

1 looking it the lead times right now."

2 A. This was probably concerning some product, but I
3 was asking about how long it would take to get. And I
4 was asking about how long the turnaround time was.

5 Q. What's exhibit -- Page 4-23, Exhibit 2?

6 A. You asked what the --

7 Q. What is this all about, yeah?

8 A. This is an e-mail from Brian Taylor, who is a
9 formulator from what I understand.

10 Q. What's a formulator?

11 A. He works with -- he's -- I understood he was a
12 fuel formulator.

13 Q. And what is a fuel formulator?

14 A. Somebody that's a chemist that knows how to mix
15 things together. This was an e-mail asking for his
16 product or -- let's see, AFDT -- I asked him about what
17 they had. Let's see, diesel detergent, lubricity
18 additive, gasoline detergent. And I wanted some pricing
19 from them.

20 Q. Why?

21 A. We were still trying to figure out, trying to
22 figure out -- I mean, I'm not a chemist. We were just
23 trying to figure out something that we could offer
24 Quixtar at this point.

25 Q. What do you mean? What are you saying? Why



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1 would you be writing to this guy, this fuel formulator
2 and asking him for pricing information on these two --
3 these different products here?

4 A. Well, we're in the process of trying to -- or I
5 am in the process of looking at different options that
6 we could possibly -- different companies that could
7 possibly provide us their fuel additive to sell. And
8 this was one other company I contacted.

9 Q. To sell to who?

10 A. Well, I believe at this time, we were -- we had
11 -- we were looking at setting on company, I'm not sure
12 if it was setup already, but Solutions For Fuel and we
13 still needed to come up with a product.

14 Q. You sent Brian Taylor of AFD Technologies a
15 confidentiality agreement or did he send it to you? It
16 looks like he sent it to you.

17 A. I'm not sure.

18 Q. Well, look at Page 4-23. Up at the top you see
19 the icon "PDF, Disberger Confidentiality Agreement"?

20 A. Uh-huh. Yes.

21 Q. And then if you turn to the next page, 4-24,
22 there's the confidentiality agreement, right?

23 A. Yes.

24 Q. And then Brian Taylor signed it, promising to
25 keep any information that you were giving him



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1 confidential, right? Essentially.

2 A. Can you repeat your question?

3 Q. Yes. And so Brian Taylor, then, signs the
4 confidentiality agreement that you sent him so as to
5 keep information that you were giving him confidential.

6 A. I'm not sure if I sent him this.

7 Q. I'm sorry. He sent it to you?

8 A. I think I sent him a confidential -- or a
9 confidentiality agreement, and I think he might have
10 changed or added something to it and then he --

11 Q. Scanned it in and sent it back to you?

12 A. Yes. I -- I'm thinking that's correct, but I
13 can't be positive.

14 Q. All right. What are these -- this series of
15 e-mails that occurs after this dated March 23, 2006,
16 from Taylor to you and from you to Taylor represented by
17 Page 4-25 and 4-26?

18 A. You're asking about 4-25 and 4-26?

19 Q. Yes. Of Exhibit 2 to Selzer.

20 A. To Selzer.

21 Q. This is Selzer Exhibit 2.

22 MR. DILLON: That simply means to you,
23 Robert, that all of these documents were identified in a
24 prior deposition so that a court or a Judge so someone
25 looking at this knows what we're talking about.



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1 MR. MASTROMARCO: That's why I'm doing it.

2 THE WITNESS: I see.

3 MR. MASTROMARCO: Let me try to rephrase it
4 for you.

5 MR. DILLON: I got it.

6 BY MR. MASTROMARCO:

7 Q. Please provide us with your understanding of what
8 Pages 4-25 and 4-26 of what Selzer Exhibit 2 are?

9 A. I can't be certain. I'm thinking that with his
10 AFD-6550 or his AFD-2575 on Exhibit 4.25 -- or 4-25,
11 would be that we would have needed a filler to go with
12 his -- with either one of those two products. And I was
13 -- since I'm not a chemist, I needed a recommendation on
14 what filler we would put in it.

15 Q. Look at 4-27. What is this all about? This
16 Calumet 600 Solvent.

17 A. I believe that 4.27[sic] is the attachment PDF on
18 4.25[sic].

19 Q. All right. Now, let's look at 4-28. Apparently,
20 you're also breaking down the Freedom Fuel to what's in
21 that, too, right? Do you see the letter or the memo at
22 the top of the page from Bob Pond to you?

23 MR. DILLON: Go ahead.

24 MR. CLELAND: Objection. Compound.

25 MR. DILLON: Form. But go ahead and read.



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1 has a relationship with them.

2 Q. Now, look at 4-30. Now, what's this Calumet?
3 This Clint Meadows of calumetlubricants.com. What is he
4 doing, and he's copied in Joe Tuberville,
5 T-U-B-E-R-V-I-L-L-E.

6 A. Well, Clint, I believe, is a sales rep for
7 Calumet Lubricants.

8 Q. Is he an IBO?

9 A. I have idea on that.

10 Q. All right. Is Joe Tuberville an IBO?

11 A. I have no idea.

12 Q. All right. What's he doing here? Why is he
13 doing this?

14 A. I had called Calumet looking for a solvent back
15 form Brian Taylor's e-mail where he recommended a
16 solvent. He didn't -- he doesn't sell this solvent and
17 so he gave me this name of this company to call.

18 Q. Brian Taylor did?

19 A. Yes.

20 Q. Do you know what Brian Taylor's history is --

21 A. No.

22 Q. -- with Polar Molecular Corporation?

23 A. No.

24 Q. What's he doing, giving you formulas for the
25 solvent?



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1 MR. DILLON: You're referring to 4-30?

2 MR. MASTROMARCO: Yes.

3 BY MR. MASTROMARCO:

4 Q. He's got PDF attachments with, you know, "Calumet
5 400-500 1%, Calumet 400-500 Solvent, Calumet LVP 100."

6 A. I'm not sure; it looks like an MSDS sheet to me.

7 Q. What's that stand for?

8 A. MSDS, Material Safety Data Sheet.

9 Q. All right. All right. Now, the attachment that
10 Calumet sent, so we can get through that ends at, I
11 believe, 4-34.

12 A. The last attachment is 4-34 from 4-30.

13 Q. Now, on March 27th, if you look at 4-35, you're
14 discourse -- you're sending e-mails back and forth or at
15 least you're receiving an e-mail, I should say, from
16 Kim Murray, M-U-R-R-A-Y, of Land & Sea Container; is
17 that right?

18 A. Yes.

19 Q. And you're -- at that point you're what,
20 exploring bottles or containers to use to sell the fuel?

21 A. We asked Land & Sea -- or I asked Land & Sea
22 Container to provide us a quote for bottling.

23 Q. And look at the next page, 4-37. That's an
24 e-mail from Fred Heller of Lubrizol -- or it contains
25 one anyway -- from Selzer to Heller and then from Heller



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37

1 to you and Selzer. I guess -- whatever. It speaks for
2 itself. What's this all about?

3 MR. DILLON: That's 4-37 you're talking
4 about?

5 MR. MASTROMARCO: Yeah.

6 THE WITNESS: I had contacted Fred to get --
7 to see what Lubrizol sold for additives. And I was -- I
8 wanted to ask -- I asked him about -- I was looking for
9 a fuel additive that would be for diesel and gas. And
10 his response was by sending these attachments on 4-37.

11 BY MR. MASTROMARCO:

12 Q. And they appear at 4-39, correct, start to
13 appear?

14 A. That is correct.

15 Q. These are detergents, aren't they?

16 A. I'm not sure. I'm -- I mean, I'm not, I'm not an
17 expert or a chemist.

18 Q. And then Page 4-45 talks about what the marketing
19 claims are for these products; is that right?

20 A. It says "Competitive, Common, and Enhanced
21 Marking Claims," on 4-45, yes.

22 Q. All right. Now, move to 4-48. You're asking
23 Lubrizol to give you 5 gallon sample of AX400L-90?

24 MR. DILLON: I think that you need to look
25 at 4-40 -- Page 4-49 and maybe 4-50. It looks like it's



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1 all part of the same e-mail.

2 MR. MASTROMARCO: Well, I'm looking at 4-48.
3 I'm skipping over because those earlier ones they're
4 just sending the MSDS on it, okay?

5 BY MR. MASTROMARCO:

6 Q. So eventually you asked, on 4-48, to send you a
7 5-gallon pail or drum? 5-gallon pail.

8 A. I'm not --

9 Q. Do you see on the top of 4-48, (As read:)
10 Robert, I'm arranging for a five gallon pail to be sent
11 to you attention?

12 A. I would say that's possible that I asked.

13 Q. So as of this date on March 28th, you're still
14 formulating the product; is that right? You're still
15 trying find something to add to the product apparently,
16 because you're at 400L-90.

17 A. I'm not -- I'm not sure at this point. Anything,
18 anything was possible. We were talking to multiple fuel
19 additive companies on all sorts of different levels.

20 Q. Do you see this -- you heard Mr. Selzer and
21 Mr. Lehnardt yesterday talk about how they were led to
22 the -- or at least Mr. Lehnardt was -- to Lubrizol to
23 find the AX400L-90? Do you remember that discussion,
24 you were present?

25 A. Yes.



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1 Q. And then he ended up getting a -- the Lubrizol
2 product AX400L-90?

3 A. State the question, please, again.

4 Q. Do you remember him, then, telling us that it was
5 after that point that they obtained the AX400L-90?

6 A. After what point?

7 Q. After they tried to get the 400 and they said it
8 wasn't available anymore. Do you remember that
9 discussion, if you don't that's fine?

10 A. I'm not sure. I just -- I just remember that
11 they had asked -- they had talked to Lubrizol about it.

12 Q. All right. Look at the next page.

13 A. I'm sorry, I coughed.

14 Q. Oh, look at the next page that I want you to look
15 at, it's 4-51. Whose -- who is Mr. Trippe, T-R-I-P-P-E?

16 A. Mr. Trippe, I believe, works for a company that
17 sells a product called viscon.

18 Q. What were you calling him about or e-mailing them
19 about?

20 A. I did a -- another -- or I did an e-mail search
21 on fuel additives and found viscon on the internet and
22 was curious about -- you have to remember that I'm not
23 chemist. I have no idea which direction we're going in
24 and, at this point, we're totally -- I am totally open
25 to looking at all avenues, so this was another avenue of



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1 another technology that I was interested in getting more
2 information on.

3 Q. So ProFuel, at that point, hadn't been created?

4 A. I'm not -- I'm not sure when -- ProFuel is --
5 from my understanding, was created by Steven.

6 Q. Lehnardt?

7 A. Yeah.

8 Q. Again, do you know when it was created?

9 A. I don't know the exact date that they created it.

10 Q. Apparently -- do you know when they formed Trans
11 Tech?

12 A. I believe Steven formed Trans Tech probably,
13 possibly in late April, mid- to late April or...

14 Q. And your understanding from a layman's point is
15 Trans Tech was formed to do what?

16 A. To market.

17 Q. ProFuel?

18 A. To market a fuel additive.

19 Q. A fuel additive?

20 A. Or just to be in the fuel additive business.

21 Q. And when you say mid- or late April, are you
22 referring to 2006?

23 A. That is correct.

24 Q. And why don't we turn to 4-53. What are these
25 things -- these documents 4-53 through 4-58 comprise?



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1 MR. DILLON: 4-53, 4-58 is what he's asking
2 about.

3 BY MR. MASTROMARCO:

4 Q. Yeah. Do you know what they even are?

5 A. It looks like to me that they were attachments
6 from an e-mail from 4 -- 4-52. And on attachment 4-53
7 it says, "Fuel Economy Test in a 1996 Kenworth Tractor
8 With a Caterpillar."

9 Q. What are they testing, do you know?

10 A. It doesn't seem to explain much on the attachment
11 other than at the time I was asking for information on
12 viscon.

13 Q. So they're giving you their test documents
14 apparently?

15 A. I would say that is correct.

16 Q. In fact, in looking through these documents, it
17 looks like they sent you a whole lot of information
18 about different tests that have been performed,
19 different -- by different schools. I mean, if we flip
20 through here -- I mean, it looks like it goes, almost,
21 to 4-114, I'm hoping.

22 (Off-the-record discussion.)

23 THE WITNESS: Vic, you had a question from
24 me.

25 BY MR. MASTROMARCO:



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1 Q. I think these attachments go all the way to
2 4-114?

3 A. Unless I missed something, they look like these
4 are the attachments. I mean, there's a lot of pages
5 here but it looks like to me they're all consecutive. I
6 went through them relatively quickly.

7 Q. I understand. Let's look at 4-115.

8 This is an e-mail from Aaron. The top of this is
9 an e-mail. On the top of this page from Aaron Myers to
10 you regarding AX400L-90. Apparently, this is --
11 remember the discussion yesterday that Lubrizol was the
12 predecessor to -- I shouldn't say predecessor. They
13 succeeded to ALOX Corporation and ALOX had previously
14 been supplying this particular component for the polar
15 compound. Do you remember that?

16 MR. CLELAND: I'm going to object to the
17 form of that question.

18 MR. MASTROMARCO: Fine.

19 THE WITNESS: I don't remember.

20 MR. MASTROMARCO: I'm trying to use it to
21 get to -- to refresh your memory.

22 THE WITNESS: I don't recall all of the
23 details.

24 MR. DILLON: And he would -- off the record.
25 (Off-the-record discussion.)



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1 MR. MASTROMARCO: 4-124.

2 THE WITNESS: And what's your question?

3 BY MR. MASTROMARCO:

4 Q. What is it?

5 A. It's an MSDS sheet.

6 Q. What is -- why is it here? What was the -- why
7 is it dated April 12th, 2006? Do you know any of those
8 answers?

9 A. Why is the MSDS sheet in this file?

10 Q. Yeah. Why is it here and what is it?

11 A. On April 26 of 2006, we sent Michael -- or Trans
12 Tech sent Michael Herblet at Quixtar --

13 MR. DILLON: This is 4-121.

14 THE WITNESS: 4-121. Let's see here.
15 Attachments consisting of pricing for Quixtar, MSDS
16 sheet XS Fuel Conditioner. TTO-PGW, that would be a
17 warranty. And then some labels.

18 BY MR. MASTROMARCO:

19 Q. So this is all being sent to Herblet at Quixtar?

20 A. Yes. On 4/26 of '06.

21 Q. And the purpose of doing that is, if you know,
22 what?

23 A. We were submitting a -- just a second. E-mail
24 says (As read:) I sent an EMI, essential merchandising
25 -- I think that says -- I think the I stand for



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1 information --

2 Q. What page are you looking at?

3 A. On 4-121 or 121, yes.

4 Q. All right.

5 A. -- letter about a patent expiring.

6 This was a packet of information I was sending to
7 Michael Herblet to have them consider us as a vendor for
8 a fuel additive.

9 Q. And apparently if you turn to Page 141 on May 1,
10 2006 --

11 MR. DILLON: 4-141.

12 MR. MASTROMARCO: Hold on just a second.
13 I'm looking, I've got the wrong one here.

14 THE WITNESS: Why don't you -- I need to go
15 to the bathroom.

16 (Off-the-record discussion.)

17 (Break taken.)

18 BY MR. MASTROMARCO:

19 Q. Now, on Page 4-141, this is that letter that I
20 read to Lehnardt where he's talking about how the
21 managers at Quixtar have requested a greater level of
22 detail and/or explanation regarding this attorney --
23 "McMahon's method of determining that the older PMC
24 patent had -- or has expired to prove to Quixtar that
25 our formula, which was derived from the expired patent



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1 doesn't infringe on any PMC patents."

2 Do you remember that?

3 A. To some degree. I'm not a patent attorney. Some
4 of it might have went over my head.

5 Q. Well, in any event, this memo or e-mail is dated
6 May 1, 2006; do you see that?

7 A. Yes.

8 Q. Apparently, he writes back, "he" being
9 Mr. Herblet, after he receives this McMahon's letter on
10 May 4, 2006. This is on Page 4-147. And he says, in
11 paragraph 2, (As read:) Mr. Lehnardt states that the
12 Trans Tech formulation is, quote, derived from, end
13 quote, an expired PMC patent, as opposed to being a
14 direct copy of the PMC formulation claimed in the
15 expired patent.

16 Do you see where it says that?

17 A. Yes.

18 Q. And then he goes on and he says, (As read:) It
19 is possible that changes or modifications to the
20 formulation disclosed in the expired PMC patent might
21 have brought the Trans Tech formulation within the
22 coverage provided by patents owned by PMC or another
23 entity.

24 Do you see where it says that?

25 A. Yes.



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1 Q. So did that concern you?

2 A. I'm not sure.

3 Q. Do you see --

4 A. I mean possibly.

5 Q. And not only that, Quixtar wanted an
6 indemnification claim, or I should say that they wanted
7 an indemnification agreement, so that if they got sued
8 for patent infringement, that you would be responsible,
9 you being Trans Tech, right?

10 A. It says that in here?

11 MR. DILLON: It does.

12 BY MR. MASTROMARCO:

13 Q. Did that concern you?

14 MR. DILLON: He's reading. Where does it
15 ask for indemnification?

16 MR. MASTROMARCO: Okay. Let me read it to
17 you.

18 BY MR. MASTROMARCO:

19 Q. Right after the sentence that I quoted --

20 A. I see it.

21 Q. -- where it says, (As read:) It is possible that
22 changes to the modifications for the formulation
23 disclosed in the expired PMC patent might have brought
24 the Trans Tech formulation within the coverage provided
25 by patents owned by PMC or another entity. That said,



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1 phone and on a conference call with Steven to find out
2 exactly what he wanted but, but Polar was never able to
3 come up with the raw test data, which we thought was
4 really odd.

5 MR. MASTROMARCO: Just for the record,
6 objection. Hearsay.

7 BY MR. GALLAGHER:

8 Q. Let me ask you this. Can you tell me when you
9 started selling Freedom Fuel or purchasing and selling
10 Freedom Fuel from Quixtar, approximately when?

11 A. I started buying it when I first got registered,
12 probably late 80s, early 90s. And I probably started
13 selling it in the fall of -- in the winter of -- the
14 fall of 2004 and the first part of '05.

15 Q. At some point you became interested in supplying
16 Quixtar with a fuel additive product; is that correct?

17 A. Uh-huh. That's correct.

18 Q. Can you tell me how that all began?

19 A. Well, we started having --

20 (Simultaneous discussion.)

21 THE WITNESS: I started having success with
22 Freedom Fuel additive --

23 BY MR. GALLAGHER:

24 Q. When you say success, you mean selling it?

25 A. Selling it. As well as Jeff Selzer. And we --



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1 and really it all started when I looked up the patent
2 information that was on the freedom bottle -- on a
3 Freedom Fuel additive bottle. And that led us to more
4 information, technical information that was backing the
5 products, more test data.

6 Q. Well, my question is a little more basic. How
7 did you get interested in deciding that you wanted to
8 see whether or not you could manufacturer or sell a fuel
9 additive?

10 A. Um, in earlier testimony, we were concerned
11 with -- with Freedom having a competitive product out
12 there called DurAlt.

13 Q. Okay.

14 A. And we were afraid that if we kept selling our
15 Freedom product, that the technical information that we
16 gotten from Polar, that our customers would realize that
17 they could go around us and buy it directly from the
18 DurAlt at half the price or two-thirds of the price.
19 And so we went and talked to Mark Nelson on Easter
20 Sunday about how we could protect our channel, if you
21 would call it, our marketing or sales channel, from
22 these other DurAlt distributors. In the process of
23 that, Mark sent me, Mark Nelson, asked us if we had any
24 interest in also taking over the massive distribution of
25 DurAlt and that we could possibly figure a way to funnel



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1 that back into Quixtar.

2 Q. At some juncture though you, along with Jeff,
3 decided to develop your own fuel additive product,
4 correct?

5 A. Yes.

6 Q. That's what I'm interested in, how did that come
7 about?

8 A. It came about after -- after we -- after our
9 agreements were terminated in December of '05 from Polar
10 Molecular, both our D.N.S. agreement and our J.B.R.
11 settlement agreement. And we -- and after about a month
12 of sending back legal documents back and forth to Polar,
13 we realized that we weren't ever going to get back where
14 we were, and we filed for arbitration and then we
15 realized -- and then I think --

16 Q. Let me ask it a little different. I'm not
17 interested -- I don't think for purposes -- discovery
18 the arbitration in another proceeding is that relative.
19 My question more is, is there something in terms of
20 Quixtar deciding to sell or not sell Freedom Fuel
21 anymore that prompted you and Mr. Selzer to think about
22 developing a product yourselves?

23 A. Yes.

24 Q. When was that and tell me how that started.
25 That's really what I'm trying to focus on.



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1 A. When they -- when they announced that they
2 were --

3 Q. Who is "they"?

4 A. When Quixtar -- when they announced that they
5 were shutting off Freedom Fuel additive, we thought,
6 well --

7 Q. Who is "we"?

8 A. Jeff and I. Jeff Selzer and I thought that the
9 there would be a way that, maybe, we could develop, come
10 up with another fuel additive that we could replace it
11 with.

12 Q. Okay. So what did you do? When you came up with
13 that thought, what did you and Jeff do?

14 A. We started looking at -- we started looking for
15 alternative fuel additives that we could sell that were
16 existing on the market.

17 Q. Now, when you started to do that, approximately
18 when was that?

19 A. It was, probably, February or March.

20 Q. Of what year?

21 A. Of 2006.

22 Q. Now, at that juncture, were you working at all on
23 a product development with Mr. Lehnardt?

24 A. No. Not at that point.

25 Q. When is the point that you hooked up with



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