify one point. Before the late 7 1980's, if somebody went into a NAPA store and g 8 a box of either brake linings or brake shoes or 9 disk brakes that had the NAPA logo on the box, 10 whose friction product would be inside that box? 11 A. To my understanding, it would be Abex. 12 Q. Okay. 13 EXAMINATION 14 BY MR. ABBOT: 15 Q. And the basis of your understanding even at that 16 late time in the late 1980's -- 17 MR. RILEY: I said before the late 1980's. 18 Q. (BY MR. ABBOT), I'm sorry, in that time frame tha 19 Mr. Riley was referencing, the basis of your 20 knowledge for that statement is what? 21 A. Sometimes I went to these DC's and I could see the 22 product. 23 Q. Did you ever see -- 24 A. It had American Brakebloc on the labels. Our B, 25 our RS. AB's all those back in that period of time

Page 22

1 had American Brakeblocc on the labels.
 2 Q. Back --
 3 A. So I have to assume it's all American Brakeblocc
 4 inside the box.
 5 Q. Back at that time that Mr. Riley referenced prior
 6 to the late 1980's, did you purchase any -- were
 7 any purchases made of friction materials from other
 8 manufacturers?
 9 A. No. Abex was a good supplier to us. They had some
 10 problems with like some disk pads later on as far
 11 as just probably having too much business, weren't
 12 able to supply a few part numbers, but that was in
 13 the '90's. We didn't have to go outside.
 14 Q. But, again, just to recap, the NAPA stores
 15 themselves they were not required to exclusively
 16 carry products that come from the NAPA distribution
 17 center?
 18 A. No.
 19 Q. So going into a store someone --
 20 A. He's an independent business person. There is no
 21 contract.
 22 Q. Sure. They would supply based upon the product
 23 that was available and the like?
 24 A. I assume. If I was in business, if I couldn't get
 something from my primary supplier, I'd try to find

Page 23

1 something I could sell.
 2 Q. Uh-huh. And that product may or may not be an Abex
 3 line?
 4 A. I could not make a statement on that.
 5 MR. ABBOT: No further questions.
 6 EXAMINATION
 7 BY MR. GIANARIS:
 8 Q. Just to clarify, as long as the name NAPA was on
 9 the box, it would be your understanding that it
 10 would be an Abex lining?
 11 A. Yes.
 12 Q. When we talk about historical knowledge, this is
 13 stuff that you learned in your training, is that
 14 right?
 15 A. Yes.
 16 Q. Being trained to do the job that you've done since
 17 1966, you were taught by people who had been
 18 involved in this business before you --
 19 A. Yes.
 20 Q. -- about what had gone on, is that right?
 21 A. Walter Devoe, the plant manager, was -- before he
 22 came and started that plant there at Genaut
 23 Industries, he ran and operated the local NAPA
 store, company owned, in Fort Worth, Texas.
 24 Q. Okay.

Page 24

1 A. And it was I think a big operation, machine shop
 2 and everything, they supplied the Air Force base
 3 there, and he had a lot of knowledge as far as NAPA
 4 jobbers, and he tried to pass that on to me.
 5 Q. Great.
 6 MR. GIANARIS: That's all I have.
 7 MR. DICKEY: Pat?
 8 MR. RILEY: Do you want to have him read?
 9 That's it.
 10 MR. DICKEY: We will read and sign.

Page 25

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 2
 3
 4 CHARLES WILLIAM ALLEN
 5
 6 STATE OF _____ } ss:
 7 COUNTY OF _____)
 8
 9 Subscribed and sworn to before
 10 me this ____ day of _____, 2004.

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 14 NOTARY PUBLIC
 15 My Commission Expires:

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 21 (CASE: In Re: ALL SIMMONS FIRM CASES ON THE MAY 3,
 22 2004, TRIAL DOCKET -vs- A.W. CHESTERTON, et al.)
 23
 24
 25

NOTARIAL CERTIFICATE

Page 26

STATE OF MISSOURI }
COUNTY OF JACKSON }

I, KAREN I. MAY, RMR, CSR, Certified
Shorthand Court Reporter, do hereby certify that,
pursuant to the foregoing stipulation, at the
office of RASMUSSEN, WILLES, DICKET & MOORE,
L.L.C., 9200 Ward Parkway, Suite 110, in the City
of Kansas City, in the County of Jackson, and State
of Missouri,

CHARLES WILLIAM ALLEN

came before me, was by me duly sworn to testify the
whole truth of his knowledge of the matters in
controversy aforesaid, was examined and his
examination then written in shorthand by me and
afterwards typed, presentation of the deposition to
the witness being expressly waived by counsel and
the witness, as heretofore set forth, on the day
in that behalf aforesaid; that the deposition is
hereafter, by the witness, to be read over, signed
and sworn to; and thereafter, said deposition to be
returned.

I further certify that I am not counsel,
attorney or relative of either party, or clerk or
stenographer of either party or of the attorney of
either party, or otherwise interested in the event
of this suit.

IN TESTIMONY WHEREOF, I have hereunto set
my hand and seal at my office in said County and
State, this 30th day of April, 2004.

KAREN I. MAY, RMR, CSR
Registered Merit Reporter
Missouri CCR No. 816

-1- '30's [4] 7:2,15 8:16 9:14 '60 [1] 9:10 '66 [2] 5:11 11:18 '68 [1] 20:8 '69 [2] 20:8,8 '70 [1] 11:18 '70's [1] 9:10 '74 [1] 4:6 '80's [1] 16:18 '84 [2] 4:12 5:16 17:22 '90's [2] 16:18 22:13 -vs [2] 1:5 25:22 -1- 10 [1] 2:17 10004 [1] 2:4 13th [1] 1:9 14 [2] 18:13,14 15228 [1] 2:8 17 [2] 18:13,14 1806 [1] 1:24 1959 [1] 3:25 1966 [1] 4:1,17 8:17,19 8:24 11:11,12 12:11 14:14 15:2 18:11 19:25 23:17 1970 [1] 11:20 1970's [2] 8:25,25 1974 [1] 4:5 1980 [2] 17:23 18:12 1980's [4] 21:7,16,17 22:6 1984 [1] 4:11 1989 [1] 16:21 -2- 2004 [1] 1:3,9 25:10,22 26:31 206 [1] 3:14 20th [1] 26:31 21 [2] 2:18,18 23 [1] 2:19 -3- 3 [1] 1:3 2:17 25:21 300 [1] 2:7 310 [1] 1:10 2:10 26:9 -4- 411 [1] 1:23 -6- 61602 [1] 1:24 62024 [1] 1:20	64114 [1] 2:11 650 [1] 2:7 -7- 707 [1] 1:19 -8- 816 [1] 26:35 -9- 9-17-39 [1] 3:16 9200 [1] 1:10 2:10 26:9 -A- A-L-L-E-N [1] 3:10 A.W. [2] 1:6 25:22 AB's [1] 21:25 Abbot [1] 2:3,4,17,18 6:6 9:22 10:22,23 17:3,7 17:21 18:11 19:7 20:25 21:14,18 23:5 Abex [1] 7:15,17 8:11 8:25 9:9 10:1,9 14:3,10 14:15,24 15:4,5 21:11 22:9 23:2,10 able [1] 22:12 Absolutely [1] 12:13 address [1] 3:13 affiliated [1] 8:14 aforesaid [2] 26:15,20 afterwards [1] 26:17 again [1] 15:11,14 22:14 age [1] 3:2 Air [1] 24:2 al [1] 1:6 25:22 Allen [1] 1:8 2:16 3:1,8,9 3:11 10:23 25:4 26:12 Alton [1] 1:20 always [1] 7:10 8:8,9 16:13 19:21 American [1] 7:21 8:10 9:1,9,25 10:9 11:23 16:14 16:16,16 19:22 20:20,22 21:24 22:1,3 Antonio [1] 12:9 13:2 18:24 April [1] 1:9 26:31 arc [1] 8:3 area [1] 13:13 areas [1] 13:4 16:2 associated [1] 15:9 ASSOCIATES [1] 1:13 assume [2] 22:3,24 attorney [2] 26:25,26 auto [2] 5:6,7 Automotive [2] 4:4 6:18 18:17 available [1] 22:23 aware [1] 15:25 19:9	-B- B [2] 2:21 21:24 B-R-I-T-T-A-I-N [1] 6:8 base [1] 24:2 based [1] 12:11 18:21 22:22 basing [1] 8:15 basis [1] 12:5 15:7 16:19 21:15,19 became [4] 6:23 11:25 12:1 16:20 behalf [1] 26:20 belts [1] 13:6 Berkshire [1] 1:19 better [1] 5:21 beyond [1] 20:21 BHT [1] 6:19 7:2 12:1 big [1] 24:1 bill [1] 10:13 birth [1] 3:15 Bolton [1] 18:20 Boltons [1] 18:18 bought [1] 9:5 Boulevard [2] 1:19,23 BOWEN [1] 1:13 box [1] 9:6,8 21:8,9,10 22:4 23:9 boxes [1] 15:5 BPI [1] 16:20 brake [1] 5:8 7:24 9:2 14:2,10 15:3,16 16:17,22 16:24 17:1,2,5,6 20:17 21:8,8 Brakebloc [1] 7:22 8:11 9:1,9,25 10:9 11:23 16:14 16:16,16 19:22 20:20,22 21:24 22:1,3 brakes [1] 9:5,5,6 14:9 15:4 16:25 17:7 21:9 branch [1] 4:22 break [1] 9:22 BRIEF [1] 9:24 bring [1] 16:5 bringing [1] 12:5 brings [1] 13:4 Brittain [4] 6:5,6,7,9 Brothers [1] 6:5,7,9 business [1] 10:12 12:6 13:15 16:3,5,8,12 22:11 22:20,24 23:18 buy [1] 9:4 buying [4] 16:4,7 19:18 19:23 buyout [1] 5:16 -C- c [2] 1:17 2:1 carried [1] 15:14	carry [1] 22:16 CASE [1] 25:21 CASES [2] 1:2 25:21 CCR [1] 26:35 center [4] 12:4,18,22 13:25 15:21 22:17 centers [1] 4:19 10:11 12:15,24 16:2 18:2,4,8,8 18:14,16,23 19:7,8,17 central [1] 4:20,25 19:11 certain [2] 1:15 5:3 CERTIFICATE [1] 26:1 Certified [2] 1:15 26:5 certify [2] 26:6,24 change [1] 4:9 changed [1] 17:19 changecovers [1] 15:12 changes [2] 16:13,13 Charles [1] 1:8 2:16 3:1 3:8,9 25:4 26:12 check [1] 19:23 CHESTERTON [2] 1:6 25:22 Chicago [1] 4:23 choose [1] 14:23 Circuit [4] 1:1,1,15,15 City [1] 1:10,11 2:11 4:21 5:2 6:4 13:1 18:24 26:9,10 clarify [2] 21:6 23:8 CLAYTON [1] 2:11 clerk [1] 26:25 coast [1] 10:15,16 19:9 19:11,12,14,18,20 comfortable [1] 10:17 Commission [1] 25:15 companies [1] 13:14 company [1] 2:5 3:24 6:19 9:16 10:1 11:7,10 13:9 23:24 competitors [1] 5:22,22 7:4,5 9:17 considered [1] 13:11 contract [1] 14:1 22:21 controversy [1] 26:15 conversation [2] 8:12 11:17 conversations [1] 8:13 11:13 17:25 Corporation [1] 10:24 correct [1] 5:24 8:20 11:4 13:25 14:1 20:19 counsel [2] 26:18,24 country [4] 5:3,23 9:16 18:5 County [1] 1:1,11,16 25:7 26:4,10,30 couple [1] 5:22 10:25 14:8 course [1] 12:23	Court [4] 1:1,14,15,26 CRR [1] 1:12 26:5,33 current [1] 6:11 customer [1] 17:18 customers [1] 12:6 -D- D [1] 2:15 Dale [1] 7:25 Dallas [1] 12:7 13:2 18:24 date [1] 3:15 DC's [1] 21:21 deal [1] 16:9 dealers [1] 13:13 Defendant [1] 1:22 2:5 Defendants [1] 1:7 deposition [1] 1:8,9 10:6 26:17,20,22 Des [1] 5:1 18:19 19: description [1] 10:1 Detroit [1] 19:1 Devoe [1] 7:7 11:15, 15:8 23:21 Dewitt [1] 5:1 18:19 DICKEY [1] 1:10 2 2:11 17:17 19:4 21:2 24:10 26:8 different [1] 20:18 DISCUSSION [1] disk [1] 21:9 22:10 distribution [2] 4: 10:10 12:4,15,18,22, 13:4,25 15:21 16:2 1: 18:4,7,8,14,16,23 19: 19:17 22:16 DOCKET [1] 1:3 2 done [1] 23:16 down [1] 8:7 Drive [1] 3:14 duly [1] 3:2 26:13 during [1] 9:7 14:1: -E- c [1] 1:17,17,21 2:1,1 2:15,21 early [1] 16:18 east [1] 1:20 19:9,11 19:17,19 Ed [1] 10:23 EDWARD [1] 2:4 either [4] 21:8 26:2 26:27 Electric [1] 3:24 employed [4] 8:14 11:7,8 employee [1] 11:3 employer [1] 4:9 end [1] 8:25
--	---	--	--	--

engines - part

Multi-Page™

engines (n) 13:5 et (n) 1:6 25:22 Evansville (n) 8:7 fant (n) 26:27 examination (n) 2:17 2:17,18,19 3:5 10:21 21:4,13 23:6 26:16 examined (n) 1:8 26:15 example (n) 12:3 16:4 exception (n) 4:21 exclusively (n) 13:7 22:15 EXHIBIT (n) 2:22 Expires (n) 25:15 explain (n) 4:16,17 7:19 expressly (n) 26:18	Gianaris (n) 1:20 2:17 2:19 3:6 6:12,13 9:20,25 10:20 23:7 24:6 given (n) 13:12 goes (n) 7:12 9:13 gone (n) 23:20 good (n) 14:25 22:9 Grand (n) 19:1 Great (n) 24:5 grind (n) 7:24 grinder (n) 7:24 8:3,4 guess (n) 8:12 18:19 gay (n) 8:5	23:18 -J- J (n) 1:12 26:5,33 Jackson (n) 1:11 26:4,10 job (n) 5:10,10 17:13,14 23:16 jobber (n) 12:14,19 13:21 jobbers (n) 8:10 13:23 14:18,19,21 15:25 24:4 jobbing (n) 12:8 John (n) 1:13 8:5 12:3 JR (n) 1:21 Judicial (n) 1:1,15	logo (n) 21:9 Louis (n) 18:25 Louisville (n) 19:2 loyal (n) 14:24 -M- M (n) 1:13 machine (n) 24:1 Madison (n) 1:1,16 man (n) 3:17 manager (n) 5:14,16,17 5:18 6:22,23,24 7:7 11:15 11:25 12:1,4 20:12,12 23:21 manufacture (n) 16:22 16:24 17:1,5 manufactured (n) 10:8 17:4 manufacturers (n) 14:3 22:8 MARCUS (n) 1:21 married (n) 3:17 material (n) 14:15 materials (n) 9:2,2 13:24 22:7 matters (n) 26:14 may (n) 1:3,12 17:22 23:2 23:2 25:21 26:5,33 McNULTY (n) 2:6 mean (n) 17:15 19:4 meetings (n) 7:20 mentioned (n) 8:21 11:2 11:11 12:14 18:2,7 19:8 Merit (n) 26:34 messed (n) 8:2 Metro (n) 3:24 mid (n) 3:25 middle (n) 19:10 Milwaukee (n) 18:25 mind (n) 10:1 Missouri (n) 1:11 2:11 26:2,11,35 Moines (n) 5:1 18:19 19:3 MOORE (n) 1:10 2:9 26:8 Morganfield (n) 3:12 3:20 4:5,6 5:15 15:1 most (n) 4:20 10:7 14:4 14:23 Mount (n) 18:25 19:4 moved (n) 5:14	8:10,14,17 9:2,4,5,6,17 10:10 11:6,8,9,22,23 12:8 12:14,18,19,25 13:3,8,9 13:20,21,23,24 14:18,19 14:20 15:3,5,14,20,25 16:10,10,12 18:7,7 19:19 19:22 21:7,9 22:14,16 23:8,23 24:3 Nashville (n) 19:2 national (n) 10:11,14 necessarily (n) 14:10 15:4 needed (n) 13:12 never (n) 8:2 new (n) 2:3,4,4 7:9,10 13:18 None (n) 2:23 19:11,12 Normal (n) 4:23 NOTARIAL (n) 26:1 NOTARY (n) 25:14 notes (n) 19:23 nothing (n) 3:3 7:12 Notice (n) 1:9 now (n) 1:15 9:4,21 13:23 numbers (n) 22:12 numerous (n) 13:6
-K-	H (n) 2:21 Hamilton (n) 1:23 hand (n) 26:30 HARTSHORN (n) 1:23 Hello (n) 10:23 help (n) 20:13,15 hereafter (n) 26:21 hereby (n) 26:6 hereinbefore (n) 26:19 hereunto (n) 26:29 HEWITT (n) 2:6 high (n) 3:22 8:3 historical (n) 6:10,15 8:15 9:11 14:13 23:12 historically (n) 8:23 history (n) 3:23 hopefully (n) 16:8 hoses (n) 13:6 Houston (n) 12:4,9 13:2 18:24 Hoving (n) 12:3	Kansas (n) 1:10 2:11 5:1 13:1 18:24 26:10 KAREN (n) 1:12 26:5 26:33 Kentucky (n) 3:12,20 kind (n) 12:17 16:11 knew (n) 7:11 knowledge (n) 6:15 7:6 8:15,17 9:11 12:10,12 15:11 16:19 19:17,21 21:20 23:12 24:3 26:14 knowledgeable (n) 10:7 13:17 known (n) 10:9 17:21 Knoxville (n) 19:2	-L- L.L.C (n) 1:10,19 2:9 26:9 L.L.P (n) 2:3 label (n) 9:6 labels (n) 21:24 22:1 lack (n) 5:20 Lacour (n) 17:11,21 last (n) 11:19 17:14,15,20 late (n) 16:18,18 21:6,16 21:16,17 22:6 Law (n) 1:9 lawful (n) 3:2 learned (n) 23:13 left (n) 19:2 level (n) 10:11 line (n) 16:22 23:3 lines (n) 15:13 lining (n) 14:11 20:17 23:10 linings (n) 5:8 14:2,15,3 15:16 16:17,23,24 17:1,2 17:5,6 21:8 live (n) 3:11,12 local (n) 23:23 located (n) 18:5,23 locations (n) 13:1 18:3	-O- obtained (n) 11:13 off (n) 20:14 OFF-THE-RECORD (n) 14:7 office (n) 26:30 offices (n) 1:10 26:8 Oklahoma (n) 4:21 6:4 old (n) 7:8 old-timers (n) 7:9 8:9 Once (n) 20:12 one (n) 5:25 6:1,2,4 8:2 17:9 19:23 21:6 ongoing (n) 16:9 operated (n) 23:23 operation (n) 24:1 opinion (n) 15:5,7 16:15 ordered (n) 20:16,18,20 organization (n) 10:12 original (n) 17:8 otherwise (n) 26:27 outside (n) 16:2 22:13 own (n) 16:22 17:1 owned (n) 13:10,10 18:16 18:17,18,18 23:24
-G-	identify (n) 18:22 Illinois (n) 1:1,16,20,24 including (n) 5:8 9:16 independent (n) 13:10 15:11 22:20 Indiana (n) 8:7 Indianapolis (n) 6:20 8:6 19:1 individual (n) 13:14 14:8 individuals (n) 11:14 Industries (n) 4:1,8,10 4:17 20:1 23:23 information (n) 11:12 11:22 inside (n) 21:10 22:4 interchangeably (n) 10:3 interested (n) 26:27 introducing (n) 8:8 involved (n) 20:1,6,10	-I- I (n) 1:12 26:5,33 Jackson (n) 1:11 26:4,10 job (n) 5:10,10 17:13,14 23:16 jobber (n) 12:14,19 13:21 jobbers (n) 8:10 13:23 14:18,19,21 15:25 24:4 jobbing (n) 12:8 John (n) 1:13 8:5 12:3 JR (n) 1:21 Judicial (n) 1:1,15	-M- M (n) 1:13 machine (n) 24:1 Madison (n) 1:1,16 man (n) 3:17 manager (n) 5:14,16,17 5:18 6:22,23,24 7:7 11:15 11:25 12:1,4 20:12,12 23:21 manufacture (n) 16:22 16:24 17:1,5 manufactured (n) 10:8 17:4 manufacturers (n) 14:3 22:8 MARCUS (n) 1:21 married (n) 3:17 material (n) 14:15 materials (n) 9:2,2 13:24 22:7 matters (n) 26:14 may (n) 1:3,12 17:22 23:2 23:2 25:21 26:5,33 McNULTY (n) 2:6 mean (n) 17:15 19:4 meetings (n) 7:20 mentioned (n) 8:21 11:2 11:11 12:14 18:2,7 19:8 Merit (n) 26:34 messed (n) 8:2 Metro (n) 3:24 mid (n) 3:25 middle (n) 19:10 Milwaukee (n) 18:25 mind (n) 10:1 Missouri (n) 1:11 2:11 26:2,11,35 Moines (n) 5:1 18:19 19:3 MOORE (n) 1:10 2:9 26:8 Morganfield (n) 3:12 3:20 4:5,6 5:15 15:1 most (n) 4:20 10:7 14:4 14:23 Mount (n) 18:25 19:4 moved (n) 5:14	-P- p (n) 1:17,17 2:1,1,4 pads (n) 22:10 PAGE (n) 2:16,22 Parkway (n) 1:10 2:10 26:9 part (n) 1:8 4:24,24 6:17

16:3 18:17 22:12 particular (n) 13:1,12 parts (n) 2:5 4:4,23 5:6 5:7,25 6:19 7:14 9:8,16 11:7,9 12:8,25 13:3,6 14:5 16:22 18:17 party (n) 26:25,26,27 pass (n) 24:4 past (n) 12:15 Pat (n) 21:3 24:7 PATRICK (n) 2:8 Paul (n) 17:11,25 pending (n) 1:15 Pennsylvania (n) 2:8 people (n) 8:4,14 12:3,5 12:7,24 15:9 20:16 23:17 Peoria (n) 1:24 period (n) 9:7 21:25 person (n) 9:4 10:7,13 20:23 22:20 personal (n) 12:12 Pittsburgh (n) 2:8 Plaintiffs (n) 1:4,9,18 plant (n) 5:12,14,15 6:22 6:23 7:2,7,9 11:15 12:1,1 15:10 20:12 23:21,22 plants (n) 6:24 12:2 16:6 20:13 Plaza (n) 2:3 Pneumo-Abox (n) 1:22 2:2 10:24 point (n) 18:25 21:6 possible (n) 15:22,24 present (n) 5:11 presentment (n) 26:17 primary (n) 16:20 22:25 problems (n) 22:10 produced (n) 1:8 16:6 product (n) 7:1,13,4 15:13 16:11 20:7 21:10 21:22 22:22 23:2 production (n) 7:23 products (n) 6:20 10:8 15:14,15,18,20 16:1 18:9 19:18 20:18,22 22:16 promoted (n) 6:23 proper (n) 5:21 provide (n) 12:17 PUBLIC (n) 25:14 pump (n) 16:13 pumps (n) 14:22 16:4,7 18:1 purchase (n) 13:24 14:2 14:22 22:6 purchased (n) 14:9 15:3 purchases (n) 22:7 purchasing (n) 14:10 14:15 15:4 20:1,3,7,9,10 20:15,23 pursuant (n) 1:9 26:7	-O- questions (n) 10:25 14:8 20:25 21:2 23:5 -R- R (n) 1:17 2:1,8 RAICHL (n) 1:21 ran (n) 23:23 Rapids (n) 19:1 RASMUSSEN (n) 1:10 2:9 26:8 Rayloc (n) 3:20 4:7,13 4:14 11:3,3 16:25 Re (n) 1:2 25:21 read (n) 10:5 24:8,10 26:21 really (n) 7:11 8:2 17:18 reason (n) 6:22 recap (n) 22:14 RECESS (n) 9:24 recollection (n) 18:21 reference (n) 13:20 referenced (n) 22:5 referencing (n) 21:19 regarding (n) 10:7 Registered (n) 26:34 regular (n) 12:5 relationship (n) 4:18 6:15 8:10 relationships (n) 11:23 relative (n) 26:25 remanufactured (n) 5:7 7:1 13:6 14:5 remember (n) 8:5 18:3,4 Reporter (n) 1:15 26:6 26:34 Reporters (n) 1:14 represent (n) 10:24 representative (n) 7:22 representing (n) 11:3 required (n) 13:23 22:15 rest (n) 4:25 18:19 retail (n) 12:19 13:16,17 14:9,16 returned (n) 26:23 rewind (n) 3:21 right (n) 6:12 8:18,22 12:16 18:13 23:14,20 Riley (n) 2:6,8,18 6:8,10 17:2,4 18:10 21:5,17,19 22:5 24:8 RMR (n) 1:12 26:5,33 Road (n) 2:7 ROBERT (n) 1:25 roughly (n) 11:16 RS (n) 21:25 running (n) 12:2	-S- s (n) 1:17 2:1,21 sale (n) 10:8 San (n) 12:9 13:2 18:24 Sank (n) 4:23 saw (n) 17:14,15 school (n) 3:22 Schoonover (n) 7:25 SCOTT (n) 1:23,25 seal (n) 26:30 second (n) 9:23 17:9 19:23,24 section (n) 5:3 see (n) 7:10 21:21,23 seem (n) 19:10 sell (n) 15:15,18 23:1 selling (n) 11:9 16:1,10 service (n) 17:19 set (n) 7:23 26:19,29 shoes (n) 7:24 21:8 shop (n) 24:1 shorthand (n) 1:15 26:6 26:16 show (n) 16:6 sick (n) 20:14 sign (n) 24:10 signed (n) 26:21 SIMMONS (n) 1:2,19 25:21 sister (n) 6:22 situation (n) 9:15 SMITH (n) 2:3 someone (n) 15:2 16:4 20:14 22:19 sometime (n) 20:13 Sometimes (n) 21:21 somewhere (n) 9:13 20:8 sorry (n) 8:6 17:3,9 21:18 sort (n) 20:10 sorts (n) 20:21 sources (n) 8:21 speed (n) 8:3 SS (n) 25:6 St (n) 18:24 Standard (n) 4:22 6:2 start (n) 12:22 started (n) 8:17,24 18:11 19:25 23:22 starting (n) 5:10 7:9 state (n) 1:11 3:7 25:6 26:2,10,31 statement (n) 21:20 23:4 States (n) 4:20 19:10,11 stenographer (n) 26:26 Stephenville (n) 4:2 7:8 7:21 15:10 Stevens (n) 18:25 still (n) 4:8 5:18 14:25	stipulation (n) 26:7 stock (n) 13:11 stocked (n) 13:11 store (n) 9:4 12:20 13:16 13:17 14:9,16 15:3 16:10 21:7 22:19 23:24 stores (n) 6:25 12:8,8,25 13:3,3,8,9,19,20 15:14,25 16:9,12 19:19 22:14 Strike (n) 17:9 stuff (n) 15:13 23:13 Subscribed (n) 25:9 subsidiary (n) 4:3 6:18 6:21 successor (n) 10:10 suit (n) 26:28 Suite (n) 1:10,24 2:7,10 26:9 super (n) 13:19 supplied (n) 4:19 5:23 6:25 7:1,5 9:7,8,17,17 18:13 24:2 supplier (n) 5:4,6 9:1 14:25,25 15:1 16:17,20 22:9,25 suppliers (n) 13:5 supply (n) 10:8 12:25 13:7,12 22:12,22 supplying (n) 19:19 SWAIN (n) 1:23 SWEITZER (n) 2:6 sworn (n) 1:8 3:2 25:9 26:13,22 -T- T (n) 2:21 taught (n) 23:17 teach (n) 7:11 teaching (n) 8:12,13 TED (n) 1:20 telling (n) 8:9 term (n) 5:21,21 termed (n) 7:4 terminology (n) 13:21 testified (n) 3:4 testify (n) 26:13 TESTIMONY (n) 26:29 Texas (n) 4:2 23:24 thank (n) 21:1 Thanks (n) 10:20 themselves (n) 22:15 thereafter (n) 26:22 Third (n) 1:1,15 Three (n) 2:3 through (n) 4:25 5:10 8:24 9:10 10:10 11:13,18 throughout (n) 4:20 5:22 9:15 18:5 title (n) 17:13,14,17	today (n) 4:5 15:1 18 together (n) 12:21 too (n) 22:11 took (n) 20:12 trade (n) 11:9 13:14 trained (n) 23:16 training (n) 8:12,13 23:13 TRIAL (n) 1:3 25:20 tried (n) 24:4 truth (n) 3:3,3,4 26:1 try (n) 16:5 22:25 trying (n) 7:11,23 12 16:11 Tuesday (n) 1:9 Tulsa (n) 4:22 two (n) 6:24 18:20 19 20:13 type (n) 20:18 typed (n) 26:17 -U- understood (n) 17:1 Unit (n) 4:23 United (n) 4:20 19:10 units (n) 6:2 16:6 up (n) 4:23 7:23 17:8 used (n) 12:23 -V- vacation (n) 20:14 Valley (n) 3:14 variety (n) 15:18 Vernon (n) 18:25 19: Village (n) 4:23 Virginia (n) 19:5 -W- W (n) 1:25 waived (n) 26:18 walk-in (n) 13:14 walked (n) 14:9 15:2 Walter (n) 7:6,23 11: 15:8 23:21 Ward (n) 1:10 2:10 26 warehouses (n) 12:2 Washington (n) 2:7 water (n) 14:22 16:4,7 18:1 Wayne (n) 19:1 west (n) 10:15,16 19:1 19:20 WHEREOF (n) 26:2 whole (n) 3:3 26:14 wholly-owned (n) 4 6:18,21 William (n) 1:8 2:16 3:8,9 25:4 26:12
---	--	--	---	--

WILLIS - York

Multi-Page™

WILLIS (s) 1:10 2:9
26:8
toess (s) 6:7 19:6
18,19,21
worked (s) 3:25 4:14
works (s) 12:20,20
Worth (s) 23:24
written (s) 26:16

-X-

X (s) 2:15,21

-Y-

year (s) 3:25 16:21 20:6
years (s) 17:20
York (s) 2:3,4,4